

**Statement by the Minister of Corrections accompanying copy of Agreement relating to the PPP at Wiri Men's Prison Project tabled pursuant to section 199I(1) of the Corrections Act 2004**

This Agreement relating to the PPP at Wiri Men's Prison Project (the **Agreement**) is being tabled in the House of Representatives pursuant to section 199I(1) of the Corrections Act 2004 (the **Act**) as it contains a prison management contract.

This Agreement provides for the design, build, finance, operation and maintenance of a new men's prison at Wiri. The Agreement is much broader in scope than a prison management contract under the Act since prison management relates to the operational element of the Agreement (as distinct from the design, build, finance and maintenance elements). However, notwithstanding this broader scope I am tabling the Agreement in its entirety except in respect of information that I believe would pose a risk to public safety.

The parts of the Agreement that I am withholding are only those parts that are outside the scope of a prison management contract and publication of which would increase the risk of:

- (a) an escape;
- (b) the unlawful entry of a person or contraband into the prison which could result in (a);
- (c) surveillance being inhibited which could result in (a) or (b);
- (d) sabotage of the facility which could result in (a) or (b); or
- (e) a cyber attack which could result in (a) or (b).

## **Agreement relating to the PPP at Wiri Men's Prison Project**

Her Majesty, The Queen in Right of New Zealand acting by and through  
the Chief Executive of the Department of Corrections (the **Department**)

**and**

SecureFuture Wiri Limited (the **Contractor**)

**Date** *10 September* 2012

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This Agreement relating to the PPP at Wiri Men's Prison Project is made on 10 September 2012

between (1) Her Majesty, The Queen in Right of New Zealand acting by and through the Chief Executive of the Department of Corrections (the Department)

and (2) SecureFuture Wiri Limited (the Contractor)

## Introduction

- A. The Department invited tenderers to bid to undertake the Project on behalf of the Department.
- B. The Contractor is the successful tenderer.
- C. The Contractor will:
  - (i) design and construct the Works and the Facility for the Department; and
  - (ii) provide the Operational Services,upon the terms and conditions of this Agreement.
- D. The Department will make payments to the Contractor in consideration of the Contractor undertaking the Project on the terms and conditions set out in this Agreement.

## It is agreed

### Part 1 – Definitions and Interpretation

#### 1. Definitions

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In this Agreement, unless the context otherwise requires, the following terms have the following meanings:

**Abandons** means to not carry out any Works contemplated by the Works Provisioning Programme at the Department Site for 20 consecutive Business Days or during 120 Business Days (whether consecutive or not) in any rolling 12 month period between Financial Close and Works Completion, excluding:

- (a) in the case of any 20 consecutive Business Day period, any period in respect of which a notice under clause 26.2 (Updates) has been issued and is in effect; and
- (b) in either case absences contemplated by the Works Provisioning Programme or a rectification programme or Prevention Plan accepted by the Department under clause 79.4 (Warning Notice) or absences otherwise permitted under the Financier Direct Deed;

**Absconding** has the meaning given to it in paragraph 1.1(b) of Schedule 16 (Performance Regime) and **Absconds** and **Absconded** have a corresponding meaning;

**Accelerated Dispute Panel** is described in clause 93.1 (Accelerated Dispute Panel);

**Accelerated Dispute Resolution Procedures** means the procedures established under Part 22 (Dispute Resolution) to hear and resolve Disputes;

**Acceptance Criteria** means, in relation to a Milestone and/or any Completion, the conditions contained in Schedule 27 (Completion Tests);

**Access Notice** is defined in clause 22.3(d);

**Actual Termination Date** means:

- (a) if a Termination Notice is issued and the Security Trustee serves a Step-in Notice (as defined in the Financier Direct Deed) prior to the Termination Date specified in that Termination Notice, the Final Termination Date; or
- (b) in all other cases, the Termination Date;

**Additional Disengagement Services** means any services comparable to any part of the Operational Services, provided or to be provided by the Contractor after the Actual Termination Date, as requested by the Department in the Disengagement Services Notice;

**Additional Payments** means any payment that the Department is required to make to the Contractor pursuant to the terms of this Agreement other than the Monthly Unitary Payment, including:

- (a) any amounts payable for a Compensation Extension Event or a Compensation Intervening Event;
- (b) any net amounts payable for reinstatement works under clause 76.3 (Reinstatement processes);
- (c) any amounts payable by the Department under clause 74.11(d);
- (d) any Incentive Payment;
- (e) any Extended Hospital Supervision Payment;
- (f) any payment for Additional Transfer Services;
- (g) any Excess Volume Payments;
- (h) any amounts payable by the Department in accordance with paragraph 2.6(b) of Schedule 18 (Innovation outside of the Project);
- (i) any amount payable by the Department under clause 53.11(c) (Rates and Taxes);
- (j) any amount payable under clause 53.14 (Payment of Base Fee under Independent Reviewer Agreement); and
- (k) if the Department has sent a Change Notice in respect of a Material Change that has been subsequently withdrawn, any reasonable additional third party costs payable to the Contractor pursuant to clause 49.2 (Withdrawn Change);

**Additional Transfer Services** means inter-prison transfers of Prisoners undertaken by or on behalf of the Contractor (excluding any transfers undertaken by the Department or any Department Personnel);

- (a) in excess of 26 such transfers per Contract Year in the geographical area between Waikeria Prison to the south and any Northern Regional Corrections Facility to the north; and
- (b) to prisons outside the area referred to in paragraph (a) of this definition;

**Additional Rescue Refinancing Amount** means, on the first Drawdown Date for each Rescue Refinancing, the amount by which aggregate Senior Debt (including amounts drawn by or available to the Contractor which are attributable to that Rescue Refinancing) immediately after the implementation of that Refinancing exceeds the Core Senior Debt prior to the implementation of that Rescue Refinancing;

**Adjoining Crown Site** means any Adjoining Property vested in or occupied by a Governmental Entity from time to time, with the Adjoining Crown Sites identified in paragraph 5 of Schedule 8 (Site Particulars) being the only Adjoining Crown Sites as at the Execution Date;

**Adjoining Crown Site Contamination** means Contamination that:

- (a) emanates from an Adjoining Crown Site after the Execution Date (including, in the case of airborne Contamination, Contamination that originally emanated from another location and passed over or through that Adjoining Crown Site prior to affecting the Department Site);
- (b) directly results in Contamination affecting the Department Site; and
- (c) could not, by use of Good Industry Practice, have been reasonably avoided or mitigated by the Contractor without incurring material costs,

but excludes any Contamination (regardless of whether or not the same emanated from an Adjoining Crown Site) affecting or otherwise present on the Department Site as at the Execution Date;

**Adjoining Property** means any land and/or property adjoining or in the neighbourhood of the Department Site or any extra land (as defined in clause 22.1(h)) and each and every part thereof including all roads, footpaths, walls, fences, buildings and other erections and all conduits, pipes, ducts, water courses, wires, cables, meters, switches, channels, flues and all other conducting media appliances and other apparatus on, under or within such land and/or property;

**Adjusted Estimated Value of the Contract** is defined in Schedule 23 (Calculation of Compensation on Termination);

**Adjusted Highest Compliant Tender Price** is defined in Schedule 23 (Calculation of Compensation on Termination);

**Affiliate** means a person that is a "related company", as that term is defined in section 2(3) of the Companies Act 1993, of any relevant person;

**Agent** means, as at the Execution Date, ANZ National Bank Limited in its capacity as agent for the Senior Lenders under the Financing Agreements, and includes any successor to, or replacement of, the Agent;

**Agreed Use** means that the Prison is designated for use as a prison accommodating:

- (a) men or women (or both where appropriately separated); and/or

- (b) young persons who receive a custodial sentence in the adult jurisdiction in accordance with section 142 of the Criminal Justice Act 1985,

provided that at no time may the Prison be designated to accommodate maximum security prisoners;

**Agreement** is described in clause 3.1 (Scope of Agreement);

**Ancillary Documents:**

- (a) means the agreements to which the Contractor is party for the performance of its obligations under this Agreement but to which the Department is not a party, being those agreements identified as such in paragraph 1(b) of Schedule 3 (Project Documents);
- (b) includes any document or agreement entered into for the purpose of supplementing, amending, replacing or novating any of those listed documents that the Department has agreed (in writing) to be an Ancillary Document; and
- (c) does not include the Financing Agreements;

**Annual Audit Plan** means the plan of that name prepared by the Contractor as part of the Operational Quality Assurance Plan in accordance with Part 3 (Correction Services Documentation) of Schedule 5 (Operative Documents), and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Annual Performance Trend Report** means each such report required to be delivered by the Contractor under and in accordance with paragraph 4.1(b) of Schedule 15 (Reporting);

**Applicable Reviewable Service** means Reviewable Escort Services or Reviewable AVL Services;

**Applicable Utility** means each of the following Utility Services to be procured by the Contractor in respect of the Facility:

- (a) electricity (capped for the purposes of clause 54 (Value Testing) at 9,348,963 KWh per Contract Year);
- (b) water (capped for the purposes of clause 54 (Value Testing) at 87,600 kilolitres per Contract Year);
- (c) waste water (capped for the purposes of clause 54 (Value Testing) at 87,600 kilolitres per Contract Year); and
- (d) gas (capped for the purposes of clause 54 (Value Testing) at 21,619 MJh per Contract Year);

**ARI** means average recurrence interval;

**Arms Length Terms** includes (without limiting the ordinary meaning of that term) relationships, dealings and transactions that:

- (a) do not include elements that parties in their respective positions would usually omit; or
- (b) do not omit elements that parties in their respective positions would usually include,

if the parties are:

- (c) connected or related only by the transaction or dealing in question;
- (d) acting independently; and
- (e) each acting in their own respective best interests;

**ARWCF** means Auckland Region Women's Corrections Facility;

**Asset Condition Spreadsheet** means the spreadsheet set out in the Appendix (Asset Condition Spreadsheet) to Schedule 12 (Facility Management Requirements);

**Asset Condition Survey** means each survey undertaken in accordance with clause 36 (Asset Condition Survey) in order to ascertain whether the Contractor has complied with its obligations in relation to the maintenance and replacement of all assets comprising the Works;

**Asset Management Plan** means the plan of that name, based on the Contractor's outline asset management plan as set out in Schedule 26 (Related Documents), prepared by the Contractor in accordance with clause 29.2(b), clause 34.3 (Asset Management Plan) and Part 2 (Facility Management Services Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Asset Register** means the register of that name prepared by the Contractor in accordance with clause 34.2 (Asset Register) and Part 2 (Facility Management Services Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Associate** means:

- (a) any Affiliate;;
- (b) any unit trust, investment fund, partnership, other fund or other entity of which any entity referred to in paragraph (a) of this definition or, where the Shareholder is:
  - (i) John Laing Investments NZ Holdings Limited (incorporated and registered in England with registered number 08121647, or its Associate as set out in paragraph (a) above), Henderson Group plc (incorporated and registered in Jersey with registered number 101484) or any of its subsidiaries; or
  - (ii) Infrared Infrastructure (NZ) B.V., (incorporated and registered in The Netherlands with registered number 55875688, or its Associate as set out in paragraph (a) above), InfraRed Partners LLP (incorporated and registered in England with registered number OC359657) or any of its subsidiaries,

is either the general partner, trustee or manager (either directly or indirectly) (a **Related Fund**);

- (c) any body corporate or other entity (whether or not having separate legal personality) Controlled by a Related Fund;
- (d) any general partner, nominee or trustee of any entity falling within paragraphs (a), (b) or (c) of this definition acting in such capacity (whether on a change of general partner, nominee or trustee or otherwise); and/or

- (e) limited partners, members or investors in any Related Fund but only to the extent that such persons become so as a result of a transfer in specie to them which is a distribution on a winding up out of the assets of the trust, fund or partnership in question;

**Associated Governmental Entity** means any Governmental Entity:

- (a) authorised, requested or invited to enter the Department Site by the Department pursuant to its rights and obligations under this Agreement or otherwise in connection with the Project; and/or
- (b) integrated into the operation of the Prison due to its role and/or function in the corrections sector (including Visiting Justices and the NZPB),

(and their respective employees, contractors and agents) but excluding any Governmental Entity referenced in paragraphs (a) and/or (b) above where that Governmental Entity is:

- (c) requested to enter the Department site by the Contractor; and/or
- (d) exercising a statutory right in relation to the Department Site, the Contractor or any Contractor Related Person or their respective employees, contractors and agents;

**At Risk** means, in respect of a Prisoner, a person who has self-harm or suicidal intentions, or a history of self-harm or suicidal intentions;

**Auckland Council** means Auckland Council or any successor to its rights and obligations;

**Australia New Zealand Food Standards Code** means the code incorporated under the New Zealand (Australia New Zealand Food Standards Code) Food Standards 2002 and any amendments;

**Available Prisoner Place** means, on any day on which there is a valid certificate for public use and/or a code compliance certificate (each as described in the Building Act 2004) in respect of the Prison, a Prisoner Place in respect of which:

- (a) all Laws relating to that Prisoner Place and (if applicable) to any Prisoner occupying that Prisoner Place are complied with in full;
- (b) any Prisoner occupying that Prisoner Place would have available to him three meals daily served at appropriate times of the day, to the extent that such Prisoner is physically present at the Prison at such meal times;
- (c) any Prisoner occupying that Prisoner Place would have available to him clothes to wear which are of reasonable standard and cleanliness;
- (d) any Prisoner occupying that Prisoner Place would have access to potable water throughout the day;
- (e) any Prisoner occupying that Prisoner Place would have a bed with a clean mattress and clean and adequate bedding;
- (f) the Prison Cell in which that Prisoner Place is located complies with the minimum requirements for heat, light, ventilation and other cell requirements each as set out in the "internal environmental design conditions" box of the Room Data Sheet in respect of a Prison Cell of the relevant type;

- (g) the Prison Cell in which that Prisoner Place is located has an operable lock (except in respect of Residences, where there is an operable lock to the entry door of each group of six Prison Cells);
- (h) any Prisoner occupying that Prisoner Place would have access to tepid or hot water for washing purposes and adequate sanitation facilities;
- (i) there is a cell alarm system per Prisoner Place (except in respect of Residences, where there is a cell alarm in the lounge of each group of six Prison Cells) which is in good working order and provides a means of alerting Staff Members;
- (j) there is an intercom system per Prison Cell that is in good working order and provides a means of communicating with Staff Members;
- (k) any Prisoner sharing the relevant Prison Cell with any other Prisoner, is accommodated in accordance with the cell sharing requirements of this Agreement; and
- (l) the levels of safety and security in the Prison, the control of the Prisoners, and the Contractor's ability to make medical treatment available to Prisoners are as required under this Agreement, including the Corrections Services Requirements;

**Available Prisoner Place Report** means the daily report required to be submitted by the Contractor, on each day on and following the Service Commencement Date, in accordance with paragraph 2 of Schedule 15 (Reporting);

**AVL Benchmark Information** means detailed volume information in respect of Comparable Prisons providing services equivalent to the Reviewable AVL Services, setting out the number of occasions where audio-visual links to New Zealand courts have been used and the duration of such events, recorded in each case for the 18 month period prior to the delivery of the information by the Department;

**AVL Services Rate** means \$50.03 per Service Hour (on the basis of two custody officers per room), Indexed, with LCI as the Relevant Index;

**Background IP** is defined in clause 60.1(a);

**Base Agreement** means this document comprising clauses 1 to 104 (inclusive);

**Base Case** means the financial model agreed between the parties prior to the Execution Date (as updated in accordance with Part 1 (Financial Close Adjustment Protocol) of Schedule 4 (Funding Requirements and Financing Agreements) with effect from Financial Close and from time to time in accordance with the terms of this Agreement) for the purpose of, amongst other things, calculating the Unitary Charge;

**Base Costs** means the actual costs properly and reasonably incurred by the Contractor and by any Sub-contractor (as applicable) as a result of a Change, excluding any Margin;

**Base Senior Debt Termination Amount** is defined in Schedule 23 (Calculation of Compensation on Termination);

**Building Management System** or **BMS** means the building management system to be provided in accordance with Schedule 10 (Works Requirements) and utilised and maintained in accordance with Schedule 12 (Facility Management Requirements), as may be updated from time to time in accordance with this Agreement;

**Business Day** means a day other than a Saturday or Sunday or a public holiday in New Zealand;



**Capital Expenditure** means any expenditure which falls to be treated as capital expenditure in accordance with GAAP from time to time;

**Capped Volume Assumption** is defined in clause 54.1(e)(ii)(C);

**CCTV** means closed circuit television;

**Change** means:

(a) any change made or proposed to be made in connection with:

(i) this Agreement or the Services or the Works; or

(ii) anything the subject of this Agreement or that is used or supplied for the purposes of the Services or the Works,

that the Department considers (on reasonable grounds) to be in furtherance of one or more of, and not inconsistent with the balance of, the Objectives; and

(b) (where the context permits) any Change in Law,

but excludes any Consequential Change;

**Change Compensation Principles** means the principles set out in Schedule 21 (Change Compensation Principles);

**Change in Costs** means, in respect of any Relevant Event, any Compensation Extension Event or any Compensation Intervening Event, the direct effect of that event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs (including funding delay costs), Losses or Liabilities of the Contractor and/or any Major Sub-contractor (without double counting), in each case calculated in accordance with the Change Compensation Principles;

**Change in Law** means the coming into effect after the Execution Date of:

(a) any Law (including a Law that repeals or amends an existing Law), other than any Law which:

(i) on or before the Execution Date has been published:

(A) in a draft bill;

(B) as part of a government consultation paper;

(C) in a bill; or

(D) in a draft statutory instrument; and

(ii) in respect of subparagraph (i) was, as at the Execution Date, publicly available and included substantially the same form and content as the Law eventuating after the Execution Date; or

(b) any applicable judgment of a relevant court of law which changes or creates a binding precedent,

but does not include a change in Law which was not in force at the Execution Date but which:

- (c) was contained or referred to in the Tendering Information or any Project Documents in substantially the same form and content as the change eventuating after the Execution Date;
- (d) a party experienced and competent in the implementation of the Works or the provision of the Services would have reasonably foreseen or anticipated prior to the Execution Date; or
- (e) is a change in the way a Law applies or is interpreted as a result of a court decision other than as described in paragraph (b);

**Change Notice** means a notice that initiates a Change, the form of which is set out in Schedule 20 (Change Notice);

**Change of Ownership** means:

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Contractor, HoldCo and/or the Major Sub-contractor(s) responsible for the delivery of the Corrections Services;
- (b) any change in Control in respect of the Contractor, HoldCo and/or the Major Sub-contractor(s) responsible for the delivery of the Corrections Services and/or any Controller of the Contractor, HoldCo and/or the Major Sub-contractor(s) responsible for the delivery of the Corrections Services;
- (c) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the Shareholder Debt advanced or made available to the Contractor and/or HoldCo; and/or
- (d) any other arrangements that have or may have or which result in the same effect as those described in any of paragraphs (a), (b) and (c);

**Change Proposal** means, in relation to a Change and a Change Notice, the information contained in or referenced in sections 2 and 3 of that Change Notice;

**Charge** means any amount payable by the Contractor in respect of a Charge Event, as specified in paragraph 1.2 of Schedule 16 (Performance Regime);

**Charge Event** means any of the events specified in paragraph 1.1 of Schedule 16 (Performance Regime);

**Chief Executive** has the meaning given to that term in the Corrections Act;

**Claim** includes any claim, proceeding, action, demand or suit (including by way of contribution or indemnity) at Law or in equity including for payment of money (including damages) or for an extension of time, including by statute (to the extent permitted by Law), in tort for negligence or otherwise, including negligent misrepresentation or for strict liability or for restitution;

**Clean-up Notice** means a notice or direction given under Law which requires the person to whom it is issued to take action to remediate Contamination including:

- (a) an enforcement order under section 314 of the Resource Management Act 1991; and
- (b) an abatement notice under section 322 of the Resource Management Act 1991,

but only to the extent that it requires a person to whom it is issued to do anything to remedy the existing Contamination;

**Communication Plan** means the plan of that name prepared by the Contractor in accordance with Schedule 11 (Communication Protocols), Part 1 (Works Provisioning Documentation), Part 2 (Facility Management Services Documentation) and Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) (as applicable) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Community Probation Services** or **CPS** means the Department's community probation services;

**Comparable Contractors** means private sector contractors in New Zealand, Australia, the United Kingdom or Canada undertaking works and/or services (as applicable) that are of a type and/or scale comparable to the Works Provisioning or the Operational Services, including but not limited to contractors that are party to public private partnership contracts (including under the United Kingdom government's Private Finance Initiative) in those jurisdictions;

**Comparable Prison** means a prison in New Zealand's North Island accommodating male sentenced prisoners, including any other Contract Prisons (as defined in the Corrections Act), but excluding any prisons designed to accommodate maximum security prisoners;

**Compensation Adjustment** is defined in Schedule 23 (Calculation of Compensation on Termination);

**Compensation Date** is defined in Schedule 23 (Calculation of Compensation on Termination);

**Compensation Extension Event** means:

- (a) a Māori Claim;
- (b) a Find;
- (c) Adjoining Crown Site Contamination;
- (d) an exercise by the Department of its Step-in Rights, where those Step-in Rights are exercised other than as a result of a breach by the Contractor of its obligations under this Agreement and where the Contractor has or will incur Losses as a result of the Department failing to act in accordance with any Laws or Good Industry Practice during the Step-in Period;
- (e) any breach by the Department of any of its obligations under a Project Document, other than a failure on the part of the Department to pay any monies that are then due and payable to the Contractor pursuant (and subject) to the terms of that Project Document;
- (f) any:
  - (i) legal proceeding (whether judicial review or otherwise) relating, in substance, to the Designation; or
  - (ii) judicial review relating to the Outline Plan due to any alleged action, inaction or omission by the Department or the Auckland Council in the decision making process,

but excluding any proceedings arising from the Contractor's non-compliance with its obligations set out in this Agreement (including without limitation its obligations under Schedule 9 (Resource Management Act Requirements)); or

- (g) where the thin capitalisation rules in sub-part FE of the Income Tax Act 2007 are amended such that:
  - (i) the application of those rules is extended beyond New Zealand taxpayers that are controlled by a single non-resident; and
  - (ii) the Contractor and/or Holdco is required to apportion its interest expenditure for an income year under those rules and:
    - (A) is treated as deriving an amount of income; or
    - (B) is unable to deduct (in whole or in part) an amount of interest expenditure incurred;

**Compensation Intervening Event** means:

- (a) a Māori Claim;
- (b) a Find;
- (c) Adjoining Crown Site Contamination;
- (d) an exercise by the Department of its Step-in Rights, where those Step-in Rights are exercised other than as a result of a breach by the Contractor of its obligations under this Agreement and where the Contractor has or will incur Losses as a result of the Department failing to act in accordance with any Laws or Good Industry Practice during the Step-in Period;
- (e) any breach by the Department of any of its obligations under a Project Document, other than a failure on the part of the Department to pay any monies that are then due and payable to the Contractor pursuant (and subject) to the terms of that Project Document;
- (f) any:
  - (i) legal proceeding (whether judicial review or otherwise) relating, in substance, to the Designation; or
  - (ii) judicial review relating to the Outline Plan due to any alleged action, inaction or omission by the Department or the Auckland Council in the decision making process,

but excluding any proceedings arising from the Contractor's non-compliance with its obligations set out in this Agreement (including without limitation its obligations under Schedule 9 (Resource Management Act Requirements)); or

- (g) where the thin capitalisation rules in sub-part FE of the Income Tax Act 2007 are amended such that:
  - (i) the application of those rules is extended beyond New Zealand taxpayers that are controlled by a single non-resident; and
  - (ii) the Contractor and/or Holdco is required to apportion its interest expenditure for an income year under those rules and:
    - (A) is treated as deriving an amount of income; or

- (B) is unable to deduct (in whole or in part) an amount of interest expenditure incurred;

**Compensation Sum** is defined in Schedule 23 (Calculation of Compensation on Termination);

**Completion** means:

- (a) in relation to any Milestone (other than Works Completion or Operational Completion), that the pre-conditions for successful completion for that Milestone (as detailed in Schedule 27 (Completion Tests), have been confirmed as being met by the Contractor, by the Independent Reviewer or by the Department (as the case may be); and
- (b) includes Works Completion and Operational Completion;

**Completion Plan** means, as the context requires, either or both of the Works Completion Plan and the Operational Completion Plan;

**Compliance Certificate** means a certificate in the form set out in Appendix G to Schedule 15 (Reporting);

**Compliant Tender** is defined in Schedule 23 (Calculation of Compensation on Termination);

**Compliant Tenderer** is defined in Schedule 23 (Calculation of Compensation on Termination);

**Conditions Precedent** means the conditions referred to in Schedule 1 (Conditions Precedent);

**Conditions Precedent Deadline** means 2.00pm on the date 20 Business Days after the Execution Date;

**Confidential Information** means:

- (a) all information and trade secrets already communicated or subsequently communicated under or in connection with this Agreement or with respect to the Services or otherwise with respect to the subject matter of this Agreement including (without limitation) any information obtained:
  - (i) in the course of negotiations leading to the conclusion of this Agreement; or
  - (ii) in the performance of this Agreement;
- (b) any information about the business or property of a person including (without limitation) any information:
  - (i) relating to the financial position of that person;
  - (ii) concerning that person's suppliers and customers or its agents or brokers;
  - (iii) relating to that person's internal management, structure, personnel or strategies; or
  - (iv) comprising the terms of this Agreement (other than to the extent those terms have previously been disclosed by or with the consent of the Department under clause 59 (Confidential Information)); and

- (c) all information in respect of any materials in which that person has Intellectual Property rights in accordance with or provided under the terms of this Agreement;

**Confirmed Change** means:

- (a) a Non Material Change confirmed by the Department under clause 46.4 (Non Material Change during Works Provisioning);
- (b) a Change deemed to be confirmed by the Department under clause 48.1 (Confirmation of Change);
- (c) a Change directed by the Department to be implemented by the Contractor under clause 48.2 (Alternative responses) where such direction is not disputed by the Contractor, in accordance with that clause; and/or
- (d) any Consequential Change finalised in accordance with clause 50.2(f);

**Consent** means:

- (a) any consent, authorisation, permit, registration, filing, agreement, notarisation, certificate, licence, approval, or exemption from, by or with, a Governmental Entity, judicial body or stock exchange which is required to enable the Contractor to observe, comply with or perform any of its obligations under this Agreement (and includes consents required to comply with Laws or as a result of the rights or discretions of any third party);
- (b) in relation to any act, matter or thing which will be prohibited or restricted in whole or in part if a Governmental Entity, judicial body or stock exchange intervenes or acts in any way within a specified period after lodgement, filing, registration or notification of such act, matter or thing, the expiry of such period without such intervention or action; and
- (c) includes Department Consents and Contractor Consents;

**Consequential Change** means a change arising from:

- (a) the exercise by the Department of its rights under clause 50.2(e);
- (b) any decision by the Department to reduce the scope of the Corrections Services that the Department considers (on reasonable grounds) to be in furtherance of one or more of, and not inconsistent with the balance of, the Objectives;
- (c) any physical works undertaken by the Department on the Department Site during any period in which the Department exercises its Step-in Rights under clause 67 (When step-in applies), to the extent that such works or the consequences of such works subsist following the date on which the Department ceases to exercise such Step-in Rights;
- (d) any change to the Fixed Support Cost Components requested by the Contractor where the volume of Reviewable Escort Services actually required by the Department, in any Contract Year, is greater than 32,000 Service Hours; and/or
- (e) the omission of a Reviewable Service by the Department under clause 54.1(e)(ii)(D);

**Consequential Change Notice** means a notice to be issued by the Department in accordance with clause 50.2(f) proposing a Consequential Change, substantially in the form set out in Schedule 20 (Change Notice);

**Consequential Change Proposal** means the response to a Consequential Change Notice in accordance with clause 50.2(f), comprising the information to be set out in sections 2 and 3 of that Consequential Change Notice;

**Consequential Loss (Business Interruption) Insurance** is described in Part 2 (Services Phase) of Schedule 22 (Required Insurances);

**Construction Staff** means any Contractor Personnel who is required to work or perform duties which are connected with the design and construction of the Facility or the Works;

**Construction sub-contract** means the agreement between the Contractor and the person or persons for the time being appointed by the Contractor:

- (a) to undertake Works Provisioning for the purposes of this Agreement; or
- (b) to effect a Material Change in relation to the Works;

**Construction Sub-contractor** means each person engaged from time to time by the Contractor to perform all or any material part of the Works Provisioning, being at the Execution Date The Fletcher Construction Company Limited;

**Construction Sub-Programme** means that sub-programme of that name prepared by the Contractor as part of the Works Provisioning Programme in accordance with Part 1 (Works Provisioning Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Contamination** means the presence on, in, over or under land (including both surface and ground water) of a substance at a concentration above the concentration at which the substance is normally or naturally present on, in, over or under that land (including both surface and ground water) or land or waters in the same locality, being a presence that presents a risk of harm to human health or any other feature of the Environment;

**Contract Month** means any month in a Contract Year provided that:

- (a) the first Contract Month shall commence on the Service Commencement Date and end on the last day of the month in which the Service Commencement Date occurs; and
- (b) the last Contract Month shall begin on the first day of the month in which the last day of the Contract Year occurs and end on the last day of the Contract Year;

**Contract Prison** has the meaning given to that term in the Corrections Act;

**Contract Term** means the period from and including the date of Financial Close to the Expiry Date, or if this Agreement ends earlier, to the Actual Termination Date;

**Contract Year** means:

- (a) the period commencing on the Service Commencement Date and ending on the next 30 June;
- (b) each subsequent 12 calendar month period during the Contract Term; and
- (c) the period from the end of the last full Contract Year to the last day of the Contract Term;

**Contractor Background IP** means Background IP that is owned by the Contractor, a Contractor Related Person or Contractor Personnel or by the head licensor of the Contractor, a Contractor Related Person or Contractor Personnel;

**Contractor Consents** means all Consents necessary to enable the Contractor to perform its obligations under this Agreement, including the Outline Plan, other than Department Consents;

**Contractor Default** means an Immediate Termination Event or a Remediable Contractor Default;

**Contractor Personnel** means any:

- (a) Contractor Related Person; or
- (b) director, officer, employee or agent of, or contractor to, the Contractor or a Contractor Related Person;

**Contractor Related Person** means any:

- (a) Affiliate of the Contractor; or
- (b) Sub-contractor;

**Contractor's Notice** is defined in clause 52.2 (Notification of Qualifying Change in Law);

**Contractor's ICT System** means the ICT systems installed and/or utilised by the Contractor in the provision of the Operational Services, but excluding the Department's ICT System;

**Contractor's Representative** means the person for the time being appointed by the Contractor as its representative pursuant to clause 15.2 (Service management) and Part 3 (Parties' representatives) of Schedule 7 (Governance and Service Management);

**Contractor's Share** means the percentage figure corresponding to that part of the Cumulative Capital Expenditure or Qualifying Opex, as applicable, at the relevant time, as set out in the third column of the table set out below;

Cumulative Capital Expenditure	Qualifying Opex	Contractor's Share
\$0 to \$300,000 (inclusive)	\$0 to \$25,000 (inclusive)	100%
\$300,000 to \$600,000 (exclusive)	\$25,000 to \$50,000 (exclusive)	50%
\$600,000 and above	\$50,000 and above	0%

**Control** means, in relation to a body corporate (of any kind):

- (a) control or influence of, or having the capacity to control or influence, the composition of the board as defined in section 7 of the Companies Act 1993;
- (b) being in a position to cast, or control the casting of, more than 20 per cent of the maximum number of votes that may be cast at a general meeting; or
- (c) having a relevant interest (as defined in sections 5 to 5B of the Securities Markets Act 1988) in more than 20 per cent of the voting securities,



of that body corporate (whether alone or together with any Affiliate);

**Controller** means, in relation to a Change of Ownership (as the context may require), the person or body corporate that is then exercising Control or the person or body corporate to whom Control is intended to pass;

**Convictions** means any previous convictions or pending prosecutions, but excludes:

- (a) minor road traffic offences; and
- (b) any matter to which the Criminal Records (Clean Slate) Act 2004 applies;

**Core Disengagement Services** means those services to be provided by the Contractor under and in accordance with Part 21 (Hand Back and Disengagement) and Schedule 24 (Disengagement) but excludes Additional Disengagement Services;

**Core Senior Debt** means, as at any date and without double counting, the aggregate of all Senior Debt comprising:

- (a) Senior Debt incurred by way of Senior Financing Agreements in place at Financial Close;
- (b) Senior Debt incurred by way of all Permitted Refinancings (excluding any Swap Breakage Refinancing, any Additional Rescue Refinancing Amounts and any Permitted Hedging); and
- (c) Senior Debt incurred by way of all General Refinancings,

and excludes, for the avoidance of doubt, any Senior Debt incurred by the Contractor without obtaining the prior written consent or deemed consent (as the case may be) of the Department under this Agreement;

**Corrections Act** means the Corrections Act 2004 (and, for the avoidance of doubt, includes any Section 196 Instruction);

**Corrections Regulations** means the Corrections Regulations 2005;

**Corrections Services** means the services described in Schedule 14 (Corrections Services Requirements);

**Corrections Services Documentation** means the programmes, plans and documentation as set out in Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents), including:

- (a) the Preliminary Operational Completion Plan;
- (b) the Operational Completion Plan;
- (c) the Operational Completion Programme;
- (d) the Integration Plan;
- (e) the Ramp-Up Plan;
- (f) the Communication Plan;
- (g) the Stakeholder Engagement Plan;

- (h) the Policy and Procedures Manual;
- (i) the Rehabilitation and Reintegration Programme;
- (j) the Emergency Procedures and Business Continuity Manual;
- (k) the Security Management Plan;
- (l) the Risk Management Plan;
- (m) the ICT Solution;
- (n) the Disengagement Plan;
- (o) the Handover Package;
- (p) the Privacy Impact Assessment; and
- (q) the Prison Manager Position Description;

**Corrections Services Requirements** means those requirements of the Department, as varied in accordance with Part 13 (Changes) or otherwise pursuant to the terms of this Agreement, that set out the Department's minimum requirements for the provision of the Corrections Services including the descriptions of the Corrections Services, the Available Prisoner Place requirements and the Performance Standards and all performance monitoring requirements, the initial Corrections Services Requirements being set out in Schedule 14 (Corrections Services Requirements);

**Corrections Services Solution** means the document of that name appended to Schedule 5 (Operative Documents) solely for the purpose of providing a baseline assessment for the development and finalisation of the initial Policy and Procedures Manual in accordance with the Review Procedures and, upon the finalisation of the initial Policy and Procedures Manual shall be deemed to no longer form part of this Agreement;

**Corrnet** means the Department's intranet for the communication of policies and procedures, contact details for employees of the Department and other internal information, access to which will be provided to the Contractor as required by this Agreement via Citrix Access Gateway;

**CPI** means the "all groups" consumer price index for the time being as published by Statistics New Zealand or any successor or replacement index to CPI as nominated by Statistics New Zealand for the time being;

**Criminal Convictions Report** means a copy of an individual's criminal convictions held on the Ministry of Justice's computer systems (or any successor similar service or report);

**CRi(Māori)** has the meaning given to that term in Part 4 of Schedule 16 (Performance Regime);

**CRi(Overall)** has the meaning given to that term in Part 4 of Schedule 16 (Performance Regime);

**Critical System** means each of the following electrical systems:

- (a) security equipment;
- (b) SMS;

- (c) ICT and communications equipment;
- (d) BMS;
- (e) Prison Cell water management systems;
- (f) fire protection systems;
- (g) Disaster Recovery Room ICT system; and
- (h) perimeter security lighting and path lighting;

**Cultural Centre** means the area identified and labelled on the Schedule 10 Drawings as the “Cultural Ctr”;

**Cumulative Capital Expenditure** means the aggregate of:

- (a) all Capital Expenditure that has been incurred as a result of each General Change in Law that has come into effect during the period since the Service Commencement Date; and
- (b) the amount of Capital Expenditure that is agreed, or determined to be required, as a result of a General Change in Law;

**Custodial Management System** or **CMS** means the electronic custodial management system to be provided in accordance with Schedule 10B (Works (Retrofit) Requirements) and Schedule 13 (ICT Requirements) and utilised and maintained in accordance with Schedule 14 (Corrections Services Requirements), as may be updated from time to time in accordance with this Agreement;

**Custodial Service Failure** means an event listed in the second column of the table set out in the appendix to Schedule 16 (Performance Regime);

**Death due to Prisoner Action** has the meaning given to it in paragraph 1.1(d) of Schedule 16 (Performance Regime);

**Debt Contract Month** means:

- (a) the period from the Service Commencement Date until the 23<sup>rd</sup> day of the month in which the Service Commencement Date occurs (or, if the Service Commencement Date is on or after the 24<sup>th</sup> day of a month, the period from the Service Commencement Date until the 23<sup>rd</sup> day of the following month); and
- (b) subsequently, each period commencing on the 24<sup>th</sup> day of a month and ending on the 23<sup>rd</sup> day of the following month;

**Deductions** means any deductions imposed as a result of any KPI Breach in accordance with paragraph 9 of Schedule 16 (Performance Regime);

**Deemed Works Completion** means the date on which it is determined by the Independent Reviewer that Works Completion would have occurred but for the implementation of any General Change in Law requiring Capital Expenditure that has been enacted but has not come into force;

**Default Interest** is defined in Schedule 23 (Calculation of Compensation on Termination);

**Defect** means:

- (a) any aspect of the design of the Works which is not in accordance with the requirements of this Agreement; or
- (b) any defect, non-compliance of any part of the Works with the requirements of this Agreement, shrinkage, fault or omission in the Works (but in each case excludes any normal shrinkage of materials unless that shrinkage should have been accommodated for in accordance with Good Industry Practice);

**Delivery Proposal** means the Contractor's proposed delivery solution, as set out in Schedule 10 (Works Requirements) and Schedule 10B (Works (Retrofit) Requirements) in relation to the Works Requirements, in Schedule 12 (Facility Management Requirements) in relation to the Facility Management Requirements, in Schedule 13 (ICT Requirements) in relation to the ICT Requirements and in Schedule 14 (Corrections Services Requirements) in relation to the Corrections Services Requirements;

**Department Application** means, at the Execution Date, the following Software applications used by the Department in connection with the Project:

- (a) Integrated Offender Management System (including the Psychological Services (**PS**) and Community Probation Services (**CPS**) modules) (**IOMS**);
- (b) Corrections Analysis and Reporting System (**CARS**);
- (c) Medtech32;
- (d) HRHP Database;
- (e) Secure Intelligence Database System (**SiD**);
- (f) Secure Email; and
- (g) Trust Accounting Bulk Upload (**TABU**),

and includes such other Software applications that the Department notifies the Contractor from time to time is a Department Application, whether by way of upgrade, replacement, substitution or change to any Department Application or by way of a new Department Application;

**Department Background IP** means Background IP that is owned by the Department or a Department Related Person or by the head licensor of the Department or a Department Related Person;

**Department Consent** means:

- (a) the Designation;
- (b) any Consent that, as a matter of law, only the Department is eligible to obtain (excluding the Outline Plan); and
- (c) any other Consent that the Department has agreed to seek or obtain, to the extent specified in writing by the Department to the Contractor;

**Department Developed IP** means all Developed IP;

**Department Information** means any information disclosed or made available to the Contractor, its Shareholders or advisers by or on behalf of the Department about or relating to the Project, including any of the Tendering Information and any report provided by the Department to the Contractor with respect to the Department Site;

**Department Personnel** means:

- (a) any employee of the Department, contractor to, or agent of, the Department or a Department Related Person, including employees of the Treasury, the Inland Revenue Department, the Department of Prime Minister and Cabinet and the State Services Commission;
- (b) the Auditor General, the Deputy Auditor General and any employee of, or contractor to, the Office of the Auditor General or the Audit Office; and
- (c) any Minister of the New Zealand Government to whom the Chief Executive of the Department, the State Services Commission and the Treasury report and any staff working in that Minister's office,

but excludes the Contractor, any Contractor Related Person and the Independent Reviewer;

**Department Records** means all records relating to the Department and the Department's operations, facilities, Department Personnel, assets, programs and Prisoners in whatever form that information may exist and whether entered into, stored in, generated by or processed as part of the Services;

**Department Related Person** means any Governmental Entity that provides services in or in relation to the Facility;

**Department Site** means the areas edged in red on the Department Site Plan for the Facility, together with the buildings and service ducts and media for all utilities and services for servicing the Facility;

**Department Site Plan** means the plans for the Department Site set out in paragraph 2 of Schedule 8 (Site Particulars);

**Department's ICT System** means the following applications:

- (a) the Department Applications;
- (b) the hardware, equipment and associated infrastructure utilised by the Department from time to time to host and operate the Department Applications and includes the Citrix access gateway at the ICT Interface; and
- (c) the Ministry of Justice integrated courtroom video conferencing system;

**Department's Representative** means the person for the time being appointed by the Department as its representative pursuant to clause 15.2 (Service management) and Part 3 (Parties' representatives) of Schedule 7 (Governance and Service Management);

**Department's Requirements** means the Works Requirements set out in Schedule 10 (Works Requirements) and Schedule 10B (Works (Retrofit) Requirements), the Facility Management Requirements set out in Schedule 12 (Facility Management Requirements), the ICT Requirements set out in Schedule 13 (ICT Requirements) and the Corrections Services Requirements set out in Schedule 14 (Corrections Services Requirements);

**Design and Construction Payment** means the payment of the amount specified in cell U60 on the Base Case sheet entitled "Summary" as at Financial Close, to be made by the

Department to the Contractor on the Service Commencement Date, representing the agreed design and construction costs of the Facility (excluding Fitout) and/or the Works, which includes an allocation of the Contractor's debt funding costs, as incurred or deemed incurred during or prior to Works Provisioning;

**Design Development** means that phase of Works Provisioning described in clause 27 (Design and Design Development) forming part of the Works Provisioning Programme, the requirements for which are specified in Part 1 (Works Provisioning Documentation) of Schedule 5 (Operative Documents);

**Design Development Plan** means the plan of that name prepared by the Contractor as part of the Works Provisioning Programme in accordance with Part 1 (Works Provisioning Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Design Documentation** means all design documentation (including drawings, specifications, models, samples and calculations) in computer readable and human readable form necessary for the Contractor to complete all or any part of the Works;

**Design Requirements** means, in respect of the Works or the Facility and subject to clause 25.2(a), the requirements for the design of those Works or the Facility set out in this Agreement;

**Designation** means the designation of the Department Site and one Adjoining Crown Site under the Resource Management Act 1991 for the construction and operation of a men's prison on the Department Site and the construction and operation of ARWCF on an Adjoining Crown Site, on the terms and conditions set out in Schedule 9 (Resource Management Act Requirements), referred to in the Auckland Council District Plan (Manukau Section) Designation 288;

**Developed IP** is defined in clause 60.1(b);

**Director's Certificate** means a certificate in the form set out in Annexure A to Schedule 1 (Conditions Precedent);

**Disaster Recovery Room** or **DRR** means the area identified and labelled on the Schedule 10 Drawings as the "Disaster Recovery Room" or "DRR";

**Disclosed Title Matters** means the matters set out in Schedule 8 (Site Particulars);

**Disengagement Deliverables** mean the assets, Fitout, Fixtures, records, information, data and other tangible or intangible deliverables specified in the Disengagement Plan as being deliverable to the Department on or prior to the expiry of the Disengagement Period in accordance with that Disengagement Plan;

**Disengagement Period** is defined in clause 88.2 (Disengagement Period);

**Disengagement Plan** means the plan of that name prepared by the Contractor in accordance with Part 21 (Hand Back and Disengagement), Schedule 24 (Disengagement) and Part 1 (Works Provisioning Documentation), Part 2 (Facility Management Services Documentation) and Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) (as applicable) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Disengagement Services** means Core Disengagement Services and/or Additional Disengagement Services (as applicable);

**Disengagement Services Notice** has the meaning given to it in clause 88.1 (Disengagement Services Notice);

**Disorder Event** means a Disorder Event (Riot) or a Disorder Event (Hostage);

**Disorder Event (Hostage)** has the meaning given to it in paragraph 1.1(f) of Schedule 16 (Performance Regime);

**Disorder Event (Riot)** has the meaning given to it in paragraph 1.1(e) of Schedule 16 (Performance Regime);

**Dispute** has the meaning given to it in clause 91.1 (Notice of Dispute);

**Dispute Resolution Procedures** means the procedures for hearing and resolving Disputes as set out in Part 22 (Dispute Resolution);

**Disputed Amount** has the meaning given to it in clause 53.5 (Disputed Amounts);

**Disputes Panel** means the panel established pursuant to clause 92.1 (Establishment of Disputes Panel) to hear and resolve Disputes, other than those Disputes that, pursuant to clause 91.4(c), are to be directly referred for resolution under the Accelerated Dispute Resolution Procedures;

**Distribution** means, whether in cash or in kind, any:

- (a) dividend or other distribution (as that term is defined in section 2 of the Companies Act 1993) by the Contractor in respect of share capital;
- (b) reduction of capital redemption or purchase of shares or any other reorganisation or variation to share capital;
- (c) payment under the Subordinated Financing Agreements (whether of principal, interest, breakage costs or otherwise);
- (d) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms; or
- (e) receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms;

**District Health Board** means any applicable district health board established under the New Zealand Public Health and Disability Act 2000;

**Dollars** means New Zealand dollars or any other currency that is for the time being the lawful currency of New Zealand;

**Drawdown Date** means the date on which all or any Core Senior Debt is advanced to the Contractor, and includes, in the case of a Rollover Refinancing, the date on which any relevant tranche of the then-current Core Senior Debt is or is deemed to be re-advanced to the Contractor or otherwise refinanced under the Rollover Refinancing;

**DRi(Māori)** has the meaning given to that term in Part 4 of Schedule 16 (Performance Regime);

**DRi(Overall)** has the meaning given to that term in Part 4 of Schedule 16 (Performance Regime);

**Drug Store** means the area in the Health, Education and Programmes building identified and labelled on the Schedule 10 Drawings as the “Drug Store”;

**Earthworks and Contamination Management Plan** means the plan of that name prepared by the Contractor in accordance with Part 1 (Works Provisioning Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**EBR Re-set** means any transaction (however described) that alters the Effective Base Rate payable by the Contractor in respect of any one or more tranches of Core Senior Debt, provided that where the transaction is the close-out or termination of any Swap prior to its original maturity date and the consequent re-setting of Swaps following any such close-out or termination, the EBR Re-set relating to that transaction will occur on the original Swap maturity date referred to above;

**Education and Training Plan** means the plan of that name prepared by the Contractor as part of the Rehabilitation and Reintegration Programme in accordance with Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Effective Base Rate or EBR** means, in relation to any tranche of Core Senior Debt at any time:

- (a) the fixed rate payable by the Contractor under the Swaps entered into on or before Financial Close in accordance with this Agreement, or Permitted Hedging, in each case attributable to that tranche of the Core Senior Debt at that time, being the Base Swap Rate inclusive of all Structural Adjustments and any additional illiquidity premium but exclusive of Dealer’s Swap Margins; or
- (b) in circumstances where clause 13 of the Swap Pricing Protocol applies, the floating rate payable by the Contractor under the Senior Financing Agreements in relation to that tranche of the Core Senior Debt at that time,

with Base Swap Rate, Structural Adjustments, additional illiquidity premium and Dealer’s Swap Margins as defined in the Financial Close Adjustment Protocol (for Swaps put in place with effect from Financial Close) or the Swap Pricing Protocol (for any subsequent Permitted Hedging);

**Eligible Māori Prisoner** means a Prisoner recorded as a Māori Prisoner on commencement of his sentence who served a minimum of three months within the Prison;

**Eligible Non-Māori Prisoner** means a Prisoner, other than a Prisoner recorded as a Māori Prisoner on commencement of his sentence who served a minimum of three months within the Prison;

**Emergency Procedures and Business Continuity Manual** means the plan of that name prepared by the Contractor as part of the Policy and Procedures Manual in accordance with Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Emergency Management Plan** means the updated emergency management plan required to be provided by the Contractor in accordance with the Designation and as part of the Policy and Procedures Manual;

**Environment** includes all aspects of the surroundings of human beings including:



- (a) the physical characteristics of those surroundings such as land, water and the atmosphere;
- (b) the biological characteristics of those surroundings such as animals, plants and other forms of life; and
- (c) the aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures;

**Environmental Plan** means the plan of that name prepared by the Contractor as part of the Policy and Procedures Manual in accordance with Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Equity IRR** means the projected blended rate of return to any person for the time being holding share capital or a relevant interest (as defined in sections 5 to 5B of the Securities Markets Act 1988) in the share capital in the Contractor or HoldCo over the full term of the Agreement, having regard to Distributions made and projected to be made;

**Escape** occurs where a Prisoner:

- (a) becomes free of the Contractor's effective control (other than by way of lawful release by the Contractor on completion of his custodial sentence); or
- (b) leaves the location in which the Prisoner was required to be subject to the Contractor's effective control (whether the Prison, a vehicle, court premises or otherwise) or fails to return to his place of effective control within 15 minutes after the appointed time,

provided that where the Contractor has transferred any Prisoner to another person lawfully authorised to supervise or control such Prisoner, effective control shall, for the purposes of this definition, cease upon signature of any release form (or equivalent) by such person;

**Escape (Breakout)** has the meaning given to it in paragraph 1.1(a) of Schedule 16 (Performance Regime);

**Escort Benchmark Information** means detailed volume information from all Comparable Prisons, setting out the number and duration of:

- (a) all medical escorts - scheduled medical appointments (including transfer and supervision during appointment); and
- (b) all hospital guard duties - (including transfer (emergency/unscheduled) and supervision during hospital stay),

with information on duration to include travelling times and to be recorded with reference to bands of two hours (i.e., 0-2, 2-4, 4-6), and recorded for the 12 month period prior to the delivery of the information by the Department or such other period as may be agreed by the parties (acting reasonably);

**Escort Services Rate** means \$39.03 per Service Hour (on the basis of two custody officers per transfer or escort), Indexed, with LCI as the Relevant Index;

**Escort Services** has the same meaning as "escort services" in section 3(1) of the Corrections Act, and relates to escort services in connection with the Prison;

**Estimated Value of the Contract** is defined in Schedule 23 (Calculation of Compensation on Termination);

**Event** means any of:

- (a) an Extension Event and/or a Compensation Extension Event;
- (b) an Intervening Event and/or a Compensation Intervening Event; and
- (c) an Uninsurable Event;

**Excess Volume Payment** means any amount payable to the Contractor under clause 53.13(c);

**Excluded Return Grounds** has the meaning given to that term in Part 4 of Schedule 16 (Performance Regime);

**Execution Date** means the date this Agreement is signed by both parties;

**Exempt EBR Re-set** means any alteration to the Effective Base Rate applicable to any one or more tranches of Core Senior Debt attributable to:

- (a) the entry by the Contractor into any Swap to the extent entered into in respect of any Incremental Debt Amount to which the relevant Refinancing applies;
- (b) a Swap amended or closed-out (in whole or in part) to the extent it is undertaken solely to ensure compliance with clause 55.8(b)(i); or
- (c) the operation of clause 13 of the Swap Pricing Protocol;

**Exempt Refinancing** means a Refinancing that constitutes:

- (a) a change in taxation or change in accounting treatment;
- (b) the exercise of rights, waivers, consents and similar actions that relate to day-to-day administrative and/or supervisory matters;
- (c) the exercise of rights, waivers, consents and similar actions that are in respect of:
  - (i) conditions precedent;
  - (ii) a breach of representations and warranties or undertakings, or a default or review event triggered by a breach of representations, warranties or undertakings (or to cure, prevent, avoid, remedy or mitigate the effects of any such thing);
  - (iii) movement of monies between, or application of monies from, the Project Accounts in accordance with the terms of the Senior Financing Agreements, or any change to any cash sweep or lock-up provisions (other than, following a Scheduled Refinancing or a Rollover Refinancing, the Lock-up DSCR);
  - (iv) late or non-provision of information, notices, consents or licences;
  - (v) amendments to sub-contracts to which a Sub-contractor is party for the purposes of this Agreement;
  - (vi) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Senior Financing Agreements);

- (vii) restrictions imposed by the Senior Lenders on the dates on which the Senior Debt can be advanced to, drawn down, or withdrawn by the Contractor under the Senior Financing Agreements which are imposed as a result of any failure by the Contractor to ensure that the construction work and retrofit work is performed in accordance with the agreed construction programme;
  - (viii) changes to milestones for drawdown or withdrawal set out in the Senior Financing Agreements and which are imposed as a result of any failure by the Contractor to ensure that construction work and retrofit work are performed in accordance with the agreed programme and budget;
  - (ix) failure by the Contractor to obtain any consent from statutory bodies required by the Senior Financing Agreements; or
  - (x) voting by the Senior Lenders and the voting arrangements between the Senior Lenders in respect of the levels of approval required by them under the Senior Financing Agreements;
- (d) any amendment, variation or supplement of any agreement approved by the Department as part of any Qualifying Change or Qualifying Change in Law under this Agreement;
  - (e) any sale of shares in HoldCo by the Shareholders or securitisation of the existing rights and/or interests attaching to shares in HoldCo;
  - (f) any sale or transfer of a Subordinated Lender's existing rights and/or interests under the Subordinated Financing Agreements or securitisation of a Subordinated Lender's existing rights and/or interests under the Subordinated Financing Agreements;
  - (g) any Qualifying Bank Transaction;
  - (h) voluntary and mandatory prepayments contemplated by the Senior Financing Agreements; or
  - (i) conversion of the construction facility to the term facility under the Senior Financing Agreements;

**Exempt Refinancing Conditions** means the conditions set out in clause 55.10 (Exempt Refinancing Conditions);

**Exit Survey** means the survey of the Works and the Facility to be undertaken under clause 84 (Exit Survey);

**Expiry Date** means the date 25 years from (and including) the Service Commencement Date;

**Extended Hospital Supervision Payment** means any amount payable to the Contractor under clause 53.13(a);

**Extension Event** means any one or more or a combination of the following:

- (a) a Compensation Extension Event;
- (b) an Uninsurable Event;
- (c) a Force Majeure Event;
- (d) Unforeseeable Contamination;

- (e) Migrating Contamination;
- (f) any blockade or embargo that directly affects the Department Site; and
- (g) any insured event or occurrence giving rise to physical loss, destruction of or damage to the Facility from any cause;

**External Infrastructure** means infrastructure services which are external to but are to be provided to the Department Site and which are used in common with other users, including roads, footpaths, transport facilities and services and includes Utility Infrastructure;

**Facility** means all of the structures located or to be located on the Department Site, that together or separately are to be designed, constructed, commissioned and maintained by the Contractor in accordance with the terms of this Agreement, including:

- (a) the entire physical infrastructure on the Department Site on which the Facility is or is to be located and which is required to be provided as part of the Facility;
- (b) the grounds and gardens situated on the Department Site; and
- (c) all plant and equipment that, in accordance with the Design Requirements, are to be exclusively used in or as part of the Facility;

**Facility Lease** means a deed of lease in the form set out in Annexure B to Schedule 3 (Project Documents);

**Facility Management Procedures** means the procedures of that name prepared by the Contractor as part of the Policy and Procedures Manual in accordance with Part 2 (Facility Management Services Documentation) and Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Facility Management Requirements** means those requirements of the Department, as varied in accordance with Part 13 (Changes) or otherwise pursuant to the terms of this Agreement, that set out the Department's minimum requirements for the Facility Management Services, the initial Facility Management Requirements being set out in Part 2 of Schedule 12 (Facility Management Requirements);

**Facility Management Services** means the services provided in order to meet the requirements of Schedule 12 (Facility Management Requirements);

**Facility Management Services Documentation** means the programmes, plans and documentation as set out in Part 2 (Facility Management Services Documentation) of Schedule 5 (Operative Documents), including:

- (a) the Communication Plan;
- (b) the Asset Register;
- (c) the Asset Management Plan (including each Semi-Annual Work Plan);
- (d) the Facility Management Procedures;
- (e) the Stakeholder Engagement Plan; and
- (f) the Disengagement Plan;

**Fale Pasifika** means the area identified and labelled on the Schedule 10 Drawings as the “Fale Pasifika”;

**Fifth EBR Re-set** means the last of the First five EBR Re-sets;

**Final Design Documentation** means each set of Design Documentation that is the final Design Documentation for the construction of the relevant section of the Works which:

- (a) has completed all stages of Design Development;
- (b) is marked as being “for construction”; and
- (c) is to be used in the construction of the Works,

to ensure that the Works are designed, built and commissioned in accordance with clause 25.1 (Works Provisioning generally) and the other terms of this Agreement;

**Final Termination Date** has the meaning given to it in Schedule 23 (Compensation on Termination);

**finalised** is defined in paragraph 4.1 of Schedule 6 (Review Procedures);

**Financial Close** means the later of the dates on which:

- (a) all the Conditions Precedent are satisfied or waived, as set out in a notice given by the Department under clause 10.4 (Conditions Precedent); and
- (b) the Effective Base Rate is first determined and incorporated in the Base Case;

**Financial Close Adjustment Protocol** means the financial close adjustment protocol referred to in Part 1 (Financial Close Adjustment Protocol) of Schedule 4 (Funding Requirements and Financing Agreements) in the form agreed between the parties (each acting reasonably) prior to Financial Close;

**Financial Records** is defined in clause 18.3 (Financial Records);

**Financier Direct Deed** means the deed so named and made between the Department, the Contractor and the Security Trustee substantially in the form of Annexure A to Schedule 4 (Funding Requirements and Financing Agreements);

**Financing Agreements** means all or any of the agreements or instruments entered into or to be entered into by the Contractor (or HoldCo) relating to the financing of the Project (including the Initial Financing Agreements and any agreements or instruments to be entered into by the Contractor (or HoldCo) relating to the re-scheduling of their indebtedness or any Refinancing);

**Financing Default** means an “Event of Default” as defined under the Senior Financing Agreements;

**Find** means all or any materials and objects of any kind (including wildlife) found at or on the Department Site that are or appear to be fossils, antiquities, protected New Zealand objects under the Protected Objects Act 1975, protected wildlife under the Wildlife Act 1953 or other objects or materials having scientific, geological, historic value as well as human remains or ordnance;

**Fire Pump Room** means the area identified and labelled on the Schedule 10 Drawings as the “Fire Pump Room”;

**First five EBR Re-sets** means the first five EBR Re-sets (other than Exempt EBR Re-sets) that take place after (but excluding) Financial Close;

**First Service Commencement Date** means 18 May 2015;

**Fit for the Intended Purpose** means, in respect of all or any part of the Works, that those Works:

- (a) as at Works Completion, meet the Works Completion Tests;
- (b) as at Operational Completion, meet the Operational Completion Tests; and
- (c) at any time after Operational Completion:
  - (i) meet the standards of workmanship, plant and materials required to satisfy the Delivery Proposals in respect of the Works Requirements as at Works Completion;
  - (ii) meet the standards of workmanship, equipment and materials required to satisfy the Delivery Proposals in respect of the Works Requirements set out in Schedule 10B (Works (Retrofit) Requirements) as at Operational Completion;
  - (iii) remain consistent with the Final Design Documentation; and
  - (iv) are capable of enabling the Contractor to provide the Operational Services:
    - (A) in accordance with the Delivery Proposals in relation to the Corrections Services Requirements;
    - (B) in accordance with the Delivery Proposals in relation to the Facility Management Requirements;
    - (C) in accordance with the Delivery Proposals in relation to the ICT Requirements;
    - (D) in accordance with the Performance Standards; and
    - (E) so that 960 Available Prisoner Places can be achieved and maintained in accordance with the requirements of this Agreement;

**Fitout** means all alterations and additions, and fittings and partitioning, service facilities, plant and machinery, furnishings, light fittings, and equipment, made to or installed in the Facility by the Contractor, but excludes Fixtures;

**Fixed Support Cost Components** means the items specified in rows 35 and 48 of sheet "Ass\_Custodial\_Ops" in the Base Case;

**Fixtures** means those buildings, including component parts of buildings, other structures and improvements and other property that have become attached or affixed to the Department Site and would at Law, at the relevant time, comprise a "fixture";

**FM and Bulk Store building** means the area identified and labelled on the Schedule 10 Drawings as the "FM and Bulk Store" building;

**Force Majeure Event** means any one or more, or a combination, of the following:

- (a) cyclone, earthquake, natural disaster, landslide, tsunami, flood, volcanic eruption or mudslide;
- (b) civil riot, civil rebellion, revolution, terrorism and military usurped power, act of sabotage or act of a public enemy and war (declared or undeclared) or other like hostilities;
- (c) epidemics or pandemics to the extent that the Contractor or its Sub-contractors, cannot, in compliance with Law, access the Department Site or deliver the Services;
- (d) any “terrorist act” as defined in section 5 of the Terrorism Suppression Act 2002;
- (e) ionising radiation, Contamination by radioactivity, nuclear, chemical or biological Contamination not caused or contributed to by the Contractor or any Contractor Related Person; and
- (f) an explosion or fire caused by an event referred to in paragraph (a) or paragraph (b), not caused or contributed to by the Contractor or any Contractor Related Person, where the Contractor can demonstrate that all reasonable preventative measures were taken (having regard to the nature of the Department Site and the Works) to minimise the cause and effect of the explosion or fire on the performance of its obligations under this Agreement,

which either separately or together:

- (g) directly causes a party to be unable to perform all or a material part of its obligations (other than an obligation to pay money) under this Agreement;
- (h) where the event or its consequences could not have been prevented by the exercise of a standard of care and diligence consistent with that of a prudent person undertaking the obligations under this Agreement; and
- (i) where the event or its consequences were not otherwise caused or contributed to by the negligence of the Contractor or any Contractor Related Person or failure by the Contractor or any Contractor Related Person to comply with obligations which the Contractor is required to observe, comply with or perform under this Agreement;

**Full Service Date** means the date specified in the Ramp-Up Plan from which 960 Available Prisoner Places are to be made available by the Contractor;

**GAAP** has the meaning given to the term “generally accepted accounting practice” in section 3 of the Financial Reporting Act 1993;

**Gatehouse** means the area identified and labelled on the Schedule 10 Drawings as the “Gatehouse”, which includes the Sally Port and the Utilities Area;

**General Breach** means any failure by the Contractor to comply with any obligation under this Agreement which failure is not:

- (a) in relation to, or analogous to, compliance with the Key Performance Indicators (to which KPI Breaches apply);
- (b) a Charge Event nor in relation to, or analogous to, a Charge Event;
- (c) a failure to comply with a particular obligation under any Operative Document, any Delivery Proposal under Schedule 10 (Works Requirements), Schedule 10B (Works (Retrofit) Requirements) or Schedule 12 (Facility Management Requirements) or Schedule 13 (ICT Requirements); or

(d) in relation to or giving rise to a deduction in respect of Snagging Defects,

which is notified by the Department to the Contractor in accordance with clause 79.3 (Notice of General Breach);

**General Change in Law** means a Change in Law which is not a Specific Change in Law;

**General Delivery Breach** means any material failure by the Contractor to comply with a particular obligation under any Operative Document, any Delivery Proposal under Schedule 10 (Works Requirements), Schedule 10B (Works (Retrofit) Requirements), Schedule 12 (Facility Management Requirements) or Schedule 13 (ICT Requirements), which failure

- (a) is not in relation to, or analogous to, compliance with the Key Performance Indicators to which KPI Breaches apply;
- (b) is not a Charge Event nor in relation to, or analogous to, a Charge Event;
- (c) is not in relation to or giving rise to a deduction in respect of Snagging Defects; and
- (d) is notified by the Department to the Contractor in accordance with clause 79.3 (Notice of General Breach);

**General Refinancing** means any Refinancing that is neither a Permitted Refinancing nor an Exempt Refinancing;

**General Refinancing Conditions** means the conditions set out in clause 55.3 (General Refinancing Conditions);

**Good Industry Practice** means that degree of skill, care, prudence and foresight and operating practice that would reasonably and ordinarily be expected of a skilled and competent supplier of services engaged in the same type of undertaking as that of the Contractor and/or any Sub-contractor under the same or similar circumstances as those contemplated by this Agreement;

**Governmental Entity** means any government, or any governmental or semi-governmental entity, person or authority, body politic (but excluding any political party), government department, local government authority or statutory authority and includes (unless the context otherwise requires) the Department;

**GST** means tax chargeable under the GST Act;

**GST Act** means the Goods and Services Tax Act 1985;

**Hand Back Requirements** means those requirements for hand back of the Works that are set out in or established in accordance with the Asset Management Plan;

**Handover Package** means the package of that name prepared by the Contractor in accordance with Part 21 (Hand Back and Disengagement) and Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Hazardous Substance** means any substance that would or might reasonably be expected to cause damage or injury to any person, property or the Environment;

**Health, Education and Programmes building** means the area identified and labelled on the Schedule 10 Drawings as the "Health, Education and Programmes" building or the "Health, Education & Programmes" building;



**Hedge Counterparty** means a person providing interest rate swaps or equivalent hedging products to the Contractor under the Senior Financing Agreements from time to time;

**High Risk High Profile** or **HRHP** means, in respect of a Prisoner, a person who is identified as presenting a high risk of offending or who will attract a high level of interest from the public or the media, in accordance with the Department's guidelines in relation to the management of High Risk High Profile Prisoners;

**High Risk High Profile Database** or **HRHP Database** means the Department's national online High Risk High Profile Prisoner database;

**Highest Compliant Tender Price** is defined in Schedule 23 (Calculation of Compensation on Termination);

**HoldCo** means SecureFuture Wiri Holdings Limited;

**Holding Room** means each area identified and labelled on the Schedule 10 Drawings as a "Holding Room" or "Hold";

**Horticulture building** means the area identified and labelled on the Schedule 10 Drawings as the "Horticulture" building;

**House Block** means each of the areas identified and labelled on the Schedule 10 Drawings as "House Block 1", "House Block 2", and "House Block 3";

**HSE Legislation** means all statutes, regulations and other subordinate legislation in force, or that comes into force, in New Zealand while this Agreement remains current in respect of health and safety in employment (including the Health and Safety in Employment Act 1992 and all regulations made under that Act);

**ICT** means information and communications technology;

**ICT Interface** means the point at which there is a physical or logical interface between the Contractor's ICT System and the Department's ICT System;

**ICT Requirements** means those requirements of the Department, as varied in accordance with Part 13 (Changes) or otherwise pursuant to the terms of this Agreement, that set out the Department's minimum requirements with respect to ICT, the initial ICT Requirements being set out in Part 2 of Schedule 13 (ICT Requirements);

**ICT Solution** means the document of that name prepared by the Contractor in accordance with Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Immediate Termination Event** is defined in clause 79.2 (Contractor Default);

**Incentive Payment** means an incentive payment calculated in accordance with Part 4 (Reducing reimprisonment – Incentive Payments) of Schedule 16 (Performance Regime) and payable as an Additional Payment;

**Incentive Payment Information Protocol** means the Incentive Payment Information Protocol appended to Schedule 26 (Related Documents) at the Execution Date, as may be amended by agreement between the parties from time to time;

**Incentive Payment Report** means each such report required to be delivered by the Department under and in accordance with paragraph 18 of Schedule 16 (Performance Regime);

**Incentive Payment Year or IP Year** means:

- (a) each Contract Year, excluding:
  - (i) the period commencing on the Service Commencement Date and ending on the immediately following 30 June; and
  - (ii) the two Contract Years immediately following the period described in subparagraph (i) above; and
- (b) includes the two 12 month periods immediately following the last 30 June prior to the Expiry Date or the Actual Termination Date (as applicable);

**Incentive Target** means each incentive target stipulated in paragraph 17 of Schedule 16 (Performance Regime);

**Incident** means an event in respect of which the Contractor is required to report in accordance with the Incident Reporting Framework;

**Incident Notification** means any notification required to be given by the Contractor to the Department in accordance with paragraph 7.1 of Schedule 15 (Reporting);

**Incident Report** means any report required to be given by the Contractor to the Department in accordance with paragraph 7 of Schedule 15 (Reporting);

**Incident Reporting Framework** means the procedures issued by the Chief Executive to keep the Minister and the Chief Executive informed of incidents involving prisoners which may affect public safety, the integrity of sentences, the welfare of prisoners and the good order and security of prisons, which, as at the Execution Date, is appended to Schedule 26 (Related Documents);

**Incident Table** means the schedule of incident categories included in the Incident Reporting Framework, which is, as at the Execution Date, appended to Schedule 26 (Related Documents);

**Incremental Debt Amount** means, in relation to a proposed Scheduled or Rollover Refinancing as at the first Drawdown Date of that Refinancing, any Senior Debt incurred or proposed to be incurred (as the case may be) by the Contractor pursuant to that Refinancing to the extent it exceeds the Core Senior Debt immediately prior to the first Drawdown Date in respect of that Refinancing;

**Incremental Debt Headroom** means, as at the first Drawdown Date of any Permitted Refinancing:

- (a) where the relevant Incremental Debt Amount is proposed to be incurred by the Contractor under a Rollover Refinancing, 1 per cent; and
- (b) where the relevant Incremental Debt Amount is proposed to be incurred by the Contractor under a Scheduled Refinancing, 3.5 per cent,

in each case of the Core Senior Debt immediately prior to the first Drawdown Date in respect of that Permitted Refinancing;

**Indemnified Party** is defined in clause 61.1(a);

**Independent Expert** means a person appointed for the time being pursuant to clause 93 (Accelerated Dispute Resolution Procedures), who has suitable expertise and experience required to determine a Dispute having regard to the nature of the Dispute;

**Independent Reviewer** means the person referenced in clause 25.5 (Independent Reviewer), who is to be appointed jointly by the Department and the Contractor to act as an independent certifier under the Independent Reviewer Agreement;

**Independent Reviewer Agreement** means that agreement under which the Independent Reviewer is appointed by, inter alia, the Department and the Contractor, on terms that are the same or substantially similar to the form of agreement set out in Annexure C to Schedule 3 (Project Documents);

**Indexable Element** or **IE** means the indexable element of the Unitary Charge, as set out in the Base Case and as calculated in accordance with Schedule 17 (Payment Mechanism);

**Indexation Base Month** means July 2012;

**Indexation Formula** has the meaning given to it in paragraph 3.1(c) of Schedule 17 (Payment Mechanism);

**Indexation Review Date** shall be the first day of the month that is 12 months immediately following the Indexation Base Month, and every first day of that month thereafter;

**Indexed** is defined in clause 3.5 (Indexation and replacement of indices);

**Indexed Equity Base Month** means June 2014;

**Induction Programme** means the programme that is to be delivered to Prisoners following the completion of the Reception Procedure, as described in paragraph 8.2 of Schedule 14 (Corrections Services Requirements);

**Industrial Waste** means any waste arising from commercial, industrial or trade activities and any waste containing substances or materials which are potentially harmful to any person, property or the Environment;

**Industries** means the areas identified and labelled on the Schedule 10 Drawings as "Industry 1", "Industry 2" or "Industries";

**Initial Financing Agreements** means the Financing Agreements put in place on or prior to Financial Close as described in Schedule 4 (Funding Requirements and Financing Agreements), copies of which have been initialled by the parties for the purposes of identification;

**Initiating Sentence** has the meaning given to that term in Part 4 of Schedule 16 (Performance Regime);

**Innovation** is defined in paragraph 1.2 of Schedule 18 (Innovation Outside the Project);

**Insolvency Event** means, in relation to a person, any of the following events:

- (a) an application for liquidation of that person is presented and:
  - (i) is not demonstrated to the Department prior to the expiry of a period of 30 days after its filing as being an application that is frivolous or vexatious; or
  - (ii) the Contractor does not provide the Department with evidence that any liability of that person the subject of that application is paid in full prior to the expiry of 30 days after its filing, and that application is not discharged within 60 days after its filing;

- (b) entering into any compromise or scheme of arrangement with all or any class of that person's creditors, except as part of a solvent reconstruction or amalgamation previously approved by the Department in writing;
- (c) the appointment of a liquidator, receiver, statutory manager, administrator or similar official to that person;
- (d) the suspension or threatened suspension by that person of the payment of that person's debts generally;
- (e) the cessation by that person of that person's business in New Zealand generally;
- (f) the enforcement of any security against the whole or a substantial part of that person's assets; or
- (g) any other insolvency event or proceedings analogous to any of the foregoing occurring in any relevant jurisdiction;

**Inspector** has the meaning given to that term in the Corrections Act;

**Insurance Policy** means any policy or contract for insurance that is required to be effected pursuant to clause 74.2 (Specified insurances) or clause 74.3 (Other insurances);

**Insurance Year** is defined in paragraph 5 (Insurance Payment) of Schedule 17 (Payment Mechanism);

**Integration Plan** means the plan of that name prepared by the Contractor in accordance with Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Intellectual Property** means patents, registered designs, petty patents, utility models, trade marks (including logos and trade dress), domain names, copyright, circuit layouts, rights in computer software and databases, rights in inventions, know how and business process and methods, (in each case) whether registered or unregistered (including applications for the grant of any of the foregoing) and all rights or forms of protection that are capable of intellectual property protection under Law;

**Intellectual Property Claim** is defined in clause 61.1(a);

**Intellectual Property Materials** means Materials which wholly or partly embody or contain Intellectual Property;

**Intervening Event** means any one or more or a combination of the following:

- (a) a Compensation Intervening Event;
- (b) an Uninsurable Event;
- (c) a Force Majeure Event;
- (d) Unforeseeable Contamination;
- (e) Migrating Contamination;

- (f) the Department failing to approve or reject a proposed replacement Major Sub-contractor in accordance with clause 16.1(j) prior to the end of the 30 Business Day period referred to in clause 16.1(n);
- (g) any blockade or embargo that directly affects the Department Site; and
- (h) any insured event or occurrence giving rise to physical loss, destruction of or damage to the Facility from any cause;

**Intervention** means the programmes, activities and services designed to have an impact on recidivism and/or assist prisoners to successfully reintegrate into the community upon release;

**IOMS** means Integrated Offender Management System, a Department wide computer based system that constitutes the Department's core offender management system, and includes any replacement offender management system;

**Joint Insurance Account** means the bank account to be held and operated in accordance with clause 76.2(b) in the name of the Contractor, having account number 01-1839-0285691-04 and held with ANZ National Bank Limited;

**Key Performance Indicators** means each of the key performance indicators set out in the table entitled "KPI Table" in the Appendix to Schedule 16 (Performance Regime);

**Kitchen & Laundry** means the area identified and labelled on the Schedule 10 Drawings as the "Kitchen & Laundry";

**Korowai Manaaki** means the Northern Region Youth Justice Residence located on Kiwi Tamaki Road and operated by the Ministry of Social Development;

**KPI Breach** means any failure to comply with the Key Performance Indicators as set out in the Appendix to Schedule 16 (Performance Regime);

**Last Date for Service Commencement** means 18 July 2016 (as may be postponed in accordance with clause 39 (Extension Events));

**Laws** means those principles of New Zealand law established by the courts, statutes, regulations, ordinances, by-laws and any other subordinate forms of rule making of government, any local authority, the Department or any other Governmental Entity as well as any Consents (and any conditions or requirements under them) and any Section 196 Instruction together with the Mandatory International Prison Standards;

**LCD** means liquid crystal display;

**LCI** means the Labour Costs Index (All Labour Costs) for the time being as published by Statistics New Zealand or any successor or replacement index to LCI as nominated by Statistics New Zealand for the time being;

**LED** means light emitting diode;

**Legal Proceedings** is defined in clause 57.3(f);

**Level 1 SFP** means, at any time following the Service Commencement Date, but subject to adjustment in accordance with paragraph 13 (Allocation and Indexation of Service Failure Points) of Schedule 16 (Performance Regime):

- (a) the Contractor has incurred 2,000 or more SFPs, in aggregate, in respect of the previous nine Contract Months; and/or

- (b) paragraph 6.2(a) of Schedule 16 (Performance Regime) applies;

**Level 2 SFP** means, at any time following the Service Commencement Date, but subject to adjustment in accordance with paragraph 13 (Allocation and Indexation of Service Failure Points) of Schedule 16 (Performance Regime):

- (a) the Contractor has incurred 6,000 or more SFPs, in aggregate, in respect of the previous nine Contract Months; and/or
- (b) paragraph 6.2(b) of Schedule 16 (Performance Regime) applies;

**Level 3 SFP** means, at any time following the Service Commencement Date, but subject to adjustment in accordance with paragraph 13 (Allocation and Indexation of Service Failure Points) of Schedule 16 (Performance Regime):

- (a) the Contractor has incurred 8,000 or more SFPs, in aggregate, in respect of the previous nine Contract Months; and/or
- (b) paragraph 6.2(c) of Schedule 16 (Performance Regime) applies;

**Level 4 SFP** means, at any time following the Service Commencement Date, but subject to adjustment in accordance with paragraph 13 (Allocation and Indexation of Service Failure Points) of Schedule 16 (Performance Regime):

- (a) the Contractor has incurred 10,000 or more SFPs, in aggregate, in respect of the previous nine Contract Months; and/or
- (b) paragraph 6.2(d) of Schedule 16 (Performance Regime) applies;

**Liability** includes any debt, obligation, cost (including legal costs, deductibles or increased premiums), expense, loss, damage, compensation, charge or liability of any kind, actual, prospective or contingent and whether or not currently ascertainable and whether arising under or for breach of contract, in tort (including negligence), restitution, pursuant to statute (including, to the extent permitted by Law, statutory fines, penalties and criminal liability) or otherwise at Law or in equity;

**Lifecycle Maintenance Plan** means the plan of that name describing the performance characteristics required of individual assets and the maintenance activity that will be employed to ensure their performance remains above the agreed minimum level of service throughout their agreed lives, prepared by the Contractor as part of the Asset Management Plan in accordance with Part 2 (Facility Management Services Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Liquid Market** is defined in Schedule 23 (Calculation of Compensation on Termination);

**Lock-in Period** means the period starting from the Execution Date and ending 12 months after the Service Commencement Date;

**Lock-up DSCR** means, in respect of the scheduled term of any Senior Debt following an applicable Scheduled Refinancing or Rollover Refinancing, the level of the debt service coverage ratio (however expressed) in the Senior Financing Agreements to apply from the date of that Refinancing until the end of the scheduled maturity date of that Refinancing that would, if reached, prevent the Contractor from making Distributions from cash available after debt service (however expressed) for any period of time;

**Losses** means all damages, losses, Liabilities, costs, expenses (including legal expenses on a solicitor/client basis and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands;

**LV** means low voltage;

**Main Communications Rooms** means the Security Equipment Room, the PABX/Server Room and the Disaster Recovery Room;

**Majority of the Works** means, at any time, more than 75% of the insured value of the Works under the Physical Damage Policies at that time;

**Major sub-contract** means each sub-contract for the construction, operation and facility management of the Facility entered into by the Contractor;

**Major Sub-contractor** means the person or persons for the time being appointed by the Contractor:

- (a) to undertake all or any material part of Works Provisioning for the purposes of this Agreement and/or to effect Material Changes in relation to the Works; or
- (b) to provide all or any material part of the Facility Management Services; or
- (c) to provide any of the Corrections Services,

and that are party to a Major sub-contract;

**Major Sub-contractor Breach** means failure on the part of the Contractor to comply with the requirements of clause 16.1(h)(i);

**Major Sub-contractor's Direct Deed** means the direct deed made between, amongst others, each Major Sub-contractor and the Department substantially in the form of Annexure A to Schedule 3 (Project Documents);

**Major Sub-contractor's Intellectual Property rights** means those Intellectual Property rights for the time being vested in a Major Sub-contractor or by the head licensor of that Major Sub-contractor;

**Malicious Software** means any software program or code intended to destroy, interfere with, corrupt or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence and includes any computer virus, interruptions, logic bombs, Trojan horses and other forms of malicious code or performance impediments;

**Mana Whenua** means the customary authority exercised by an iwi or hapu in an identified area;

**Management Unit** means the area of House Block 1 to be utilised as the "Management Unit", being the unit shown as areas HBK1.G.124 through to HBK1.G.140 and areas HBK1.1.106 through to HBK1.G.118 on the Schedule 10 Drawings;

**Mandatory International Prison Standards** means the mandatory international obligations and standards in relation to the management and/or operation of a prison from time to time and which are, as at the Execution Date, appended to Schedule 26 (Related Documents);

**Mandatory Procurement Rules** means the New Zealand government's mandatory procurement rules that are in force from time to time;

**Māori Claim** means any claim made by Māori (whether an individual, hapu or iwi group or otherwise) under Te Ture Whenua Māori Act 1993, the Treaty of Waitangi, the Treaty of Waitangi (State Enterprises) Act 1988 or common or customary law, but not being:

- (a) a claim arising out of any wilful misconduct by the Contractor or any Contractor Personnel or any breach of its obligations under this Agreement; or
- (b) any claim in respect of a Find;

**Māori Incentive Payment** means the Incentive Payment relating to the Recidivism Index - Reimprisonment of men who were formerly Māori Prisoners;

**Māori Prisoner** means any Prisoner who identifies as being Māori;

**Margin** means the fixed percentage that the Contractor or any Sub-contractor may charge in relation to a Change in accordance with the Change Compensation Principles to cover all off Site overheads and administrative and corporate and other like costs and profit (including the cost of the Contractor's project management services);

**Margin Allowances** are specified in paragraph 1.4 (Margin Allowances) of Schedule 21 (Change Compensation Principles);

**Market Testing** means the value test mechanism conducted in accordance with clause 54.2 (Market Testing);

**Master Control Room** or **MCR** means the area identified and labelled on the Schedule 10 Drawings as the "Master Control Room" or "MCR";

**Material Adverse Effect** means a material adverse effect on:

- (a) the ability of the Contractor to perform and observe its obligations under any Project Document;
- (b) the rights of the Department under any Project Document; or
- (c) the ability, cost or capacity of the Department to exercise its rights or perform its obligations under a Project Document;

**Material Change** means a Change that is not a Non-Material Change;

**Materials** includes any software, firmware, documented methodology or process, documentation or other material whatsoever (including any reports, specification, plans, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions) in either or both human readable or computer readable form;

**MATV** means master antenna television;

**Medtech32** means the Department's electronic clinical file health database system for prisoners;

**Methadone Room** means the methadone issuing room in the Health, Education and Programmes building identified and labelled on the Schedule 10 Drawings as the "Meth Room";



**Migrating Contamination** means, at any time, any Contamination on, in, over or under the Department Site that was not present on, in, over or under (as the case may be) the Department Site as at the Execution Date;

**Milestone** means each way point identified as a milestone, for the purposes of Works Provisioning, as set out in the Works Provisioning Programme;

**Milestone Date** means, for each Milestone for Works Provisioning, the date set out in the Works Provisioning Programme for that Milestone;

**Minimum Projected DSCR** means, in respect of the scheduled term of any Senior Debt following an applicable Scheduled Refinancing or Rollover Refinancing, the minimum projected debt service cover ratio (however expressed) in the Senior Financing Agreements as set out in the certificate provided by the Contractor to the Department under clause 55.11 (Refinancing – general provisions);

**Minister** has the meaning given to that term in the Corrections Act;

**Modelled Senior Debt** means, as at any date, the principal amount (including capitalised interest, fees and costs, if applicable) specified in row 328 on sheet “M\_Cons” and row 71 on sheet “Q\_Debt” of the Base Case in its form as at Financial Close in respect of that date;

**Modelled Senior Debt Cap** means, as at any date, an amount equal to 15 per cent of the Modelled Senior Debt as at that date;

**Moneys Owning** means all moneys which the Contractor, alone or together with any other person, at any time becomes actually liable to pay to, or for the account of, the Department (alone or together with any other person) on any account whatsoever under or in relation to any Project Document (including by way of principal or interest, fees, costs, charges, expenses, indemnity or damages);

**Monitor** means the Primary Monitor and any other person appointed by the Chief Executive as a “monitor” in accordance with section 199E(1)(b) of the Corrections Act in relation to the Prison, or in accordance with section 199E(2) of the Corrections Act;

**Monthly Performance Report** means each monthly performance report required to be delivered by the Contractor under paragraph 3 of Schedule 15 (Reporting);

**Monthly Relevant Amount** means the applicable amount set out in the Returnable Schedule, as updated from time to time as the result of any Relevant Event, in respect of the relevant Contract Month;

**Monthly Unitary Charge** means the monthly amount calculated in accordance with paragraphs 2 and 3 of Schedule 17 (Payment Mechanism);

**Monthly Unitary Payment** means the monthly payment calculated in accordance with paragraph 1 of Schedule 17 (Payment Mechanism);

**Monthly Volume Assumption** means, in respect of an Applicable Reviewable Service, the Capped Volume Assumption (if any) for that Applicable Reviewable Service, divided by 12;

**Moral Rights** means the rights conferred on authors of copyright works under Part 4 of the Copyright Act 1994;

**Moral Rights Consent** means the waiver or consent to be given in relation to Moral Rights;

**Mutual Aid** means a national plan for providing support arrangements between all prisons in New Zealand, including in the event of a serious incident requiring a reinforcement of staff trained to use control and restraint techniques;

**Named Employee** is defined in clause 21.2 (Criminal records check);

**New Contract** is defined in Schedule 23 (Calculation of Compensation on Termination);

**New Contractor** means the person who has entered or who will enter into the New Contract with the Department;

**New Zealand Building Code** or **NZBC** means Schedule 1 to the Building Regulations 1992;

**New Zealand Qualifications Framework** or **NZQF** means the framework published by NZQA, as updated and amended from time to time;

**Non-Material Change** means:

- (a) in relation to Works Provisioning, a Change that, if implemented, will not:
  - (i) result in a net cost or expense to the Contractor;
  - (ii) impact the design in a way that will reduce the safety, security or robustness of the Prison;
  - (iii) increase the likelihood of the Contractor failing to meet the Department's Requirements; or
  - (iv) materially or adversely affect the Contractor's ability to perform its obligations under this Agreement; and
- (b) after the Service Commencement Date, a Change that, if implemented, will not:
  - (i) result in a net cost or expense to the Contractor;
  - (ii) increase the likelihood of the Contractor failing to meet the Department's Requirements; or
  - (iii) materially or adversely affect the Contractor's ability to perform its obligations under this Agreement;

**Notice of Dispute** is defined in clause 91.1 (Notice of Dispute);

**NZPB** means the New Zealand Parole Board;

**NZQA** means the New Zealand Qualifications Authority;

**Objectives** means:

- (a) to obtain, on an ongoing basis, increased efficiency and effectiveness in prison management that will deliver sustainable cost savings and service improvements;
- (b) to create opportunities for Māori and New Zealand businesses to contribute intellectual, human or financial resources to the delivery of prison management services by the Contractor at the Prison;
- (c) to improve public safety by ensuring sentence compliance and reducing re-offending;

- (d) to facilitate the use of private sector initiative and innovation in prison management to improve service delivery and reduce costs;
- (e) to ensure that improvements in service delivery and reductions in costs in relation to the Services continue to equal or better the Department's current delivery against its five justice sector outcomes, which are that:
  - (i) "compliance with sentences and orders is ensured";
  - (ii) "re-offending is reduced";
  - (iii) "offenders are managed safely and humanely";
  - (iv) "sentencing options are used effectively"; and
  - (v) "victims of crime are supported";
- (f) that the Services be delivered in a manner that is cognisant of the cultural aspects of New Zealand's tangata whenua and that fosters greater connectivity and alignment of services with these aspects to deliver better outcomes for Māori;
- (g) to provide mechanisms for adequate monitoring and evaluation in order to determine whether the implementation of the Government's policy in contracting out prison management has been successful; and
- (h) that the Prison be operated in a way that is consistent with the Department's key strategies and that has regard to the purpose of the corrections system set out in section 5(1) of the Corrections Act and the principles guiding the operation of the corrections system set out in section 6(1) of the Corrections Act;

**Officer** has the meaning given to that term in the Corrections Act;

**Officer Post** means the area identified and labelled on the Schedule 10 Drawings as the "Officer Post" or "Officers Post";

**Official Agency** has the meaning given to that term in the Corrections Act;

**Official Information Act** means the Official Information Act 1982;

**Official Person** means any person that the Department has made an "Official Person" by giving an Access Notice under clause 22.3(b) or who has become an "Official Person" by operation of clause 22.3(d);

**Ombudsman** has the meaning given to that term in the Corrections Act;

**Open Book Basis** includes (without limiting the natural meaning of that term):

- (a) the provision of all information reasonably required in order to be able to assess actual Base Costs and Margins (where payable) whether that information is held by the Contractor or a Contractor Related Person;
- (b) the provision of a full breakdown of all relevant preliminaries, labour, equipment, materials, sub-contract costs and Margins in a clear and transparent manner; and
- (c) the conduct by or on behalf of the Department of such audits and inspections of the Financial Records of the Contractor or a Contractor Related Person in order to enable

the Department to verify the Contractor's compliance with any "open-book" requirements specified in this Agreement;

**Operating Expenditure** means any expenditure that falls to be treated as operating expenditure in accordance with GAAP from time to time;

**Operating Term** means the period starting on the Service Commencement Date and ending on the last day of the Contract Term;

**Operational Completion** is defined in clause 29.1(d);

**Operational Completion Notice** means the notice which the Department issues to the Contractor pursuant to clause 29.4(i)(i) or 29.4(i)(ii) stating that (subject to clause 29.4(l)) Operational Completion appears to have been achieved;

**Operational Completion Plan** means the plan of that name, based on the Preliminary Operational Completion Plan, prepared by the Contractor in accordance with clause 29.2(b) and Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Operational Completion Programme** means the programme of that name prepared by the Contractor in accordance with Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Operational Completion Tests** means those tests described as such in Schedule 27 (Completion Tests) (including re-run tests requested by the Department) to be carried out prior to the date that the Operational Completion Notice is issued pursuant to clause 29.4(i);

**Operational Fire Management Plan** means the plan of that name prepared by the Contractor as part of the Policy and Procedures Manual in accordance with Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Operational Health and Safety Plan** means the plan of that name prepared by the Contractor as part of the Policy and Procedures Manual in accordance with Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Operational Quality Assurance Plan** means the plan of that name prepared by the Contractor as part of the Policy and Procedures Manual in accordance with Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Operational Services** means each and all of the Corrections Services and the Facility Management Services;

**Operative Documents** means the Works Provisioning Documentation and the Services Documentation;

**Other Service Provider** means a service provider (other than the Contractor or any Sub-contractor) that provides, or will provide, services to the Department in relation to the Department Site, the Prison or the Prisoners;

**Outline Plan** means the outline plan, within the meaning of section 176A of the Resource Management Act 1991, in respect of the Works, which is appended to Schedule 26 (Related Documents);

**Outstanding Work** means any work required, as identified in an Asset Condition Survey or the Exit Survey, to return the Facility to the then-applicable Required Standard;

**Overall Incentive Payment** means the Incentive Payment relating to the Recidivism Index - Reimprisonment of all men who were Prisoners;

**PABX/Server Room** means the area identified and labelled on the Schedule 10 Drawings as the "PABX/Server Room";

**Payment Period** means each calendar month or (in the case of the first and final Payment Periods) part thereof during the period starting on the Service Commencement Date and ending on the last day of the Contract Term;

**PECCS** means Prisoner Escort and Courtroom Custodial Services, which is provided to the Department by a third party contractor;

**Performance Quarter** means each of the successive four periods of three months during the Contract Year ending on 31 March, 30 June, 30 September and 31 December, provided that:

- (a) in the first Contract Year, if the number of months is not divisible by three, the first Performance Quarter shall start on the Service Commencement Date and shall end on the next to occur of 31 March, 30 June, 30 September or 31 December; and
- (b) in the last Contract Year, if the number of months is not divisible by three, the last Performance Quarter shall be the period commencing on the 1 April, 1 July, 1 October or 1 January immediately preceding the last day of the Contract Term and ending on the last day of the Contract Term;

**Performance Standard** means the minimum standards of service provision relating to each specific requirement for the Corrections Services as set out in the Corrections Services Documentation;

**Performance Trend Report** means each performance trend report submitted by the Contractor in accordance with paragraph 4 of Schedule 15 (Reporting);

**Permitted Borrowing** is defined in Schedule 23 (Calculation of Compensation on Termination);

**Permitted Hedging** means the entry after Financial Close into Swaps that meet the Permitted Hedging Conditions;

**Permitted Hedging Conditions** means the conditions set out in clause 55.8(d) (Permitted Hedging);

**Permitted Refinancing** means a Refinancing that meets the applicable Permitted Refinancing Conditions;

**Permitted Refinancing Conditions** means:

- (a) in the case of a Refinancing that is proposed to be a Scheduled Refinancing, the Scheduled Refinancing Conditions;

- (b) in the case of a Refinancing that is proposed to be a Rollover Refinancing, the Rollover Refinancing Conditions;
- (c) in the case of a Refinancing that is proposed to be a Swap Breakage Refinancing, the Swap Breakage Refinancing Conditions;
- (d) in the case of Refinancing that is proposed to be a Permitted Hedging, the Permitted Hedging Conditions; and
- (e) in the case of a Refinancing that is proposed to be a Rescue Refinancing, the Rescue Refinancing Conditions;

**Permitted Security Interest** means:

- (a) a Security Interest arising solely by operation of Law and in the ordinary course of business of the Contractor provided the Contractor is not in default in payment to the holder of that Security Interest;
- (b) any Security Interest that is created or provided for by a lease for a term of more than one year (as defined in the Personal Property Securities Act 1999) in respect of which the Contractor is the lessee and that does not secure payment or performance of an obligation; or
- (c) any Security Interest over any asset of the Contractor created by operation of Law in favour of any Governmental Entity for the purpose of securing payment of Tax provided that such Security Interest has not been created pursuant to, or as a consequence of, a default on the part of the Contractor in the due payment of such Tax;

**Persistent General Breach** means, on any date, that in the six months immediately preceding that date:

- (a) no less than eight General Breaches have occurred and remain unremedied to the Department's reasonable satisfaction;
- (b) no less than 12 General Breaches have occurred and have been remedied to the Department's reasonable satisfaction;
- (c) no less than 12 General Delivery Breaches have occurred and remain unremedied to the Department's reasonable satisfaction; and/or
- (d) no less than 20 General Delivery Breaches have occurred and have been remedied to the Department's reasonable satisfaction;

**Pharmaceutical Store** means the area identified and labelled on the Schedule 10 Drawings as the "Pharmaceutical Store";

**Physical Damage Policies** means those insurances called:

- (a) Contract Works Insurance (Material Damage) and Industrial Special Risks (Material Damage) Insurance referred to and described in Parts 1 and 2 (respectively) of Schedule 22 (Required Insurances); and
- (b) Terrorism Insurance (Material Damage & Advance Loss of Profits) and Terrorism Insurance (Material Damage & Consequential Loss Business Interruption) referred to and described in Parts 1 and 2 (respectively) of Schedule 22 (Required Insurances), but only to the extent of claims in respect of the material damage coverage of such insurances;

**Planned Service Commencement Date** means 1 July 2015 (as may be postponed in accordance with clause 39 (Extension Events));

**Policy and Procedures Manual** means the manual of that name prepared by the Contractor in accordance with clause 32.2 (Policy and Procedures Manual) and Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Post Termination Date Service Amount** is defined in Schedule 23 (Calculation of Compensation on Termination);

**Postliminary Sentence** has the meaning given to that term in Part 4 of Schedule 16 (Performance Regime);

**PPP** means the New Zealand Government's public private partnership initiative;

**Pre-approved Lender List** means the list of persons pre-approved as Qualifying Lenders, appended to Schedule 26 (Related Documents) as at the Execution Date and as may be updated in accordance with its terms from time to time;

**Preliminary Operational Completion Plan** means the plan of that name prepared by the Contractor in accordance with Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Prevention Plan** is defined in clause 79.4(c);

**Pre-Refinancing Equity IRR** means the nominal post-tax (i.e., post-tax with respect to the Contractor, pre-tax with respect to shareholders) Equity IRR calculated immediately prior to a Refinancing;

**Prescribed Documentation** means any item or document which relates to the performance of the Works or the Services and shall include plans of the Site and such other documents which relate to the carrying out of the Works or the provision of the Services, including, whether as hard copy or electronic data:

- (a) Design Documentation;
- (b) Works Provisioning Documentation;
- (c) Services Documentation;
- (d) Reports and Records;
- (e) Prisoner records;
- (f) photographs; and
- (g) other information, including models and samples;

**Prescribed Rate** means, as at any date, 2 per cent above the 90 day bank bill bid settlement rate displayed on page BKBM (or its successor page) of the Reuters Monitor Screen at 10.45am on that date;

**Primary Monitor** means a person appointed by the Chief Executive as a "monitor" in relation to the Prison in accordance with section 199E(1)(a) of the Corrections Act;

**Primary Physical Barrier** means the fence/wall forming the secure perimeter of the Prison, including the inside face of the Gatehouse, as shown on the drawings set out in the Schedule 10 Drawings;

**Prison** means the prison to be operated at the Department Site, including, as the context requires, the undertaking of the running of the prison and the Facility that physically comprises the prison;

**Prison Cell** means a secure unit of accommodation for occupation by a Prisoner or Prisoners;

**Prison Manager** has the meaning given to that term in the Corrections Act;

**Prison Manager Position Description** means the description of that name prepared by the Contractor in accordance with Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Prisoner** means:

- (a) any person for the time being in the legal custody of the Chief Executive under the Corrections Act who has been placed under the control of the Contractor in its capacity as a prison management contractor or a security contractor under the Corrections Act and has not yet been released from custody in accordance with any Law or released into the custody of another person that is lawfully entitled to take custody of that prisoner; and
- (b) any person that would be a Prisoner under paragraph (a) of this definition if they had not escaped or been released from custody by the Contractor before they were entitled by Law to be released from custody;

**Prisoner Management Plan** has the meaning given to that term in section 51 of the Corrections Act;

**Prisoner Place** means a unit of accommodation for occupation by a Prisoner in a Prison Cell (other than in a Prison Cell which is the Health, Education and Programmes building) at the Facility;

**Prisoner Property** has the meaning given to that term in the Corrections Act;

**Prison Trust Account** means the trust account required to be opened and operated in accordance with section 46 of the Corrections Act;

**Prisoner Waiting Area** means each area identified and labelled on the Schedule 10 Drawings as a "Prisoner Waiting Area";

**Privacy Impact Assessment** means the assessment of that name prepared by the Contractor in accordance with Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents), and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Probity Event** means:

- (a) offering, giving or agreeing to give to any employee or agent of, or contractor to, the Department or any other Governmental Entity any gift or consideration of any kind as an inducement or reward:



- (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Department or another Governmental Entity; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Department or another Governmental Entity;
- (b) entering into this Agreement or any other contract with the Department or another Governmental Entity in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Department;
- (c) committing any offence under any Laws creating offences in respect of fraudulent acts, in respect of fraudulent acts in relation to this Agreement or any other contract with the Department or another Governmental Entity;
- (d) defrauding or attempting to defraud or conspiring to defraud the Department or another Governmental Entity; or
- (e) a probity-related event, matter or thing for which the Contractor or a Contractor Related Person is responsible (other than an event, matter or thing for which there is another express remedy under this Agreement) that:
  - (i) constitutes a conflict of interest that is or is likely to have a material adverse effect on the ability of the Contractor to perform or observe its obligations under this Agreement or on the rights of the Department or any Department Related Person under any Project Document; or
  - (ii) is or is likely to have a material adverse effect on:
    - (A) the reputation or credibility of the Department or another Governmental Entity; or
    - (B) the public interest (having regard to the policy objectives of the Department) and public confidence in the Prison;

**Probity Investigation** means such probity and criminal investigations as more particularly described in clause 21.5 (Probity Investigations) to report on the character, honesty and integrity of persons or corporations (including Sub-contractors) as are required by Law or by the Department from time to time to make, to ensure that a person is fit and proper for its proposed or continued involvement in the Project;

**Professional Advisor** means any accounting, legal, engineering, insurance or technical services professional advisor;

**Project** means the PPP at Wiri Men's Prison Project, to be undertaken by the Contractor at the request of the Department in accordance with the Project Documents;

**Project Accounts** means the accounts referred to in and required to be established under the Financing Agreements;

**Project Documents** means those agreements listed as "Project Documents" in Part 1 (Overview of Project Documents and Particulars) of Schedule 3 (Project Documents) and includes any document or agreement entered into for the purpose of supplementing, amending, replacing or novating any of those listed documents that the parties have agreed (in writing) to be a Project Document;

**Project Governance Group** means the project governance group referred to in clause 15.1 (Governance), the composition, functions and processes of which are described in Part 1A (Project Governance Group) of Schedule 7 (Governance and Service Management);

**Protected Disclosures Act** means the Protected Disclosures Act 2000;

**Public Records Act** means the Public Records Act 2005, and includes any standards issued by the Chief Archivist (as defined in the Public Records Act) under section 27 of the Public Records Act, as amended under section 27(1)(b) of the Public Records Act, but only to the extent that:

- (a) the Chief Archivist has stated that compliance with those standards is mandatory; and
- (b) such standards have not been revoked;

**Qualification Criteria** has the meaning given to that term in Schedule 23 (Calculation of Compensation on Termination);

**Qualifying Bank Transaction** means:

- (a) the syndication or grant by a Senior Lender of any rights of participation, or the disposition by a Senior Lender of any of its rights, interests or obligations in respect of the Financing Agreements to which the Senior Lenders are party in favour of:
  - (i) any other Senior Lender;
  - (ii) a local agency or public agency;
  - (iii) a Qualifying Lender;
  - (iv) a securitisation or funding vehicle of the Senior Lender where the Senior Lender remains the lender of record; or
  - (v) any other institution in respect of which the prior written consent of the Department has been given;
- (b) the grant by a Senior Lender of any other form of benefit or interest in either those Financing Agreements or the revenues or assets of the Contractor or HoldCo, whether by way of security or otherwise, in favour of:
  - (i) any other Senior Lender;
  - (ii) a local agency or public agency;
  - (iii) a Qualifying Lender;
  - (iv) a securitisation or funding vehicle of the Senior Lender where the Senior Lender remains the lender of record; or
  - (v) any other institution in respect of which the prior written consent of the Department has been given; and/or
- (c) the transfer or assignment by the Agent of its role as agent for the Senior Lenders under the Financing Documents to:
  - (i) any other Senior Lender;

- (ii) a Qualifying Lender; or
- (iii) any other institution in respect of which the prior written consent of the Department has been given;

**Qualifying Change** means a Change in respect of which a Change Notice has been served:

- (a) on the Department by the Contractor, which Change Notice has been confirmed by the Department pursuant to clause 48.1 (Confirmation of Change); or
- (b) on the Contractor by the Department:
  - (i) where the Department has confirmed that it is funding all or the remaining part of the Capital Expenditure; and
  - (ii) which Change Notice has been confirmed by the Department pursuant to clause 48.1 (Confirmation of Change),

and in respect of which, any documents or amendments to the Project Documents that are required in order to give effect to that Change have been signed by the parties and have become unconditional in all respects;

**Qualifying Change in Law** means a Change in Law that is:

- (a) a Specific Change in Law; or
- (b) following Works Completion, a General Change in Law, which:
  - (i) was enacted after Works Completion;
  - (ii) was enacted after Deemed Works Completion and came into force more than three months following Deemed Works Completion; or
  - (iii) was enacted prior to Deemed Works Completion and came into force more than three months following Deemed Works Completion,

and which in each case involves Capital Expenditure. To avoid doubt, for the purposes of this definition and the definition of Deemed Works Completion, 'coming into force' is deemed to occur at the expiry of any transitional period or transitional arrangements for any Law;

**Qualifying Lender** means:

- (a) any Affiliate of a Senior Lender;
- (b) at any time, any person included on the Pre-approved Lender List at that time;
- (c) any bank registered and regulated under the laws of an OECD member country and having a long term issuer credit rating of at least BBB+ from Standard & Poor's Rating Services or Baa1 from Moody's Investor Services (or any equivalent credit rating of any other ratings agency consented to by the Department);
- (d) any financial institution organised under the laws of, or regulated in, an OECD member country and having a long term issuer rating of at least BBB+ from Standard & Poor's Rating Services or Baa1 from Moody's Investor Services (or any equivalent credit rating of any other ratings agency consented to by the Department), not being a

financial institution (or any Affiliate of or fund controlled by a financial institution) that solely or predominantly invests in distressed debt assets; or

- (e) any other person approved or deemed to be approved by the Department as a Qualifying Lender under clause 55.11 (Refinancing – general provisions);

**Qualifying Māori Prisoner (other prison)** has the meaning given to that term in Part 4 of Schedule 16 (Performance Regime);

**Qualifying Māori Prisoner (Prison)** has the meaning given to that term in Part 4 of Schedule 16 (Performance Regime);

**Qualifying Opex** means any increase in annual Operating Expenditure that has been incurred as a result of Cumulative Capital Expenditure;

**Qualifying Prisoner (other prison)** has the meaning given to that term in Part 4 of Schedule 16 (Performance Regime);

**Qualifying Prisoner (Prison)** has the meaning given to that term in Part 4 of Schedule 16 (Performance Regime);

**Qualifying Refinancing** means any Refinancing that will give rise to a Refinancing Gain, but excludes any Exempt Refinancing and any Rescue Refinancing;

**Quality Assurance System** means that system for quality assurance to be developed by the Contractor pursuant to clause 19.1 (Quality Assurance System);

**Quarterly Performance Trend Report** means each such report required to be delivered by the Contractor under paragraph 4.1(a) of Schedule 15 (Reporting);

**Quarterly Volume Assumption** means, in respect of an Applicable Reviewable Service, the Capped Volume Assumption (if any) for that Applicable Reviewable Service, divided by four;

**Ramp-Up Period** means the period between Service Commencement and the Full Service Date, as specified in the Ramp-Up Plan;

**Ramp-Up Plan** means the plan of that name prepared by the Contractor in accordance with Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Rates** means all rates (as defined in the Local Government (Rating) Act 2002) payable to a Governmental Entity in respect of the Department Site and:

- (a) any fees imposed by a Governmental Entity in relation to the connection or provision of infrastructure to the Department Site; but
- (b) excludes any usage or consumption-based rates or charges payable to any Governmental Entity or entities controlled by a Governmental Entity;

**Reception** means the area identified and labelled on the Schedule 10 Drawings as the “Reception”;

**Reception Procedure** means the procedure that is to be undertaken upon the arrival of a Prisoner at the Prison, as described in paragraph 8.2 of Schedule 14 (Corrections Services Requirements);

**Recidivism Index – Reimprisonment** or **RiR** has the meaning given to that term in Part 4 of Schedule 16 (Performance Regime);

**Records** means the Service Records, the Financial Records and the Department Records;

**Rectification Costs** is defined in Schedule 23 (Calculation of Compensation on Termination);

**Refinancing** means:

- (a) any amendment, variation, novation, supplement or replacement of any Senior Financing Agreement;
- (b) the exercise of any right, or the grant of any waiver or consent under any Senior Financing Agreement;
- (c) the entry into or breakage of any Swap (other than the entry into any Swap on or prior to Financial Close);
- (d) the disposition of any rights or interests in, or the creation of any rights of participation in, or in respect of, the Senior Financing Agreements or the creation or granting of any other form of benefit or interest in either the Senior Financing Agreements or the contracts, revenues or assets of the Contractor whether by way of security or otherwise; or
- (e) any other arrangement put in place by the Contractor or another person which has an effect which is similar to any of paragraphs (a) to (d) above;

**Refinancing Breach** means a failure by the Contractor to obtain the actual or deemed consent of the Department to a Refinancing (other than an Exempt Refinancing) in accordance with this Agreement;

**Refinancing Gain** means an amount equal to the greater of zero and  $(A - B) - C$ , calculated immediately prior to an applicable Refinancing, where:

**A** = the Net Present Value of the Distributions projected to be made over the remaining term of the Agreement following the Refinancing, using the Base Case as updated to take into account the effect of that Refinancing;

**B** = the Net Present Value of the Distributions projected to be made over the remaining term of the Agreement following the Refinancing, using the Base Case without updates to take into account the effect of that Refinancing; and

**C** = any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR;

**Rehabilitation and Reintegration Programme** means the programme of that name prepared by the Contractor in accordance with Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Reinstatement Plan** is defined in clause 76.3(a);

**Reinstatement Works** is defined in clause 76.3(a);

**Relationship Management Group** means the relationship management group, the composition, functions and processes of which are described in Part 1B (Relationship Management Group) of Schedule 7 (Governance and Service Management);

**Release Measurement Period** has the meaning given to that term in Part 4 of Schedule 16 (Performance Regime);

**Released** has the meaning given to that term in Part 4 of Schedule 16 (Performance Regime);

**Relevant Event** means any:

- (a) Confirmed Change;
- (b) Qualifying Change in Law;
- (c) action taken by the Department under Part 18 (Department Step-in) that affects the carrying out of any Services in circumstances where the Department has exercised its rights under Part 18 otherwise than as a result of the occurrence of any Contractor Default or of any breach of this Agreement by the Contractor;
- (d) requirement of the Department for additional insurances pursuant to clause 74.3(a);
- (e) agreement or determination that the Department will pay an amount to the Contractor under clause 41.4(b)(i)(A);
- (f) Consequential Change;
- (g) Refinancing (other than an Exempt Refinancing);
- (h) change to the amount payable by the Department for a Reviewable Service as agreed or determined under clause 54.2 (Market Testing);
- (i) event to which clause 42.11 (Remedies available for specific Events) applies;
- (j) setting of the Base Insurance Premium (as defined in Schedule 17 (Payment Mechanism)) under paragraph 1 of Schedule 25 (Insurance Premium Sharing); or
- (k) other matter as a result of which there may be an adjustment to the Unitary Charge;

**Relevant Incident** is defined in clause 76.3(a);

**Relevant Index** means CPI, except where and to the extent that any reference to indexation in this Agreement expressly refers to an alternative index, in which case it means that alternative index;

**Relevant Payment Date** is defined in clause 53.3(b);

**Relevant Proceeds** is defined in clause 76.3(c)(iv);

**Relevant Service Commencement Date** means, as at any date:

- (a) prior to the First Service Commencement Date, the First Service Commencement Date; or
- (b) if the First Service Commencement Date has passed, the Planned Service Commencement Date; or

- (c) if the Planned Service Commencement Date has passed, the Last Date for Service Commencement;

**Relevant Works** is defined in clause 76.1(a);

**Remediable Contractor Default** is defined in clause 79.2 (Contractor Default);

**Rental Prepayment** means the amount specified in cell U59 on the Base Case sheet entitled "Summary" as at Financial Close, to be made by the Contractor to the Department on the Service Commencement Date, representing the rental to be paid under the Facility Lease from its commencement until the earlier of the Actual Termination Date and the Expiry Date;

**Reports** means the reports the Contractor is required to prepare and make available to the Department pursuant to the terms of this Agreement, which include those reports specified in Schedule 10 (Works Requirements) and Schedule 14 (Corrections Services Requirements);

**Reputable** means a Qualifying Lender and any person who is not:

- (a) an Unsuitable Third Party;
- (b) engaged in, nor has Control of a person that is engaged in, the gambling industry, the production, distribution or sale of tobacco products, alcoholic drinks, pornography, narcotics or arms and armaments;
- (c) on, or Controlled by a person on, any publically available terrorist blacklist applicable in New Zealand or any country in which that person is domiciled or regulated; or
- (d) engaged in, or has a material interest in, activities that, in the reasonable opinion of the Department, pose or could pose a threat to national security;

**Reputable Insurer** means a financially sound and reputable insurer with a long term credit rating (or equivalent) of no less than:

- (a) A- from Standard & Poor's, a division of the McGraw-Hill Companies, or the successor to its ratings business; and/or
- (b) B+ from A.M. Best Company, Inc, or the successor to its ratings business,

or any other financially sound and reputable insurer approved in writing by the Department;

**Required Insurance** means an insurance that is required by the terms of this Agreement as set out in Parts 1, 2 and 3 of Schedule 22 (Required Insurances);

**Required Standard** means, in relation to an Asset Condition Survey or the Exit Survey, the required standard of the Facility as at that time as specified in the Asset Management Plan;

**Rescue Refinancing** means a Refinancing that meets the Rescue Refinancing Conditions;

**Rescue Refinancing Conditions** means the conditions set out in clause 55.9(b);

**Residences** means each of the areas identified and labelled on the Schedule 10 Drawings as the "Residences", "Residence 1", "Residence 2", "Residence 3", "Residence 4", "Residence 5", "Residence 6", "Residence 7", "Residence 8", "Residence 9" and "Residence 10" and **Residence** means each of them;

**Retained Services** means the scope of the Services retained by the Contractor following any Consequential Change (including a Significant Consequential Change);

**Retention Fund Account** is defined in clause 85.1 (Notification);

**Returnable Schedule** means the sheet called 'Unitary Charge Pro Forma' in the Base Case;

**Review Procedures** means the procedures by which Reviewable Documents are reviewed by the Department as described in Schedule 6 (Review Procedures);

**Reviewable AVL Services** means the services performed by the Contractor in respect of the Project comprising:

- (a) escorting of Prisoners within the Prison to facilitate participation in audio visual court appearances by Prisoners;
- (b) supervision of Prisoners whilst participating in audio visual court appearances within the Prison,

excluding for the avoidance of doubt, any New Zealand Parole Board appearances;

**Reviewable Design Material** means the Design Documentation listed in Exhibit 1 to Schedule 6 (Review Procedures);

**Reviewable Document** means any Operative Document and any other document specified as a "Reviewable Document" in Schedule 6 (Review Procedures), together with such other documentation that the parties agree in writing should be a Reviewable Document;

**Reviewable Escort Services** means the Escort Services performed by the Contractor under paragraph 4.1(b) of Schedule 14 (Corrections Services Requirements), including temporary Prisoner escorts and removals under:

- (a) regulation 29(k) of the Corrections Regulations (to obtain, whether by appointment or otherwise, medical, surgical or dental assessment to treatment that is not available in the Prison); and
- (b) regulation 29(l) of the Corrections Regulations (to be admitted to hospital for treatment),

but excluding any other temporary Prisoner escorts and removals under regulation 29 of the Corrections Regulations and excluding any services to which the definition of Additional Transfer Services applies;

**Reviewable Services** means:

- (a) Applicable Utilities;
- (b) Reviewable AVL Services; and/or
- (c) Reviewable Escort Services;

**Reviewable Services Term** means each period of five years of the Contract Term, the first such term being one that commences on the Service Commencement Date and ends five years from the Service Commencement Date;

**RiChange(Māori)** has the meaning given to that term in Part 4 of Schedule 16 (Performance Regime);



**RiChange(Overall)** has the meaning given to that term in Part 4 of Schedule 16 (Performance Regime);

**Risk Management Plan** means the plan of that name prepared by the Contractor as part of the Policy and Procedures Manual in accordance with Part 3 (Correction Services Documentation) of Schedule 5 (Operative Documents), and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Risk Register** means the register prepared by the Contractor as part of the Risk Management Plan in accordance with Part 3 (Correction Services Documentation) of Schedule 5 (Operative Documents), and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Rollover Refinancing** means a Refinancing that meets the Rollover Refinancing Conditions;

**Rollover Refinancing Conditions** means the conditions set out in clause 55.6(b) (Rollover Refinancing Conditions);

**Room Data Sheets** means the room data sheets set out in Appendix C (Room Data Sheets) to Schedule 10 (Works Requirements);

**Sally Port** means the sally port identified and labelled on the Schedule 10 Drawings as the “Sally Port” or the “Sallyport”;

**Schedule 10 Drawing** means each drawing appended to Schedule 10 (Works Requirements), wherever it appears in those appendices, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Scheduled Maintenance** is defined in clause 35.1 (Scheduled Maintenance);

**Scheduled Refinancing** means a Refinancing that meets the Scheduled Refinancing Conditions;

**Scheduled Refinancing Conditions** means the conditions set out in clause 55.5(b) (Scheduled Refinancing Conditions);

**Schedules** means the schedules to the Base Agreement for the time being;

**Section 196 Instruction** means any instruction or guidance expressly issued by the Chief Executive under section 196 of the Corrections Act, including, as at the Execution Date those instructions and guidance set out in the Delegations and Instructions Table, appended to Schedule 26 (Related Documents);

**Secure Dispensary** means the area in the Health, Education and Programmes building identified and labelled on the Schedule 10 Drawings as “Secure Dispense”;

**Secure Email** means the email routing configurations that enable email between the Staff Members and the Department to be transmitted via the private WAN link to the Department;

**Secure Intelligence Database System or SiD** means the national intelligence unit secure electronic storage facility for information relating to prisoners;

**Security Equipment Room or SER** means the area identified and labelled on the Schedule 10 Drawings as the “Security Equipment Room”;

**Security Interest** includes:

- (a) a security interest within the meaning ascribed to that term under section 17 of the Personal Property Securities Act 1999; and
- (b) a mortgage, charge or security interest over the Contractor's rights under the Facility Lease;

**Security Management Plan** means the plan of that name prepared by the Contractor as part of the Policy and Procedures Manual in accordance with Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Security Management System** or **SMS** means the security management system to be installed in accordance with Schedule 10 (Works Requirements), maintained in accordance with Schedule 12 (Facility Management Requirements) and utilised in accordance with Schedule 14 (Corrections Services Requirements), as may be updated from time to time in accordance with this Agreement;

**Security Monitor** has the meaning given to that term in the Corrections Act;

**Security Officer** has the meaning given to that term in the Corrections Act;

**Security Trustee** means the security trustee appointed by the Senior Lenders being, as at the Execution Date, ANZ National Bank Limited;

**Semi-Annual Work Plan** means the plan of that name prepared by the Contractor as part of the Asset Management Plan in accordance with clause 29.2(b), clause 34.4 (Semi-Annual Work Plan) and Part 2 (Facility Management Services Documentation) of Schedule 5 (Operative Documents), and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Senior Debt** means the financial accommodation provided by Senior Lenders from time to time under the Senior Financing Agreements;

**Senior Debt Rate** means the non-default interest rate as set out in the Senior Financing Agreements or such lower rate as the parties may agree;

**Senior Financing Agreements** mean those Financing Agreements specified as such in Schedule 4 (Funding Requirements and Financing Agreements) and any amendments to or replacements of any Senior Financing Agreements that relate to Refinancings for which the prior written approval (or the deemed approval) of the Department has been obtained under this Agreement;

**Senior Lender** means a person providing financial accommodation to the Contractor under the Senior Financing Agreements from time to time and includes, where applicable, any Hedge Counterparty;

**Serious Assault** means:

- (a) any form of sexual assault without voluntary consent; and/or
- (b) any act of physical violence where the victim requires overnight hospitalisation or repeated medical intervention by a healthcare professional (beyond just initial assessment by a medical practitioner);

**Serious Complaint** means a complaint that contains an allegation of:

- (a) racial abuse;
- (b) loss of or damage to a Prisoner's Property; or
- (c) any theft of a Prisoner's Property;

**Serious Incident Report** means any report required to be given by the Contractor to the Department in accordance with paragraph 7.1(b) or 7.1(c) of Schedule 15 (Reporting) and includes any interim Serious Incident Report;

**Service Commencement** means the commencement of the Operational Services from and including the Service Commencement Date;

**Service Commencement Date** is defined in clause 29.1(b);

**Service Failure Points** or **SFP** means service failure points attributed to the Contractor as a result of any KPI Breach, in accordance with Schedule 16 (Performance Regime);

**Service Hours** means, for Operational Services comprising an Applicable Reviewable Service and a specified period, the actual hours expended by or on behalf of the Contractor in performing such Operational Services during such period (measured on an hours per event basis and consistently with the manner in which the Capped Volume Assumption for the Applicable Relevant Service is set);

**Service Records** is defined in clause 18.2 (Service Records);

**Services** means Works Provisioning and the Operational Services;

**Services Documentation** means the Facility Management Services Documentation and the Corrections Services Documentation;

**Settled Accommodation** means permanent independent housing, an approved premises or supported housing;

**Shared Operating Insurances** means the Insurance Policies described in Part 2 of Schedule 22 (Required Insurances);

**Shareholder** means any person from time to time holding share capital in the Contractor or HoldCo;

**Shareholder Breach** means:

- (a) any sale, transfer or disposal of any direct legal, beneficial or equitable interest in any or all of the shares in the Contractor by HoldCo, in breach of clause 95 (Change of Ownership); or
- (b) any sale, transfer or disposal of any direct legal, beneficial or equitable interest in any or all of the shares in HoldCo by an immediate Shareholder in breach of clause 95 (Change of Ownership) that HoldCo fails to cure within 20 Business Days after it became aware (or ought reasonably to have become aware) of any such sale, transfer or disposal;

**Shareholder Debt** means any loan, convertible note, debt security or other instrument treated as debt in accordance with GAAP advanced, made or to be made available by a Shareholder (or by a person under the Control of the Shareholder's holding company (within the meaning of section 5 of the Companies Act 1993)) to the Contractor or HoldCo;

**Significant Consequential Change** means a Consequential Change involving or otherwise arising from any decision by the Department that results in:

- (a) removal of the custody and guarding of Prisoners within the Prison from the scope of the Corrections Services;
- (b) removal of the Contractor's right to appoint the Prison Manager and/or the management responsible for the custody and guarding of Prisoners within the Prison; and/or
- (c) reducing the proportion of the Unitary Charge payable, as set out in the Base Case at Financial Close, by the Contractor to the Major Sub-contractor responsible for the delivery of the Corrections Services under its Major Sub-contract (in aggregate with any other reductions due to Consequential Changes) by at least 75 per cent;

**Significant Material Change** means a Material Change that is likely to require additional Capital Expenditure above \$13 million or is likely to impact the Unitary Charge in excess of five per cent);

**Site Access and Interface Protocols** means:

- (a) the protocols for accessing the Department Site prior to Works Completion as set out in the Works Project Management Plan; and
- (b) the protocols for accessing the Department Site following Works Completion as set out in the Policy and Procedures Manual,

each in a form agreed by the Department (acting reasonably) subject, in each case, to such reasonable and necessary variations from time to time as the Contractor requires to ensure the continued efficient and safe operation of the Department Site (provided that any variation that alters the Department's rights or obligations must first be approved by the Department acting reasonably);

**Site Conditions** means any physical conditions on, under, or over the surface, or in the vicinity of the Department Site, including:

- (a) ground water, ground water hydrology, the existence of any wells and the effects of any de-watering;
- (b) physical and structural conditions above, upon and below the ground including any partially completed structures or in ground works;
- (c) pastures, grasses or other vegetation on the Department Site;
- (d) topography, ground surface and sub-surface conditions and geology including rock or other materials;
- (e) availability and condition of roads and all other means of access and rights required to access the Department Site from a public way and all Utility Services (including drainage) servicing, or required to service, the Department Site or the Works;
- (f) climatic and weather conditions, rain, surface water run-off and drainage, water seepage, wind, wind-blown dust and sand seasons, mud and other effects of climatic and weather conditions;
- (g) all existing improvements, Finds, installations, systems and services on, above or below the surface of the Department Site and any particular heritage or other

significance attaching to them, and the location of all facilities with which the systems and services are connected;

- (h) any Contamination; and
- (i) all other physical conditions and characteristics of the Department Site above, on or below the surface which may affect the performance by the Contractor of its obligations under this Agreement;

**Snagging Defect** means a Defect comprising a minor defect or deficiency that:

- (a) does not adversely affect the provision of the Operational Services or the availability of any Prisoner Place; and
- (b) does not constitute a health and safety hazard,

and includes, for the purposes of clause 29.3(l)(ii)(B) (Works Completion) only, any failure by the Contractor to obtain a code compliance certificate (as defined in the Building Act 2004) for the Prison on or prior to Operational Completion;

**Software** means any computer programmes or programming in source or object code format (including shrink-wrap software, collaborative applications, microcode, shareware and firmware) and associated documentation that is used or that is necessary to be used, to perform the Services or that is, or is to be, provided to the Department as part of the Services;

**Specific Change in Law** means any Change in Law which expressly and exclusively applies to:

- (a) the Project;
- (b) the Facility or the Department Site;
- (c) the Contractor or a Major Sub-contractor, but only in its capacity as contractor to the Department or to the Contractor (as applicable) in order to implement and undertake the Project;
- (d) the corrections sector in New Zealand; or
- (e) the Contractor and other persons that are undertaking projects under the policies of the New Zealand Treasury's National Infrastructure Unit or any replacement of substitute policies of the New Zealand Government relating to PPPs for the provision of public infrastructure for any Governmental Entity, in each case only as it applies to them in that capacity and in relation to their involvement in this Project;

**Specific Change Share** means, in respect of the net capital and operating consequences (if that amount is a positive number) arising from a Specific Change in Law of the type referred to in paragraph (d) of the definition of Specific Change in Law, the following:

Net capital and operating consequences	Contractor's compensation (Net capital consequences)	Contractor's compensation (Net operating consequences)
\$0 to \$50,000 (inclusive)	0%	100%
\$50,000 to \$100,000 (exclusive)	50%	100%
\$100,000 and above	100%	100%

**Sports Hall** means the area identified and labelled on the Schedule 10 Drawings as the "Sports Hall";

**Staff Member** has the meaning given to that term in the Corrections Act;

**Staff Training Centre** means the area identified and labelled on the Schedule 10 Drawings as the "Staff Training Centre";

**Stakeholder Engagement Plan** means the plan of that name prepared by the Contractor as part of the Communication Plan in accordance with Part 1 (Works Provisioning Documentation), Part 2 (Facility Management Services Documentation) and Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) (as applicable), and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Standby Letter of Credit** means a letter of credit or bank guarantee on terms that are (in form and substance) satisfactory to the Department, and that:

- (a) is unconditional, irrevocable and payable in the same circumstances as the Retention Fund Account;
- (b) is issued by a financial institution that is the holder of a current banking licence issued by the Reserve Bank of New Zealand and that as at the date of the issue of that bond has a credit rating of at least A- (issued by Standard and Poor's), or the equivalent credit rating issued by another generally recognised international credit rating agency; and
- (c) specifies a location within New Zealand where demand is to be given and payment made, without further confirmation from the issuer;

**Start Date** means the date on which Works Provisioning is to commence pursuant to the Works Provisioning Programme;

**Statutory Report** means each statutory report to be delivered by the Contractor to the Department under paragraph 5 of Schedule 15 (Reporting);

**Step-in Period** means, in relation to any exercise of the Department's Step-in Rights under Part 18 (Department Step-in), the period commencing on the date on which the Department exercises its Step-in Rights following service of the Department's notice under clause 69.1 (Particulars of notice) and ending on the date specified in the Department's notice under clause 72.1 (Cessation), as being the date on which the Department will cease to exercise those Step-in Rights;

**Step-in Rights** means those rights of the Department to step-in pursuant to Part 18 (Department Step-in), as described in clause 68 (Step-in Rights);

**Sub-contractor** means:

- (a) any other person engaged by the Contractor from time to time as may be permitted by this Agreement to procure the provision of the Works and/or the Services (or any of them) and includes each Major Sub-contractor; and
- (b) includes (unless otherwise specified in this Agreement) any other person that is engaged (at any tier) to act as a sub-contractor for the purposes of this Agreement;

**Sub-contractor Breakage Costs** means Losses that have been or will be reasonably and properly incurred by the Contractor to a Sub-contractor as a direct result of the termination of this Agreement, but only to the extent that:

- (a) the Losses are incurred in connection with the Project and in respect of the provision of Services or Completion of Works, including:
  - (i) any materials or goods ordered or sub-contracts placed that cannot be cancelled without such Losses being incurred;
  - (ii) any expenditure incurred in anticipation of the provision of Services or the Completion of Works in the future;
  - (iii) the cost of demobilisation including the cost of any relocation of equipment used in connection with the Project; and
  - (iv) redundancy payment liability incurred by a Sub-contractor; and
- (b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms;

**Submitted Item** is defined in paragraph 2.1(b) (Contractor's submissions) in Schedule 6 (Review Procedures);

**Subordinated Financing Agreements** mean those Financing Agreements specified as such in Schedule 4 (Funding Requirements and Financing Agreements) as may be amended, substituted or replaced from time to time in accordance with this Agreement;

**Subordinated Lender** means a person providing finance to the Contractor under the Subordinated Financing Agreements from time to time;

**Suitable Substitute Contractor** means a person approved by the Department (such approval not to be unreasonably withheld or delayed) as:

- (a) not being an Unsuitable Third Party;
- (b) having the legal capacity, power and agency to become a party to and perform the obligations of the Contractor under this Agreement; and
- (c) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Contractor under this Agreement;

**Swap** means an interest rate swap or other equivalent or comparable transaction entered into by the Contractor and any Hedge Counterparty;

**Swap Breakage Costs** means costs payable by a Hedge Counterparty to the Contractor or by the Contractor to a Hedge Counterparty (as the case may be) on the close-out or termination of a Swap entered into in respect of Core Senior Debt;

**Swap Breakage Refinancing** means a Refinancing that meets the Swap Breakage Refinancing Conditions;

**Swap Breakage Refinancing Conditions** means the conditions set out in clause 55.7(b)(Swap Breakage Refinancing Conditions);

**Swap Pricing Protocol** means the swap pricing protocol applicable after Financial Close as referred to in Part 2 (Swap Pricing Protocol) of Schedule 4 (Funding Requirements and Financing Agreements) and appended to Schedule 26 (Related Documents), as amended or updated by agreement between the parties from time to time;

**Tax** means any present or future tax, levy, impost, deduction, charge, duty or withholding of any nature (other than GST) which is levied or imposed by a Governmental Entity, together with interest, penalties, charges, fees, or other amounts (if any) imposed or made on or in respect of the above and **Taxation** will be construed accordingly;

**Tender Cost** is defined in Schedule 23 (Calculation of Compensation on Termination);

**Tender Process** is defined in Schedule 23 (Calculation of Compensation on Termination);

**Tender Process Monitor** is defined in Schedule 23 (Calculation of Compensation on Termination);

**Tendering Information** means the expression of interest and request for proposal documentation issued by the Department in respect of the Project, and includes all other written information, including responses to questions, provided by the Department to the Contractor or to all bidders in connection with the same;

**Termination Date:**

- (a) means the date specified in a Termination Notice on which this Agreement terminates; and
- (b) is more accurately described in clause 77.5 (Termination Date);

**Termination Event** is defined in clause 77.4 (Termination);

**Termination Notice** means a notice of termination issued in accordance with this Agreement following the occurrence of a Termination Event, including a notice issued or to be issued by the Department pursuant to clause 79.5 (Termination Notice), but does not include a Warning Notice;

**Third Party Claim** is defined in clause 63.1 (Notice and compromise);

**Third Party Contractor** has the meaning set out in clause 50.2(e);

**Third Party Profit** means revenue earned by or on behalf of the Contractor other than the Unitary Charge or any Additional Payment made by the Department, less costs incurred by or on behalf of the Contractor in generating that revenue (excluding those already recovered by way of the Unitary Charge) but excludes any such third party profit to the extent incorporated in the Base Case;

**Third Party Profit Report** means each such report required to be delivered by the Contractor under and in accordance with paragraph 8 of Schedule 15 (Reporting);



**Threshold Equity IRR** is the percentage amount specified in cell H197 on the Base Case sheet entitled "Ass Scenario" as at Financial Close;

**Total Deductions** means the sum of all Deductions applicable to a Contract Month, as calculated in accordance with Schedule 16 (Performance Regime);

**Transfer Date** is defined in clause 11.2 (Ownership of Fixtures and Fitout);

**Transition Offender Plan** means the plan developed for every Prisoner in accordance with paragraph 30.2 of Schedule 14 (Corrections Services Requirements) in conjunction with the Prisoner Management Plan, and based on research into options and pathway requirements for the Prisoner;

**Transition Offender Plan Review** means, in the context of a prisoner who is transitioning from one sentence/order to another, the review that is to be completed prior to the prisoner being transitioned in accordance with paragraph 30.2 of Schedule 14 (Corrections Services Requirements), which identifies what objectives of the prisoner's Prisoner Management Plan have been achieved and what objectives need to continue;

**Triage Room** means the area in each House Block identified and labelled on the Schedule 10 Drawings as "Triage";

**Trust Accounting Bulk Upload** means the Software application provided via Citrix Access Gateway which is used to upload bulk offender earnings information;

**Unauthorised Item** has the meaning given to that term in the Corrections Act;

**Unforeseeable Contamination** means Contamination that subsists on the Department Site as at the Execution Date that would not reasonably have been foreseen by the Contractor at the Execution Date if the Contractor had:

- (a) examined all information made available in writing by the Department to the Contractor for the purpose of this Agreement;
- (b) examined all information relevant to the risks, contingencies and other circumstances having an effect on its rights and obligations under this Agreement obtainable by the making of reasonable enquiries;
- (c) undertaken all detailed inspections and surveys of the Department Site and its surroundings that would reasonably be expected to be undertaken by a skilled, qualified and experienced contractor given the same level of access to the Department Site as that given to the Contractor; and
- (d) acted at all times in respect of the inspection and survey of the Department Site in accordance with Good Industry Practice;

**Unindexable Element** or **UE** means the unindexable element of the Unitary Charge, as set out in the Base Case and applied in accordance with Schedule 17 (Payment Mechanism);

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

- (a) insurance is not available to the Contractor in respect of the Project in the recognised international insurance market with Reputable Insurers of good standing in respect of that risk (including where not available to the Contractor or a Contractor Related Person (for the purposes of the Project) due to the capacity of such insurers being filled in respect of that risk);

- (b) any terms and conditions on which insurance is available to the Contractor or a Contractor Related Person in respect of the Project in the recognised international insurance market (with Reputable Insurers of good standing in respect of that risk) are not fit for the intended purpose of that insurance; or
- (c) the insurance premium payable for insuring that risk is at such a level, or the terms and conditions are such, that the risk is not generally being insured against in the recognised international insurance market with Reputable Insurers of good standing by Comparable Contractors;

**Uninsurable Event** means:

- (a) a Force Majeure Event that is, at the time of its occurrence, Uninsurable; or
- (b) a Force Majeure Event that continues to subsist following the expiry of the period of coverage under the Contractor's business interruption insurance and/or consequential loss insurance (as applicable),

but excludes any Force Majeure Event to the extent that the Uninsurability was caused or contributed to by the negligence of the Contractor, its Sub-contractors or any Contractor Related Person or failure by the Contractor, its Sub-contractors or any Contractor Related Person to comply with obligations which the Contractor is required to observe, comply with or perform under this Agreement;

**Unitary Charge** means the fee payable by the Department in consideration of the obligations performed by the Contractor under this Agreement, as set out in the Base Case and as calculated and subject to adjustment in accordance with Schedule 17 (Payment Mechanism);

**Unnatural Death of a Prisoner** has the meaning given to it in paragraph 1.1(c) of Schedule 16 (Performance Regime);

**Unsuitable Third Party** means any person:

- (a) whose activities are, in the reasonable opinion of the Department, incompatible with any operations or activities carried out by the Department for the purposes contemplated by this Agreement or any other of the Department's legal duties or other functions; and/or
- (b) who is, in the reasonable opinion of the Department, inappropriate because the Department has received specific information from the Serious Fraud Office or the Police about the unsuitability of the proposed new third party to act in relation to the Project,

provided that for the purpose of clause 55 (Refinancing and Effective Base Rate) an Unsuitable Third Party does not include any Qualifying Lender within paragraphs (a), (b) or (c) of that definition or that has been approved or deemed to be approved by the Department, as a Qualifying Lender, under clause 55;

**UPS** means uninterrupted power supply;

**Use** is defined in clause 60.1(c);

**Utilities Area** means the area of the Gatehouse identified and labelled on the Schedule 10 Drawings as "Utilities";

**Utility Infrastructure** means all infrastructure, plant and equipment for delivering Utility Services, owned or controlled by a Utility Service Provider;

**Utility Service Provider** means each provider of a Utility Service;

**Utility Services** means any utility service including water, electricity, gas, telephone, drainage, sewage, all communications services and waste collection services;

**Valuation Schedule** means the list of assets that will be subject to a regular, periodic and normalised external revaluation exercise;

**Visiting Justice** has the meaning given to that term in the Corrections Act;

**Visitor** has the meaning given to that term in the Corrections Act;

**Visitors Centre** means the area identified and labelled on the Schedule 10 Drawings as the “Visitors Centre”;

**Visits & Administration building** means the area identified and labelled on the Schedule 10 Drawings as the “Visits & Administration” building;

**Vote Corrections Report** means each such report to be delivered by the Contractor to the Department under paragraph 6 of Schedule 15 (Reporting);

**Washup Period** has the meaning given to that term in Part 4 of Schedule 16 (Performance Regime);

**Waste and Recycling building** means the area identified and labelled on the Schedule 10 Drawings as the “Waste and Recycling” building;

**Warning Notice** means a notice issued or to be issued by the Department pursuant to clause 79.4 (Warning Notice);

**Wharekura** means the area identified and labelled on the Schedule 10 Drawings as the “Wharekura”;

**Wiri Prisons Communication Protocols** means the protocols of that name prepared by the Contractor as part of the Communication Plan in accordance with Schedule 11 (Communication Protocols), Part 1 (Works Provisioning Documentation), Part 2 (Facility Management Services Documentation) and Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Works** means the Facility including the Works Infrastructure required to be provided as part of Works Provisioning, and includes all Changes and/or Consequential Changes made to the Works (or any part of them) pursuant to Part 13 (Changes);

**Works Completion** is defined in clause 29.1(c);

**Works Completion Certificate** means the notice served on the Contractor and the Department by the Independent Reviewer pursuant and subject to clause 29.3(j), signifying that Works Completion has occurred;

**Works Completion Plan** means the plan of that name prepared by the Contractor in accordance with clause 29.2(a) and Part 1 (Works Provisioning Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Works Completion Sub-Programme** means the sub-programme of that name prepared by the Contractor as part of the Works Provisioning Programme in accordance with Part 1 (Works Provisioning Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Works Completion Tests** means those tests described as such in Schedule 27 (Completion Tests) (including any additional tests and re-run tests requested by the Independent Reviewer in accordance with clause 29.3(i) to be carried out by or on behalf of the Contractor in respect of the Works (and any part of the Works) prior to the date that the Works Completion Certificate is issued pursuant to clause 29.3(j));

**Works Fire Management Plan** means the plan of that name prepared by the Contractor as part of the Works Project Management Plan in accordance with Part 1 (Works Provisioning Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Works Infrastructure** means all infrastructure, plant, equipment and works within the Department Site required to connect to and/or to use External Infrastructure, Utility Services, the Works or the Facility;

**Works Occupational Health and Safety Plan** means the plan of that name prepared by the Contractor as part of the Works Project Management Plan in accordance with Part 1 (Works Provisioning Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Works Project Management Plan** means that plan of that name, based on the draft project plan submitted by the Contractor, prepared by the Contractor in accordance with clause 26.1(b), clause 26.2 (Updates) and Part 1 (Works Provisioning Documentation) of Schedule 5 (Operative Documents) for the period until Works Completion and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Works Provisioning** means everything required to complete and commission the Works in accordance with the Works Requirements and all Works required to facilitate the Operational Services in accordance with the Corrections Services Requirements and the Facility Management Requirements;

**Works Provisioning Documentation** means the programmes, plans and documentation as set out in Part 1 (Works Provisioning Documentation) of Schedule 5 (Operative Documents) for the period until Works Completion, including:

- (a) the Works Project Management Plan;
- (b) the Works Provisioning Programme;
- (c) the Communication Plan;
- (d) the Stakeholder Engagement Plan;
- (e) the Earthworks and Contamination Management Plan;
- (f) the Works Completion Plan; and
- (g) the Disengagement Plan;

**Works Provisioning Programme** means that programme of that name prepared by the Contractor in accordance with clause 26.1(a), clause 26.2 (Updates) and Part 1 (Works Provisioning Documentation) of Schedule 5 (Operative Documents) for the period until Works Completion and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Works Quality Assurance Plan** means the plan of that name prepared by the Contractor as part of the Works Project Management Plan in accordance with Part 1 (Works Provisioning Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement;

**Works Requirements** means those requirements of the Department, as varied in accordance with Part 13 (Changes) or otherwise pursuant to the terms of this Agreement, that set out the Department's minimum design, construction and technical requirements for the Works and the Department's Requirements for Works Provisioning, the initial Works Requirements being set out in Parts 2 to 9 of Schedule 10 (Works Requirements) and in Part 2 of Schedule 10B (Works (Retrofit) Requirements); and

**Works Traffic Management Plan** means the plan of that name prepared by the Contractor as part of the Works Project Management Plan in accordance with Part 1 (Works Provisioning Documentation) of Schedule 5 (Operative Documents) and that has been submitted for review and finalised under the Review Procedures, as may be subsequently amended and updated in accordance with the terms of this Agreement.

## 2. Interpretation of Agreement

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In this Agreement, unless the context otherwise requires:

- (a) a reference to a clause, a paragraph, a part, a schedule, an exhibit, an annexure or an appendix is a reference to a clause, paragraph or part of, or a schedule, exhibit, annexure or appendix to this Agreement;
- (b) a gender includes each other gender;
- (c) the singular includes the plural and vice versa;
- (d) a reference to a person includes a partnership and also a body of persons, whether corporate or unincorporated;
- (e) a reference to documentation includes:
  - (i) a reference to that document as varied, supplemented, novated or substituted from time to time; and
  - (ii) a reference to that documentation in any form, whether paper based or in electronic form encoded on or as part of any form of media;
- (f) a reference to materials means a reference to materials of any kind whether in the form of documentation, software, hardware, components or otherwise;
- (g) a reference to a person includes reference to its respective successors in title and permitted assigns;
- (h) any agreement not to do a thing also constitutes an agreement not to suffer or permit or cause that thing to be done;

- (i) any reference to a consent requires the prior written consent of the party required to give that consent;
- (j) whenever the words “includes” or “including” are used in this Agreement, they are deemed to be followed by the words “without limitation”;
- (k) a reference to any legislation includes a modification of that legislation or legislation enacted in substitution for that legislation and a regulation, order-in-council and other instrument from time to time issued or made under that legislation;
- (l) headings and the table of contents are included for the purpose of ease of reference only and are not to have any effect on construction and interpretation;
- (m) the “Introduction” forms part of this Agreement;
- (n) a reference to days, other than Business Days, is a reference to any calendar day of the year;
- (o) a reference to currency is a reference to New Zealand currency;
- (p) if an obligation falls to be performed or a right is to be exercised on or by a day that is not a Business Day then, unless otherwise specified, that obligation is due to be performed or that right may be exercised on the Business Day next following that day;
- (q) none of the terms nor any of the parts of this Agreement are to be construed against a party, by reason of the fact that that term or that part was first proposed or was drafted by that party;
- (r) a reference to a “related company” is to a related company as defined in section 2(3) of the Companies Act 1993, as if each reference to “company” within the definition was to any body corporate; and
- (s) a party who has an obligation is to perform that obligation at its own cost, unless a term of this Agreement expressly provides otherwise.

## **Part 2 – Project Documents**

### **3. Agreement**

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#### **3.1 Scope of Agreement**

This Agreement comprises the following documents, each of which is deemed to form, and to be read and construed as part of, this Agreement:

- (a) the Base Agreement;
- (b) the Schedules; and
- (c) subject to clause 3.2, each Operative Document.

#### **3.2 Status of Operative Documents**

- (a) The Contractor is bound to comply with, and must perform all of its obligations under, the Operative Documents.
- (b) Each Operative Document is to be submitted for review under the Review Procedures, unless otherwise specified in this Agreement. The Department may review an Operative Document under the Review Procedures, but incurs no liability and assumes no responsibility for failing or declining to do so.
- (c) The Contractor acknowledges and agrees that any obligations imposed or purported to be imposed on the Department or a Department Related Person in the Operative Documents are not legally binding on the Department or that Department Related Person unless a corresponding obligation is expressly agreed to in writing by the Department or that Department Related Person, which agreement expressly refers to the terms of this clause 3.2.
- (d) The Department shall, and shall procure that all Associated Governmental Entities and third parties engaged by or on behalf of the Department to provide works and/or services on the Department Site shall, comply with the terms of the Site Access and Interface Protocols.
- (e) For the purposes of section 199(I) of the Corrections Act, to the maximum extent permitted by Law, Operative Documents will not comprise part of the prison management contract as referred to in that section.

#### **3.3 Precedence of documents**

- (a) Where there is an ambiguity, inconsistency or conflict of obligations between the documents which comprise this Agreement, the following order of precedence is to apply:
  - (i) the Base Agreement;
  - (ii) the Schedules (other than Schedule 10 (Works Requirements), Schedule 10B (Works (Retrofit) Requirements), Schedule 12 (Facility Management Requirements), Schedule 13 (ICT Requirements) and Schedule 14 (Corrections Services Requirements));
  - (iii) Schedule 14 (Corrections Services Requirements);

- (iv) Schedule 12 (Facility Management Requirements);
  - (v) Schedule 13 (ICT Requirements);
  - (vi) Schedule 10B (Works (Retrofit) Requirements);
  - (vii) Schedule 10 (Works Requirements); and
  - (viii) the Operative Documents.
- (b) Where there is an ambiguity, inconsistency or conflict of obligations within each of the documents or categories of documents identified in clause 3.3(a), then the obligation to which the Contractor is subject is that which is determined by the Department to be the most beneficial to the Department, even where the cost of performing that obligation is higher.
- (c) Where there is an ambiguity, inconsistency or conflict of obligations between this Agreement and any of the other Project Documents to which the Department is party, the following order of precedence is to apply:
- (i) the Financier Direct Deed;
  - (ii) this Agreement; and
  - (iii) the remaining Project Documents.
- (d) Except as otherwise expressed in this Agreement, any specific terms and conditions will prevail over any general terms and conditions.
- (e) Other than in respect of assessing the satisfaction of the Works Completion Tests and making any assessment of whether the Facility is Fit for the Intended Purpose, but otherwise notwithstanding clause 3.3(d), compliance by the Contractor with its obligations under any heading entitled 'Delivery Proposal' in Schedule 10 (Works Requirements), Schedule 10B (Works (Retrofit) Requirements), Schedule 12 (Facility Management Requirements), Schedule 13 (ICT Requirements) and Schedule 14 (Corrections Services Requirements) does not relieve it from the requirement to comply with the associated obligations under the corresponding heading entitled 'Works Requirement', 'Works (Retrofit) Requirement', 'Facility Management Requirement', 'ICT Requirement' or 'Corrections Services Requirement' (as the case may be) or from any liability for failure to do so.

### **3.4 Approvals, consents and similar actions**

Neither the giving of any approval or consent, the review of any document or failure to do so, nor any course of action (or any failure or ongoing failure to act) or the Department's knowledge of any course of action (or failure to act) or the provisions of any agreement or document shall (unless otherwise expressly stated in this Agreement):

- (a) relieve the Contractor of any of its obligations under the Project Documents;
- (b) relieve the Contractor of any duty it may have pursuant to this Agreement to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, review or knowledge; or
- (c) exclude or limit the Department's rights and remedies under this Agreement.



### 3.5 Indexation and replacement of indices

- (a) In this Agreement, except where otherwise provided, references to amounts expressed to be “Indexed” are references to such amounts at the price reference date prices multiplied by:

$$\frac{I_1}{I_2}$$

where  $I_1$  is the value of the Relevant Index most recently published prior to the relevant calculation date, and  $I_2$  is the value of the Relevant Index on 1 August 2011.

- (b) If there is a material change in the nature or basis of any Relevant Index, or if any Relevant Index is discontinued, the parties shall agree upon an alternative index which as closely replicates the Relevant Index as is possible, and such consequential changes shall be made to the calculations provided for in this Agreement as are necessary to ensure that all figures, payments or calculations to be adjusted with reference to a Relevant Index under this Agreement shall be adjusted in a manner as similar as possible to the manner in which such figures, payments or calculations would have been undertaken as if such change had not occurred. Any Dispute regarding changes to the calculations may be referred by either party to the Dispute Resolution Procedures.

### 3.6 No better and no worse

Any reference in this Agreement to “no better and no worse” or to leaving a party to this Agreement in a “no better and no worse position” shall be construed by reference to such party’s:

- (a) rights, duties and liabilities (including the timing of any payments made or Losses or Liabilities to be incurred) under, or arising pursuant to, performance of:
- (i) this Agreement (in the case of the Department); and
  - (ii) this Agreement, the Financing Agreements and the Major sub-contracts (in the case of the Contractor); and
- (b) ability to perform its obligations and exercise its rights under:
- (i) this Agreement (in the case of the Department); and
  - (ii) this Agreement, the Financing Agreements and the Major sub-contracts (in the case of the Contractor),

so as to ensure that:

- (c) the Contractor is left in a position which is no better and no worse in relation to the minimum debt service cover ratio, loan life cover ratio and internal rate of return by reference to the version of the Base Case applicable immediately prior to the Relevant Event; and
- (d) the ability of the Contractor to comply with this Agreement, the Financing Agreements and the Major sub-contracts or the Department to comply with this Agreement is not adversely affected or improved as a consequence of the Relevant Event.

## 4. Other Project Documents

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### 4.1 Ancillary Documents and Financing Agreements

- (a) The Contractor has provided to the Department copies of the Ancillary Documents executed on or before the Execution Date and the Initial Financing Agreements.
- (b) Without prejudice to the provisions of clause 4.1(c), clause 4.1(e) and clause 4.1(f), if for any reason and at any time (including but not limited to a Refinancing):
  - (i) an amendment is made to, or a waiver is given under any Ancillary Document or Financing Agreement;
  - (ii) the Contractor enters into a new Ancillary Document or Financing Agreement (or any agreement which affects the interpretation or application of any Ancillary Document or Financing Agreement); or
  - (iii) an existing Ancillary Document or Financing Agreement is terminated,the Contractor shall deliver to the Department a conformed copy of each such amendment, waiver, agreement or evidence of termination within five Business Days after the date of its execution or creation (as the case may be), certified as a true copy by an officer of the Contractor.
- (c) The Contractor shall perform its obligations under, and observe all of the provisions of the Ancillary Documents so as to avoid any termination of the Ancillary Documents for the Contractor's default. Without prejudice to the foregoing, the Contractor shall not:
  - (i) terminate or agree to the termination of all or part of any Ancillary Document;
  - (ii) make or agree to any material variation of any Ancillary Document;
  - (iii) in any material respect depart from its obligations (or waive or allow to lapse any rights it may have in a material respect), or cause or procure that others in any material respect depart from their obligations (or waive or allow to lapse any rights they may have in a material respect), under any Ancillary Document; or
  - (iv) enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Ancillary Document,unless:
  - (v) it is satisfied on reasonable grounds that the proposed action, waiver or allowance would not have a Material Adverse Effect; and
  - (vi) in the circumstances specified in clause 4.1(c)(i), the Contractor has complied with, and is not in breach of, clause 4.1(e), clause 16 (Sub-contractors), clause 94 (Assignment) and clause 95 (Change of Ownership).
- (d) Subject to clause 55 (Refinancing and Effective Base Rate) and clause 4.1(f), the Contractor shall be free to enter into, terminate, waive or amend its rights and generally deal with its Financing Agreements on such terms and conditions as it sees fit.
- (e) No entry into or termination of, amendment, waiver or exercise of a right under any Ancillary Document:

- (i) is permitted if the effect of the same would be reasonably expected to have a material adverse effect on the ability of the Contractor to perform its obligations under an Ancillary Document, this Agreement or any other Project Document; or
  - (ii) shall have the effect of increasing the Department's liabilities on early termination of this Agreement unless the Contractor has obtained the prior written consent of the Department to such increased liability.
- (f) No entry into a Financing Agreement may be made until:
- (i) the Department has provided its prior written approval to the form of the Financing Agreement where the Contractor is required to seek such approval to the Financing Agreement in accordance with clause 55 (Refinancing and Effective Base Rate);
  - (ii) the new financiers (if any) have executed a deed with the Department substantially in the form of the Financier Direct Deed where a necessary consequence of such Financing Agreement; and
  - (iii) the existing financiers have executed any document reasonably requested by the Department to amend or terminate (as applicable) their rights under the then-current Financier Direct Deed where a necessary consequence of such Financing Agreement.

## **4.2 Major Sub-contractor's Direct Deed**

- (a) Prior to or on the appointment of a Major Sub-contractor, the Contractor shall deliver a Major Sub-contractor's Direct Deed duly executed by that Major Sub-contractor for the benefit of the Department and each Department Related Person.
- (b) The Contractor shall not engage any new Major Sub-contractor in connection with the Project (nor accept any services from such Sub-contractor) unless that new Major Sub-contractor has provided to the Department a duly executed Major Sub-contractor's Direct Deed for the benefit of the Department and each Department Related Person.

## **5. Base Case and Base Case Adjustments**

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### **5.1 Information to be included in Base Case**

- (a) The Base Case is to be in computer spreadsheet form and shall show or permit derivation of the Contractor's:
  - (i) cash flows including all expenditure, revenues, financing and taxation of the Project; and
  - (ii) profit and loss and balance sheets throughout the Contract Term.
- (b) The Base Case must include details of all assumptions, calculations and methodology used together with any other documentation necessary to fully operate the model.
- (c) The Department shall keep a copy of the Base Case in safe custody. If, at any time, there is any dispute as to the then-current version of the Base Case, the copy held by the Department shall prevail.

## **5.2 Updating Base Case**

- (a) The Base Case will be adjusted, upon Financial Close, in accordance with Schedule 4 (Funding Requirements and Financing Agreements).
- (b) Whenever a Relevant Event occurs, the financial consequence shall (save where otherwise provided in this Agreement or where the parties mutually agree otherwise) be determined in accordance with this clause 5 and with the prior written approval of the Department (such approval not to be unreasonably withheld or delayed).
- (c) Where for the purposes of this clause 5 the Base Case is to be adjusted by reference to a Relevant Event, this shall be carried out to reflect the cumulative impact of any prior Relevant Event on the version of the Base Case applicable immediately prior to the relevant adjustment and to reflect the impact of the Relevant Event in respect of which such adjustment is being undertaken.
- (d) In assessing adjustments to be made to the Base Case arising from any Relevant Event, the Contractor must:
  - (i) only take into account any Change in Costs arising from the Relevant Event;
  - (ii) not take into account risks which the Contractor bears under the provisions of this Agreement (following its amendment, where applicable, to reflect the impact of any Change, Change in Law or Consequential Change); and
  - (iii) not, where the Relevant Event is a Refinancing, alter or seek to alter any component of the Unitary Charge as a result of that Refinancing.

## **5.3 Application to Base Case**

Where, pursuant to this Agreement, either party is entitled to the payment of any sum, the assessment of which properly requires adjustment to the Base Case, the adjustment to the Unitary Charge due shall be that required to ensure that, by reference to the Base Case adjusted under this clause 5, the Contractor is left in a no better and no worse position (as determined in accordance with clause 3.6 (No better and no worse)) than under the version of the Base Case applicable immediately prior to the relevant adjustment, and shall be ascertained by determining the adjustment to the Unitary Charge required to maintain the financial position of the Contractor with that in which it would have been under the version of the Base Case applicable immediately prior to the relevant adjustment.

## **5.4 Replacement of Base Case**

Any Base Case produced following adjustments in accordance with this clause 5 shall, when it is audited and approved by the Department (such approval not to be unreasonably withheld or delayed), become the Base Case for the purposes of this Agreement until its further amendment in accordance with this Agreement.

## **5.5 Amendments to logic and/or formulae**

- (a) Where it is necessary to amend the logic or formulae incorporated in the Base Case to permit adjustments to be made, this shall be done to as limited an extent necessary.
- (b) Where any amendment is made to the logic or formulae incorporated in the Base Case, the Base Case shall first be run as at the date immediately prior to amendment to determine the minimum debt service cover ratio and loan life cover ratio in that version of the Base Case. The logic or formulae in the Base Case will be amended by the minimum amount that nonetheless ensures that those key ratios are maintained at no lower or no higher levels than immediately post the amendment, and the difference

in the real pre-tax Equity IRR after and immediately prior to amendment does not differ by more than five basis points (0.05%) as shown in the resulting figure.

## **5.6 Copies of revised Base Case**

Following any change to the Base Case under the provisions of this clause 5, the Contractor shall promptly deliver a copy of the revised Base Case to the Department in the same form as is established at the Execution Date or in such other form as may be agreed between the parties. The revised Base Case must include details of all assumptions, calculations and methodology used together with any other documentation necessary to fully operate the model.

## **5.7 Provision of information and inputs**

The Contractor is required to provide promptly all data, inputs and other information in relation to the Base Case, and any revised Base Case, that the Department may request from time to time.

## **Part 3 – Participants and Nature of Parties’ Obligations**

### **6. Participants**

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#### **6.1 Department**

The Department is party to this Agreement and is the Governmental Entity for whose benefit the Works and the Services are to be provided.

#### **6.2 Contractor**

The Contractor is party to this Agreement and is a special-purpose company created for the purposes of undertaking the Works and providing the Services to the Department.

#### **6.3 Department’s Representative**

The Department’s Representative is the person from time to time appointed by the Department to act as its representative, as between the Department and the Contractor, on the terms and conditions set out in this Agreement.

#### **6.4 Contractor’s Representative**

The Contractor’s Representative is the person from time to time appointed by the Contractor to act as its representative, as between the Contractor and the Department, on the terms and conditions set out in this Agreement.

#### **6.5 Major Sub-contractors**

The Major Sub-contractors have been, or will be, engaged by the Contractor to undertake all or part of the Works or the Services on its behalf.

#### **6.6 Independent Reviewer**

The Independent Reviewer is appointed by, inter alia, the Department and the Contractor to provide them with specified services in connection with this Agreement.

#### **6.7 Independent Expert**

Each Independent Expert is or will be appointed jointly by the Department and the Contractor to resolve Disputes in accordance with clause 93 (Accelerated Dispute Resolution Procedures).

#### **6.8 Senior Lenders**

The Senior Lenders are to provide Senior Debt funding to the Contractor in connection with its provision of the Works and the Services.

#### **6.9 HoldCo**

HoldCo is the company which, as at the Execution Date, holds all of the shares of the Contractor.

## 6.10 Shareholders

The Shareholders are the persons who hold shares in HoldCo or the Contractor from time to time, being, as at the Execution Date, set out in Schedule 2 (Contractor Warranted Data).

## 6.11 General

This clause 6 is intended to provide a general description of the persons involved in the Project and is not intended to be an aid to interpretation or to otherwise have contractual effect.

# 7. Contractor and Department

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## 7.1 Status of Agreement

- (a) This Agreement is entered into by the Department, inter alia, under sections 166(1) and 198(1) of the Corrections Act, and comprises a prison management contract and a security contract.
- (b) The Contractor, and any Sub-contractors approved for the purpose under this Agreement and the Corrections Act, each to the extent that this Agreement or the relevant sub-contract comprises a prison management contract and/or a security contract, comprises a contractor and/or a security contractor (as applicable).
- (c) For the purpose of this clause 7.1 the terms “prison management contract”, “security contract”, “contractor” and “security contractor” have the meanings given to those terms in the Corrections Act.

## 7.2 Relationship principles

The parties will behave and work together, in relation to all aspects of this Agreement and the delivery of the Services, in a manner that is consistent with the following relationship principles:

- (a) **Service approach:** the focus for service delivery will be performance-based achievement of the outcomes sought by the Department, consistent with the Objectives;
- (b) **Teamwork:** the Department and the Contractor will operate as a team, tasked with delivering the Government’s outcomes and objectives. Communication will be open and honest. Each party will respond quickly and proactively to issues raised by the other, and both opportunities and solutions to problems will be shared;
- (c) **Risk sharing:** clear accountabilities will be maintained. The Contractor acknowledges that while it may be contractually accountable for the management of its operational and custodial risks, the Department carries ultimate responsibility to prisoners and the public for the delivery of the Services at the Prison. This will require both parties to co-operate in the resolution of issues that may impact risk;
- (d) **Service evolution:** the Services will need to evolve over time in response to delivery changes across the whole of the corrections system and the Contractor will need to respond to these changes;
- (e) **Innovation:** the parties will be proactive in seeking innovation in all aspects of Service delivery at the Prison; and

- (f) **Transparency:** transparency is a fundamental requirement in relation to all operational information and matters at the Prison, including Incident reporting.

This clause 7.2 is intended to reflect the relationship philosophies that underpin the way in which the parties will work together in relation to the Contractor's delivery of the Services. This clause 7.2 is not to be interpreted as expanding or extending the Corrections Services Requirements or any express provisions of this Agreement.

### **7.3 No agency**

The relationship of the Contractor to the Department is that of an independent contractor to its customer. Nothing in any Project Document will constitute either party as the partner, agent, fiduciary, trustee, employee or officer of, or as a joint venturer with, the other party.

### **7.4 No authority**

The Contractor acknowledges that it does not have the authority to enter into contracts or incur debts on behalf of the Department. Neither party will make any contrary representation to any other person.

### **7.5 Mutual obligations**

Each party agrees to:

- (a) promptly advise the other party on becoming aware of any material breach by it of its obligations under this Agreement;
- (b) subject to clause 8 (Nature of Department's Obligations), take reasonable care not to do anything, or omit to do anything, that would cause the other party to be in breach of applicable Laws; and
- (c) consult with the other party as soon as practicable as to any event that may materially affect the performance of its obligations under this Agreement.

### **7.6 Allocation of risk**

Whenever the Contractor is obliged or required to do or effect anything under a Project Document, then that obligation or requirement is at the risk, cost and expense of the Contractor, unless that Project Document otherwise expressly provides to the contrary.

### **7.7 Employees, agents, contractors and Sub-contractors**

- (a) Except where otherwise expressly provided:
  - (i) any act or omission or the misconduct of any employee, contractor, Sub-contractor or agent of the Contractor including any Contractor Personnel or Contractor Related Person, in the course of the performance of or the express or implied scope of its contractual obligations, employment, agency or engagement is deemed to be the act, omission or misconduct of the Contractor; and
  - (ii) any act or omission or the misconduct of any employee, contractor (excluding the Contractor), sub-contractor or agent of the Department including any Department Personnel or Department Related Person, in the course of the performance of or the express or implied scope of its contractual obligations, employment, agency or engagement, is deemed to be the act, omission or misconduct of the Department.



- (b) Without limitation to its actual knowledge, the Contractor shall, for the purposes of this Agreement, be deemed to have such knowledge in respect of the Project as is held (or ought reasonably to be held) by any:
  - (i) director or officer of the Contractor; or
  - (ii) Contractor Personnel, where that person is involved in the provision of any aspect of the Works or the Services provided that:
    - (A) the Contractor shall only be deemed to have the knowledge of any such Contractor Personnel as is held or ought reasonably to be held in respect of any Finds or Unforeseeable Contamination; and
    - (B) without limitation to clause 7.7(b)(ii)(A), the Contractor shall otherwise only be deemed to have the knowledge that is held or ought reasonably to be held, in respect of any Event, by the relevant Major Sub-contractor.

## **7.8 Department's obligations to Contractor**

Subject to the exercise by the Department of its rights under the Project Documents, which rights must be exercised in accordance with and to the extent authorised or permitted thereunder, the Department agrees that it shall not, and shall procure that:

- (a) all Associated Governmental Entities; and
- (b) any third parties engaged by or on behalf of the Department to provide works and/or services on or affecting the Department Site (and their respective personnel to the extent present on the Department Site in the course of their engagement),

shall not, prevent or materially hinder or disrupt the Contractor in the implementation of the Project, or adversely affect or prejudice the Contractor's performance of the Services, in accordance with the Project Documents.

## **8. Nature of Department's Obligations**

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### **8.1 Statutory functions**

Nothing in or contemplated by any Project Document will be construed or interpreted as restricting or otherwise affecting the unfettered discretion of the Department or any other Governmental Entity to exercise any of its executive or statutory powers or functions under any Law, or to require the Department or any Governmental Entity:

- (a) to interfere with or influence the exercise of any statutory power or discretion by any person, including the Department or a Governmental Entity;
- (b) to exercise a power or discretion in a manner that promotes the objectives and expected outcomes of the Project Documents if the Department regards that exercise as not in the public interest;
- (c) to develop or implement new policy in a manner that is only consistent with the objectives and expected outcomes of the Project Documents;
- (d) to procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of the Project Documents; or
- (e) to act in any other way that the Department regards as not in the public interest.

## **8.2 Claims by Contractor**

- (a) Anything which the Department or any Governmental Entity does, fails to do or purports to do pursuant to its executive or statutory functions and powers will be deemed not to be or cause an act or omission by the Department under a Project Document and will not entitle the Contractor to make any Claim (except to the extent expressly permitted under Part 12 (Events) of this Agreement) against the Department under a Project Document.
- (b) Notwithstanding clauses 8.1 and 8.2(a), the Department is not relieved from any Claim (including a claim under Part 12 (Events) of this Agreement) that the Contractor may have against the Department for its exercising (or failure to exercise) any of its executive or statutory functions or powers under any Law in a manner contrary to an express obligation of the Department under a Project Document and the existence of such obligations, and the existence and amount of such Claim is to be assessed in accordance with the terms of the relevant Project Document.

## **8.3 No obligation to influence**

Without prejudice to clause 8.2 but notwithstanding anything else contained or implied in the Project Documents to the contrary, the parties expressly acknowledge and agree that the Department is not obliged, in performing any of the duties and obligations of the Department under the Project Documents, to exercise a power, function or duty which is granted to or within the responsibility of any other Governmental Entity, or to influence, override or direct any Governmental Entity in the proper exercise and performance of its legal duties and functions.

## **8.4 Good faith**

Nothing in any Project Document is to be construed as imposing any general duty of good faith on the Department to the Contractor or Contractor Personnel in relation to or arising out of the Project, other than to comply with the obligations (if any) expressly stated to be assumed by the Department under the Project Documents on a good faith basis.

# **9. Contractor's Due Diligence**

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## **9.1 Department Information**

The Department makes no warranties nor gives any representations to the Contractor as to the accuracy, completeness or fitness for any purpose of any of the Department Information. The Contractor shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against the Department, a Department Related Person or any Department Personnel on grounds that any information, whether obtained from the Department or otherwise (including information made available by the Department), is incorrect or insufficient. The Contractor shall make its own enquiries as to the accuracy and adequacy of that information.

## **9.2 Contractor to satisfy itself**

- (a) The Contractor shall be deemed to have satisfied itself:
  - (i) as to the subject matter of this Agreement (including the Department Information) and the nature and extent of the risks assumed by it under this Agreement and is solely responsible for the consequences of any misunderstanding or misinterpretation of the requirements of this Agreement;

- (ii) as to the quantity, quality, nature and extent of all resources (including human resources), Materials and facilities necessary to enable it to meet, to comply with and perform its obligations under this Agreement; and
  - (iii) that each Monthly Unitary Charge provides it with sufficient allowance to enable the Contractor to undertake the Services, perform its other obligations and to manage the risks assumed by it under and pursuant to the terms of this Agreement.
- (b) The Contractor acknowledges and agrees that it:
  - (i) has gathered all information necessary to fully inform itself as to:
    - (A) the nature of the work and materials necessary for the design and construction of the Works and the provision of the Operational Services;
    - (B) all the matters relating to the Department Site referred to in clause 23.2 (Site Conditions);
    - (C) all regulatory requirements of the Governmental Entities in relation to the Works and the provision of the Operational Services generally;
    - (D) the adequacy, location and completeness of the External Infrastructure;
    - (E) the integration or compatibility of the Works Infrastructure with the External Infrastructure; and
    - (F) the performance of its obligations generally under and pursuant to this Agreement;
  - (ii) has otherwise made its own independent assessment of, and has relied on its own enquiries, investigations, experience, skills and judgement in its entry into, and performance of this Agreement; and
  - (iii) has not relied on any representations made, or information provided to it, by the Department that has not been independently verified by the Contractor.

### **9.3 Contractor acknowledgments**

The Contractor acknowledges that:

- (a) the obligations of the Contractor and the Contractor Personnel under this Agreement are in addition to their obligations under the Corrections Act and other Laws; and
- (b) performance of the Services in accordance with the standards specified in this Agreement is of critical importance to the Department and of public interest, and that any failure to perform the Services to these standards may result in reputational damage for the Department, the Chief Executive or the Minister or in one or more of them incurring legal liability.

## **Part 4 – Commencement and Duration**

### **10. Contract Term**

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#### **10.1 Commencement and duration**

- (a) This Agreement and the rights and obligations of the parties to this Agreement take effect as set out in clause 10.2.
- (b) Save as stated in clause 10.3, this Agreement terminates on the earlier of:
  - (i) the Expiry Date; and
  - (ii) the Actual Termination Date.

#### **10.2 Obligations in force from Execution Date and from Financial Close**

- (a) Clause 10.3 and the following provisions of this Agreement take effect from the Execution Date:
  - (i) clauses 1 (Definitions) and 2 (Interpretation of Agreement);
  - (ii) clause 3 (Agreement);
  - (iii) clause 7.3 (No agency);
  - (iv) clause 7.4 (No authority);
  - (v) clause 8 (Nature of Department's Obligations);
  - (vi) clause 9 (Contractor's Due Diligence);
  - (vii) clause 10 (Contract Term);
  - (viii) clause 15.2 (Service management);
  - (ix) clause 21.5 (Probity Investigations);
  - (x) clause 27 (Design and Design Development);
  - (xi) clause 56 (Contractor warranties);
  - (xii) clause 57.1 (General undertakings);
  - (xiii) clause 59 (Confidential Information);
  - (xiv) clause 62 (Indemnities);
  - (xv) clause 63 (Conduct of third party indemnity Claims);
  - (xvi) Part 22 (Dispute Resolution);
  - (xvii) Part 23 (Miscellaneous terms);

(xviii) Schedule 1 (Conditions Precedent); and

(xix) Schedule 4 (Funding Requirements and Financing Agreements).

- (b) Each provision of this Agreement not specified in clause 10.2(a) takes effect on and from Financial Close.

### **10.3 Continuing obligations**

Except as otherwise expressly provided in this Agreement or as already taken into account in the calculation of any payment on termination pursuant to this Agreement:

- (a) expiry or termination of this Agreement shall be without prejudice to any accrued rights or obligations under this Agreement as at the date of termination; and
- (b) expiry or termination of this Agreement shall not affect the continuing rights and obligations of the Contractor and the Department under:

(i) this clause 10.3;

(ii) clause 18.5 (Retention of Records);

(iii) clause 59 (Confidential Information);

(iv) Part 20 (Termination);

(v) Part 21 (Hand Back and Disengagement) and Schedule 24 (Disengagement);

(vi) Part 22 (Dispute Resolution);

(vii) clause 104 (Governing law and jurisdiction); and

(viii) Part 4 of Schedule 16 (Performance Regime),

or under any other provision of this Agreement that:

- (ix) relates to or is in connection with:

(A) the Department's rights to set off and recover money;

(B) confidentiality;

(C) Intellectual Property;

(D) any indemnity, Standby Letter of Credit or other financial security given under this Agreement; or

(E) any right arising on termination;

- (x) is expressed to survive termination;

(xi) is required to give effect to such termination or the consequences of such termination; or

(xii) by implication from its nature is intended to survive termination.

## **10.4 Conditions Precedent**

- (a) The Contractor must procure that the Conditions Precedent are satisfied by the Conditions Precedent Deadline.
- (b) The Contractor must notify the Department promptly when each Condition Precedent has, in the Contractor's reasonable opinion, been satisfied.
- (c) The Department will notify the Contractor promptly of the date on which the Department is satisfied that all Conditions Precedent have either been satisfied or unconditionally waived by the Department.
- (d) If the Conditions Precedent are not met to the Department's satisfaction or waived by the Department (subject to any terms or conditions imposed by the Department) by the Conditions Precedent Deadline, then the Department may, at its option, terminate this Agreement. In such event no payment will be due by, nor will either party have any claim against the other under or in respect of this Agreement, save that clause 10.3 shall continue to apply and be binding on each of the parties.
- (e) Each of the Conditions Precedent is for the sole benefit of the Department and must be met to the Department's satisfaction. Conditions Precedent may only be waived in writing by the Department (in its absolute discretion). The Department agrees not to waive any Condition Precedent other than where it has received a written request to do so from the Contractor.

## Part 5 – Ownership and Tenure

### 11. Construction of Facility for Department

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#### 11.1 Ownership of Facility

- (a) The Facility shall be designed and constructed by the Contractor under and in accordance with this Agreement on behalf of the Department.
- (b) Subject to the rights of the Contractor set out in this Part 5 (Ownership and Tenure), the Department will at all times before and after the Service Commencement Date own the Facility and the Department Site.

#### 11.2 Ownership of Fixtures and Fitout

- (a) Any Fixtures supplied by the Contractor prior to the commencement of the term of the Facility Lease (**Initial Fixtures**) will remain the property, and in the ownership, of the Contractor (notwithstanding any affixing to the Department Site) until the earlier of:
  - (i) the date of payment in full of the Design and Construction Payment; and
  - (ii) the date of payment in full of the Compensation Sum,(such date being the **Transfer Date**).
- (b) The Department acknowledges and agrees that the Contractor shall, until the Transfer Date, have the right (in addition and without prejudice to its other rights and remedies under the Project Documents, including the rights of access set out in Part 7 (Access to Site and Site Issues)) to enter and re-enter on to the Department Site and remove and repossess the Initial Fixtures, but only if and to the extent the Department fails to pay in full:
  - (i) the Design and Construction Payment in accordance with clauses 12.3 (Payments on Service Commencement Date) and 12.4 (Set off); or
  - (ii) the Compensation Sum on or before the due date for payment in accordance with clause 83.1 (Payment of Compensation Sum).
- (c) Upon the Transfer Date, the Contractor shall immediately transfer to the Department its ownership of the Initial Fixtures together with all associated rights in and to the Initial Fixtures and the Department Site reserved under clause 11.2(b). The Initial Fixtures will automatically vest in the Department on the Transfer Date, by operation of this clause, without the need for any additional action by any person.
- (d) The expenditure incurred by or for the Contractor in connection with the Initial Fixtures will be included in the Design and Construction Payment.
- (e) Any Fitout on the Department Site will belong to the Contractor until the earlier of the Actual Termination Date and the Expiry Date. On such date, the Fitout will be transferred by the Contractor to the Department, for no additional consideration, as part of the Disengagement Deliverables in accordance with clause 89.1 (General obligations), the terms of Schedule 24 (Disengagement) and the requirements of the Disengagement Plan.
- (f) Any Fixtures in respect of which the Contractor has incurred expenditure, other than for repairs and maintenance, after the commencement of the Facility Lease will be

treated as owned by the Contractor rather than the Department for the purposes of this Agreement. On the earlier of the Expiry Date and the Actual Termination Date, any such Fixtures, to the extent ownership is vested in the Contractor, will be transferred by the Contractor to the Department, for no additional consideration, as part of the Disengagement Deliverables in accordance with clause 89.1 (General obligations), the terms of Schedule 24 (Disengagement) and the requirements of the Disengagement Plan.

## **12. Facility Lease and payments on Service Commencement Date**

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### **12.1 Prior to Service Commencement Date**

The Contractor will, prior to the Service Commencement Date, have the rights to access the Department Site set out in Part 7 (Access to Site and Site Issues).

### **12.2 Entry into Facility Lease**

- (a) On or prior to the Department issuing an Operational Completion Notice in respect of the Facility, the parties must enter into the Facility Lease in relation to the Facility (excluding Fitout). The Facility Lease will have a term commencing at 9.00am on the Service Commencement Date and terminating on the earlier of the Actual Termination Date and the Expiry Date and will be in the form set out in Annexure B to Schedule 3 (Project Documents).
- (b) If the Contractor requires registration of the Facility Lease under the Land Transfer Act 1952, each party must do all things necessary to enable the Facility Lease to be registered in the form of a lease instrument at Land Information New Zealand via e-dealing, including without limitation signing an authority and instruction form (so that the relevant solicitor is authorised to provide the certifications required by section 164A of the Land Transfer Act 1952).

### **12.3 Payments on Service Commencement Date**

On the Service Commencement Date, immediately on commencement of the Facility Lease:

- (a) the Department must pay the Design and Construction Payment to the Contractor in consideration of the completion of the Works and the transfer of the rights set out in clause 11.2(c); and
- (b) the Contractor must pay the Rental Prepayment to the Department, representing the rental to be prepaid under the Facility Lease,

with the payments to be made in accordance with clause 12.4.

### **12.4 Set off**

- (a) The Department's obligation to pay the Design and Construction Payment to the Contractor and the Contractor's obligation to pay the Rental Prepayment to the Department:
  - (i) will arise at the same time; and
  - (ii) will be set off against each other immediately on the obligations arising, with the set-off to be recorded in a written notice given by the Department to the Contractor.



- (b) GST payable as between the parties in respect of the Rental Prepayment and the Design and Construction Payment is to be addressed in accordance with clauses 53.8 to 53.10.

## **12.5 Lowest price**

For the purposes of the financial arrangements rules in the Income Tax Act 2007, the parties agree that:

- (a) they are independent parties dealing at arm's length with each other in relation to the Project;
- (b) the Design and Construction Payment is the lowest price the parties would have agreed for the design and construction of the Facility, on the date of this Agreement, if payment had been required in full at the time the first right in the Facility passes from the Contractor to the Department;
- (c) the Design and Construction Payment and the Rental Prepayment are the value of the design and construction of the Facility and the rental under the Facility Lease; and
- (d) in the case of the Contractor only, it will compute its taxable income for the relevant period on the basis that the total consideration includes no capitalised interest and it will file its Tax returns accordingly.

## **Part 6 – General Terms Relating to Services**

### **13. Objectives**

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#### **13.1 Purpose**

The Services are to be provided for the purpose of meeting the Objectives. The rights and obligations of the parties under or in relation to this Agreement are to be interpreted to give effect to these Objectives.

#### **13.2 Effect**

Clause 13.1 is not to be interpreted as expanding or extending the Department's Requirements or any express provision of this Agreement.

#### **13.3 Objectives and performance standards**

- (a) This Agreement provides objectives and performance standards in relation to the management of the Prison, and the management and care of Prisoners, that are at least as good as the standards applicable to employees of the Department, to prisons managed by the Department and to prisoners in those prisons.
- (b) The Department may require variations to the objectives and performance standards to be met by the Contractor from time to time to ensure they continue to comply with clause 13.3(a). Where applicable, Part 13 (Changes) will apply to any such variations.

### **14. Services**

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#### **14.1 Core Services**

The Contractor is to provide:

- (a) Works Provisioning; and
- (b) the Operational Services,

in each case in accordance with and on the terms and conditions of this Agreement.

#### **14.2 Other Services**

The Contractor is:

- (a) to deliver up the Works to the Department at the end of the Contract Term and provide the Disengagement Services (if so required by the Department) in accordance with the terms of Part 21 (Hand Back and Disengagement); and
- (b) otherwise to perform all obligations which by the terms of this Agreement the Contractor is bound to perform.

#### **14.3 Service delivery**

The Contractor must deliver the Services in accordance with the terms of this Agreement with due care, skill and diligence and by the use of techniques, methodologies, processes and materials that accord with Good Industry Practice, to the extent that Good Industry

Practice requires more stringent or additional standards than those imposed on the Contractor under this Agreement.

## **15. Governance and Service Management**

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### **15.1 Governance**

- (a) On or prior to Financial Close, the parties are to establish a Project Governance Group. The Project Governance Group is to be a high level forum that will (among other things) review, discuss and manage the overall relationship between the parties and guide the development of strategy and innovation.
- (b) The parties will procure that the Project Governance Group performs the functions assigned to it in accordance with, and pursuant to, the terms of Part 1A (Project Governance Group) of Schedule 7 (Governance and Service Management).
- (c) On or prior to Financial Close, the parties are to establish a Relationship Management Group. The Relationship Management Group is to be a forum that will (among other things) be responsible for overseeing the implementation and performance of this Agreement as well as implementing any strategies or innovations agreed upon by the Project Governance Group.
- (d) The parties will procure that the Relationship Management Group performs the functions assigned to it in accordance with, and pursuant to, the terms of Part 1B (Relationship Management Group) of Schedule 7 (Governance and Service Management).

### **15.2 Service management**

- (a) The Department shall, from time to time, notify the Contractor in writing of the person it appoints as the Department's Representative and the scope of that appointment.
- (b) The Contractor shall, from time to time, notify the Department in writing of the person it appoints as the Contractor's Representative.
- (c) The Department will ensure that it always has a person representing it as the Department's Representative as long as any obligations under this Agreement remain to be performed by the Contractor.
- (d) The Contractor will ensure that it always has a person representing it as the Contractor's Representative as long as any obligations under this Agreement remain to be performed by the Contractor. The Contractor's Representative must be engaged full-time on the Project during Works Provisioning.
- (e) The Department's Representative and the Contractor's Representative will each be delegated, by the Department and the Contractor respectively, the functions, powers and responsibilities assigned to them by the terms of Part 3 (Parties' representatives) of Schedule 7 (Governance and Service Management) (as applicable).
- (f) The Contractor will ensure that the Contractor's Representative:
  - (i) has sufficient experience and skills to undertake the role;
  - (ii) is provided with all necessary information and documentation within its possession or control to enable the Contractor's Representative to fully and effectively perform his or her functions and responsibilities;

- (iii) implement such internal procedures as are necessary to ensure that all material events relating to this Agreement are brought to the attention of the Contractor's Representative;
  - (iv) is present on the Department Site at such times as are necessary to ensure that the Contractor is complying with its obligations under this Agreement; and
  - (v) is at all reasonable times fully contactable by the Department's Representative, or his or her delegate.
- (g) The Contractor may appoint another person as the Contractor's Representative, but before doing so it must obtain the Department's Representative's written consent to the appointment (such consent not to be unreasonably withheld or delayed).

## **16. Sub-contractors**

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### **16.1 Sub-contractors**

- (a) The Contractor must not sub-contract the whole, or any part of the Services to any person except in accordance with this clause 16.1 and, to the extent applicable, the Corrections Act.
- (b) The Contractor is solely responsible for the selection of each Sub-contractor (including the persons specified in Schedule 2 (Contractor Warranted Data)) and must ensure, in each case, that each such Sub-contractor is creditworthy, qualified and has the relevant experience and expertise to perform the work it is required to carry out for the Contractor.
- (c) The Contractor must:
  - (i) comply with its obligations under all sub-contracts to which it is a party; and
  - (ii) monitor the performance of each Sub-contractor under:
    - (A) each sub-contract to which the Contractor is party; and
    - (B) any related direct deed to which the Contractor is party; and
  - (iii) enforce compliance by that Sub-contractor with those terms of this Agreement that apply to Sub-contractors or sub-contracts.
- (d) Clause 4.1 (Ancillary Documents and Financing Agreements) applies in relation to each sub-contract to which the Contractor and a Major Sub-contractor is party.
- (e) The Contractor:
  - (i) is not relieved of any of its obligations and liabilities under this Agreement as a result of any subcontracting of its obligations and liabilities; and
  - (ii) remains fully responsible for all work carried out, and all materials used, for the purposes of the Project and in the delivery of the Services.
- (f) The Contractor must ensure that any sub-contract it enters into with a Major Sub-contractor, unless otherwise agreed by the Department:
  - (i) is entered into, and continues to be, on Arms Length Terms;

- (ii) contains a licence for the Department in respect of the Major Sub-contractor's Intellectual Property rights on the same terms as the licence the Department receives from the Contractor under clause 60.6 (Licensing of Contractor Intellectual Property);
- (iii) contains an assignment of rights in respect of the Major Sub-contractor's Intellectual Property rights on the same terms as the assignment to the Department under clause 60.4 (Developed IP); and
- (iv) includes, and continues to include:
  - (A) terms that the sub-contract may not be varied or cancelled so as to alter or extinguish the rights granted to the Department, except in accordance with that Major Sub-contractor's Direct Deed;
  - (B) a statement that the sub-contract, as it relates to the requirements of this clause 16.1(f) is for the benefit of and enforceable by the Department under the Contracts (Privity) Act 1982;
  - (C) a requirement that either party to the sub-contract may release to the Department any of those parts of the sub-contract sufficient to demonstrate compliance with the terms of this clause 16.1(f); and
  - (D) terms that require the Major Sub-contractor to take all steps reasonably practicable to mitigate and minimise Sub-contractor Breakage Costs in respect of any early Actual Termination Date.
- (g) The Contractor must advise the Department of any early termination of a sub-contract promptly upon its termination, or on becoming aware of the termination of that sub-contract.
- (h) The Contractor:
  - (i) must not replace any Major Sub-contractor without the prior written consent of the Department; and
  - (ii) may replace any other Sub-contractor directly engaged by the Contractor on giving prior written notice of that proposed replacement to the Department.

Nothing in sub-clauses (i) or (ii) of this clause 16.1(h) is to be construed as limiting the obligations of the Contractor or the rights of the Department under any of the other provisions of this Agreement.

- (i) The Contractor must:
  - (i) notify the Department in writing if it proposes to replace a Major Sub-contractor at any time during the Contract Term;
  - (ii) provide details to the Department of the identity of the proposed replacement Major Sub-contractor and the nature and scope of the services that the Contractor intends the replacement Major Sub-contractor will undertake;
  - (iii) provide to the Department a copy of the proposed sub-contract to which the replacement Major Sub-contractor is to be made party; and
  - (iv) provide any more information known to the Contractor about the proposed replacement Major Sub-contractor that the Department may reasonably require.

- (j) Following receipt of the notice referred to in clause 16.1(i), the Department (acting reasonably) will approve or reject the replacement Major Sub-contractor within 20 Business Days (in the case of a Major Sub-contractor not engaged in respect of the Corrections Services) or 30 Business Days (in the case of a Major Sub-contractor engaged in respect of the Corrections Services) of receipt of such notice.
- (k) If the Department approves the replacement Major Sub-contractor it may do so on any reasonable conditions, including (if the Department so requires) the condition that the final form of the proposed sub-contract:
  - (i) complies with the requirements of clause 16.1(f); and
  - (ii) is not materially different from the form of sub-contract already made available to the Department under clause 16.1(i)(iii).
- (l) If the Department rejects the proposed replacement Major Sub-contractor, the Contractor must not enter into the replacement sub-contract with that proposed replacement Major Sub-contractor until the reasons for the Department's rejection have been addressed to the satisfaction of the Department.
- (m) If the Department fails to approve or reject a replacement Major Sub-contractor not engaged in respect of the Corrections Services within 20 Business Days under clause 16.1(j), this will constitute deemed approval of the replacement Major Sub-contractor, subject to the conditions specified in clause 16.1(k).
- (n) If the Department fails to approve or reject a replacement Major Sub-contractor engaged in respect of the Corrections Services within 30 Business Days under clause 16.1(j) (with the last day of that 30 Business Day period being the **relevant date**), Part 12 (Events) will apply in respect of the period from the relevant date until the date on which the Department approves or rejects the replacement Major Sub-contractor. For the purposes of this clause 16.1(n), the Department will only be deemed to have approved the replacement Major Sub-contractor if its approval includes confirmation that any approvals or consents required to be given by the Department and the Chief Executive, by Law, in respect of the appointment of the replacement Major Sub-contractor, have also been given.

## 16.2 Replacement Major Sub-contractor

With effect from the time at which the Department approves or is deemed to approve the appointment of a replacement Major Sub-contractor under clause 16.1(j), or 16.1(m) or 16.1(n) (as applicable) and any conditions to the appointment of that replacement Major Sub-contractor have been satisfied, for the purposes of clauses 67(a)(iii) and 79.2(b) only:

- (a) Service Failure Points incurred through the performance of the terminated Major Sub-contractor under its Major sub-contract; or
- (b) any false, misleading or incorrect statement or representation made in any report or invoice by the terminated Major Sub-contractor prior to termination of its Major sub-contract; or
- (c) any General Breach and any General Delivery Breach committed by the Contractor due to the performance of the terminated Major Sub-contractor prior to termination of its Major sub-contract,

shall not be included for the purpose of assessing whether the Department has a right to issue the Contractor with a Warning Notice under clause 79.4(a) or a right to step in under clause 67(a)(iii).

## **17. Compliance obligations**

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### **17.1 Environmental obligations**

- (a) The Contractor must at all times perform its obligations under this Agreement in an environmentally responsible manner.
- (b) The Contractor must:
  - (i) carry out and fulfil all the requirements of the Environmental Plan; and
  - (ii) comply with all Laws relating to the Environment.

### **17.2 Health and safety obligations**

The Contractor:

- (a) must strictly comply, and ensure that all Contractor Personnel strictly comply, with all HSE Legislation and do all things necessary and in a manner that ensures that the Contractor satisfies its obligations under all HSE Legislation;
- (b) accepts that it is responsible at all times from Financial Close until the earlier of the Actual Termination Date and the Expiry Date for the control and management of the Department Site for the purposes of providing the Services and discharging all duties imposed by HSE Legislation;
- (c) must put in place a Works Occupational Health and Safety Plan that adequately addresses its obligations under this Agreement and under all HSE Legislation;
- (d) must, and must ensure that all Contractor Personnel, take practicable steps to carry out, the Services at all times in a way that does not cause detriment to the health and safety of any users; and
- (e) without limiting the effect of any other indemnity in this Agreement, to the extent permitted by the Laws, must indemnify the Department and all Department Personnel against any Losses suffered or Liabilities incurred by the Department or any Department Personnel that may arise as a result of any breach by the Contractor or any Contractor Personnel of HSE Legislation or this clause 17.2.

### **17.3 Consents**

- (a) The Contractor must:
  - (i) obtain all Contractor Consents and maintain all such Consents including entering into legal agreements necessary for the grant of such Consents;
  - (ii) use its best endeavours to assist the Department to obtain all Department Consents;
  - (iii) without limiting paragraph (ii) above:
    - (A) comply with its obligations under Schedule 9 (Resource Management Act Requirements); and

- (B) use reasonable endeavours to assist compliance by the Department with its obligations under the Designation in relation to both the Prison and ARWCF;
  - (iv) be responsible for implementing each Consent within the period of its validity in accordance with its terms and the relevant Laws;
  - (v) supply free of charge to the Department a copy of any application for a Contractor Consent (with a copy of all accompanying drawings and other documents) and a copy of any such Consent obtained and any associated legal documentation;
  - (vi) comply with the conditions attached to any Consents and any associated legal documentation;
  - (vii) procure that no Consent or associated legal documentation is breached in any material respect by it or any Contractor Personnel;
  - (viii) preserve each Consent and ensure that all Consents continue in full force and effect for such time as is necessary for the Contractor to carry out Works Provisioning and/or the Operational Services; and
  - (ix) not without the Department's prior written consent (which consent shall not be unreasonably withheld or delayed) apply for, or agree to any change, relaxation or waiver of any Department Consent or the Outline Plan (whether obtained before or after the Execution Date) or of any condition attached to it.
- (b) Subject to the compliance by the Contractor with its obligations under clause 17.3(a), references in this Agreement to Consents shall be construed as referring to the Consents as from time to time expressly varied, relaxed or waived.
- (c) Without limiting the Contractor's other obligations under this Agreement, where any Consent is issued on conditions which would or could have a Material Adverse Effect on:
- (i) the design or quality of all or any part of the Works or the Contractor's ability to undertake Works Provisioning so that on Works Completion the Works are Fit for the Intended Purposes; or
  - (ii) the ability of the Contractor to provide the Operational Services in accordance with the Corrections Services Requirements, the Facility Management Requirements or its other obligations in accordance with this Agreement,
- the Contractor must notify the Department that these conditional Consents would or could have such an effect, together with the Contractor's proposals for satisfying these conditional Consents in a manner that would not have such an effect, to the Department for review.
- (d) If the Department raises comments on the conditions of any conditional Consent, the Contractor will liaise (or in the case of a Department Consent, the Department and the Contractor will liaise) with the Governmental Entity issuing the Consent with a view to reaching agreement on the conditions of that Consent which would ensure that they did not have the Material Adverse Effect described in clause 17.3(c) and enable the Contractor to continue to meet its obligations under this Agreement.
- (e) Any amendments made to the Design Documentation or the Works as a consequence of the matters the subject of clause 17.3(c) will not constitute a Department-initiated Change or entitle the Contractor to make any other Claim against the Department.



- (f) The Department shall, subject to the Contractor's compliance with clause 17.3(a)(ii), use reasonable endeavours to obtain the Department Consents. The term "reasonable endeavours" as used in this clause 17.3(f) is not to be construed as obliging the Department to do anything which it is not obliged to do pursuant to clause 8.1 (Statutory functions).

## **17.4 Notification**

The Contractor must immediately notify the Department of any breach or likely breach or non-compliance or likely non-compliance with this clause 17.

## **17.5 Department responsibilities**

- (a) The Department shall discharge its obligations and responsibilities set out in Schedule 9 (Resource Management Act Requirements).
- (b) The Department shall ensure that the Designation is rolled over and incorporated into, without amendment (unless agreed in writing by the Contractor), the Auckland Council's unitary plan (and any successor, amended or replacement plan).

## **18. Record keeping**

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### **18.1 Department Records**

- (a) The Department Records are, and will remain at all times, the property of the Department. The Contractor must not:
  - (i) use Department Records for any purpose other than directly in relation to the supply of the Services;
  - (ii) purport to sell, let for hire, assign rights in, or otherwise dispose of, any Department Records; or
  - (iii) commercially exploit Department Records, and must ensure that none of the Contractor Personnel commercially exploit any of the Department Records.
- (b) The Contractor must establish, maintain and enforce safety and security procedures and safeguards against the destruction, loss, alteration or unauthorised disclosure of, or unauthorised access to, Department Records in the possession of the Contractor that:
  - (i) are no less rigorous than those maintained by the Department at the Service Commencement Date (as notified by the Department to the Contractor), and will be no less rigorous than the safeguards that can reasonably be expected from time to time in well run data or records centres; and
  - (ii) comply with all applicable Laws.
- (c) Without limiting the effect of clause 18.1(b), the Contractor must:
  - (i) comply with all of the Department's reasonable security requirements in respect of the Department Records as notified by the Department from time to time; and
  - (ii) prohibit and prevent any person who does not have the appropriate level of security clearance (such level of security clearance to be determined by reference to the security requirements referred to in clause 18.1(c)(i)) from

gaining access to Department Records that are in the possession or under the control of the Contractor.

- (d) The Contractor must:
  - (i) regularly back up electronic Department Records (to the extent that they are not Department Records which the Department itself maintains, and which the Contractor merely has access to or copies of); and
  - (ii) where there is a loss of or damage to electronic Department Records (to the extent that they are not Department Records which the Department itself maintains, and which the Contractor merely has access to or copies of), reload the Department Records saved at the last backup (at no cost to the Department).

## 18.2 Service Records

- (a) The Contractor must at all times, and in accordance with Good Industry Practice and any applicable Laws, maintain all information (in both hard and soft copy form) relating to the Services (**Service Records**) including information relating to the following:
  - (i) the actual progress of Works Provisioning against the Works Provisioning Programme;
  - (ii) the Contractor's performance monitoring;
  - (iii) all Operational Services carried out following the Service Commencement Date;
  - (iv) all insurance claims;
  - (v) all incidents relating to health, safety and security which have occurred during the Contract Term; and
  - (vi) Hazardous Substances, Contamination and Industrial Waste.
- (b) The Department is entitled to disclose any of the Service Records to a potential New Contractor for any of the purposes relating to retendering for the Services.

## 18.3 Financial Records

- (a) The Contractor must at all times, and in accordance with Good Industry Practice, GAAP (where applicable) and any applicable Laws, maintain all financial information (in both hard copy and soft copy form) relating to the Project (**Financial Records**) including information relating to the following:
  - (i) administrative overheads;
  - (ii) payments made to or received from Sub-contractors;
  - (iii) capital and revenue expenditure;
  - (iv) such other items as the Department may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of this Agreement;
  - (v) copies of all written consents and approvals, or waivers or releases in respect of any breaches by the Contractor under the Financing Agreements; and

- (vi) all reports, invoices and supporting documentation referred to in clause 53.2 (Report and invoice).
- (b) The Contractor shall, and shall procure that each Major Sub-contractor shall, at all times:
  - (i) maintain a full record of particulars of the costs of carrying out the Works Provisioning and/or providing the Operational Services with such cost detail broken down into the actual cost of providing each element of those Services; and
  - (ii) upon request by the Department, provide a written summary of any of the costs referred to in clause 18.3(b)(i), including details of any funds held by the Contractor specifically to cover such costs, in such form and detail as the Department may reasonably require to enable the Department to monitor the performance by the Contractor of its obligations under this Agreement.

#### **18.4 Maintenance of Records**

- (a) The Contractor shall ensure that the Records are kept up to date at all times.
- (b) The Contractor will:
  - (i) keep the Department fully informed as to the procedures in place for ensuring that all the Records are kept up to date at all times, and at the Department's request provide the Department with evidence that those records are fully up to date;
  - (ii) hold all Records held in electronic form in a format that is, or in formats that are, compatible with the Department's computer systems for the time being, so as to enable the Department to exercise its rights of access under clause 18.6(a)(i);
  - (iii) ensure that it and all of the Contractor Personnel maintain Records to a standard and containing sufficient detail to allow an experienced prison management service provider or prisoner Escort Services provider (as applicable) to perform the Services or similar services if the Contractor ceases to do so in whole or in part; and
  - (iv) not hold or store any of the Records outside New Zealand without the prior written consent of the Department.
- (c) The Records must provide sufficient detail to enable the Department to reconcile those Records with:
  - (i) the contents of the Reports that the Contractor is required to provide to the Department under this Agreement; and
  - (ii) the invoices that the Contractor renders to the Department under clause 53.2 (Report and invoice).

#### **18.5 Retention of Records**

- (a) The Contractor shall retain all Records it is obliged to maintain under this Agreement for the whole of the Contract Term and for a period of six years after the Expiry Date or Actual Termination Date (as the case may be).
- (b) The Contractor must not use any of the Records other than for the purposes contemplated by this Agreement.

- (c) The Contractor must ensure that it has and continues to have access to all Records at all times, that all Records are available in human readable form, including where capable of being read on screen or being printed, (as well as computer readable form, if relevant) and that the integrity of the Records is not at any time compromised.
- (d) The retention period specified in clause 18.5(a) applies to the primary source Records and to all Records held in electronic form.
- (e) The Contractor will, in addition to its obligations under clause 18.5(a), clause 18.5(b) and clause 18.5(c), observe and comply with the requirements of the Public Records Act as if the Records were public records (as defined in that Act).
- (f) If either party becomes aware or suspects that any unauthorised person has obtained or attempted to obtain access to the Records or any Confidential Information, or has attempted to use the Records or any Confidential Information for purposes not authorised or permitted by the terms of this Agreement:
  - (i) that party will immediately notify the other party;
  - (ii) the Contractor will take such steps as are available to it to identify those unauthorised persons; and
  - (iii) after consultation with the Department, the Contractor shall make such changes to its operations at its own cost, with a view to prevent, as far as is practicable, the occurrence of the same or similar breaches of security in the future.
- (g) If, at any time, the Contractor holds any Records which, under sections 41 or 120 of the Corrections Act, the Chief Executive is required to take steps to secure the destruction of, or which, under any other Law, any person is required to destroy, the Contractor must transfer those Records to the Department for destruction.

## **18.6 Access to and inspection of Records**

- (a) The Department will have access to:
  - (i) all Records that are maintained by the Contractor;
  - (ii) any other information relevant to the Contractor's performance and compliance with the terms of this Agreement; and
  - (iii) the Contractor's project office systems, to enable the Department to have electronic access to all Records held in electronic form.
- (b) The Contractor must provide such facilities as the Department may reasonably require for its representatives to visit any place where the Records are held, in order to inspect the Records.
- (c) The Department may take copies of any Records during the course of any inspection.
- (d) The Contractor will provide a report on all or any of the Records to the Department as and when requested by the Department.

## **19. Service assurance**

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### **19.1 Quality Assurance System**

- (a) Prior to commencing the Works, the Contractor must develop a Quality Assurance System to cover the execution of the Works and the provision of the Operational Services.
- (b) The Quality Assurance System in relation to:
  - (i) Works Provisioning is to be implemented in accordance with the Works Quality Assurance Plan, which forms part of the Works Project Management Plan; and
  - (ii) the Operational Services is to be implemented in accordance with the Operational Quality Assurance Plan, which forms part of the Policy and Procedures Manual.
- (c) The Contractor:
  - (i) must implement and comply with the Quality Assurance System in executing the Works and in providing the Operational Services;
  - (ii) must allow the Department access to the Quality Assurance System and the quality assurance systems of Major Sub-contractors so as to enable surveillance and auditing of compliance with the Quality Assurance System; and
  - (iii) is not to be relieved from performing and observing any of its obligations under this Agreement or from any of its liabilities whether under this Agreement or at Law as a result of the implementation of, and compliance with, the quality assurance requirements of this Agreement.
- (d) The Contractor must regularly update and maintain the Quality Assurance System throughout the Contract Term to the reasonable satisfaction of the Department.
- (e) The Quality Assurance System (together with the Works Quality Assurance Plan and the Operational Quality Assurance Plan) and each update of the same must be submitted for review under the Review Procedures.

### **19.2 Access to premises**

- (a) The Contractor shall provide the Monitor with access to the Prison as more particularly described in clause 20.3 (Prison Monitor).
- (b) The Contractor shall, on reasonable notice and at reasonable times, provide the Department, the Independent Reviewer (and any person authorised by him or her) with access to any of the Contractor's premises used for providing the Services for the purposes set out in clause 19.2(c), clause 19.2(d) and clause 19.3. In exercising its rights under this clause 19.2, the Department will comply with any reasonable safety requirements of the Contractor, when on the Contractor's premises so long as those safety procedures have been previously advised to the Department in writing and provided that where those safety requirements materially compromise or limit the exercise by the Department of its rights under this Part 6, the Department shall raise such concerns with the Contractor and the Contractor shall use all commercially reasonable endeavours to propose a compromise acceptable to the Department (acting reasonably), so as to maintain the safe and proper operation of the Facility at all times while the Department exercises such rights.

- (c) The Department may enter the Contractor's premises:
  - (i) to appraise the Services;
  - (ii) to review, inspect and monitor work being done as part of any aspect of the Services;
  - (iii) subject to clause 29.3 (Works Completion) and clause 29.4 (Operational Completion), to attend any test or investigation that is being carried out on those premises and to direct any testing on or in relation to any part of the Works or in relation to the Operational Services;
  - (iv) to access the Records in accordance with clause 18.6 (Access to and inspection of Records);
  - (v) to check the Contractor's compliance with its obligations under this Agreement;
  - (vi) to undertake audits of any aspect of the Services;
  - (vii) in connection with any matter which the Department deems relevant to the performance of the Services; and
  - (viii) in connection with any testing, monitoring or similar obligation the Department is required to perform in order to comply with any consent relating to the Department Site or any Adjoining Crown Site.
- (d) The Contractor shall procure that the Department or any representative or adviser of the Department shall have, at all reasonable times and upon giving reasonable notice, the right to visit any property, site or workshop:
  - (i) where materials, plant or equipment are being manufactured, prepared or stored for use in the Project for the purposes of general inspection and of attending any test or investigation being carried out in respect of Works Provisioning and/or the provision of the Operational Services; or
  - (ii) used by the Contractor as training or workshop facilities and places where work is being prepared or materials are being obtained for the Project.
- (e) The Contractor shall provide the Department and any person authorised by the Department (or procure that the Department and any person authorised by the Department is provided) with such:
  - (i) information, explanations and documentation reasonably necessary or desirable; and
  - (ii) accommodation and facilities (including communication facilities) reasonably required,

to enable the Department to fully exercise its rights under this Agreement.
- (f) The Department will bear the reasonable costs and expenses of any inspection or test conducted at its direction under this clause 19 unless the inspection or test reveals any Defect, in which case the Contractor must bear the costs and expenses of the inspection and testing.

### 19.3 Audits

- (a) The Department may initiate an audit of all or any of the items listed in clause 19.3(d) to verify the Contractor's compliance with and performance of its obligations under this Agreement and the likely capacity of the Contractor to continue to comply with its obligations under this Agreement.
- (b) The Department must:
  - (i) give the Contractor reasonable notice of when the audit is to be conducted;
  - (ii) give the Contractor an estimate of the audit's duration;
  - (iii) advise the Contractor of the individuals to whom the Department wishes to have access;
  - (iv) consult with the Contractor about the identity of the person or persons who are to conduct the audit; and
  - (v) not initiate more than two audits in each Contract Year, unless a Termination Event has occurred and is continuing.
- (c) The Contractor must:
  - (i) provide such information, explanations and documentation requested by the persons undertaking the audit for the Department that are relevant to the conduct of the audit;
  - (ii) arrange for those undertaking the audit on behalf of the Department to meet with the Contractor's internal quality assessors and external auditors if so required; and
  - (iii) make the Records available to those undertaking the audit on behalf of the Department.
- (d) An audit may include examination of:
  - (i) all aspects of the provision of the Services including the implementation of any Change;
  - (ii) the Base Case;
  - (iii) security and administration practices and facilities;
  - (iv) quality assurance practices;
  - (v) the Contractor's compliance with Schedule 17 (Payment Mechanism) and Schedule 14 (Corrections Services Requirements);
  - (vi) statutory, regulatory and contractual compliance generally;
  - (vii) project management practices and documentation;
  - (viii) internal review and testing processes;
  - (ix) Sub-contractor arrangements;

- (x) document management practices and version control;
  - (xi) record management practices;
  - (xii) the resources and technical infrastructures being utilised by the Contractor in its supply of the Services;
  - (xiii) business continuity, backup procedures and disaster recovery planning;
  - (xiv) application and operating systems and the use of tools and other third party materials; and
  - (xv) the Contractor's development, technical and operational processes and methodologies and all documentation associated with those processes and methodologies.
- (e) Upon the conclusion of any audit, the person that has undertaken the audit shall prepare a report and make that report available to the Department and the Contractor. The Department and the Contractor must review that report together as soon as practicable after it is issued. If that report reveals failure on the part of the Contractor to be in compliance with any of its obligations, the Contractor shall at its own cost promptly take such steps necessary to remedy or mitigate the effect of those failures. Where the audit reveals discrepancies, errors or omissions in the Base Case, the Contractor must take steps to promptly correct the Base Case accordingly.
- (f) If an audit establishes a discrepancy, error or omission in the Base Case or that the Contractor is in material breach of this Agreement, or has acted negligently or fraudulently in the performance of any of the Services, the Department's reasonable costs of performing the audit are to be borne by the Contractor. In all other cases the Contractor will not be liable for any costs incurred by the Department in performing the audit.
- (g) The Department shall ensure that any person appointed by it to conduct an audit under this clause 19.3 will sign and agree to be bound by the terms of a confidentiality agreement on terms that are substantially similar to that set out in clause 59 (Confidential Information), prior to the commencement of that audit.

#### **19.4 Audit of Prison Trust Account**

The Contractor must, within 90 days after the end of each Contract Year:

- (a) arrange for the Prison Trust Account to be audited by a person that is, or is lawfully able to be, appointed as an auditor of the Contractor under section 199 of the Companies Act 1993; and
- (b) arrange for that auditor to provide a certificate to the Department in which the auditor certifies that the Prison Trust Account has, to the best of the auditor's knowledge and belief, been maintained by the Contractor accurately, and in accordance with the requirements of the Corrections Act, during the relevant Contract Year.

#### **19.5 Controller and Auditor-General**

The Controller and Auditor-General or any person appointed by the Controller and Auditor-General may examine all or any part of the Records for the purposes of the Public Audit Act 2001, and may require the Contractor and/or any Major Sub-contractor to provide oral and written explanations as required by the Controller and Auditor-General or his or her delegate.



## **19.6 Compliance Certificate**

The Contractor will procure that two of its directors provide the Department with a written Compliance Certificate in substantially the form set out in Appendix G to Schedule 15 (Reporting), signed by each of them on behalf of the Contractor, within seven days of each anniversary of the Execution Date.

## **20. Monitoring of Operational Services**

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### **20.1 Contractor monitoring**

The Contractor shall monitor its performance in the delivery of the Operational Services in accordance with the applicable provisions of the Policy and Procedures Manual.

### **20.2 Department monitoring**

- (a) The Department may elect at any time to undertake its own performance monitoring of the Operational Services for any purpose, including to ensure that the Operational Services are being provided in accordance with this Agreement. This monitoring may include the undertaking of surveys of the Works Infrastructure, the External Infrastructure and the Facility.
- (b) The Contractor will use its best endeavours to assist the Department in a performance monitoring exercise under clause 20.2(a). The Department may notify the Contractor of the outcome of the performance monitoring exercise, and the Contractor shall have due regard to the Department's comments in relation to the on-going provision of the Operational Services.
- (c) Without prejudice to the Department's other rights and remedies under this Agreement, where the Contractor has been found:
  - (i) to be misleading in the submission of monitoring reports or claims for payment under clause 53.2 (Report and invoice); or
  - (ii) to have submitted at least three erroneous monitoring reports within a six month period,

the Department may, by notice to the Contractor, increase the level of:

- (iii) its monitoring of the Contractor; and/or
- (iv) the Contractor's monitoring of its own performance of its obligations under this Agreement,

in respect of the Operational Services the subject of such misleading or erroneous reporting until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Department that it is capable of performing and will perform all of its obligations under this Agreement.

- (d) If the Department issues a notice under clause 20.2(c), the Contractor shall bear its own costs and indemnify and keep the Department indemnified at all times from and against all reasonable costs and expenses incurred by or on behalf of the Department in relation to such increased level of monitoring arising due to circumstances under clause 20.2(c).

## **20.3 Prison Monitor**

- (a) The Contractor acknowledges that:
  - (i) the Chief Executive must, under section 199E(1)(a) of the Corrections Act, appoint a Monitor in respect of the Prison; and
  - (ii) may, under section 199E(1)(b) of the Corrections Act, appoint one or more additional Monitors to assist that Monitor.
- (b) The Department must promptly notify the Contractor of the details of the appointment of any Monitor.
- (c) The Contractor must provide office accommodation and furnishing (including direct access to telecommunications and internet) for the Monitor within the Prison in a staff-access only area.
- (d) Subject to compliance with the Contractor's reasonable safety requirements to the extent consistent with the terms of the Corrections Act, the Monitor shall be entitled to access all areas of the Prison and the Contractor shall ensure that the Monitor is provided with access to all information requested by the Monitor from time to time in respect of the Corrections Services, subject to any statutory restrictions. The Contractor must provide to the Monitor a copy of all reports prepared for the Department by or on behalf of the Contractor, and must prepare for the Monitor any additional reports reasonably requested by the Monitor.

## **20.4 Prison Manager**

The Contractor acknowledges that under section 199(1)(c) of the Corrections Act, the appointment or engagement by the Contractor of a Prison Manager is subject to the approval of the Chief Executive. The parties acknowledge that the process that the Chief Executive intends to undertake when approving such appointment or engagement, is set out in the Protocol for the Appointment of the Prison Manager, which is appended to Schedule 26 (Related Documents).

## **20.5 Section 196 Instruction**

The Department agrees to provide the Contractor with a copy of each Section 196 Instruction as soon as reasonably practicable after becoming aware of each Section 196 Instruction.

# **21. Contractor Personnel and employees**

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## **21.1 Contractor Personnel**

- (a) The Contractor is to ensure that all Contractor Personnel:
  - (i) are suitably qualified and are of good character;
  - (ii) have the requisite skills, expertise, qualifications and experience;
  - (iii) will carry out their respective duties with due care, skill and diligence; and
  - (iv) whilst on the Department Site, act at all times in a manner compatible with any work-place policies of general application advised to the Contractor by the Department from time to time.

- (b) The Contractor acknowledges and agrees that the Department may conduct a Probity Investigation and other investigations in relation to any Contractor Personnel at any time during the Contract Term in accordance with clause 21.5. The Contractor must obtain all necessary consents for this purpose.
- (c) This clause 21 applies to all Contractor Personnel. Clause 31 (Corrections Services) includes additional provisions that apply following the Service Commencement Date.

## 21.2 Criminal records check

- (a) The Contractor shall procure (unless and to the extent otherwise agreed by the Department) that, in respect of all potential staff or persons, whether directly engaged by the Contractor itself or any Major Sub-contractor, performing any of the Operational Services (each a **Named Employee**), before a Named Employee begins to attend the Department Site to perform any of the Operational Services:
  - (i) each Named Employee is questioned as to whether he or she has any Convictions;
  - (ii) a Criminal Convictions Report is obtained in respect of each Named Employee;
  - (iii) each Named Employee shall provide his or her express written consent to the Contractor to the disclosure of any Convictions (including any that arise after the Named Employee has attended the Department Site) and to the disclosure of any Criminal Convictions Report to the Department; and
  - (iv) to the extent permitted by Law, a copy of the results of such check are notified to the Department.
- (b) The Contractor shall procure that no person who discloses any Convictions, or who is found to have any Convictions following the results of a Criminal Convictions Report, is employed or engaged to perform any of the Services at the Department Site without the Department's prior written consent (such consent not to be unreasonably withheld or delayed).
- (c) The Department may require a further Criminal Convictions Report to be obtained in respect of a Named Employee from time to time throughout the Contract Term. The Contractor shall procure that the Department is kept advised at all times of any member of staff who, subsequent to his or her commencement of employment as a member of staff, receives a Conviction or whose previous Convictions become known to the Contractor (or any employee of a Sub-contractor involved in the provision of the Services).
- (d) This clause 21 shall not apply to those individuals who shall be required by the Contractor or any Sub-contractor to attend on Department Site to provide emergency reactive services. In the case of such individuals, the Contractor shall, or shall procure that any Sub-contractor shall, ensure that such individuals are accompanied at all times while on Site by a member of the Contractor or Sub-contractor's staff who has been properly employed or engaged in accordance with clauses 21.1(a)(i) to 21.1(a)(iv).

## 21.3 Conduct of staff

Whilst engaged at the Department Site, the Contractor shall, and shall procure that any Sub-contractor shall, comply with the Department's Requirements relating to the conduct and health and safety of staff and security arrangements. The Department (acting reasonably) may:

- (a) instruct the Contractor that a disciplinary investigation be undertaken in relation to any employee of the Contractor or any Sub-contractor involved in the provision of the Services (in accordance with the terms and conditions of employment of the employee concerned), where such employee misconducts himself or is incompetent or negligent in his duties (in which case the Department shall co-operate with any disciplinary investigation and shall be advised in writing of the outcome), and that, dependent on the outcome of such disciplinary investigation, the Contractor or Sub-contractor (as appropriate) shall take such disciplinary action as it considers appropriate against its employee in relation to such misconduct, incompetence, or negligence; or
- (b) where the Department has reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the performance of the Services is undesirable, require the exclusion of the relevant employee from the relevant location.

## **21.4 Admission to Department Site**

- (a) The Department (acting reasonably) may refuse admission to the Department Site of any officer, employee, agent of, or contractor to the Contractor or a Contractor Related Person. This clause 21.4(a) is to be read subject to clause 21.4(e).
- (b) If the Department refuses admission to the Department Site, of any officer, employee, agent of, or contractor to the Contractor or a Contractor Related Person, it shall give reasons for its decision at the same time that decision is communicated to the Contractor.
- (c) Subject to clause 21.4(d), the Contractor shall:
  - (i) at least 10 Business Days before the Service Commencement Date, provide the Department with a written list of the names and address of all employees or other persons who it expects may require admission to the Department Site in connection with the provision of the Operational Services, specifying the capacities in which those employees or other persons are concerned with the provision of the Operational Services and giving such other particulars as the Department may require; and
  - (ii) update this information as and when any such individuals are replaced or complemented by others, not less than 10 Business Days before their inclusion.
- (d) Where the Contractor is unable (acting reasonably) to comply with clause 21.4(c) by the time period specified in it, then the Contractor shall comply with its obligations under that clause as soon as reasonably practicable and by no later than the end of the day on which the relevant individual first goes on to the Department Site. Until such time as the Contractor has complied with its obligations in respect of that individual, he or she shall at all times be accompanied on the Department Site by a member of the Contractor's or Sub-contractor's staff who has been properly notified to the Department in accordance with clause 21.4(c).
- (e) This clause 21.4 shall not apply to those individuals who shall be required by the Contractor or any Sub-contractor to attend on the Department Site to provide emergency reactive services. In the case of such individuals, the Contractor shall, or shall procure that any Sub-contractor shall, ensure that such individuals are accompanied at all times on each such Site by a member of the Contractor or Sub-contractor's staff who has been properly notified to the Department in accordance with clause 21.4(c).

## **21.5 Probity Investigations**

- (a) At any time the Department may conduct, or may require the Contractor to conduct, a Probity Investigation in respect of any key personnel. The Department will advise the

Contractor in writing of those persons on whom the Department requires a Probity Investigation.

- (b) Key personnel comprise:
  - (i) any director or any person that Controls the Contractor or a Contractor Related Person; and
  - (ii) any officer or employee of the Contractor or a Contractor Related Person that:
    - (A) has the ability to exercise influence or control in matters relating to the Project or in relation to matters otherwise;
    - (B) works in, or has access to, the Facility following Service Commencement; or
    - (C) has access to information that is Confidential Information of the Department.
- (c) The Department may require the Contractor to conduct probity and security investigations in addition to the Probity Investigations on key personnel or persons proposed to be key personnel.
- (d) The Contractor will advise the Department at least 10 Business Days prior to the proposed appointment of all persons proposed to be appointed as key personnel by the Contractor.
- (e) The Department will require the Contractor to procure the written consent to a Probity Investigation of all key personnel on whom the Department advises the Contractor it requires a Probity Investigation and other probity and security investigations, and all consents and other information required by the Law and by the Department must be given to the Department.
- (f) The Department's determination as to whether a person is a desirable person to become key personnel will be advised to the Contractor by the Department within 10 Business Days.
- (g) The Contractor will not appoint, and will ensure no other person appoints, a person to a position which enables them to perform any functions of key personnel if the Department has not given approval (following a Probity Investigation and other investigations that the Department requires) to that person becoming key personnel.
- (h) In exercising its rights under this clause 21.5 the Department agrees to act reasonably in light of the purpose of this clause.

## **21.6 Security clearance**

- (a) If the Department, acting reasonably, decides that a security clearance is required in relation to any persons referred to in clause 21.2(a) or clause 21.5(b), then the Contractor must ensure that any such person, as may be requested by the Department from time to time throughout the Contract Term, undergoes security clearance at any level under the Department's auspices.
- (b) If any of the persons referred to in clause 21.6(a) are requested to undergo a security clearance and do not undergo the requested security clearance, or do not meet the relevant clearance requirements, then the Contractor must not, except to the extent explicitly authorised by the Department, permit the personnel to perform any of the

Services at the Department Site, or to undertake any task for the purpose of this Agreement that requires access to the Department Site or the Facility.

## **21.7 Expenses incurred**

The Contractor will pay to the Department, on presentation of an invoice by the Department, all expenses reasonably incurred by the Department in carrying out each Probity Investigation under clause 21.5 if the results of the Probity Investigation reveal that any person involved or proposed to be involved in the Project is not deemed to be a fit and proper person to be involved in the Project. The Contractor is to be responsible for all costs associated with clause 21.6.

## **21.8 Resources and training**

The Contractor shall procure that:

- (a) there shall be at all times a sufficient number of staff (including all relevant grades of supervisory staff) engaged in the provision of the Services with the requisite level of skill and experience to meet the Contractor's statutory and contractual obligations in respect of this Agreement. This obligation shall include ensuring that there are sufficient staff to cover periods of holiday, sickness, other absences and anticipated and actual peaks in demand for each of the Services; and
- (b) all staff receive such training and supervision, at the Contractor's cost:
  - (i) as is necessary to ensure the proper performance of the Services under this Agreement;
  - (ii) to the standard appropriate for their particular positions;
  - (iii) in the case of Staff Members of the Prison, to a standard no lower than the standard of training received by Staff Members of prisons managed by the Department;
  - (iv) in the case of Security Officers employed by the Contractor, to a standard no lower than the standard of training received by any Security Officers employed by the Chief Executive;
  - (v) subject to Part 13 (Changes) where applicable, to updated or modified standards as identified and notified to the Contractor from time to time; and
  - (vi) in relation to tikanga Māori and cultural responsiveness.

## **21.9 Personnel policies and procedures**

The Contractor shall procure that there are set up and maintained by it, and by all Major Sub-contractors involved in the provision of the Services, personnel policies and procedures covering all relevant matters (including a code of conduct, discipline, employment relationship problems, equal opportunities, and health and safety (including in relation to drugs and alcohol)). The Contractor shall procure that the terms and implementation of such policies and procedures comply with Laws, Good Industry Practice, and that they are published in written form and that copies of them (and any revisions and amendments to them) are forthwith issued to the Department.

## **21.10 Responsibility for staff costs**

As between the Contractor and the Department:

- (a) the Contractor shall be entirely responsible for all aspects, including costs, of the contracts of employment of its and its Sub-contractors' employees; and
- (b) except where otherwise specifically provided, the Contractor shall be liable for any costs and payment of redundancy awards to its employees, agents or representatives, including any costs and payment of redundancy awards to Contractor Personnel of an outgoing Major Sub-contractor if a replacement Major Sub-contractor is appointed pursuant to the provisions of this Agreement and/or otherwise.

### **21.11 Offers of employment**

The Contractor shall not, and shall use reasonable endeavours to ensure that no Sub-contractor shall, make any offer of employment or otherwise approach, entice, induce or encourage (other than through general advertisement as part of a public recruitment process) any employee of the Department and Department Related Person or any other part of the criminal justice system to leave the employment of the Department, and Department Related Person or any other part of the criminal justice system (including any sub-contractors of the Department) unless it has given the Department not less than five (5) Business Days' prior written notice of such intended offer of employment, approach, enticement or encouragement.

### **21.12 Protected Disclosures Act**

The Contractor must:

- (a) comply with the requirements of section 11 of the Protected Disclosures Act, as though the Contractor were a public sector organisation within the meaning of that Act;
- (b) provide copies of the internal procedures required under clause 21.12(a) to the Department, both before the Service Commencement Date and whenever they are changed; and
- (c) provide reporting in relation to complaints received under the Protected Disclosures Act, as required by clause 25.4 (Reporting) and Schedule 15 (Reporting).

## Part 7 – Access to Site and Site issues

### 22. Department Site

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#### 22.1 Contractor's rights over Department Site

- (a) From Financial Close until the Service Commencement Date, the Department grants the following rights to the Contractor and Contractor Personnel for the purpose of the carrying out of Works Provisioning:
  - (i) a non-exclusive licence to enter, occupy and remain upon those parts of the Department Site to which the Contractor and/or any Contractor Personnel requires access as shown on the Department Site Plans, subject to any restrictions imposed under the relevant Site Access and Interface Protocol; and
  - (ii) such non-exclusive rights of access to and egress from the Department Site as are specified in the relevant Site Access and Interface Protocol,in each case subject to the following provisions of this Part 7.
- (b) From the Service Commencement Date until the earlier of the Expiry Date and the Actual Termination Date, the Contractor's rights of access to the Department Site will be as specified in the Facility Lease.
- (c) The rights conferred on the Contractor and Contractor Personnel under clause 22.1(a) are granted insofar as the Department is capable of granting them and such rights are subject to any valid restriction in the title or otherwise disclosed in writing to the Contractor as part of the Disclosed Title Matters.
- (d) The rights conferred on the Contractor and Contractor Personnel under clause 22.1(a) shall not in any circumstances entitle the Contractor or any Contractor Personnel to exclusive occupancy or exclusive possession of any part of the Department Site (save during Works Provisioning to the extent set out in the Site Access and Interface Protocols).
- (e) Without limiting the Contractor's other obligations under this Agreement, the Contractor and Contractor Personnel must not cause any material disruption to the Department in the performance of the Department's legal duties or other functions, or any disruption to the Department's Auckland Region Women's Corrections Facility adjacent to the Department Site (except to the extent expressly set out in the Works Provisioning Programme, the Works Project Management Plan or in the Corrections Services Requirements).
- (f) The licence rights granted under clause 22.1(a):
  - (i) are personal rights in contract;
  - (ii) do not create any estate or interest in any or all of the Department Site; and
  - (iii) do not create the relationship of landlord and tenant between the Contractor and the Department or any other Governmental Entity.
- (g) Subject to this clause 22.1, but without prejudice to its rights under Part 12 (Events), the Contractor is responsible for gaining access to and from the Department Site and is not entitled to make any Claim against the Department nor any Governmental Entity in connection with access, or failure to obtain or delay in obtaining access to and from the Department Site.



- (h) If at any time the Contractor requires access to, or occupation of any land involving the acquisition of any interest in land that does not form part of the Department Site (**extra land**) or any additional rights beyond those which the Contractor has in relation to any part of the Department Site:
  - (i) the responsibility and cost of securing or acquiring such access or interest, or in integrating such access shall be entirely the responsibility and at the sole risk of the Contractor;
  - (ii) its use or rehabilitation of any extra land in which the Contractor may acquire an interest for the purposes of this Agreement must comply with any requirements of the owner, any head lessor and all Consents affecting that land; and
  - (iii) the Contractor must (if requested by the Department) provide the Department with a legally binding release from any person having an interest in the extra land, on terms reasonably satisfactory to the Department.

## **22.2 Contractor's conduct on Department Site**

- (a) In carrying out Works Provisioning and/or provision of the Operational Services at the Department Site, the Contractor must (and must procure that any Contractor Personnel shall):
  - (i) not breach any of the terms of the Disclosed Title Matters applicable to the Department Site;
  - (ii) not act or omit to act in any way which shall give rise to a right for any person to obtain title to or any right or interest over the Department Site or any part of it (save in accordance with the terms of this Agreement);
  - (iii) comply with and observe all relevant Consents and all relevant planning restrictions;
  - (iv) observe and comply with any third party rights (including public rights) which may exist from time to time in respect of land comprising and adjoining the Department Site;
  - (v) comply with the terms of the Facility Lease;
  - (vi) ensure that Works Provisioning and/or provision of the Operational Services are carried out in such a way as not to unnecessarily or unreasonably interfere with access to and use and occupation of public or private roads or footpaths by any person who is entitled to any such access, use or occupation;
  - (vii) not use or occupy the Department Site for any purpose other than for the purposes of the Project, or the performance of its obligations under this Agreement;
  - (viii) not (except to the extent reasonably required for Works Provisioning as set out in the Works Provisioning Programme or in the Works Project Management Plan):
    - (A) cause any damage to the Department Site or any Utility Infrastructure or any appurtenances, services, fittings, fixtures or other items on the Department Site;

- (B) cause any disruption to any Utility Services that has not been agreed with the supplier of those Utility Services and the owner of any equipment or structures used in the delivery of those Utility Services; or
  - (C) dispose of any earth, clay, sand, gravel, chalk or other material from the Department Site or permit or suffer the same to be removed;
- (ix) at the Contractor's sole cost, transport all surplus materials arising from Works Provisioning and arrange for the tipping of the same at such places as may lawfully be used for tipping;
- (x) not use or allow the Department Site to be used so that:
  - (A) any Industrial Waste or Hazardous Substances are abandoned or dumped on the Department Site and/or Adjoining Properties;
  - (B) any Industrial Waste or Hazardous Substances are handled in a manner that is likely to cause damage to the Environment; or
  - (C) except to the extent agreed by the Department in writing, any other substance is released, deposited or emanates from the Department Site that results in Contamination affecting the Department Site and/or Adjoining Properties;
- (xi) ensure that all of their vehicles leaving the Department Site are adequately cleaned to prevent the deposit of waste materials and debris on the Adjoining Property and if any such material or debris is so deposited, the Contractor shall forthwith employ such measures as shall be necessary to remove the material and debris and to clean and reinstate the Adjoining Property to the reasonable satisfaction of the owners or occupiers of the Adjoining Property;
- (xii) not permit or suffer the blockage of any rivers, ditches or Utility Infrastructure by reason of anything done or omitted on the Department Site by the Contractor or Contractor Personnel;
- (xiii) comply, at the Contractor's expense, with:
  - (A) any obligations imposed on the registered proprietor of the Department Site under any easement referred to in clause 28.3 (Department to enter into easements); and
  - (B) any legal, regulatory or planning requirements so far as such requirements relate to, or affect Works Provisioning and/or provision of the Operational Services at the Department Site;
- (xiv) procure that those parts of the Department Site which are from time to time occupied by the Contractor and/or Contractor Personnel for the purpose of carrying out Works Provisioning and/or provision of the Operational Services are, so far as practicable having regard to the nature of Works Provisioning and/or the provision of the Operational Services, maintained in a clean, orderly, safe and secure state, and their working areas on the Department Site are secure against trespassers and clean and tidy;
- (xv) make available on Site for visitors, in accordance with the Site Access and Interface Protocol:
  - (A) not less than 10 sets (in varying sizes) of personal protective equipment;

- (B) welfare facilities; and
- (C) visitor health and safety inductions;
- (xvi) make provision for, and display, any signage on the Site that is required by the Department;
- (xvii) prior to the Service Commencement Date, clear from the Department Site to the reasonable satisfaction of the Department all temporary structures, rubbish and all building and surplus material and equipment of the Contractor or any Contractor Personnel and in default of that, the Department shall be entitled to employ an alternative contractor to clear them and shall be entitled to be reimbursed by the Contractor for any costs reasonably incurred in clearing or procuring the clearing of them;
- (xviii) not, without the written consent of the Department (not to be unreasonably withheld or delayed), erect any signage, advertising or temporary structure except (in the case of a temporary structure) site accommodation as contemplated by the Works Provisioning Programme; and
- (xix) take all practicable steps in accordance with any Laws for ensuring that the health and safety of all:
  - (A) occupants of the Department Site;
  - (B) individuals invited on to the Department Site; and
  - (C) occupants of Adjoining Properties,
 is not adversely impacted upon by the Works or the Operational Services.
- (b) The Contractor indemnifies the Department and each Department Related Person from and against all Losses and Liabilities suffered or incurred as a direct or indirect result of the Contractor breaching its obligations under this clause 22.2.
- (c) This clause 22.2 applies to the Contractor and any Contractor Personnel from Financial Close until the earlier of the Expiry Date or the Actual Termination Date, notwithstanding the Contractor's entry into the Facility Lease.

## **22.3 Contractor's rights and obligations in relation to access to Prison**

- (a) This clause 22.3 applies from the Service Commencement Date and, to the extent of any inconsistency, prevails over the terms of the Facility Lease.
- (b) The Contractor must not permit any person who is not a Prisoner access to the Prison, unless that person is:
  - (i) an employee or sub-contractor of the Contractor, to the extent that person requires access to the Prison in the course of his or her duties;
  - (ii) a person who is required by Law to be given access to the Prison (but only to the extent and at the times required by such Law);
  - (iii) a person authorised by the Department under clause 22.3(d) to have access to all or any part of the Prison (but only in accordance with that authorisation);
  - (iv) an Official Person (but only to the extent required by, and otherwise in accordance with, this Agreement);

- (v) any other person the Contractor is required by this Agreement to provide with access to the Prison (but only to the extent required by and otherwise in accordance with this Agreement); or
  - (vi) escorted or supervised at all times while at the Prison or otherwise meets any security requirements provided for in the Policy and Procedures Manual.
- (c) Unless the Department has given notice to the contrary, or a person is exercising a right of access specified in this Agreement, the Contractor may assume that a person has not been authorised by the Department to access the Prison. This clause is not intended to limit the access rights of any person that arise by operation of Law.
- (d) The Contractor must, if the Department gives notice to the Contractor to that effect (an **Access Notice**), provide access, to all or any part of the Prison, to such persons as may be authorised by the Department in that notice, but only for the purpose, and subject to the conditions or requirements, specified in that notice.
- (e) The Contractor must provide access to the Prison to all Official Persons, Other Service Providers and any other person authorised by the Department under clause 22.3(d) (each an **Access Recipient**) in accordance with this clause and any applicable Law prescribing the extent of access. In doing so, the Contractor must:
- (i) establish protocols with the relevant Access Recipient which enable that Access Recipient to have such access:
    - (A) as is reasonably required by it to perform its tasks and functions, consistent with any conditions or requirements for access notified by the Department; or
    - (B) in the case of an Official Person, which the Contractor is required to provide under clause 25.4 (Reporting);
  - (ii) allow access to the contractors and personnel of Access Recipients in accordance with the protocols established under clause 22.3(e)(i); and
  - (iii) provide appropriate security measures to ensure the safety and security of Access Recipients and their staff,

provided that, subject to the relevant Access Notice, an Official Person shall have free and unfettered access, and is not bound by the protocols referred to in clause 22.3(e)(i), although the Department acknowledges that the Contractor:

- (iv) has no liability for any breach of the Contractor's obligations under any of the Project Documents (including any such liability under Part 17 (Indemnities and Liability), Part 18 (Department Step-in) and Part 20 (Termination of this Agreement), or for any damage to property or persons; and
- (v) is entitled to relief under clause 53.4 (Relief from Deductions) for Deductions, Service Failure Points and/or Charges (as applicable),

that directly results from an Official Person breaching those protocols.

## **23. Conditions on Department Site**

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### **23.1 No reliance**

- (a) The Contractor shall take the Department Site (as well as any extra land in which the Contractor may acquire an interest) in its state and condition in all respects as the Contractor finds them, and nothing in this Agreement or otherwise shall constitute or imply a warranty by or on the part of the Department as to:
  - (i) the existence or non-existence of any Finds;
  - (ii) Site Conditions on the Department Site;
  - (iii) whether or not the Department Site or any other land is or has been subject to Contamination; or
  - (iv) the fitness and suitability of the Department Site, any extra land, or any part thereof for Works Provisioning and/or provision of the Operational Services or for any other purpose.
- (b) Nothing in this Agreement shall constitute or imply a warranty by or on the part of the Department as to the existence or non-existence of Māori Claims to which the Department Site (or access or egress to the Department Site) may be subject.

### **23.2 Site Conditions**

The Site Conditions of the Department Site and any extra land shall be the sole responsibility of the Contractor and accordingly (but without prejudice to any other obligation of the Contractor under this Agreement) the Contractor shall be deemed to have:

- (a) carried out a ground physical and geophysical investigation and to have inspected and examined the Department Site, extra land and their surrounds and (where applicable) any existing structures or works on, over or under the Department Site or any extra land;
- (b) satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the form and nature of the Department Site or any extra land, the load bearing and other relevant properties of the Department Site or any extra land, the risk of injury or damage to property affecting the Department Site or any extra land, the nature of any materials (whether natural or otherwise) to be excavated and the nature of any design, works and materials necessary for Works Provisioning;
- (c) satisfied itself as to the adequacy of the means and rights of access to and through the Department Site, or any extra land and any accommodation it may require for the purposes of fulfilling its obligations under this Agreement (such as additional land or buildings outside the Department Site);
- (d) satisfied itself as to the possibility of interference by persons of any description whatsoever (other than the Department or Department Personnel) with access to or use of, or rights in respect of, the Department Site, or any extra land with particular regard to the owners of Adjoining Properties; and
- (e) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to third parties.

### **23.3 No Claim**

The Contractor accepts full responsibility for all matters referred to in clause 23.1 and clause 23.2 and the Contractor, subject to Part 12 (Events), shall not be entitled to make any Claim against the Department of any nature whatsoever on any grounds connected with the matters subject to such clauses, including the fact that incorrect or insufficient information on any matter relating to the Department Site was given to it by any person, whether or not the Department or any Department Personnel.

## **24. Finds, Contamination or Māori Claims**

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### **24.1 Discovery**

Upon the discovery of a Find or Contamination on or in respect of the Department Site:

- (a) the Contractor shall immediately notify the Department of such discovery and shall specify its location;
- (b) the Contractor must provide all reasonable assistance requested of it in connection with dealing with the Find or Contamination;
- (c) the Contractor must at any time permit and allow the Department or any other person authorised by the Department for the purpose to view, examine and supervise any excavations on the Department Site;
- (d) without limiting the Contractor's other rights or obligations under this clause 24, but subject to Part 12 (Events), the Contractor must continue to carry out Works Provisioning and/or provision of the Operational Services in accordance with the terms of this Agreement; and
- (e) all costs or risks to which the parties are exposed in connection with the Find or Contamination are to be allocated by the parties in accordance with clause 24.5.

### **24.2 Finds**

Upon the discovery of a Find on the Department Site:

- (a) that Find will, as between the Department and the Contractor, be the absolute property of the Department; and
- (b) the Contractor must (in addition to its obligations under clause 24.1):
  - (i) not disturb the Find and, if necessary, cease any Work Provisioning and/or provision of the Operational Services in so far as the carrying out of such Services would endanger the Find and/or the Department Site or prevent or impede excavation of the Find, pending receipt of instruction from the Department pursuant to clause 24.2(b)(iv);
  - (ii) take all necessary steps to preserve the Find in the same position and condition in which it was found;
  - (iii) if the Find is or appears to be ordnance, immediately contact the police and then proceed promptly and diligently as directed by them; and

- (iv) promptly and diligently comply with any direction given by the Department specifying any other action (which may include a direction not to do something) the Department requires to be taken (or not taken) in relation to such Find.

### **24.3 Contamination**

- (a) Upon the discovery of any Contamination on the Department Site, (in addition to the obligations assumed by the Contractor under clause 24.1) the Contractor must:
  - (i) clean up, or otherwise deal with any such Contamination on, in, under, over or emanating from, the Department Site or any other land used by or occupied by the Contractor or any Contractor Personnel in connection with the Project, so that the Contractor is at all times in compliance with its obligations under this Agreement, all applicable Laws and all relevant Consents; and
  - (ii) comply (and ensure that all Contractor Personnel comply) with any Clean-up Notice relating to the Contamination on, in, under, over or emanating from, the Department Site or any other land used by or occupied by the Contractor or any Contractor Personnel in connection with the Project.

Each party must promptly provide the other party with a copy of any Clean-up Notice served on it, or that otherwise comes into its possession.

- (b) The obligations of the Contractor under clause 24.3(a) apply regardless of whether the applicable Law, the relevant Consents or the Clean-up Notice apply or are addressed to the Contractor, the Department or some other person and regardless of whether the Contamination occurred before or after Financial Close.
- (c) Subject to the terms of clause 24.3(a), the Contractor must promptly and diligently comply with any direction given by the Department specifying any other action (which may include a direction not to do something) the Department requires to be taken (or not taken) in relation to the Contamination provided that such action is not in excess of the requirements of the relevant Clean-Up Notice, applicable Laws and all relevant Consents.
- (d) Subject to their respective obligations under Law, neither party will do anything with the intent (directly or indirectly) of causing or being likely to cause the service of a Clean-up Notice.

### **24.4 Māori Claim**

Upon the Contractor becoming aware of any Māori Claim in respect of or in connection with the performance of its obligations under this Agreement, the Contractor shall immediately notify the Department of the same and:

- (a) the Contractor will not (except with the consent or at the direction of the Department or pursuant to the order of a Court or tribunal) take any action in respect of that Māori Claim;
- (b) the Contractor must promptly and diligently comply with any direction given by the Department to the Contractor (that is not inconsistent with an order of a Court or tribunal), specifying any other action (which may include a direction not to do something) the Department requires to be taken (or not taken) in relation to any Māori Claim; and
- (c) the Contractor will, if the claim comprises or includes a claim against the Contractor or any Contractor Personnel, and then only if requested by the Department:

- (i) do all things reasonably required by the Department in negotiating, defending or otherwise taking action or proceedings in respect of that Māori Claim;
- (ii) join in any proceedings with the Department or another Governmental Entity;  
and
- (iii) permit the Department or another Governmental Entity to represent the Contractor and have exclusive conduct of any negotiations in relation to the Māori Claim,

and the Department will pay to the Contractor all costs and expenses reasonably incurred by the Contractor in complying with its obligations under this clause 24.4.

## **24.5 Allocation of risk**

The responsibility for the cost of cleaning up or otherwise dealing with a Find or Contamination and the relief from obligations to the extent the Find and/or Contamination and/or Māori Claim prevents or impedes the performance of the Services are allocated between the Department and/or the Contractor in accordance with Part 12 (Events). Except to the extent that a Find and/or Contamination and/or Māori Claim comprises an Event for which the Contractor is entitled to relief under Part 12 (Events), the Contractor will be solely responsible for the consequences of that event.

## **24.6 Indemnity**

Subject to the extent expressly provided in Part 12 (Events) of this Agreement, the Contractor indemnifies the Department and each Department Related Person from and against all Losses and Liabilities suffered or incurred as a direct or indirect result of the Contractor failing to observe, comply with or perform its obligations under clause 24.1 to clause 24.4 (inclusive).



## **Part 8 – Works Provisioning**

### **25. Overarching Terms**

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#### **25.1 Works Provisioning generally**

The Contractor must ensure that the Facility achieves Operational Completion by no later than the Planned Service Commencement Date. Without limiting the foregoing, the Contractor must carry out Works Provisioning to ensure the Works and the Facility are designed, built, equipped and fitted out:

- (a) to be Fit for the Intended Purpose;
- (b) so as to comply with the Works Requirements;
- (c) in accordance with the Works Project Management Plan and the Operational Completion Plan;
- (d) in accordance with Good Industry Practice;
- (e) in accordance with all relevant Laws; and
- (f) otherwise in accordance with the terms of this Agreement.

#### **25.2 Works Requirements, Works Provisioning Programme and Operational Completion Plans**

- (a) The Works shall comply with the Works Requirements in all respects, except to the extent of any Confirmed Changes to the Works Requirements requested by, or consented to by, the Department.
- (b) Works Provisioning is to be performed in accordance with the Works Provisioning Programme for the period up until Works Completion and the Operational Completion Plan thereafter.

#### **25.3 Materials**

- (a) Only new materials may be used in the construction, manufacture or maintenance of the Works unless:
  - (i) specified in the Works Requirements; or
  - (ii) the Department otherwise agrees in writing.
- (b) All materials used or included in the construction, manufacture, or maintenance of the Works are to be fit and proper for their intended use and purpose and selected in accordance with Good Industry Practice.

#### **25.4 Reporting**

- (a) During the course of Works Provisioning, the Contractor must submit:
  - (i) a monthly Works report to the Department within five Business Days of the end of each calendar month prior to Works Completion;

- (ii) such other reports as may be required pursuant to Schedule 10 (Works Requirements), Schedule 10B (Works (Retrofit) Requirements), Schedule 15 (Reporting) or Schedule 7 (Governance and Service Management); and
  - (iii) such additional reports and information relating to the Project as the Department may reasonably request.
- (b) The provision of reports by the Contractor to the Department and any other information provided by the Contractor to the Department about:
- (i) the Works;
  - (ii) Works Provisioning;
  - (iii) the Works Provisioning Programme; or
  - (iv) the Operational Completion Plan,

does not relieve or affect the Contractor's obligations under this Agreement.

## **25.5 Independent Reviewer**

The Independent Reviewer is appointed by the Department and the Contractor, amongst others, under the Independent Reviewer Agreement. The Independent Reviewer will be required to:

- (a) perform the powers, duties and functions it is required to discharge pursuant to the Independent Reviewer Agreement; and
- (b) exercise those powers, duties and functions:
  - (i) honestly, impartially and reasonably for the benefit of both the Department and the Contractor; and
  - (ii) as an independent valuer and assessor and not as an agent for the Department or the Contractor or of both of them.

## **25.6 Milestones**

- (a) The Contractor must meet the Milestones specified in the Works Provisioning Programme by the relevant Milestone Dates. If the Contractor does not meet a Milestone by the relevant Milestone Date, clause 25.7(c) will apply.
- (b) The Contractor must immediately produce and send a written report addressed to the Department and copied to the Independent Reviewer if:
  - (i) construction of the Works ceases for more than two consecutive Business Days; or
  - (ii) the Contractor fails, or is aware of a circumstance under which it would reasonably expect to fail, to achieve a Milestone by its Milestone Date,

setting out the reasons for the cessation, failure or expected failure to achieve the Milestone by the relevant Milestone Date, the date by which the Milestone will be achieved and the impact, if any, of the delay in achieving the Planned Service Commencement Date.

- (c) Schedule 27 (Completion Tests) and/or each Completion Plan will specify the Acceptance Criteria for the achievement of each Milestone.

## 25.7 Monitoring

- (a) The parties agree that the Independent Reviewer is to monitor actual progress of Works Provisioning as against the requirements of the Works Provisioning Programme. Any certificate or notice provided by the Independent Reviewer under this clause 25.7 is binding on both parties.
- (b) Where a relevant Milestone has been achieved by its Milestone Date, the Independent Reviewer will provide a certificate to that effect to both the Contractor and the Department on or about the relevant Milestone Date.
- (c) Where a relevant Milestone has not been achieved by its Milestone Date, the Independent Reviewer will give notice of that failure to both the Contractor and the Department on the Business Day immediately following the relevant Milestone Date.
- (d) The Department may at any time during Works Provisioning require the Independent Reviewer to review progress of the Works Provisioning to determine whether the status and progress of the Works Provisioning is likely to have a Material Adverse Effect on the ability of the Contractor to achieve the Planned Service Commencement Date or, if that date has passed, the Last Date for Service Commencement for the Facility or for the Works as a whole.
- (e) If the Independent Reviewer, following a review under clause 25.7(d), is of the view that:
  - (i) the Planned Service Commencement Date will not be achieved (which will be determined to be the case only if the Independent Reviewer is of the view that Works Completion cannot be achieved by a date 40 Business Days before the Planned Service Commencement Date); or
  - (ii) the Last Date for Service Commencement will not be achieved (which will be determined to be the case only if the Independent Reviewer is of the view that Works Completion cannot be achieved by a date 40 Business Days before the Last Date for Service Commencement),

the Independent Reviewer must issue a notice to the Department and to the Contractor to this effect.

- (f) If the Independent Reviewer gives a notice:
  - (i) under clause 25.7(e)(i), clause 25.8 will apply; or
  - (ii) under clause 25.7(e)(ii):
    - (A) where the Contractor (acting reasonably) does not agree with the Independent Reviewer it may refer the Dispute for resolution under the Accelerated Dispute Resolution Procedures within five Business Days of receipt of a notice under clause 25.7(e)(ii); or
    - (B) where the Contractor does not refer the notice to dispute resolution in accordance with paragraph (A) above or it is determined in accordance with the Accelerated Dispute Resolution Procedure that the Independent Reviewer is correct, this will comprise an Immediate Termination Event under clause 79.2 (Contractor Default).

- (g) This clause 25.7 is not to be read as limiting:
  - (i) in any way the right of the Department itself to carry out any review of the actual progress of Works Provisioning against the Works Provisioning Programme; and
  - (ii) any other monitoring rights the Department may have under this Agreement.
- (h) The Contractor must provide all assistance and information reasonably required by the Department or the Independent Reviewer (as the case may be) for the purposes of this clause 25.7.

## 25.8 Delays

- (a) If the Contractor becomes aware, at any time, that:
  - (i) the actual progress of Works Provisioning has or may become significantly delayed; or
  - (ii) there will or is likely to be a delay in the Works Provisioning such that:
    - (A) the Start Date for the Works or the Facility may be delayed;
    - (B) a Milestone Date may be missed; or
    - (C) the Planned Service Commencement Date may be missed,

the Contractor must as soon as reasonably practicable and in any event within two Business Days of becoming aware (or of the day on which it ought to have become aware) of the delay, submit to the Department a written notice to that effect:

  - (iii) specifying when the notifying party first became aware of the delay;
  - (iv) specifying the reason for the delay;
  - (v) providing an estimate of the probable effect of the delay;
  - (vi) specifying whether or not any of the Contractor's contingency plans (or any adaptation of the same) can be utilised to avoid or mitigate the delay;
  - (vii) identifying any alternative strategies to avoid or mitigate the delay; and
  - (viii) providing a revised Works Provisioning Programme (and, where applicable, a revised Preliminary Operational Completion Plan and/or Operational Completion Plan) showing the manner and the periods in which Works Provisioning is to be carried out to achieve the Planned Service Commencement Date for the Facility and the Works as a whole.
- (b) The Contractor will promptly supply to the Department such additional information relating to the delay or likely delay as the Department may reasonably request, including such additional ongoing monitoring and reporting as is required by the Department.
- (c) The Contractor must take all steps reasonably available to it to mitigate the delay and the consequences of any delay or likely delay the subject of a notice given to the Department under clause 25.8(a).

## **25.9 Delays - liquidated damages**

- (a) Where the Service Commencement Date does not occur on or prior to the Planned Service Commencement Date, liquidated damages shall be payable by the Contractor to the Department at the rate of \$11,000 for each calendar day from (but excluding) the Planned Service Commencement Date until (but excluding) the Service Commencement Date.
- (b) If the Department invoices the Contractor for an amount of liquidated damages under this clause 25.9 then the amounts specified in such invoice are payable within 20 Business Days after the date of the invoice. The Department shall not be entitled to issue more than one invoice in any month in respect of liquidated damages. Any delay in the payment of any such liquidated damages by the Contractor will accrue interest at the Prescribed Rate, such accrual to commence 20 Business Days following the date of the invoice.
- (c) The parties agree that the liquidated damages payable by the Contractor and recoverable by the Department under this clause 25.9 constitute a genuine pre-estimate of the Department's Losses for the Service Commencement Date not occurring on or prior to the Planned Service Commencement Date. If the liquidated damages provided for in this clause 25.9 are held to be unenforceable and the Department is unable to recover payment under this clause 25.9, the Department will be entitled to claim general damages from the Contractor in respect of the Losses suffered by the Department as a result of the Service Commencement Date not occurring on or prior to the Planned Service Commencement Date.
- (d) The aggregate maximum amount recoverable by the Department under this clause 25.9 is \$5,000,000 (regardless of whether such amount is claimed by way of liquidated damages or general damages) plus any costs awarded by an Independent Expert under clause 93 (Accelerated Dispute Resolution Procedures) or by a Court in respect of any Claim or challenge raised by the Contractor that the liquidated damages payable under this clause 25.9 are unenforceable and/or a penalty.

## **25.10 Defects**

- (a) This clause 25.10 applies solely to Defects that occur, are identified and/or subsist following the Service Commencement Date.
- (b) The Contractor will rectify all Defects whether or not the subject of a notice under this clause 25.10.
- (c) If the Department identifies a Defect, then the Department may give a written notice to the Contractor specifying that Defect, requiring the Contractor to rectify the Defect and specifying a reasonable time within which this will occur.
- (d) If a notice is given under clause 25.10(c), the Contractor must correct the Defect within the time specified in the Department's notice.
- (e) Neither the Department's rights, nor the Contractor's liability, whether under this Agreement or otherwise at Law in respect of Defects, will be affected or limited by:
  - (i) the rights conferred upon the Department by this clause 25.10 or any other provision of this Agreement; or
  - (ii) the failure by the Department to exercise any such rights.

## **26. Planning and mobilisation**

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### **26.1 Delivery of plans and programmes**

- (a) The Contractor must within the timeframes specified in Part 1 (Works Provisioning Documentation) and Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents), prepare and deliver to the Department a draft of:
  - (i) the Works Project Management Plan;
  - (ii) the Works Provisioning Programme;
  - (iii) the Operational Completion Plan; and
  - (iv) each other item of Works Provisioning Documentation.
- (b) Each item of Works Provisioning Documentation and the Operational Completion Plan:
  - (i) is to be prepared by the Contractor in accordance with the requirements of Part 1 (Works Provisioning Documentation) or Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) (as applicable) and the other terms of this Agreement;
  - (ii) must be submitted to the Department for review under the Review Procedures; and
  - (iii) may be reviewed by the Department pursuant to the Review Procedures.

### **26.2 Updates**

- (a) The Contractor must:
  - (i) at all times prior to Works Completion ensure that the Works Provisioning Programme and all of its sub-programmes reflect the progress of Works Provisioning;
  - (ii) subject to clause 26.2(d), update the Works Provisioning Programme and all of its sub-programmes:
    - (A) within the timeframes specified for the updating of that documentation as set out in Part 1 (Works Provisioning Documentation) of Schedule 5 (Operative Documents); and
    - (B) otherwise as necessary to comply with its obligations under this clause 26.2(a);
  - (iii) not adjust any Milestone or Milestone Date in the Works Provisioning Programme unless an extension has been given to the Contractor under clause 39 (Extension Events); and
  - (iv) comply with Schedule 10 (Works Requirements) when updating the Works Provisioning Programme.
- (b) The Contractor must update the Works Project Management Plan as and when:

- (i) it considers necessary; and
  - (ii) required to ensure that the Works are being implemented in accordance with the terms of this Agreement.
- (c) The Contractor must submit any updates to the Works Project Management Plan and the Works Provisioning Programme for review under the Review Procedures.
- (d) If, at any time, the Contractor reasonably believes that it might not be able to carry out any Works contemplated by the Works Provisioning Programme at the Department Site for a period of no less than 20 consecutive Business Days, which period is not contemplated by the then current Works Provisioning Programme, it may (without prejudice to the Department's rights under the Review Procedures in respect of the Works Provisioning Programme) give the Department written notice setting out reasonable particulars of the anticipated inability to carry out any such Works for such a period and the reasons for the same. Any such notice shall take effect on the date on which it is delivered to the Department and shall cease to have effect on the date on which the next update to the Works Provisioning Programme is finalised or deemed to be finalised in accordance with the Review Procedures.
- (e) Following Works Completion and prior to Operational Completion, the Contractor must:
  - (i) at all times ensure that the Operational Completion Plan and all of its sub-programmes (if any) reflect the progress of the Works Provisioning following Works Completion;
  - (ii) update the Operational Completion Plan and all of its sub-programmes (if any) within the timeframes specified for the updating of that documentation as set out in Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents); and
  - (iii) comply with Schedule 10B (Works (Retrofit) Requirements) to the extent relevant when updating the Operational Completion Plan.

### **26.3 Department's rights**

- (a) The Department may direct the Contractor to update the Works Provisioning Programme if the programme does not accurately reflect the actual progress of Works Provisioning or does not comply with the Works Project Management Plan.
- (b) The Department may direct the Contractor to update the Works Project Management Plan if it reasonably considers that such update is required to:
  - (i) ensure the health and safety of persons;
  - (ii) avoid or minimise unreasonable interference of the Works with the passage of persons and vehicles or other operations being conducted on the Department Site (as contemplated in the Works Requirements); or
  - (iii) ensure consistency with the terms of this Agreement.
- (c) The Department may direct the Contractor to update the Operational Completion Plan and/or the Operational Completion Programme if the relevant plan or programme does not accurately reflect the actual progress of Works Provisioning following Works Completion.

## 27. Design and Design Development

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### 27.1 Design Development

- (a) The purpose of Design Development is to refine and finalise the design through the Design Development process, to ensure that the Works are designed, built and available in accordance with clause 25.1 (Works Provisioning generally) and the other terms of this Agreement.
- (b) The final output of Design Development is the Final Design Documentation, being the Design Documentation, marked as being “for construction” and which is to be used in the construction of the Works to ensure that the Works are designed, built and available in accordance with clause 25.1 (Works Provisioning generally) and the other terms of this Agreement. The Contractor must only use the Final Design Documentation for the construction of the Works.
- (c) The Design Development process is to be conducted in accordance with the Design Development Plan and may include:
  - (i) meetings with relevant stakeholders nominated by the Department;
  - (ii) preparation of and consultation with relevant stakeholders on successive iterations of draft Design Documentation; and
  - (iii) Design Development presentations:
    - (A) to provide an understanding of the status of Design Development;
    - (B) to define key issues; and
    - (C) to provide an understanding of each element of the design before the finalisation of each stage of the Design Development process.
- (d) The Contractor must:
  - (i) submit the Reviewable Design Material prepared at the conclusion of each stage of Design Development for review under the Review Procedures;
  - (ii) not use any of the Reviewable Design Material for construction purposes unless:
    - (A) that element of the Reviewable Design Material has been submitted to the Department for review under the Review Procedures by the dates required for submission under the Works Provisioning Programme (which may allow for staggered submission of Reviewable Design Material); and
    - (B) the periods provided in the Works Provisioning Programme for completion of the Review Procedures for that element of the Reviewable Design Material have expired or the Department has returned that element of the Reviewable Design Material and confirmed in writing that it has no further comments on the same or is deemed to have done so in accordance with and subject to the terms of the Review Procedures; or
    - (C) expiry of such longer periods as is reasonably required by the Department, if comments on the Design Documentation are made requiring resubmission of that Design Documentation for review; and



- (iii) not amend any of the Reviewable Design Material submitted for review under the Review Procedures under this clause 27.1(d) unless it submits the proposed amendments for review under the Review Procedures and the process in this clause 27.1(d) has been reapplied.
- (e) Neither the Final Design Documentation, nor any other product of the Design Development process, constitutes a Change unless the Contractor can demonstrate to the Department that that documentation (or other product of the Design Development process) results in a Change to the Works Requirements.
- (f) The Contractor may not (despite clause 27.1(e)) make any claim for or in respect of a Change pursuant to clause 27.1(e) unless the Contractor has notified the Department in writing of the alleged Change prior to incorporating the same into any design material together with particulars of that Change and the facts relied upon to support the Contractor's claim in respect of that alleged Change.
- (g) Without limiting the Review Procedures, the Contractor must give the Department the opportunity to comment on and monitor all the design material (whether or not produced as part of Design Development or comprising Reviewable Design Material).
- (h) Adequate provision in the Works Provisioning Programme must be made to accommodate the activities contemplated by this clause 27.1.
- (i) The Contractor must bear all of its costs incurred arising out of or in connection with Design Development.

## **27.2 Final Design Documentation**

- (a) The Contractor must, prior to commencement of any section of the Works, provide to the Department:
  - (i) following the conclusion of the Review Procedures for the relevant Reviewable Design Material, true, complete and accurate copies of all relevant Final Design Documentation derived from that Reviewable Design Material; and
  - (ii) true, complete and accurate copies of other items of relevant Design Documentation that do not constitute Reviewable Design Material,
 that the Contractor intends to use in the construction of that section of the Works.
- (b) For the avoidance of doubt, Final Design Documentation status may be achieved on a staged basis in relation to defined sections of the Works. The Contractor may begin a section of the Works once all Design Documentation relating to that section has achieved Final Design Documentation status.
- (c) If any Final Design Documentation does not meet the requirements of clause 25.1 (Works Provisioning generally) or the other terms of this Agreement, the Contractor must at its own expense amend the Final Design Documentation and rectify the Works or any part of the Works affected.

## **28. Construction**

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### **28.1 Integration**

- (a) The Contractor is and remains solely responsible for the construction of the Works pursuant to clause 25.1 (Works Provisioning generally) and the other terms of this Agreement.

- (b) The Contractor's responsibility extends to (but is not limited to):
  - (i) construction of the Facility;
  - (ii) installation and maintenance of the Works Infrastructure;
  - (iii) liaison with all relevant Governmental Entities and the Utility Service Providers for the co-ordination and integration of the Works Infrastructure with the External Infrastructure;
  - (iv) ensuring that all External Infrastructure is provided to the boundary of the Department Site;
  - (v) installation and maintenance of all Works Infrastructure so that it is brought to and connected to the External Infrastructure;
  - (vi) relocation (if required) and protection of all Utilities Infrastructure; and
  - (vii) provision of all utilities for the Works (and the Contractor will enter into such agreements with Utility Service Providers for that purpose).
- (c) The Contractor is solely responsible for all costs, expenses and liabilities associated with the design and construction of the Works, including all costs incurred by the Contractor in complying with clause 28.1(b).
- (d) The Contractor indemnifies the Department and each Department Related Person in relation to any loss or damage relating to the External Infrastructure, the Utility Infrastructure or any other infrastructure or services to the extent caused or contributed to by the Contractor or any Contractor Personnel.
- (e) The Contractor may only enter into agreements for the supply of Utility Services in accordance with this clause 28.1 and clause 28.2.

## **28.2 Utilities**

The Contractor shall be responsible for:

- (a) determining the location of, and the maintenance of, access to the Utility Services on the Department Site;
- (b) making and relying upon all necessary investigations and surveys as to the Utility Services on the Department Site;
- (c) making provision for lawfully diverting, disconnecting or otherwise dealing as necessary with all Utility Infrastructure outside the Department Site;
- (d) paying to all providers of Utility Services all costs and expenses incurred in diverting, disconnecting, connecting into or otherwise carrying out works in respect of such Utility Services within the Department Site;
- (e) at its own cost and in its own name, separately connecting to, and making payment for all Utility Services provided outside, or to the boundary of, the Department Site;
- (f) at its own cost and in its own name, procuring the provision of all Utility Services and entering into all agreements with the providers of Utility Services necessary for the performance of Works Provisioning;

- (g) the protection and maintenance of such services and utilities at or to the Department Site;
- (h) making good at its own cost any damage to any Utility Infrastructure on the Department Site or outside a Department Site (where caused by an act or omission by the Contractor or any Contractor Related Person) within a reasonable time of its cause to the Department's reasonable satisfaction; and
- (i) otherwise doing all that is required in relation to Utility Services as a result of the carrying out of Works Provisioning and/or provision of the Operational Services.

### **28.3 Department to enter into easements**

- (a) Notwithstanding the Contractor's obligation pursuant to clause 28.2, the Department shall, at the Contractor's cost, following a request to do so by the Contractor, enter into, and take all reasonable steps to perfect the registration of, easements with:
  - (i) Vector Limited in relation to an electricity easement and a gas easement;
  - (ii) Her Majesty The Queen in Right of New Zealand acting by and through the Chief Executive of the Ministry of Social Development in relation to a wastewater easement; and
  - (iii) Watercare Services Limited in relation to a water easement,

on the terms and conditions contained in the relevant agreement or deed referred to in paragraph 3.2 of Schedule 8 (Site Particulars).
- (b) To the extent that the fee is required to be paid to the Utility Service Provider under the agreement referred to in paragraph 3.2 of Schedule 8 (Site Particulars) or the easement to be entered into pursuant to such agreement or deed then such fee shall be paid by the Contractor.

## Part 9 – Completion and Service Commencement

### 29. Completion

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#### 29.1 Requirements for Completion and Service Commencement

- (a) Prior to the Service Commencement Date, the Contractor must achieve:
  - (i) Works Completion; and
  - (ii) Operational Completion.
- (b) The **Service Commencement Date** is the day specified in the Operational Completion Notice on which all of the Operational Services are to actually commence, in accordance with the Ramp-Up Plan, provided that the Service Commencement Date is to be a date no earlier than the First Service Commencement Date and no later than the Last Date for Service Commencement unless agreed in writing by the Department.
- (c) **Works Completion** means that the Works Completion Certificate has been issued by the Independent Reviewer.
- (d) **Operational Completion** means the stage when all of the following have occurred:
  - (i) the Works Completion Certificate has been issued by the Independent Reviewer; and
  - (ii) the Operational Completion Notice has been issued by the Department.

#### 29.2 Preparation for Completion

- (a) The Contractor must, within the timeframes specified in Schedule 5 (Operative Documents), prepare and deliver to the Department the Works Completion Plan.
- (b) The Contractor must, within the timeframes specified in Schedule 5 (Operative Documents), prepare and deliver to the Department a draft of:
  - (i) the Operational Completion Plan;
  - (ii) the Corrections Services Documentation, by the dates specified for delivery of each applicable document in Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents); and
  - (iii) the Facility Management Services Documentation, by the dates specified for delivery of each applicable document in Part 2 (Facility Management Services Documentation) of Schedule 5 (Operative Documents).
- (c) Each Completion Plan:
  - (i) is to be prepared by the Contractor in accordance with the requirements of Part 1 (Works Provisioning Documentation) and Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) (as applicable) and the other terms of this Agreement (as applicable);
  - (ii) must be submitted to the Department for review under the Review Procedures; and

- (iii) may be reviewed by the Department pursuant to the Review Procedures.
- (d) The Facility Management Services Documentation:
  - (i) is to be prepared by the Contractor in accordance with the requirements of Part 2 (Facility Management Services Documentation) of Schedule 5 (Operative Documents) and the other terms of this Agreement (as applicable);
  - (ii) must be submitted to the Department for review under the Review Procedures; and
  - (iii) may be reviewed by the Department pursuant to the Review Procedures.
- (e) The Corrections Services Documentation:
  - (i) is to be prepared by the Contractor in accordance with the requirements of Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents) and the other terms of this Agreement (as applicable);
  - (ii) must be submitted to the Department for review under the Review Procedures; and
  - (iii) may be reviewed by the Department pursuant to the Review Procedures.
- (f) If there is any inconsistency between:
  - (i) the Facility Management Services Documentation and Schedule 12 (Facility Management Requirements), the provisions of Schedule 12 shall prevail; or
  - (ii) the Corrections Services Documentation and Schedule 14 (Corrections Services Requirements), the provisions of Schedule 14 shall prevail.
- (g) The Contractor must comply with each Completion Plan, but only once review of that document has been completed or deemed to have been completed under the Review Procedures. The Contractor must not:
  - (i) initiate Works Completion until the Review Procedures for the Works Completion Plan have been completed or deemed to be completed; or
  - (ii) initiate Operational Completion until the Review Procedures for the Operational Completion Plan have been completed or deemed to be completed.

### **29.3 Works Completion**

- (a) The Works Completion Tests must be conducted in accordance with:
  - (i) the Works Completion Plan;
  - (ii) the requirements of Schedule 10 (Works Requirements);
  - (iii) the requirements of Schedule 27 (Completion Tests) that relate to Works Completion; and
  - (iv) the timeframes specified for and in relation to Works Completion in the Works Provisioning Programme,

to determine whether the Acceptance Criteria for Works Completion have been met and whether the Works (or the relevant part of the Works being tested) are Fit for the Intended Purposes as at Works Completion. The Works Completion Tests, the sequences of their implementation, and the involvement in, and responsibilities of, the Contractor to assist in establishing Works Completion are set out in Schedule 27 (Completion Tests) and the Works Completion Plan.

- (b) The Contractor will give the Independent Reviewer and the Department not less than five Business Days' written notice of the day or days on which it proposes to conduct the relevant Works Completion Tests for Works Completion (or that part of Works Completion to which those Works Completion Tests relate). The parties acknowledge and agree that there is no requirement for all the Works Completion Tests to be undertaken on the same day.
- (c) The Department may, and the Independent Reviewer must (under the terms of the Independent Reviewer Agreement) attend and observe the Works Completion Tests and the Independent Reviewer may take samples, make measurements and otherwise carry out whatever tests or checks he may reasonably require in connection with the Works Completion Tests, provided that any such tests and checks are consistent with the purpose and intent of the relevant Works Completion Test.
- (d) The Works Completion Tests must be conducted to the reasonable satisfaction of the Independent Reviewer.
- (e) The Contractor agrees that any participation or assistance given by Department Personnel in conducting a Works Completion Test (except to the extent set out in, or required under, Schedule 27 (Completion Tests)) will be given at the absolute discretion of the Department and without any acceptance of liability or responsibility for any Claim in relation to that participation or assistance.
- (f) When the Contractor considers that it has done everything necessary for the Independent Reviewer to issue a Works Completion Certificate, it will give to the Department and the Independent Reviewer a completion report, which must meet the requirements for that report as set out in the Works Completion Plan.
- (g) Within four Business Days after receiving any report under clause 29.3(f), where it believes (acting reasonably) that any Works Completion Test has not been satisfied (disregarding any Snagging Defects), the Department may (but has no obligation to) issue a written representation to this effect to the Independent Reviewer and the Contractor and:
  - (i) the Contractor may (but has no obligation to) issue a submission to the Independent Reviewer and the Department in response to the Department's representation within three Business Days of receipt thereof; and
  - (ii) the Independent Reviewer must take into account any such representation and submission when carrying out its roles under clauses 29.3(h) and/or 29.3(i) (as applicable).
- (h) Where the Independent Reviewer, following its receipt of a completion report from the Contractor under clause 29.3(f) and any representation and submission under clause 29.3(g), does not believe (acting reasonably) that the Works Completion Tests have been satisfied (disregarding any Snagging Defects) such that there is an outstanding issue (**Outstanding Issue**), the Independent Reviewer:
  - (i) must, within eight Business Days after receiving any report under clause 29.3(f):
    - (A) notify the Contractor and the Department of any such Outstanding Issue (giving reasons); and

- (B) consult with the Contractor and the Department in relation to the nature of each Outstanding Issue and the steps (including additional works) that it considers reasonably necessary to address the Outstanding Issue to enable the Works to satisfy the applicable Works Completion Test; and
- (ii) may, within two Business Days following the consultation referred to in clause 29.3(h)(i) above, request that the Contractor repeat any failed steps and/or conduct any additional tests as the Independent Reviewer reasonably considers to be necessary to establish that any previously failed Works Completion Tests have been passed, provided that any such tests are consistent with the purpose and intent of the relevant Works Completion Test. The Contractor will promptly repeat any such failed steps and conduct any such additional tests, provided that either the Contractor or the Department may refer any dispute relating to the imposition, substance or form of additional tests under this clause 29.3(h) to the Accelerated Dispute Resolution Procedure in accordance with Part 22 (Dispute Resolution).
- (i) If the Independent Reviewer determines that the results of the repeated steps undertaken by, or the additional tests conducted by, the Contractor establish that:
  - (i) the Works Completion Tests (in respect of the relevant part of the Works being tested) have been satisfied, such that the Works (or the relevant part of the Works being tested) are Fit for the Intended Purposes (irrespective of any Snagging Defects) as at Works Completion, then clause 29.3(j) will apply; or
  - (ii) the Works Completion Tests have **not** been satisfied, such that the Works are **not** Fit for the Intended Purposes, then the Contractor will thereupon subject the Works (or the relevant part of the Works being tested) to the Works Completion Tests once again pursuant to the processes described in clauses 29.3(a) to 29.3(h) above.
- (j) The Independent Reviewer will be required to issue to the Contractor and the Department:
  - (i) within 10 Business Days after receiving any report under clause 29.3(f), where the Independent Reviewer does not believe (acting reasonably) that there are any Outstanding Issues;
  - (ii) within one Business Day following the consultation referred to in clause 29.3(h)(i), where, as a result of such consultation, the Independent Reviewer does not request any failed steps or tests to be repeated; or
  - (iii) within one Business Day after determining (acting reasonably) that the results of the repeated steps or tests establish that all the Works Completion Tests have been satisfied,

a Works Completion Certificate in relation to the Works stating that, in the reasonable opinion of the Independent Reviewer, the Contractor has satisfactorily completed the relevant Works Completion Tests for Works Completion in respect of the Works as a whole, such that the Acceptance Criteria for Works Completion have been met and the Works are Fit for the Intended Purpose as at Works Completion, subject to the existence of Defects that the Independent Reviewer, acting reasonably, considers are Snagging Defects.
- (k) The Works Completion Certificate must:
  - (i) include particulars of the date on which Works Completion has been achieved; and

- (ii) include or attach, where Snagging Defects exist, a full list of those Snagging Defects including reasonable particulars of the same.
- (l) If the Works Completion Certificate is expressed to be subject to Snagging Defects:
  - (i) the Contractor shall make good such Snagging Defects prior to Operational Completion to the satisfaction of the Independent Reviewer (acting reasonably) provided that in the event that the Contractor fails to make good any such Snagging Defect to the satisfaction of the Independent Reviewer (acting reasonably) within this period, the Department's sole remedy in respect of such failure is set out in clause 29.3(l)(ii) below;
  - (ii) if the Contractor fails to complete such work prior to Operational Completion to the satisfaction of the Independent Reviewer (acting reasonably), the Department may (at its option):
    - (A) no earlier than 31 days after Operational Completion, arrange for such work to be completed by others to a standard reasonably necessarily consistent with the intent and purpose of the Works Requirements and the Contractor shall pay the Department for the cost of such work (either as a debt due and payable or by way of set off as Moneys Owing against the next Monthly Unitary Payment). The completion of any such work by a third party shall not relieve the Contractor of any of its obligations under this Agreement; or
    - (B) for each day following the day 31 days after Operational Completion on which the Contractor has failed to remedy all such Snagging Defects to the satisfaction of the Independent Reviewer (acting reasonably), recover from the Contractor as Moneys Owing:
      - (I) \$1,500 for each day from (and including) the day 31 days after Operational Completion until (but excluding) the day 93 days after Operational Completion; and
      - (II) \$3,000 for each day from (and including) the date 93 days after Operational Completion until (but excluding) the date on which all such Snagging Defects are remedied to the satisfaction of the Independent Reviewer (acting reasonably).
- (m) The Department acknowledges and agrees that where the Works pass the Works Completion Tests, the Works shall be deemed to be Fit for the Intended Purpose as at Works Completion.
- (n) The issue by the Independent Reviewer of the Works Completion Certificate and the issue by the Department of any notice under clause 29.3(g) as applicable) are solely for the purposes of enabling the Contractor to conclude Works Completion (or the relevant part of Works Completion) and confirming that the Works (or the relevant parts of the Works) are Fit for the Intended Purpose as at Works Completion, but do not:
  - (i) constitute evidence or otherwise imply that the Works (or the relevant parts of the Works) are Fit for the Intended Purpose as at any date other than Works Completion;
  - (ii) constitute an approval by the Department of Completion of the Works or the relevant part of the Works that have been tested in accordance with clause 25.1 (Works Provisioning generally) or evidence that all or any other obligations under this Agreement in respect of those Works have been satisfied;



- (iii) provide the Contractor with any grounds for relief from any of its obligations under this Agreement; or
- (iv) limit or affect any of the Department's rights, nor the Contractor's liability, whether under this Agreement or otherwise at Law and whether before or after Works Completion.

## 29.4 Operational Completion

- (a) The main objective of Operational Completion is to ensure that the Contractor is ready and able to commence the provision of the Operational Services with effect from the Service Commencement Date.
- (b) The Operational Completion Tests must be conducted in accordance with:
  - (i) the Operational Completion Plan; and
  - (ii) the requirements of Schedule 27 (Completion Tests) that relate to Operational Completion,

to determine whether the Acceptance Criteria for Operational Completion have been met.
- (c) The Operational Completion Tests, the sequences of their implementation, and the involvement in, and responsibilities of, the Contractor to assist in Operational Completion are set out in Schedule 27 (Completion Tests) and the Operational Completion Plan.
- (d) The Contractor must give the Department not less than five Business Days' prior written notice if the day or days on which it proposes to conduct each Operational Completion Test differs from that set out in the then-applicable Operational Completion Programme. The parties acknowledge and agree that there is no requirement for all the Operational Completion Tests to be undertaken on the same day.
- (e) The Department must attend and observe the Operational Completion Tests (except for those Operational Completion Tests to be assessed and confirmed by way of documentation evaluation in accordance with Schedule 6 (Review Procedures)) at the times proposed by the Contractor in accordance with the then-current Operational Completion Programme (and any repeated tests, subject to not less than two Business Days' prior written notice unless otherwise agreed between the parties in accordance with this clause 29.4(e)), which notice must set out reasonable particulars of how the Contractor intends to remedy the issues that resulted in the test needing to be repeated). In respect of any Operational Completion Test comprising a physical demonstration or role-playing of a scenario, the Department shall notify the Contractor on the day of such test if it is not passed and in such circumstances, both parties shall use their reasonable endeavours to re-schedule such Operational Completion Test on the next Business Day.
- (f) The Department must ensure that its representatives attending, observing, conducting and/or assessing the Operational Completion Tests:
  - (i) are suitably qualified to assess whether the Contractor has passed or failed the applicable Operational Completion Tests set out in Schedule 27 (Completion Tests);
  - (ii) accept that the Operational Completion Tests are to be conducted and assessed against the procedures and requirements set out in the relevant Operative Documents (and that the Operational Completion Tests are not to be

utilised to change any such procedures and requirements as a condition of issuing an Operational Completion Certificate or to change any Design Requirements); and

- (iii) are authorised to make binding decisions as to whether such tests have been passed or failed on behalf of the Department.
- (g) The Contractor may, where entitled to do so under clause 29.4(h), request that the Department issue the Operational Completion Notice. Such request will:
  - (i) contain a report:
    - (A) confirming that the Operational Completion Tests have been passed (irrespective of any Snagging Defects); and
    - (B) otherwise meeting the requirements for that report set out in the Operational Completion Plan; and
  - (ii) specify the proposed Service Commencement Date, which must be a date:
    - (A) no earlier than the First Service Commencement Date and no later than the Last Date for Service Commencement unless otherwise agreed in writing by the Department; and
    - (B) no earlier than seven Business Days after the date on which the Contractor issues its request under this clause 29.4(g);
- (h) The Contractor shall only be entitled to request that the Department issue the Operational Completion Notice under clause 29.4(g) if:
  - (i) all the Operational Completion Tests have been passed (irrespective of any Snagging Defects); and
  - (ii) without prejudice to the Contractor's obligation to remediate Contamination pursuant to clause 24.3 (Contamination), any Migrating Contamination on the Department Site that has not been fully remediated in accordance with clause 24.3 (Contamination) has been properly managed, confined and/or treated, so that, following Service Commencement, such Migrating Contamination would not prevent the Prison from functioning nor constitute a health and safety hazard to Prisoners.
- (i) The Department will (acting reasonably) as soon as possible after, but in any event within five Business Days of receiving the request under clause 29.4(g), issue to the Contractor either:
  - (i) an Operational Completion Notice, provided that the Department is satisfied, acting reasonably and in accordance with this clause 29.4, that the requirements of clause 29.4(h) have been met:
    - (A) stating that Operational Completion has been achieved (irrespective of any Snagging Defects); and
    - (B) confirming the Service Commencement Date (which, where this clause 29.4(i)(i) applies, must be the date nominated by the Contractor under clause 29.4(g)); or
  - (ii) in any other case, a notice requesting the Contractor to re-perform those Operational Completion Tests that have not been met to its satisfaction (acting

reasonably and in accordance with this clause 29.4) and to submit an updated report on the Operational Completion Tests thereafter.

- (j) The Contractor will conduct the tests that the Department has requested to be undertaken pursuant to clause 29.4(i)(ii). If the Department (acting reasonably and following consultation with the Contractor) determines within two Business Days of receipt of an updated report on the Operational Completion Tests, that the results of those re-run tests establish that:
  - (i) the requirements of clause 29.4(h) have been met (without further work being undertaken), then the Department will pay the reasonable costs of the Contractor (if applicable) in conducting those additional tests and issue the Operational Completion Notice; or
  - (ii) the requirements of clause 29.4(h) have **not** been met:
    - (A) the Contractor will pay the Department the reasonable costs of the Department in relation to the conduct of those re-run tests; and
    - (B) the testing of Operational Completion, in respect of the tests that have not been met to the Department's satisfaction (acting reasonably and in accordance with this clause 29.4(j)), will begin again (subject to the Department's right (in its entire discretion) to waive any of the Operational Completion Tests being further re-run).
- (k) Either party may refer a Dispute under clause 29.4(j) for resolution under the Accelerated Dispute Resolution Procedures.
- (l) The issue of a notice by the Department under clause 29.4(i) or 29.4(j)(i) does not:
  - (i) evidence that all or any other obligations of the Contractor under this Agreement have been satisfied;
  - (ii) provide the Contractor with any grounds for relief from any of its obligations under this Agreement; or
  - (iii) limit or affect any of the Department's rights, nor the Contractor's liability, whether under the Agreement or otherwise at Law and whether before or after Operational Completion.

## **30. Service Commencement and Full Service Date**

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### **30.1 Available Prisoner Places**

- (a) On and from the Service Commencement Date, and each subsequent date listed or identified in the first column of the Ramp-Up Plan, the Contractor shall provide to the Department the number of Available Prisoner Places shown in the corresponding row of the second column of the Ramp-Up Plan.
- (b) Subject to the terms of this Agreement, the Contractor shall, at all times on and from the Full Service Date, provide to the Department 960 Available Prisoner Places.

### **30.2 Ramp-Up and Available Prisoner Places**

The Contractor shall be entitled to payment for each of the 960 Available Prisoner Places from the Service Commencement Date.

## Part 10 – Operational Services

### 31. Corrections Services

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#### 31.1 General

- (a) With effect from the Service Commencement Date the Contractor must carry out the Corrections Services:
  - (i) in accordance with Schedule 14 (Corrections Services Requirements);
  - (ii) in accordance with Good Industry Practice to the extent that such standard imposes more stringent or additional standards to those imposed under clause 31.1(a)(i);
  - (iii) in accordance with all relevant Laws; and
  - (iv) otherwise in accordance with the terms of this Agreement.
- (b) If there is any inconsistency between the Corrections Services Documentation and Schedule 14 (Corrections Services Requirements), the provisions of Schedule 14 shall prevail.

#### 31.2 Applicable Laws

- (a) The Contractor must:
  - (i) ensure that the Operational Services (including the procurement and supply of any items or materials procured for the provision of the Operational Services) are provided by it, its Major Sub-contractors and its Contractor Personnel in compliance with all Laws, including:
    - (A) the requirements of the Corrections Act and the Corrections Regulations, in so far as those requirements are applicable to Contract Prisons or the Services;
    - (B) the requirements of the New Zealand Bill of Rights Act 1990, as if the Prison were a prison managed by the Department and the Contractor and Contractor Personnel were employees of the Chief Executive;
    - (C) the requirements of the Public Records Act, as if the Contractor were part of the Department and the records relating to the Prison and to Prisoners in the Prison were records created or received by the Department;
    - (D) all Mandatory International Prison Standards; and
    - (E) the requirements of sections 56(1) and (2) and 58(3) of the State Sector Act 1988 (which relate to personnel and equal opportunity policies), as if the Contractor was the chief executive of a department within the meaning of that Act and as if those requirements applied, not only in respect of employees of the Contractor, but in respect of all Staff Members of a Contract Prison;
  - (ii) ensure that, where any Law requires that a right or entitlement be granted to a Prisoner, the Contractor grants the right or entitlement to the Prisoner, unless the Law expressly makes another person responsible for granting that right or

entitlement or the granting of the right or entitlement is beyond the Contractor's reasonable control; and

- (iii) not, by any act or omission, cause the Department or the Chief Executive to breach any Law.
- (b) Clause 31.2(a) is not to be read as limiting any other provision in this Agreement relating to compliance with any specific Laws.
- (c) The Contractor must avoid any conflicts of interest that might arise in relation to the exercise or performance by the Contractor of any Contractor Personnel of any power, duty or function conferred or imposed by or under this Agreement, or by or under the Corrections Act or any other Law.
- (d) If, after the Execution Date, the parties agree that there were relevant international obligations and standards in relation to the management and/or operation of the Prison that were in force as at and following the Execution Date but were not included in the list of Mandatory International Prison Standards as at the Execution Date (**additional obligations**):
  - (i) the Contractor will be bound to comply with such additional obligations; and
  - (ii) the additional obligations will be deemed to comprise a Specific Change in Law and the provisions of clause 52 (Change in Law) shall apply in respect of such additional obligations.
- (e) If, after the Execution Date, either party becomes aware of an international obligation or standard in relation to the management and/or operation of a New Zealand prison, that comprises or may reasonably be expected to comprise a Mandatory International Prison Standard, it will notify the other party of the same as soon as reasonably practicable and the terms of clause 52 (Change in Law) shall apply to such obligation or standard.

## **32. Maintenance of Corrections Services Documentation**

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### **32.1 Operative Documents generally**

- (a) Each update of the Corrections Services Documentation is to be submitted for review under the Review Procedures:
  - (i) within the timeframes specified for the updating of that documentation as set out in Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents); or
  - (ii) as and when reasonably required by the Department.
- (b) The Operative Documents and each update of the same:
  - (i) must describe the policies, procedures, work practices, liaison procedures and other operational matters in respect of the delivery of the Corrections Services; and
  - (ii) must include:
    - (A) all of the operating procedures;
    - (B) the communication protocols and procedures; and

- (C) such other information as is required to be included in the Policy and Procedures Manual as set out in Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents).
- (c) The Contractor must seek approval from the Department for all new working practices, or working practices that have changed from those already agreed with the Department, before any such new or revised working practices are implemented.

## **32.2 Policy and Procedures Manual**

- (a) Each update of the Policy and Procedures Manual is to be submitted for review under the Review Procedures:
  - (i) within the timeframes specified for the updating of that documentation as set out in Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents); or
  - (ii) as and when reasonably required by the Department.
- (b) The Policy and Procedures Manual and each update of the same must include:
  - (i) a description of the policies, procedures, work practices, liaison procedures and other operational matters in respect of the delivery of the Operational Services;
  - (ii) procedures for information management;
  - (iii) a programme that sets out the manner in which the Contractor will monitor its own performance in its delivery of the Operational Services;
  - (iv) the following sub-programmes:
    - (A) the Emergency Procedures and Business Continuity Manual;
    - (B) the Security Management Plan;
    - (C) the Risk Management Plan;
    - (D) the Operational Quality Assurance Plan;
    - (E) the Operational Health and Safety Plan;
    - (F) the Environmental Plan;
    - (G) the Facility Management Procedures;
    - (H) the Operational Fire Management Plan;
    - (I) the Site Access and Interface Protocols; and
    - (J) the Emergency Management Plan, the Traffic Assessment Survey Plan, the Travel Demand Management Plan and the Community Safety Management Plan (as required pursuant to the Designation); and
  - (v) information relating to the monitoring of the Facility Management Services by the Contractor.

The Contractor must seek approval from the Department for all new working practices, or working practices that have changed from those already agreed with the Department before any such new or revised working practices are implemented.

## **33. Facility Management Services**

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### **33.1 General**

- (a) With effect from the Service Commencement Date, the Contractor must carry out the Facility Management Services:
  - (i) in accordance with:
    - (A) Schedule 12 (Facility Management Requirements);
    - (B) the Asset Management Plan;
    - (C) the Facility Management Procedures; and
    - (D) the Policy and Procedures Manual,so as to ensure that the Facility is and remains Fit for the Intended Purposes to the extent that such standard imposes more stringent or additional standards to those imposed under this clause 33.1(a)(i);
  - (ii) in accordance with Good Industry Practice to the extent that such standard imposes more stringent or additional standards to those imposed under clause 33.1(a)(i);
  - (iii) in a manner that facilitates and does not impair the safe, effective and efficient provision of the Corrections Services;
  - (iv) in accordance with all relevant Laws; and
  - (v) otherwise in accordance with the terms of this Agreement.
- (b) If there is any inconsistency between the Asset Management Plan, the Facility Management Procedures, the Policy and Procedures Manual and Schedule 14 (Corrections Services Requirements), the provisions of Schedule 14 shall prevail.

### **33.2 Co-ordination**

Except as expressly provided to the contrary in this Agreement:

- (a) the performance by the Contractor of the Facility Management Services will not limit or affect the Contractor's obligations to provide the Corrections Services in accordance with this Agreement; and
- (b) the Contractor must:
  - (i) perform the Facility Management Services in accordance with the terms of this Agreement and in a manner that minimises disruption to the Corrections Services; and
  - (ii) take all steps which are necessary or otherwise reasonably required by the Department, when carrying out the Facility Management Services and

establishing or updating the Facility Management Documentation, to minimise disruption or inconvenience to the Department, taking into account, where required by the Department, seasonal demand for prisoner places across its portfolio of prisons.

### **33.3 Materials**

- (a) Only new materials may be used in the provision of the Facility Management Services, unless:
  - (i) specified in, or expressly permitted by, the Facility Management Requirements; or
  - (ii) the Department otherwise agrees in writing.
- (b) All materials used or included in the provision of the Facility Management Services must have a design life equal to or greater than the items being repaired or replaced, must not materially increase any operating or maintenance costs or any costs payable by the Department and must be fit and proper for their intended use and purpose and selected in accordance with Good Industry Practice.

### **33.4 Utilities**

- (a) The Contractor must from the Service Commencement Date for the Facility ensure a continuous supply of all Utility Services to, within or from the Facility in order to meet the Facility Management Requirements and Corrections Services Requirements.
- (b) The Contractor must manage and maintain all Utility Services to meet the requirements of clause 33.4(a), including:
  - (i) securing and maintaining connections to all Utility Services of adequate capacity to supply the requirements of the Facility under all anticipated operating conditions;
  - (ii) ensuring the specifications with respect to supply of Utility Services are consistent with the requirements of the operations of the Facility;
  - (iii) liaising with Utility Service Providers to optimise the reliability of supply; and
  - (iv) identifying and implementing means to minimise the extent and duration of any disruption to the Services by:
    - (A) the preparation and maintenance of contingency plans which may be reviewed by the Department under the Review Procedures on an annual basis; and
    - (B) the establishment and maintenance of standby Utility Service supplies to cater for those eventualities where Utility Service Provider connections are unable to meet the demand placed on them.

## **34. Maintenance of Facility Management Services Documentation**

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### **34.1 Operative Documents generally**

Each update of the Facility Management Services Documentation is to be submitted for review under the Review Procedures:



- (a) within the timeframes specified for the updating of that documentation as set out in Part 2 (Facility Management Services Documentation) of Schedule 5 (Operative Documents); or
- (b) as and when reasonably required by the Department.

## **34.2 Asset Register**

- (a) The Contractor must prepare and maintain an Asset Register in respect of the Works (including all plant and equipment that is being used in connection with or as part of the Works) in accordance with Part 2 (Facility Management Services Documentation) of Schedule 5 (Operative Documents) and this clause 34.2.
- (b) The Asset Register must be submitted to the Department at least 30 Business Days prior to the end of each Contract Year and otherwise as reasonably requested by the Department.

## **34.3 Asset Management Plan**

The Asset Management Plan and all updates to the same, must include:

- (a) the asset management framework including purpose, management responsibilities, process details, systems and change management;
- (b) detailed information on the assets that support service delivery including key issues and strategies, condition, performance, criticality, capacity and value in accordance with IFRS16;
- (c) a whole of life asset management approach to assets, including:
  - (i) details of current and predicted future asset condition; and
  - (ii) an analysis of asset life cycles, including details of any changes from the previous plan (extended or reduced life) and the reasons for those changes;
- (d) risk management and business continuity for the Facility and the Works Infrastructure;
- (e) the Lifecycle Maintenance Plan;
- (f) the Valuation Schedules;
- (g) the master maintenance plan;
- (h) the service delivery matrix, including:
  - (i) service areas and service levels;
  - (ii) quality standards;
  - (iii) performance measures;
  - (iv) management and maintenance strategies;
  - (v) building names; and
  - (vi) list of reports;

- (i) the Hand Back Requirements; and
- (j) a Semi-Annual Work Plan together with an analysis of historical and predicted future breakdown maintenance (as relevant).

### 34.4 Semi-Annual Work Plan

Each Semi-Annual Work Plan must contain details of:

- (a) the proposed start and end dates for each period of planned maintenance for different parts of the Works;
- (b) the planned maintenance to be carried out and the proposed hours in which such planned maintenance is to be carried out, together with particulars of its nature, scope and location;
- (c) the planned replacement programme for the Works;
- (d) all scheduling for the planned maintenance and for the planned replacement programme; and
- (e) any anticipated effect of the planned maintenance or planned replacement programme on the delivery of any of the Corrections Services.

## 35. Maintenance of Works

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### 35.1 Scheduled Maintenance

From the Service Commencement Date, the Contractor must carry out scheduled maintenance by implementing those parts of the Asset Management Plan and the Policy and Procedures Manual concerned with scheduled maintenance in accordance with Schedule 12 (Facility Management Requirements) and otherwise in accordance with the terms of this Agreement (**Scheduled Maintenance**).

### 35.2 Acceleration or deferral of Scheduled Maintenance

- (a) The Department may, at any time, require the Contractor to accelerate or defer any Scheduled Maintenance (excluding any lifecycle replacement of any individual assets in accordance with the Asset Management Plan or any mandatory maintenance or safety checks) by giving (unless otherwise agreed) not less than six months' written notice to the Contractor, which notice shall set out the time and/or periods at or during which the Department requires the Scheduled Maintenance to be performed. The Contractor shall, within one month, notify the Department of the amount of any additional reasonable costs which it will incur as a direct consequence of such acceleration or deferment (the **Estimated Increased Maintenance Costs**).
- (b) The Department shall, within a further period of one month, at its option, either confirm or withdraw its request to accelerate or defer the Scheduled Maintenance. The Department shall reimburse the Contractor the direct and reasonable costs actually incurred by the Contractor as a consequence of such acceleration or deferment up to, but not exceeding, the amount of the Estimated Increased Maintenance Costs.
- (c) Where Scheduled Maintenance to be carried out has been deferred by the Department, the Contractor shall not be treated as having failed to perform the Operational Services on account of the condition of the Works or any part of the Works but:

- (i) only from the time the planned maintenance or the planned replacement programme was scheduled to have been completed until the time the deferred planned maintenance or the planned replacement programme was scheduled to have been completed; and
  - (ii) not before or afterwards.
- (d) If the Contractor believes on reasonable grounds that a Department request to defer Scheduled Maintenance would breach any applicable Laws or would result in the Contractor being unable to meet its obligations under clause 22.2(a)(xix), the Contractor may, within 15 Business Days of receiving the deferral request from the Department, provide the Department with notice to this effect (including reasonable particulars of the issue identified). If the Contractor provides the Department with a notice under this paragraph, it will not be required to defer any Scheduled Maintenance to the extent that such deferral would breach any applicable Laws or would result in the Contractor being unable to meet its obligations under clause 22.2(a)(xix), unless the parties agree otherwise. Any notice provided by the Contractor under this clause may be referred for resolution under the Accelerated Dispute Resolution Procedures.

### **35.3 Unscheduled repairs or rectification works**

- (a) The Contractor must undertake all such unscheduled repairs or rectification works in accordance with the Asset Management Plan and Schedule 12 (Facility Management Requirements).
- (b) The Contractor will advise the Department through the monthly Operational Service reports of all unscheduled repairs or rectification works that have been undertaken in that month.
- (c) The Contractor will not be entitled to any additional payment from the Department for unscheduled repairs or rectification works undertaken under this clause 35.3.

## **36. Asset Condition Survey**

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### **36.1 Asset Condition Survey**

The Department shall be entitled to carry out Asset Condition Surveys, or to procure the carrying out of Asset Condition Surveys by an independent expert, to assess whether the Works have been and are being maintained and replaced by the Contractor in accordance with:

- (a) the Asset Condition Spreadsheet;
- (b) the Asset Management Plan; and
- (c) its other obligations under this Agreement.

The Department may not exercise this right more than once every five years.

### **36.2 Notification**

The Department shall consult with and then notify the Contractor in writing a minimum of 10 Business Days in advance of the date it wishes to carry out or procure the carrying out of the each Asset Condition Survey.

### **36.3 Parties' obligations**

Where the Department carries out or procures the carrying out of an Asset Condition Survey, the Department shall use reasonable endeavours to minimise any disruption caused to the provision of the Operational Services by the Contractor. The Contractor shall afford the Department or any person carrying out the survey any reasonable assistance required by the Department during the carrying out of the Asset Condition Survey (free of charge).

### **36.4 Results of Asset Condition Survey**

If any Asset Condition Survey shows that the Contractor has not complied with or is not complying with any of its other obligations under the Asset Management Plan or this Agreement for the maintenance of the Facility to the Required Standard, then the Department will:

- (a) notify the Contractor of the rectification and/or maintenance work that is required to ensure that the Works are brought up to the Required Standard;
- (b) specify a reasonable period within which the Contractor must carry out such rectification and/or maintenance work; and
- (c) recover the cost of the applicable Asset Condition Survey from the Contractor by means of a deduction from the next payment of the Monthly Unitary Charge.

### **36.5 Contractor must perform Outstanding Work**

The Contractor shall carry out such Outstanding Work notified pursuant to clause 36.4 in order to reach the Required Standard within the period specified and any costs it incurs in carrying out the Outstanding Work shall be at its own expense.

### **36.6 Failure to undertake Outstanding Work**

If the Contractor fails to complete such Outstanding Work in order to reach the Required Standard within the period specified, the Department shall be entitled to undertake, or to procure the undertaking of, such Outstanding Work and to recover all costs incurred by it (including administration costs) in doing so from the Contractor by means of a deduction from the next payment or payments of the Monthly Unitary Charge.

## **Part 11 - Innovation**

### **37. Innovation**

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#### **37.1 Continuous Innovation**

Without prejudice to the potential application of Part 13 (Changes) the Contractor will, during the Contract Term, continually plan and cater for the evolution of and improvement to the Operational Services and the Department's broader strategies and operations (as they relate to the corrections sector in New Zealand) and seek to improve its performance as measured against the Key Performance Indicators.

#### **37.2 Improvements**

The Contractor acknowledges that it is necessary for the Department to be kept up to date with:

- (a) improvements, developments and changes in technology, processes, practices, international standards, interfaces and methodologies;
- (b) any changes in the Contractor's technology strategies and policies; and
- (c) opportunities with third parties,

to the extent that any of the same could comprise Innovation to any material extent; and

- (d) any other material opportunities for Innovation of which the Contractor becomes aware.

#### **37.3 Regular reporting and consultation**

- (a) By no later than each anniversary of Financial Close falling within every Contract Year, the Contractor will provide the Department with a written report detailing opportunities for Innovation, which must include:
  - (i) the matters referred to in clause 37.2 and any other relevant matters having regard to clause 37.1; and
  - (ii) the matters referred to in paragraph 2.1 of Schedule 18 (Innovation Outside the Project) and any other relevant matters having regard to clause 37.1 and Schedule 18 (Innovation Outside the Project).
- (b) The provisions of Schedule 18 (Innovation Outside the Project) and, where applicable, Part 13 (Changes), shall apply to any identified Innovation.

#### **37.4 Availability of Innovation**

In addition to its obligations under clause 37.3, the Contractor will notify the Department of any material Innovation either before or at the time that such Innovation is provided or made available by the Major Sub-contractor responsible for the Corrections Services to contract counterparties of its parent company provided that the provision of such Innovation does not cause any person to be in breach of any confidentiality or other contractual requirement with any person other than a related company of the Major Sub-contractor responsible for the Corrections Services or the relevant legal and statutory restrictions in the relevant jurisdiction.

## Part 12 – Events

### 38. Application

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- (a) Clause 39 (Extension Events) applies from the date of Financial Close until (but excluding) the Service Commencement Date.
- (b) Clause 40 (Intervening Events) applies on and from the Service Commencement Date until the Expiry Date or the Actual Termination Date (as applicable).
- (c) Clause 41 (Uninsurable Events) applies only to Uninsurable Events.

### 39. Extension Events

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#### 39.1 Application for relief

Without prejudice to its obligations under clause 42.4 (Duty to mitigate), if, and to the extent that, an Event is the direct cause of any failure or likely failure without the Contractor taking action as a result of such Event to ensure that the Service Commencement Date would occur on or before the Relevant Service Commencement Date, then the Contractor may apply to the Department for relief from the consequences of failing to comply with certain terms of this Agreement. Such relief is limited to that specified in clause 39.3.

#### 39.2 Notices

The Contractor must:

- (a) as soon as practicable, and in any event within 15 Business Days after it became aware that the Event is likely to:
  - (i) adversely affect the ability of the Contractor to ensure that Operational Completion occurs on or before the Relevant Service Commencement Date ; and/or
  - (ii) in the case of a Compensation Extension Event only, result in costs or revenue losses being incurred by the Contractor as a direct result,

provide the Department and the Independent Reviewer with a notice of delay under clause 25.8 (Delays), which notice must also include an express statement that the Contractor is claiming relief under this clause 39, the basis on which such relief is being claimed and, in the case of a Compensation Extension Event only, the estimated Change in Costs claimed;

- (b) within 20 Business Days after it became aware that the Event is likely to adversely affect the ability of the Contractor to ensure that Operational Completion occurs on or before the Relevant Service Commencement Date, demonstrate to the reasonable satisfaction of the Independent Reviewer (where any such Event occurs prior to Works Completion or relates to or involves the reinstatement or remediation of physical damage to the Works) or the Department (in all other circumstances) that:
  - (i) the event or events on which relief is being claimed is an Extension Event;
  - (ii) the Event has directly caused or is likely to directly cause failure by the Contractor to ensure that Operational Completion occurs on or before the Relevant Service Commencement Date ;

- (iii) to the extent of the relief sought, the loss of time could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice; and
- (iv) to the extent of the relief sought, the Contractor is using best endeavours to perform its obligations under the Agreement; and
- (c) notify the Department and, where applicable, the Independent Reviewer if at any time the Contractor becomes aware of any additional information relating to the Event or its consequences that is new or that renders information previously provided inaccurate or misleading.

### **39.3 Relief available**

If the Contractor has complied with its obligations under clause 39.2, then subject to clause 42 (General Provisions Relating to Events):

- (a) the period in which the Contractor is obliged to perform its obligations in order to ensure that Operational Completion occurs on or before the Relevant Service Commencement Date shall be extended (and each of the First Service Commencement Date, the Planned Service Commencement Date and the Last Date for Service Commencement that have not passed at that time shall be correspondingly postponed) by such time as the Independent Reviewer (where any such Event occurs prior to Works Completion or relates to or involves the reinstatement or remediation of physical damage to the Works) or the Department (in all other circumstances) shall consider to be reasonable to account for such Extension Event:

- (i) taking into account the likely effect of the delay; but
- (ii) disregarding any period in which the delay could have been reasonably expected to have been avoided or mitigated by acting in accordance with Good Industry Practice,

and the Independent Reviewer and/or the Department (as applicable) shall notify the Contractor of the determination made in relation to the appropriate relief as soon as reasonably practicable;

- (b) where:

- (i) the First Service Commencement Date is postponed under paragraph (a) above, the Planned Service Commencement Date and the Last Date for Service Commencement will be postponed by the same number of days by which the First Service Commencement Date is postponed; and
- (ii) the Planned Service Commencement Date is postponed under paragraph (a) above, the Last Date for Service Commencement will be postponed by the same number of days by which the Planned Service Commencement Date is postponed;

- (c) in the case of a Compensation Extension Event only, the Department shall compensate the Contractor for the Change in Costs incurred by the Contractor (supported by such information as shall be reasonably required by the Department) by way of an Additional Payment pursuant and subject to clause 53.2 (Report and invoice); and
- (d) as an alternative to the extension of the Relevant Service Commencement Date under clause 39.3(a) above, the Department may request that the Contractor prices the Change in Costs required to enable the Contractor to meet the then current Relevant Service Commencement Date (or, where that is not reasonably practicable,

a revised Relevant Service Commencement Date that is subject to a reduced extension), on an Open Book Basis, despite the occurrence of the relevant Event. Following receipt of the relevant information the Department will elect at its discretion to either extend the Relevant Service Commencement Date in accordance with clause 39.3(a) above, or to require the Contractor to undertake the relevant works required in accordance with its proposal provided to the Department. If the Department elects to proceed with the Contractor's proposal it will meet the Change in Costs specified in the agreed proposal as an Additional Payment to the Contractor and no extension (or, where specified in the agreed proposal, a reduced extension) to the Relevant Service Commencement Date will be granted.

## **39.4 Disputes**

If the parties cannot agree:

- (a) the extent of any compensation or delay incurred or the period of any suspension; or
- (b) that an Extension Event, a Compensation Extension Event or an Uninsurable Event has occurred; or
- (c) that the Contractor is entitled to any extension, compensation or other relief under this clause 39,

the parties shall resolve the matter in accordance with the Accelerated Dispute Resolution Procedures.

## **40. Intervening Events**

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### **40.1 Application for relief**

If, and to the extent that, an Event is the direct cause of any failure or likely failure on the part of the Contractor to comply with its obligations under the Project Documents on and from the Service Commencement Date, then the Contractor may apply to the Department for relief from the consequences of failing to comply with certain terms of this Agreement. Such relief is limited to that specified in clause 40.3.

### **40.2 Notices**

The Contractor must:

- (a) as soon as practicable, and in any event within 15 Business Days after it became aware that the Event is likely:
  - (i) to adversely affect the ability of the Contractor to comply with its obligations under the Project Documents; and/or
  - (ii) in the case of a Compensation Intervening Event only, to result in costs or revenue losses being incurred by the Contractor as a direct result of that event,

provide the Department with written notice of the same, which notice must also include an express statement that the Contractor is claiming relief under this clause 40, the basis on which such relief is being claimed and, in the case of a Compensation Intervening Event only, the estimated costs or revenue losses to be incurred as a direct result;



- (b) within 20 Business Days after it became aware that the Event is likely to adversely affect the ability of the Contractor to comply with its obligations under this Agreement, demonstrate to the reasonable satisfaction of the Department that:
  - (i) the event or events on which relief is being claimed is an Intervening Event;
  - (ii) the Event has directly caused or is likely to directly cause failure by the Contractor to comply with its obligations under this Agreement, and the period of time for which this failure is likely to subsist;
  - (iii) to the extent of the relief sought, the failure or likely failure could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice; and
  - (iv) to the extent of the relief sought, the Contractor is using its best endeavours to prevent or to minimise the impact of the Event on its performance of its obligations under Project Documents (including by putting in place temporary measures reasonably acceptable to the Department to enable the Contractor to deliver the Operational Services in accordance with the Department's Requirements as far as that is reasonably practical at the relevant time); and
- (c) notify the Department if at any time the Contractor becomes aware of any additional information relating to the Event or its consequences that is new or that renders information previously provided inaccurate or misleading.

### 40.3 Relief available

If the Contractor has complied with its obligations under clause 40.2 and subject to clause 42 (General Provisions Relating to Events):

- (a) to the extent that the Event prevents the Contractor from providing Operational Services in accordance with the Department's Requirements or rectifying a failure to provide a service in accordance with this Agreement within the rectification period (if any) applicable under this Agreement or otherwise complying with its obligations, the obligation to do so will be suspended, but only from the time of the Event until the time at which the Event or the consequences of the Event cease to prevent performance of that obligation (the **period of suspension**);
- (b) notwithstanding that Operational Services affected by the Event are suspended or are being provided by the Department, the Department will continue to pay the Unitary Charge in respect of any Operational Services affected by the Event for the period of suspension after deducting:
  - (i) amounts representing those recurrent costs of the Contractor which are not in fact incurred by the Contractor during the period, because the obligation to provide those Operational Services has been suspended or those Operational Services are being provided by the Department; and
  - (ii) to the extent that the Event or the risk giving rise to the Event is or is required to be insured against under this Agreement, the amounts of such insurances that are paid or would have been payable had the Contractor complied fully with its obligations; and
- (c) during the period of suspension, the failure to perform the obligations of the Contractor which are so suspended will not be a breach of this Agreement by the Contractor.

#### **40.4 Rectification of damage**

- (a) The Contractor must rectify any damage which is consequent on the occurrence of any Event so that the Operational Services can be provided in accordance with this Agreement.
- (b) If the Event is a Compensation Intervening Event, the Department will pay any Change in Costs of the Contractor, in each case arising as a direct result of the Compensation Intervening Event, provided that:
  - (i) the Contractor has complied, and continues to comply, with clause 40.2(b)(iv), including by minimising the impact of the Event on its costs resulting from the Event; and
  - (ii) such payment will be made only to the extent such additional costs are not met (or would not have been met had the Contractor fully complied with its obligations) by the Required Insurances.

#### **40.5 Disputes**

If the parties cannot agree:

- (a) the extent of any compensation or delay incurred or the period of any suspension;
- (b) that an Intervening Event, a Compensation Intervening Event or an Uninsurable Event has occurred; or
- (c) that the Contractor is entitled to any extension, compensation or other relief under this clause 40,

the parties shall resolve the matter in accordance with the Accelerated Dispute Resolution Procedures.

### **41. Uninsurable Events**

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#### **41.1 Application**

This clause 41 applies where an Extension Event or an Intervening Event is also an Uninsurable Event.

#### **41.2 Obligations of parties while Uninsurable Event continues**

If any of the Contractor's obligations under this Agreement are affected as a result of an Uninsurable Event, each party shall use reasonable endeavours to agree such reasonable arrangements with the other party that are prudent in order to avoid or mitigate the effect of the Contractor's inability to perform the affected obligations.

#### **41.3 Unable to agree – right to terminate**

If no such terms are agreed on or before the date falling on the earlier of:

- (a) in the case of an Uninsurable Event that has resulted in destruction of the Majority of the Works, 20 Business Days after the date of that Event; or
- (b) in any other case:

- (i) 90 Business Days after the date that such Event, where it occurs prior to the Service Commencement Date, has become an Uninsurable Event; or
- (ii) 150 Business Days after the date that such Event, where it occurs after the Service Commencement Date, has become an Uninsurable Event,

and such Event is or the consequences of such Event are continuing then, subject to clause 41.4, either party may terminate this Agreement by giving a Termination Notice to the other party (which notice must provide that the Termination Date is at least 30 Business Days after the date of the Termination Notice).

#### 41.4 Notice to continue

- (a) If the Contractor gives notice to the Department under clause 41.3 that it wishes to terminate this Agreement, then the Department has the option either to accept such notice or to respond in writing on or before the date falling 20 Business Days after the date of its receipt stating that it requires this Agreement to continue (a **continuation notice**).
- (b) If the Department serves a continuation notice on the Contractor, then, without affecting the Contractor's other rights under this Part 12:
  - (i) where:
    - (A) Operational Completion has not occurred, the Department shall pay to the Contractor as an Additional Payment, for the period until either Operational Completion is achieved or this Agreement is otherwise terminated in accordance with its terms, the aggregate of the following amounts:
      - (I) a sum equal to the debt service costs (including capitalised interest) under the Senior Financing Agreements;
      - (II) a sum equal to any other proven and reasonable unavoidable costs of the Contractor; and
      - (III) such additional sums (if any) as may be agreed between the Department and the Contractor (each acting reasonably) or otherwise determined under the Accelerated Dispute Resolution Procedures as are required to enable the Contractor to continue to perform its obligations under this Agreement, subject to any amendments agreed by the parties, on a 'no better no worse' basis; or
  - (ii) Operational Completion has occurred, the Department shall pay to the Contractor the Unitary Charge from the day after the date on which this Agreement would have terminated under clause 41.3 as if the Services were being fully provided after deducting amounts representing those recurrent costs of the Contractor which are not in fact incurred by the Contractor because the Services are not being fully performed by the Contractor;
  - (iii) notwithstanding that the Department has served a continuation notice on the Contractor pursuant to clause 41.4(a), the Department may, within 20 Business Days of service of such continuation notice, serve a Termination Notice on the Contractor, specifying it has elected to terminate the Agreement under clause 41.3; and
  - (iv) this Agreement will not terminate unless and until the Termination Date specified in a Termination Notice served on the Contractor by the Department

specifying under clause 41.4(b)(iii) that it has elected to terminate the Agreement under clause 41.3 in which case clause 82 (Consequences of Termination) shall apply as a result of the Uninsurable Event.

- (c) Unless the Department has given the Contractor a continuation notice under clause 41.4(a), this Agreement terminates on the Termination Date specified in the Termination Notice served under clause 41.3 (which notice must provide that the Termination Date is at least 30 Business Days after the date of the Termination Notice).

## **42. General Provisions Relating to Events**

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### **42.1 Late notices**

In the event that the Contractor fails to perform its obligations under clause 39.2 (Notices) or clause 40.2 (Notices) on time, then any relief or extension of time granted in respect of the Event (and, in the case of Compensation Extension Events and Compensation Intervening Events, the payment of any amount) shall be at the absolute discretion of the Department.

### **42.2 Meeting**

The parties will, if required by the Department, meet within five Business Days of provision by the Contractor of a notice under clause 39.2 (Notices) or clause 40.2 (Notices) to discuss and agree the consequences of the relevant Event, including:

- (a) any questions or issues the Department may wish to raise concerning any matter that is the subject of the notice;
- (b) the reasons why the Contractor considers that the occurrence of the Event prevents or will prevent it from complying with its obligations under this Agreement;
- (c) the expected duration of any delay or non-compliance arising directly out of the occurrence of the Event;
- (d) what further steps (if any) the Contractor may reasonably undertake in order to avoid or mitigate the effect of that Event (including any steps the Contractor has taken or is proposing to take to make a claim under the Insurance Policies);
- (e) the extent to which insurance may mitigate the effects of the Event;
- (f) an estimate of the costs that the Contractor would incur to remedy the situation were it able to do so; and
- (g) any other matters that the Department may wish to raise in connection with the occurrence or the alleged occurrence of the Event.

### **42.3 Alternative arrangements**

The Department may make its own arrangements for alternate means of providing any of the Services which have been suspended as a result of an Event, whether from the Department Site or elsewhere and from any person, and in any such case Part 18 (Department Step-in) shall apply.

## **42.4 Duty to mitigate**

During any period in which an Event impairs or may impair the Contractor's ability to comply with all its obligations under this Agreement, the Contractor shall do everything it can reasonably do within its power to avoid or mitigate the effect of it being prevented from complying with or performing such obligations.

## **42.5 Where relief is not available**

- (a) Nothing in clause 39.3 (Relief available) or clause 40.3 (Relief available) entitles the Contractor to any relief from its obligations under this Agreement which are not affected by the relevant Event.
- (b) No extension of time or payment of compensation for any loss (including loss of revenue) is available to the Contractor:
  - (i) if an Immediate Termination Event (where the Contractor has not remedied or prevented the re-occurrence of such Immediate Termination Event and the Department has not waived its rights in relation thereto) was subsisting at the time of the Event;
  - (ii) to the extent that the relevant Event or its consequences could have been prevented by the exercise of a standard of care and diligence consistent with that of a prudent person undertaking the obligations under this Agreement;
  - (iii) to the extent that the relevant Event or its consequences were otherwise caused or contributed to directly or indirectly by the negligence of the Contractor or any Contractor Personnel or the failure by the Contractor or any Contractor Personnel to comply with obligations which the Contractor is required to observe, comply with or perform under this Agreement; or
  - (iv) to the extent that the relevant Event or its consequences were otherwise within the control of the Contractor and capable of being mitigated (but were not mitigated) pursuant to clause 42.4 (including within the scope of contingency planning which the Contractor has or ought to have put in place in accordance with the Works Project Management Plan or otherwise in accordance with Good Industry Practice).
- (c) Subject to clause 42.5(d) below, the Contractor shall not be entitled to any extension of time or payment of compensation for any Loss (including loss of revenue) under clause 39 (Extension Events) or clause 40 (Intervening Events) where:
  - (i) in respect of a claim for an extension of time due to an Extension Event (which is not a Compensation Extension Event), the relevant Event does not result in or is not agreed or determined to be likely to result in a time delay exceeding one working day; or
  - (ii) in respect of a claim for an extension of time and/or compensation due to a Compensation Extension Event, the relevant Event does not result in or is not agreed or determined to be likely to result in:
    - (A) a time delay exceeding one working day; and/or
    - (B) a Loss exceeding \$30,000;
  - (iii) in respect of a claim for compensation due to a Compensation Intervening Event, the relevant Event does not result in or is not agreed or determined to be likely to result in a Loss exceeding \$15,000 (provided that this clause 42.5(c)(iii)

shall not limit the Contractor's ability to make claims under clause 40 (Intervening Events) for relief, other than compensation for Losses, to which it is entitled under that clause).

- (d) Notwithstanding clause 42.5(c) above, where over any rolling 12 month period following Financial Close:
  - (i) multiple Extension Events (which are not Compensation Extension Events) occur, none of which is agreed or determined to be individually likely to result in a time delay exceeding one working day but which, taken together, are agreed or determined to be likely to result in an aggregate time delay exceeding five working days;
  - (ii) multiple Compensation Extension Events occur, none of which is agreed or determined to be individually likely to result in:
    - (A) a time delay exceeding one working day; and/or
    - (B) a Loss exceeding \$30,000,but which, taken together, are agreed or determined to be likely to result in:
    - (C) an aggregate time delay exceeding five working days; and/or
    - (D) an aggregate Loss exceeding \$60,000; and/or
  - (iii) multiple Compensation Intervening Events occur, none of which is agreed or determined to be individually likely to result in a Loss of greater than \$15,000 but which, taken together, are agreed or determined to be likely to result in an aggregate Loss exceeding \$50,000,

the Contractor shall, provided the relevant Events have been notified to the Department in accordance with clauses 39.2(a) (subject to paragraph (e) below) or 40.2(a) (as applicable) be entitled to an extension of time and/or payment of compensation for any Loss (including loss of revenue), in respect of the aggregate of the relevant time period or Losses, under and to the extent available in accordance with clause 39 (Extension Events) or clause 40 (Intervening Events).

- (e) In the case of any Extension Event where the Contractor does not reasonably expect the relief sought to meet the thresholds set out in clause 42.5(c), the Contractor shall notify the Department of such expectation in the notification provided under clause 39.2(a) in respect of each such Extension Event and the Contractor shall be relieved from its obligation to demonstrate to the satisfaction of the Department or the Independent Reviewer (as applicable) the matters set out in clause 39.2(b) until such time as the Contractor reasonably believes that the relief sought will meet such thresholds.
- (f) For the purposes of clauses 42.5(c) and 42.5(d), **working day** means a period of 9 hours in any calendar day.

## 42.6 Partial relief

Where there are multiple causes of a delay, a failure to provide Services causes an increase in costs or loss of revenue, and at least one of those causes is not an Event, the Contractor will only be granted relief under clause 39 (Extension Events) or clause 40 (Intervening Events) (as applicable) for the causes that constitute an Event and:

- (a) in the case of an Extension Event, the Independent Reviewer will be required to apportion the delays and/or the Change in Costs accordingly; or
- (b) in the case of an Intervening Event, the Department (acting reasonably) will apportion the relief for any Change in Costs and/or the failure to comply with this Agreement accordingly.

## **42.7 Cessation of Event**

The Contractor must notify the Department immediately after it ceases to be prevented from performing any of its obligations under this Agreement as a result of an Event. Following such notification, the Contractor shall continue to perform this Agreement on the terms immediately existing prior to the occurrence of the Event.

## **42.8 Step-in**

The rights of the Contractor to suspension of obligations by reason of an Event do not affect the rights of the Department under clause 68 (Step-in Rights) of this Agreement.

## **42.9 No Claim**

The Contractor will not be entitled to make any other Claim against the Department arising out of or in connection with the Event other than under and in accordance with this Part 12.

## **42.10 Relief from termination**

- (a) If:
  - (i) an Immediate Termination Event, Remediable Contractor Default or any failure to rectify a Remediable Contractor Default or to implement a Prevention Plan occurs; and
  - (ii) the Department is satisfied (acting reasonably) that that Immediate Termination Event, Remediable Contractor Default or failure to rectify a Remediable Contractor Default or to implement a Prevention Plan is caused by an Event,

then, subject to the Contractor's compliance with the relevant provisions of this Part 12 (Events), the Department shall not be entitled to terminate the Project Agreement under clause 79.5 (Termination Notice) in respect of that Immediate Termination Event, Remediable Contractor Default or failure to rectify a Remediable Contractor Default or to implement a Prevention Plan.

- (b) Where the Contractor is given relief in respect of any failure to rectify a Remediable Contractor Default or to implement a Prevention Plan under clause 42.10(a), the period within which the Contractor shall be required to rectify such Remediable Contractor Default or to implement such Prevention Plan shall, without prejudice to any other rights of the Contractor under Part 20 (Termination), be extended in accordance with the provisions of this Part 12.

## **42.11 Remedies available for specific Events**

Notwithstanding anything to the contrary in this Part 12 or Part 13, if an Event to which paragraph (g) of the definition of Compensation Extension Event or paragraph (g) of the definition of Compensation Intervening Event applies occurs:

- (a) the only relief to which the Contractor will be entitled is financial compensation (and it shall not be entitled to any relief from its obligations to provide the Services under this Agreement);
- (b) the amount of financial compensation shall be equal to an amount calculated for each income year as follows:

$$(W * X) + Y + Z$$

where:

"W" means:

- (i) the amount of income which is treated as being derived by the Contractor and/or HoldCo; or
- (ii) the amount of interest expenditure which the Contractor and/or Holdco is unable to deduct in the relevant income year,

in each case as a result of the Compensation Extension Event or Compensation Intervening Event (as applicable); and

"X" means the prevailing corporate tax rate in New Zealand for the relevant income year;

"Y" means, in the event that the financial compensation received is taxable to the Contractor, such additional amount as is necessary to ensure that the Contractor is in the same after Tax position as it would have been in had the financial compensation not been so taxable. For these purposes an amount is "taxable" where it is taxable as assessable income or otherwise reduces a net loss or increases net income in the relevant income year for the purposes of the Act; and

"Z" means any reasonable costs and expenses incurred by the Contractor arising out of any such Event;

- (c) any such compensation will be payable by way of Additional Payments as and when required;
- (d) clauses 3.6 (No better and no worse), 5.2(d), 42.4 (Duty to mitigate) and 42.5(b)(ii) to 42.5(b)(iv) and Schedule 21 (Compensation Change Principles) shall not apply to the compensation calculated pursuant to clause 42.11(c); and
- (e) for the purposes of this clause 42.11 "income year" has the meaning set out in the Income Tax Act 2007.



## **Part 13 – Changes**

### **43. Generally**

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#### **43.1 Change process must be followed**

No payment will be made in respect of any variation to this Agreement or any modification to the Services, nor any Change in relation to anything that is the subject of this Agreement, unless the processes and procedures set out in this Part 13 have been complied with and observed.

#### **43.2 Obligations unaffected without express consent**

Unless and to the extent otherwise expressly agreed by the Department, in relation to each Change, the Contractor must continue to comply with all obligations imposed on it under this Agreement (including all Laws and Consents) until a Change Proposal has become a Confirmed Change in accordance with the processes and procedures set out in this Part 13, after which time the obligations of the Contractor shall be amended but only to the extent expressly set out in that Confirmed Change.

#### **43.3 Reviewable Service**

To the extent that a General Change in Law affects a Reviewable Service, this Part 13 will have no application to the financial effects of that General Change in Law on the Reviewable Service which will be subject to and addressed in accordance with clause 54 (Value Testing).

#### **43.4 Directions**

- (a) Any claim by the Contractor against the Department for costs, expenses and/or other relief in connection with compliance with, or as a result of, a direction given to the Contractor by the Department will be dealt with pursuant to this Part 13 as a Change if the direction constitutes a Change and the Department does not withdraw or modify the direction within 20 Business Days of the date of receipt of the Contractor's notice under clause 43.4(b).
- (b) The Contractor must, if it wishes to make a claim for costs and expenses in complying with or as a result of any direction given to it by the Department, within 20 Business Days of receiving that direction and before complying with that direction, give written notice to the Department:
  - (i) that it considers the direction constitutes or involves a Change and the classification of that Change (as set out in clause 44.2 (Classification of Change)) (provided that, for the purpose of this clause, a direction may constitute or involve a Change whether or not that direction is made in furtherance of the Objectives);
  - (ii) setting out the legal basis for the claim, whether based on a term of this Agreement or otherwise, and if based on a term of this Agreement, clearly identifying the specific term;
  - (iii) setting out the facts relied upon in support of the claim in sufficient detail to permit verification; and
  - (iv) detailing the amount claimed and how it has been calculated.

- (c) If the Contractor fails to comply with clause 43.4(b), then the Department will have no liability to the Contractor nor will the Contractor have any cause of action against the Department or any Department Related Person in respect of or in connection with the direction or the costs and expenses in complying with the direction.
- (d) Notwithstanding clause 43.4(b), in the event that the Department advises the Contractor that a direction must be acted on by the Contractor urgently, and the Contractor notifies the Department prior to acting on that direction that it wishes to make a claim for costs and expenses on the basis that such direction is a Change, the Contractor will act upon the direction immediately but will then provide the information set out in clause 43.4(b)(i) to (iv) as soon as reasonably practicable thereafter.
- (e) If the Contractor disputes the Department's determination under clause 43.4(a) that a direction is a Change, the parties shall resolve the matter in accordance with the Accelerated Dispute Resolution Procedures.

### **43.5 Change Compensation Principles**

Any payment or remuneration by the Department to the Contractor in respect of a Change (as provided for in this Part 13), is governed by the terms of Schedule 21 (Change Compensation Principles). No payment or remuneration is payable by the Department to the Contractor in respect of a Change, except as expressly provided in this Part 13 and then only to the extent provided for in Schedule 21 (Change Compensation Principles).

### **43.6 Furtherance of Objectives**

The Department acknowledges and agrees that it may not exercise its rights under clause 50.2(e) nor initiate a Change or Consequential Change under this Part 13 (Changes) unless that Change or Consequential Change is in furtherance of one or more of, and not inconsistent with the balance of, the Objectives. If the Contractor disputes whether the exercise of the Department's rights under clause 50.2(e) or any purported Change and/or Consequential Change meets this requirement, the parties shall resolve the matter in accordance with the Accelerated Dispute Resolution Procedures.

## **44. Initiation of Change Procedure**

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### **44.1 Change Notice**

If a party wishes to propose any Change, such party must initiate the change procedure set out in this Part 13 by sending a Change Notice to the other party and completing section 1 of the Change Notice in accordance with clause 44.3.

### **44.2 Classification of Change**

The party sending the Change Notice is to specify whether the Change proposed is:

- (a) a Material Change; or
- (b) a Non-Material Change.

### **44.3 Sufficient details of Change**

- (a) The party sending the Change Notice is to include in section 1 of the Change Notice sufficient detail to enable the other party to determine whether the Change is:
  - (i) a Material Change; or

- (ii) a Non-Material Change.
- (b) If the Department is the sender of the Change Notice, and the Change is identified in the Change Notice as a Material Change, the Department is to specify in section 1 of the Change Notice whether it intends to pay the Contractor the Capital Expenditure involved in implementing the Material Change or whether the Contractor is to use its best endeavours to obtain its own funding.
- (c) If the Contractor is the sender of the Change Notice, the Contractor must provide such additional information about the proposed Change as reasonably requested by the Department (whether before or after the date the Change Notice is sent).

#### **44.4 Failure to agree classification**

The parties are to agree whether a Change is:

- (a) a Material Change; or
- (b) a Non-Material Change,

and, if they are unable to agree, the parties shall resolve the matter in accordance with the Accelerated Dispute Resolution Procedures.

### **45. Change Proposal and Response**

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#### **45.1 Response and response period**

- (a) If the Contractor is the sender of the Change Notice, the Contractor, in addition to completing section 1 of the Change Notice, is to also complete sections 2 and 3 of the Change Notice. A Change Notice sent by the Contractor with sections 2 and 3 completed in accordance with the terms of this Part 13 will be deemed to be the Change Proposal for that Contractor-initiated Change.
- (b) If the Department is the sender of the Change Notice, then, subject to clause 45.3, the Contractor must:
  - (i) complete sections 2 and 3 of the Change Notice in accordance with the terms of this Part 13, and the Change Notice will be deemed to be the Change Proposal for that Department-initiated Change; and
  - (ii) return the Change Notice to the Department within:
    - (A) 10 Business Days in the case of a Non-Material Change prior to Works Completion;
    - (B) 20 Business Days in the case of any other Non-Material Change; or
    - (C) 40 Business Days in the case of a Material Change,

of the date of receipt of the Change Notice by the Contractor or within 20 Business Days of the resolution of the dispute in the event that the matter has been referred for resolution in accordance with the Accelerated Dispute Resolution Procedures under clause 44.4 (Failure to agree classification).

- (c) In the event that the Contractor is in breach of clause 45.1(b), the Department may, on giving written notice to the Contractor and allowing the Contractor not less than five Business Days to remedy the breach, exercise its rights under clause 50.2(e).

## **45.2 Matters to be covered in Change Proposal**

The Change Proposal must (having regard to the nature and classification of the Change):

- (a) set out all the steps that the Contractor proposes to take to implement the Change;
- (b) consistent with Good Industry Practice, detail all the consequences of the Change that are reasonably foreseeable consistent with Good Industry Practice (including any relief sought by way of extension of time and any variations that are proposed to be made to the Works Provisioning Programme, the Corrections Services Requirements or the Performance Standards);
- (c) be costed and otherwise be in accordance with this Part 13 and Schedule 21 (Change Compensation Principles); and
- (d) include the information required for a Change Proposal as specified in the form of Change Notice set out in Schedule 20 (Change Notice).

## **45.3 Material Change - value for money**

- (a) The Contractor must, when preparing a Change Proposal for a Material Change:
  - (i) set out information in the Change Proposal sufficient to demonstrate:
    - (A) how any Capital Expenditure to be incurred or avoided as a consequence of the Change is being measured in a cost effective manner, including showing when such expenditure is to be incurred;
    - (B) that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain any of the Works affected by the Change, has been taken into account in determining the estimated Change in Costs and/or the Capital Expenditure that is or may be for the account of the Department; and
    - (C) how the Contractor and Contractor Related Persons propose to minimise any increase in costs and maximise any reduction in costs; and
  - (ii) disclose the proposed fees and charges payable in connection with such Changes on an Open Book Basis.
- (b) The Department will not be obliged to accept the reasonableness or accuracy of any quote, estimate, valuation, allowance or cost submitted by the Contractor in a Change Proposal for a Material Change.
- (c) The Department may require and rely upon (as applicable) independent valuations or assessments from independent reviewers, quantity surveyors or other qualified experts appointed by the Department at the Department's own expense for this purpose.
- (d) Without limiting the foregoing, the parties acknowledge and agree that any verification by an expert appointed under clause 45.3(c) is solely for the Department's benefit and notwithstanding verification by that expert, the Department in its discretion (and at any time) may elect to accept the Base Costs proposed by the Contractor or any other

quote, estimate, valuation, allowance or cost submitted by the Contractor in connection with its Change Proposal for a Material Change.

#### **45.4 Material Change - other requirements**

- (a) Following receipt of a Change Proposal for a Change that is a Material Change, the Department may conduct:

- (i) a full cost audit of the Change Proposal on an Open Book Basis; and
- (ii) a full technical audit of the Change.

The Contractor is to be solely responsible for the costs of these audits unless the Change is the subject of a Change Notice of which the Department was the sender.

- (b) The Contractor must give the Department access to all information and documentation that the Department may request for the purpose of conducting the audits under clause 45.4(a).
- (c) If a Change is a Significant Material Change, the Department may, in its absolute discretion, require the Contractor to obtain competitive quotations for the work or for elements of the work entailed in implementing the Change in accordance with Schedule 20 (Change Notice).

#### **45.5 Contractor's right to refuse**

- (a) The Contractor shall be entitled to refuse a Department-initiated Change only where that Change (if implemented):
- (i) requires the Works and/or the Services to be performed by the Contractor in a way that infringes any Law;
  - (ii) would be inconsistent with Good Industry Practice;
  - (iii) would cause any existing Consent to be revoked;
  - (iv) would materially and adversely affect the health and safety of any person at the Department Site; or
  - (v) would cause any existing Insurance Policy to become void or voidable.
- (b) The Contractor must provide the Department with written notice of its refusal of the Change within 10 Business Days of its receipt of the relevant Change Proposal. The notice must set out the reason or reasons for such refusal and provide all supporting documentation (including copies of all relevant legal or professional assessments), that the Contractor contends support its refusal of a Department-initiated Change. If the Department disputes the Contractor's refusal to implement a Department-initiated Change, then the Department may refer the dispute to an Independent Expert for resolution in accordance with the Accelerated Dispute Resolution Procedures.

### **46. Agreeing Change Proposal**

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#### **46.1 Parties to meet**

As soon as practicable after the Department receives the Change Proposal, the parties shall meet and endeavour to agree its terms.

## **46.2 Evaluation of Change Proposal**

The Department shall evaluate the Change Proposal in good faith taking account of all the relevant issues, including whether:

- (a) the Change Proposal has been completed to the reasonable satisfaction of the Department;
- (b) additional Capital Expenditure or change in the Unitary Charge is required and, if so, whether such additional Capital Expenditure or change in the Unitary Charge complies with the Change Compensation Principles;
- (c) the Change will affect the safety, security or robustness of the Prison;
- (d) the Change will affect the quality of any of the Services or the likelihood of successful delivery of any of the Services;
- (e) the Change will interfere with the relationship of the Department and third parties;
- (f) the financial strength of the Contractor, each Contractor Related Person and any other person who is to undertake the Change is sufficient to perform the Change;
- (g) the residual value of the Works will be reduced; and/or
- (h) the Change materially affects the risks or costs to which the Department is or may be exposed.

## **46.3 Change proposed**

If the Change proposed in the Change Proposal is a Material Change, clause 45.3 (Material Change – value for money), clause 45.4 (Material Change – other requirements) and the applicable provisions of Schedule 20 (Change Notice) will apply, in addition to other terms of this Agreement applicable to such Change.

## **46.4 Non Material Change during Works Provisioning**

During Works Provisioning, to the extent that any Non Material Change is proposed to reflect an amendment to any Design Documentation appended to Schedule 10 (Works Requirements) that has been identified at the time of submission of any Submitted Item, in the event that such Submitted Item is endorsed or deemed to be endorsed "no comments" under Schedule 6 (Review Procedures), the Department shall confirm the Change to the relevant Design Documentation appended to Schedule 10 (Works Requirements) within 10 Business Days of receipt of a duly completed Change Notice.

## **47. Documenting agreement to Change Proposal**

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### **47.1 Documentation**

The parties will, in accordance with the requirements of the Change Notice (taking into account any Event that has occurred following the issue of the Change Notice or Change Proposal, as applicable), document:

- (a) any agreement to the Change Proposal and any effect it has on the Unitary Charge;
- (b) the agreed relief to be given to the Contractor, including the agreed relief from any of the Contractor's obligations:

- (i) to ensure that the Operational Services for the Facility are available on the Relevant Service Commencement Date during or as a result of the implementation of the Change; and
  - (ii) in respect of the Performance Standards or the Corrections Services Requirements during or as a result of the implementation of the Change;
- (c) the agreed time periods for implementing the Change, which will be:
  - (i) if the Change is a Material Change that does not affect Works Provisioning, the agreed time periods for implementing the Change; or
  - (ii) if the Change is a Material Change that affects Works Provisioning, an agreed revised Works Provisioning Programme, showing in all cases the agreed timing of any Capital Expenditure to be incurred as a result of the implementation of the Change;
- (d) the agreed method of certification of construction or manufacture (if not covered by the procedures specified in the Completion Plan);
- (e) any agreed variations to the Agreement that result from a Confirmed Change, once implemented; and
- (f) any other agreed effects of the Change not covered in the Change Notice.

## **47.2 Payment**

- (a) The Department acknowledges that where the Department is the sender of the Change Notice, the Change is a Material Change and the Contractor has confirmed in the Change Proposal or otherwise that funding is not available to pay for all the costs of the Change, the Department will either:
  - (i) agree to pay for such costs for which funding is not available;
  - (ii) withdraw the Change Notice by giving written notice to the Contractor; or
  - (iii) where reasonably practicable in the circumstances, direct that changes be made to the Change Proposal in accordance with clause 48.2 (Alternative responses) so that such additional funding is either available or no longer required to effect the Change.
- (b) If the Change is a Material Change and the Department has agreed to pay all or part of the costs of the Change for which funding is not available, the parties will also document (in accordance with the requirements of the Change Notice):
  - (i) the agreed payment schedule reflecting the amount and timing of the costs to be incurred by the Contractor in implementing the Change to the extent such costs are to be borne by the Department; and
  - (ii) where payment for part of a Change reflects the carrying out of, or specific progress towards, an element of the Change, an objective means of providing evidence confirming that the applicable element, or required progress towards that element, of the Change has been achieved.

## 48. Confirmation or withdrawal of Change Notice

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### 48.1 Confirmation of Change

In respect of a Change (other than a Change to which clause 48.2 applies), the Department may complete sections 4.2 and 4.3 of the Change Notice and sign and return a copy of the Change Notice to the Contractor, in which case the Change which is the subject of the Change Notice is deemed to be confirmed by the Department.

### 48.2 Alternative responses

If the Department does not confirm the Change in accordance with clause 48.1 it may provide any one of the following possible responses:

(a) If the Department is the sender of the Change Notice then the Department may:

- (i) withdraw the Change Notice by giving written notice to the Contractor;
- (ii) direct that changes be made to the Change Proposal (**change proposal variations**) whereupon the Contractor must:
  - (A) implement the Change in accordance with the change proposal variations; or
  - (B) if it disputes the change proposal variations, refer the Dispute for dispute resolution in accordance with the Accelerated Dispute Resolution Procedures within 5 Business Days of it receiving the direction to make the change proposal variations; or
- (iii) where the Change is a Significant Material Change, require the Contractor to obtain competitive quotations for the work or for elements of the work entailed in implementing the Change in accordance with Schedule 20 (Change Notice),

provided that if the Department does not take any action under this paragraph (a) within 20 Business Days of the date of the Change Proposal, it will be deemed to have withdrawn the relevant Change Notice.

(b) If the Contractor is the sender of the Change Notice then the Department may:

- (i) where the Change is a Material Change, refuse the Change by giving written notice to the Contractor;
- (ii) where that Change is a Non-Material Change, refuse the Change by giving written notice to the Contractor if the Department (acting reasonably) determines (having regard to the criteria specified in clause 3.6 (No better and no worse) and clause 46.2 (Evaluation of Change Proposal)) that it would be in a worse position if the Change were to be implemented, in which case the Contractor must:
  - (A) not implement the Change; or
  - (B) if it disputes that the Department is entitled to refuse the Non-Material Change, refer the Dispute to dispute resolution in accordance with the Accelerated Dispute Resolution Procedures within five Business Days of the Contractor receiving the Department's refusal;
- (iii) direct change proposal variations, whereupon the Contractor must:



- (A) implement the Change in accordance with the change proposal variations; or
- (B) if it disputes the change proposal variations, refer the Dispute for dispute resolution in accordance with the Accelerated Dispute Resolution Procedures within five Business Days of it receiving the direction to make the change proposal variations; or
- (iv) in the case of a Significant Material Change that is necessary in order to comply with a Change in Law, require the Contractor to obtain competitive quotations for the work or for elements of the work entailed in implementing the Change in accordance with Schedule 20 (Change Notice),

provided that if the Department does not take any action under this paragraph (b) within 10 Business Days of the date of the Change Proposal if it relates to a Non-Material Change prior to Works Completion or 20 Business Days of the date of the Change Proposal in the case of all other Change Proposals, it will be deemed to have rejected the relevant Change Notice.

- (c) If the Contractor exercises its rights under clause 48.2(a)(ii)(B) or under clause 48.2(b)(iii)(B) in respect of a Change, and the Department is not satisfied with the determination of the relevant Dispute under the Accelerated Dispute Resolution Procedures, then the Department shall be under no obligation to confirm the Change under clause 48.1.
- (d) Notwithstanding the foregoing, the Department may not refuse any Change proposed by the Contractor to the extent such Change:
  - (i) is required in order for the Contractor to implement and comply with any Change in Law; and/or
  - (ii) is a Consequential Change.

### **48.3 Events**

The Contractor will not be entitled to relief under Part 12 (Events) in respect of a Change, initiated after Service Commencement, where the Contractor is the sender of the Change Notice (other than a Change which was a Confirmed Change at the time of the Event), unless the Department (in its sole discretion) determines that there are value for money reasons for providing relief to the Contractor.

### **48.4 No work to be started**

The Contractor will not begin or allow any work to begin, and will not, save as expressly provided for in clause 49 (Contractor's costs), have any entitlement to make any claim against the Department in respect of any Change, until such time as:

- (a) the Department has confirmed the relevant Change Notice pursuant to clause 48.1;
- (b) it is directed or determined that the Change be implemented under clause 49.2 (Withdrawn Change); or
- (c) the Department has otherwise expressly agreed in writing where the Department considers that the urgency of the requested Change justifies an interim approval prior to the Department completing the procedures set out in this clause 48.

## **49. Contractor's costs**

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### **49.1 Generally**

The Department is not obliged, nor will it incur any liability in respect of any costs and expenses incurred by the Contractor, any Contractor Related Person or any other person in connection with the preparation, processing and approval of a Change Notice or a Change Proposal, except to the extent provided in this clause 49.

### **49.2 Withdrawn Change**

If the Department is the sender of a Change Notice the subject of which is a Material Change and the Change Notice is withdrawn by the Department under clause 48.2 (Alternative responses), the Department must pay to the Contractor the reasonable additional third party costs incurred by the Contractor in preparing the Change Proposal (including in undertaking any reasonable surveys or testing), provided that:

- (a) the Contractor has properly completed sections 2 and 3 of the Change Notice in accordance with this Part 13 and has used its best endeavours to submit a reasonably priced Change Proposal;
- (b) the additional third party costs incurred by the Contractor or a Sub-contractor that is a Contractor Related Person must be the direct costs invoiced by the third party and must not include any margin payable to the Contractor or the Sub-contractor;
- (c) the Contractor has made available to the Department an estimate of the third party costs that would be incurred by the Department if the Change Notice were to be withdrawn together with an adequate cost breakdown of those third party costs;
- (d) the Department has approved the estimate of the third party costs and the third party cost breakdown before any of those third party costs have been incurred; and
- (e) the Contractor has provided the Department with such evidence as the Department may reasonably require in order to verify the additional third party costs and that such costs can be substantiated in accordance with clause 18 (Record Keeping).

If the Department has failed to respond to a request by the Contractor for approval of an estimate of third party costs (together with an adequate cost breakdown of those third party costs) within 10 Business Days of the date of receipt of the same by the Department, then the Department will be deemed to have approved such estimate and that breakdown.

### **49.3 Payment**

If any payment is to be made by the Department under this clause 49, it will only be made if the Contractor has complied with clause 53.2 (Report and invoice).

## **50. Implementation of Changes**

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### **50.1 Contractor's obligations**

- (a) Subject to any Consents which must be obtained or modified being so obtained or modified, the Contractor must implement each Confirmed Change in accordance with the Change Notice to which that Confirmed Change relates.

- (b) The Contractor must ensure that Works Provisioning and the Operational Services are performed in accordance with this Agreement during the implementation of the Confirmed Change and following implementation of the Confirmed Change except and to the extent otherwise expressly specified in the Confirmed Change and agreed pursuant to clause 51 (Variations to Agreement).
- (c) All Confirmed Changes implemented as part of Works Provisioning and before the Service Commencement Date will form part of the Works and, subject to clause 51 (Variations to Agreement), all obligations of the Contractor with respect to the Works, the Services and the Project generally will accordingly apply to those Confirmed Changes.
- (d) All Works the subject of a Confirmed Change implemented after the Service Commencement Date must be:
  - (i) designed and built:
    - (A) in accordance with the drawings and specifications specified in the relevant Change Proposal and the other requirements of the Change Proposal;
    - (B) in accordance with Good Industry Practice;
    - (C) in accordance with all relevant Consents;
    - (D) in accordance with all relevant Laws; and
    - (E) otherwise in accordance with the terms of this Agreement (as varied pursuant to clause 51 (Variations to Agreement));
  - (ii) implemented (subject to any express term of the relevant Change Notice the subject of the Confirmed Change):
    - (A) so that the Contractor provides and will continue to provide the Operational Services in accordance with Schedule 14 (Corrections Services Requirements) and Schedule 12 (Facility Management Requirements) (as varied pursuant to clause 51 (Variations to Agreement));
    - (B) so that the Works (incorporating the Confirmed Change) are and remain Fit for the Intended Purposes; and
    - (C) in a manner that causes minimal disruption to Works Provisioning or the provision of the Operational Services by the Contractor or a Contractor Related Person;
  - (iii) (except where otherwise specified in the relevant Change Notice) certified as being complete and ready for use in accordance with the requirements of the relevant Confirmed Change; and
  - (iv) commissioned in accordance with the commissioning tests specified in the relevant Change Notice and any additional tests that the Department reasonably required.
- (e) The Contractor will provide to the Department three copies of all final drawings, specifications, models, samples and calculations (as-built documentation) used to complete any Confirmed Change promptly following completion of the same, together with amended versions of the Works Requirements, the Corrections Services

Requirements, the Facility Management Requirements, the Final Design Documentation, the Works Provisioning Programme, the Completion Plan, the Services Documentation or any other documentation if (and to the extent) affected by the Confirmed Change.

## 50.2 Department's rights and obligations

- (a) The Department's obligations in respect of any Change, the terms of the Change Notice or any obligations to pay for or fund the Change are:
  - (i) only to take effect if the Change Notice has been confirmed by the Department under clause 48.1 (Confirmation of Change); and
  - (ii) to be set out in that Change Notice.
- (b) There will be no increase in the Unitary Charge unless the Confirmed Change expressly provides for an increase in the Unitary Charge and the amount of that increase. The Unitary Charge may also be decreased as a result of a Confirmed Change.
- (c) Any compensation payable pursuant to a Change Notice that has been confirmed by the Department under clause 48.1 (Confirmation of Change) is (subject to clause 50.2(d)) only to be paid in accordance with the Change Compensation Principles.
- (d) In the event of a conflict between:
  - (i) a term of the Change Notice (whether or not confirmed by the Department under clause 48.1 (Confirmation of Change)) and the Change Compensation Principles; or
  - (ii) the determination of compensation payable pursuant to that Change Proposal and the Change Compensation Principles,

the Change Notice is to be read and interpreted subject to the Change Compensation Principles, except and to the extent that any Change Notice that has been confirmed by the Department under clause 48.1 (Confirmation of Change) contains terms expressly derogating from the Change Compensation Principles and specifying what those derogations are. In the absence of such term or terms, any matter the subject of a Confirmed Change that cannot be reconciled with the Change Compensation Principles is to be disregarded.

- (e) Where:
  - (i) the Contractor is in breach of clause 45.1 (Response and response period);
  - (ii) the Department has elected to withdraw or refuse a Change Notice pursuant to clause 48.2 (Alternative responses);
  - (iii) the Contractor refuses a Department-initiated Change under clause 45.5 (Contractor's right to refuse); or
  - (iv) the Department otherwise (and for whatever reason) declines or does not confirm a Change under clause 48.1 (Confirmation of Change),

the Department is not obliged to engage the Contractor to carry out such Changes and may have such Changes carried out by a third party (**Third Party Contractor**).

- (f) Where the Department exercises its rights to engage a Third Party Contractor under clause 50.2(e) and/or wishes to initiate any other Consequential Change, then:
  - (i) the Department will issue a Consequential Change Notice, which shall also, to the extent applicable:
    - (A) append the proposed form of contract with the Third Party Contractor (if any) and/or the proposed revised form of the Corrections Services Requirements;
    - (B) identify the Third Party Contractor or those persons who will be invited to tender to carry out any such proposed Consequential Change; and
    - (C) set out the nature and timing of the work to be done to implement the Consequential Change and any provisional procurement timeframe;
  - (ii) the Contractor shall submit a Consequential Change Proposal in response to the Consequential Change Notice in accordance with the terms of this Part 13 and within 40 Business Days (or such longer period as may be agreed between the parties, acting reasonably, including to undertake any due diligence required by any Contractor Related Person and/or the Senior Lenders) and on the basis that the Consequential Change is a Material Change (with the necessary modifications), except that:
    - (A) in the case of a Significant Consequential Change, the Contractor shall have a period of 80 Business Days (or such longer period as may be agreed between the parties, acting reasonably, including to undertake any due diligence required by any Contractor Related Person and/or the Senior Lenders) to submit a Consequential Change Proposal;
    - (B) the Contractor shall not have any right to refuse the Consequential Change under clause 45.5 (Contractor's right to refuse); and
    - (C) notwithstanding any right for the Department otherwise (and for whatever reason) to decline, refuse or not to confirm a Change, the Department shall be required to confirm the Consequential Change (as may be modified in accordance with clause 50.2(g) or otherwise by agreement between the parties) within 20 Business Days following receipt of the Consequential Change Proposal;
  - (iii) the parties acknowledge and agree that the purpose of this clause 50.2(f) is to ensure that, as a result of any Consequential Change, the impact of any reduction in the scope of the Corrections Services and/or a Third Party Contractor entering on to, and carrying out any works and/or services on the Department Site, is appropriately addressed so that:
    - (A) subject to clause 50.2(f)(iii)(C)(I), the Contractor is left in no better and no worse position (calculated in accordance with clause 3.6 (No better and no worse) following the Consequential Change (taking into account any compensation or relief to which any relevant Major Sub-contractor is entitled under the Change Compensation Principles in respect of that Consequential Change);
    - (B) in the event of any Consequential Change occurring prior to Operational Completion, all Operational Completion Tests that are no longer applicable to the Retained Services are deleted or disappplied; and
    - (C) in the event of any Significant Consequential Change:

- (I) the debt service cover ratio and the Equity IRR (as each is set out in the Base Case applicable immediately prior to the relevant Significant Consequential Change) remain unchanged;
  - (II) the definition of Fit for the Intended Purposes is varied and qualified to the extent necessary so as only to apply to the Works undertaken by or on behalf of the Contractor and the Retained Services; and
  - (III) the provisions within, and the application of, the Performance Regime that are no longer applicable to the Retained Services are deleted or disappplied;
- (iv) where the Contractor (acting reasonably) believes that the Department's response to the Consequential Change Proposal does not, following the Consequential Change leave the Contractor in a no better and no worse position (taking into account any compensation or relief to which any relevant Major Sub-contractor is entitled under the Change Compensation Principles in respect of that Consequential Change) it may, within 20 Business Days of receipt of such Department response, refer any dispute for resolution in accordance with the Accelerated Dispute Resolution Procedures;
- (v) following the confirmation from the Department of the Consequential Change and, where applicable, the identity of the Third Party Contractor engaged to deliver such Change, the Contractor shall provide reasonable assistance to, and co-operate with, such Third Party Contractor in accordance with, and subject to, the terms of the Consequential Change; and
- (vi) the Department will ensure that:
  - (A) any Third Party Contractor undergoes security and probity investigations, substantially the same as those set out in clause 21 (Contractor Personnel and employees);
  - (B) any Third Party Contractor does not, in implementing such Change, prevent or materially hinder or disrupt the Contractor in the implementation of the Retained Services, or adversely affect or prejudice the Contractor's performance of the Retained Services, in accordance with the Project Documents;
  - (C) following a Significant Consequential Change:
    - (I) responsibility for the performance of the custody and guarding of Prisoners within the Prison and/or the right to appoint the Prison Manager and/or the persons with management responsibility for the custody and guarding of Prisoners within the Prison is not subsequently sub-contracted by the Department (provided that the Department may elect to sub-contract the performance of any or all of the electronic security, rehabilitation and reintegration services, health services, transportation, administrative functions, ICT services and/or facilities management services); and
    - (II) the Prison is only used for the Agreed Use.
- (g) The parties acknowledge and agree that the full impact of any Consequential Change (including any Significant Consequential Change) may be difficult to foresee, and therefore:

- (i) there will be a joint review, within 15 Business Days following the end of the first six months after the implementation of any Consequential Change, in relation to the changes to the Performance Regime agreed to apply to that Consequential Change, provided that any further changes arising out of such review shall only apply until the completion of the review under clause 50.2(g)(ii)(B). In advance of the joint review, either party may provide to the other party an outline of the issues or unexpected consequences which they consider should be addressed in the joint review; and
- (ii) either party may:
  - (A) request, no more frequently than on a quarterly basis, that the Relationship Management Group review any issues or unexpected consequences resulting from such Consequential Change; and/or
  - (B) request that the parties undertake a joint review of the Contractor's performance in respect of the 12 months immediately following the implementation of such Consequential Change; and

in respect of any review requested under clauses 50.2(g)(ii)(A) or 50.2(g)(ii)(B):

  - (C) the relevant review must occur within 15 Business days after the request; and
  - (D) in advance of the relevant review, either party may provide to the other party an outline of the issues or unexpected consequences which they consider should be addressed in the relevant review; and
- (iii) if a review under clauses 50.2(g)(i) or 50.2(g)(ii) identifies any issues or unexpected consequences (whether beneficial or detrimental to the Contractor's performance under this Agreement) that were not known or considered in full during the assessment, agreement and documentation of such Consequential Change, the Department shall, but without prejudice to any review or update of any associated Operative Documents, propose a further Consequential Change Notice to deal with such newly identified issues or unexpected consequences.

## 51. Variations to Agreement

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- (a) To the extent that the Department has accepted, or it is determined that a Change Notice the subject of a Confirmed Change, requires amendment or variation to the terms of this Agreement, as a result of the implementation of that Change, this Agreement will be varied to reflect each Confirmed Change and if such variations are not agreed the changes to this Agreement (if any) will be determined in accordance with the Accelerated Dispute Resolution Procedures.
- (b) No amendment to this Agreement evidencing any Change will be effective unless it is in writing and signed by or on behalf of both parties.

## 52. Change in Law

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### 52.1 Occurrence

Notwithstanding a Change in Law, the Contractor must comply (to the extent that it is lawful to do so) with all obligations imposed on it, and shall take all steps necessary to ensure that the Works are commissioned and the Services are performed in accordance with the terms of this Agreement.

## 52.2 Notification of Qualifying Change in Law

The Contractor must notify the Department promptly upon becoming aware of any actual or impending (and probable) Qualifying Change in Law. If the Contractor fails to notify the Department, the Department may notify the Contractor of that Qualifying Change in Law. The Contractor must then, as soon as possible (which must be no later than one month before the Law is to come into effect, unless the date that Law is to come into effect is less than one month after the Contractor becoming aware of the same) send to the Department a written notice (**Contractor's Notice**) expressing its opinion on the likely effects of the Qualifying Change in Law, giving details of its opinion of:

- (a) any necessary change to the Works or the Services and the steps that the Contractor will need to take as a result of that change being implemented;
- (b) whether any changes are required to the terms of this Agreement to deal with the Qualifying Change in Law;
- (c) whether relief from compliance with obligations is required, including the obligations of the Contractor to:
  - (i) commence the Works by the Start Date;
  - (ii) achieve Operational Completion by the Relevant Service Commencement Date; and
  - (iii) carry out the Operational Services in accordance with this Agreement during and after the implementation of any relevant Qualifying Change in Law;
- (d) any increase or decrease in operating expenditure that will be required to comply with this Agreement as a result of a Qualifying Change in Law taking effect after the Service Commencement Date; and
- (e) any increase or decrease in Capital Expenditure that will be required to comply with this Agreement as a result of a Qualifying Change in Law taking effect after the Service Commencement Date,

in each case setting out in a Change Notice in full detail the procedure for implementing the change in the Works or in the Services and ensuring that the notice complies with the Change Compensation Principles. Responsibility for the costs of implementation (and any resulting variation to the Unitary Charge) shall be dealt with in accordance with clauses 52.3 to 52.7.

## 52.3 Parties to discuss

As soon as practicable after receipt by the Department of a Contractor's Notice under clause 52.2, the parties shall meet to discuss and agree the issues referred to in clause 52.2 and any ways in which the Contractor can mitigate the effect of the Qualifying Change in Law, including:

- (a) providing evidence that the Contractor has used its best endeavours (including (where practicable) the use of competitive quotes) to oblige its Sub-contractors to minimise any increase in costs and maximise any reduction in costs;
- (b) demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Contractor;



- (c) providing evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses to the Project, including similar businesses in which the Shareholders or their Affiliates carry on business; and
- (d) demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Qualifying Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required under clauses 52.2(d) or 52.2(e).

#### **52.4 Department options on receipt of Contractor's Notice**

- (a) Within 10 Business Days (or such longer period as the parties, acting reasonably, may agree) after the meeting under clause 52.3, the Department may:
  - (i) accept the Contractor's Notice and require the Contractor to implement the Contractor's Notice, subject to any agreement reached under clause 52.3, in which case the parties must make the payments and amend the Agreement and take any such other action specified in the Contractor's Notice; or
  - (ii) vary any requirements of this Agreement to avoid the consequences of the Qualifying Change in Law, in which case the Department's election to vary the Agreement will be deemed to be a Department direction and the provisions of clause 45 (Change Proposal and Response) will apply; or
  - (iii) issue a notice that it disputes the details contained in the Contractor's Notice. Any such dispute will be resolved in accordance with the Accelerated Dispute Resolution Procedures.
- (b) If the Department issues a notice under clause 52.4(a)(iii), no later than 10 Business Days (or such longer period as the parties, acting reasonably, may agree) following the Contractor's Notice being agreed between the parties or determined by an Independent Expert, the Department may elect either option available to it specified in clause 52.4(a)(i) or 52.4(a)(ii).

#### **52.5 Entitlement to compensation for Change in Law**

If a Change of Law has been agreed and documented by the parties in accordance with clause 52.4, then an amount will be calculated and payable to the Contractor or to the Department (as applicable) in accordance with this clause 52 and in accordance with the Change Compensation Principles (to the extent applicable), unless the Department has first exercised its rights under clause 52.4(a)(ii) to vary the requirements of this Agreement to avoid or mitigate the consequences of the Change in Law.

#### **52.6 Qualifying Change in Law**

- (a) If a Qualifying Change in Law occurs, then:
  - (i) the Contractor must allocate all of the financial consequences of that Qualifying Change in Law as either capital or operating consequences. This allocation is to be made by the Contractor and agreed between the parties in accordance with the Change procedures in this Part 13 or determined under the Accelerated Dispute Resolution Procedures in Part 22 (Dispute Resolution). The allocation must cover all of the costs (including funding delay costs), benefits and savings, such that the outcome is to identify the total net capital and net operating consequence of the Change in Law, with all monetary items allocated to one or other category. All consequences will be measured by their effect on the Unitary Charge, with costs to the Contractor reflected as a positive number, and

benefits or savings to the Contractor reflected as a negative number. To the extent that:

- (A) the financial consequences are not classified as Capital Expenditure or Qualifying Opex, the Contractor shall receive no compensation for those financial consequences; or
  - (B) the financial consequences are classified as Capital Expenditure or Qualifying Opex, the following provisions shall apply;
- (ii) if the Contractor is required to incur additional Capital Expenditure due to a Qualifying Change in Law (excluding the Contractor's Share of any such Capital Expenditure), then the Contractor shall use its reasonable endeavours to obtain funding for such Capital Expenditure on terms reasonably satisfactory to it and to the Senior Lenders; and
  - (iii) the Contractor's Share of any Cumulative Capital Expenditure or Qualifying Opex agreed or determined to be required as a result of a General Change in Law shall be solely for the account of the Contractor.
- (b) If a Specific Change in Law occurs, then:
- (i) subject to clause 52.6(c), the Contractor will be entitled to compensation for an amount equivalent to 100 per cent of the net capital and operating consequences (if that amount is a positive number) arising from the Specific Change in Law; and
  - (ii) the Department will be entitled to compensation for an amount equivalent to 100 per cent of the net capital and operating consequences (if that net amount is a negative number) arising from the Specific Change in Law,

and all consequences will be measured by their effect on the Unitary Charge, with costs to the Contractor reflected as a positive number and benefits or savings to the Contractor reflected as a negative number provided that where any Specific Change in Law increases the capital expenditure of the Contractor but reduces its operating expenditure, the net capital and operating consequences in respect of such Specific Change in Law will be dis-aggregated and clause 52.7 shall be applied separately to the capital and operating consequences.

- (c) If a Specific Change in Law occurs which falls only within paragraph (d) of the definition of Specific Change in Law, then the Contractor will be entitled to compensation for an amount equivalent to the Specific Change Share of the net capital and operating consequences (if that amount is a positive number) arising from that Specific Change in Law. If as a result of any such Specific Change in Law the Contractor is required to incur additional Capital Expenditure for which the Contractor is to be compensated through the Specific Change Share, then the Contractor shall use its reasonable endeavours to obtain funding for such Capital Expenditure on terms reasonably satisfactory to it and to the Senior Lenders, and if the Contractor has used reasonable endeavours to obtain funding for such Capital Expenditure, but has been unable to do so within 20 Business Days of the date that the agreement or determination referred to in clause 52.4(b) occurred, then the Department shall pay to the Contractor an amount equal to that Capital Expenditure on or before the date falling 10 Business Days after the Capital Expenditure has been incurred.

## **52.7 Method of compensation**

- (a) The Department shall have the right to elect how any compensation payable under this clause 52 (other than to the extent to which this is prescribed under clause 52.6(c))

for any compensation to which that clause applies) is to be paid or funded including either as:

- (i) one or more lump sum payments totalling the compensation amount payable, with payments to be made at such times as may be agreed by both parties (acting reasonably) as appropriate for the work being undertaken provided that the Department shall pay to the Contractor an amount equal to any Capital Expenditure that the Department is funding on or before the date falling 10 Business Days after any such Capital Expenditure has been incurred by or on behalf of the Contractor;
  - (ii) an amendment to the Unitary Charge over the remaining term of the Agreement where funding has been obtained under clause 52.6(a)(ii); or
  - (iii) a combination of the above.
- (b) Where the Department advises the Contractor to do so, the Contractor shall use its reasonable endeavours to obtain funding for such compensation amount on terms reasonably satisfactory to it and to the Senior Lenders.
- (c) If the Contractor has used reasonable endeavours to obtain funding for the Capital Expenditure referred to in clause 52.6(a)(ii), but has been unable to do so within 20 Business Days of the date that the Contractor was requested to obtain funding under clause 52.7(b), then the Department shall pay to the Contractor an amount equal to that Capital Expenditure on the basis set out in clause 52.7(a)(i).
- (d) Any compensation payable under this clause 52 by means of an adjustment to or reduction in the Unitary Charge shall be determined and made in accordance with clause 5 (Base Case and Base Case Adjustments).

## Part 14 – Unitary Charge, Value Testing and Refinancing

### 53. Unitary Charge

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#### 53.1 Obligation to pay and sole remedy

- (a) The Department must pay the Contractor the Monthly Unitary Payment in respect of each Payment Period, calculated in accordance with Schedule 17 (Payment Mechanism).
- (b) Subject to:
  - (i) any other express right or remedy of the Department pursuant to this Agreement; and
  - (ii) the Department's right to claim, on or after termination of this Agreement, the amount of its costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of:
    - (A) any breach of this Agreement by the Contractor; or
    - (B) any negligent act or omission on the part of the Contractor,after taking account of:
    - (C) sums already recovered by the Department pursuant to this Agreement; and
    - (D) any compensation payable by the Department pursuant to Part 20 (Termination),

the sole remedies of the Department in respect of a failure to provide the Operational Services in accordance with this Agreement shall be:

- (iii) where Charges are applicable for any such failure, the operation of Schedule 16 (Performance Regime);
  - (iv) where Deductions are applicable for any such failure, the operation of Schedule 16 (Performance Regime);
  - (v) where Service Failure Points are applicable for any such failure, the operation of Schedule 16 (Performance Regime), Part 20 (Termination) and Part 18 (Department Step-in); and/or
  - (vi) the granting of injunctive relief, a decree of specific performance or other discretionary remedies available from any Court of competent jurisdiction (whether or not Deductions are applicable for any such failure).
- (c) The sole remedies of the Department in respect of any delay in respect of the carrying out of the Works Provisioning are:
    - (i) where the Contractor fails to comply with clause 25.6 (Milestones), the remedies set out in clause 25.7 (Monitoring);

- (ii) where the Service Commencement Date does not occur on or prior to the Planned Service Commencement Date, the remedies set out in clause 25.9 (Delays - liquidated damages); and
- (iii) the remedies set out in clause 79 (Termination on Contractor Default) where the circumstances set out in clauses 79.2(a)(i), 79.2(a)(ii) or 79.2(a)(v) apply.

## 53.2 Report and invoice

- (a) On the tenth Business Day of each Payment Period, the Contractor shall submit to the Department:
  - (i) a Monthly Performance Report certified by the Contractor:
    - (A) specifying the Monthly Unitary Payment for the immediately preceding Payment Period;
    - (B) setting out individually, the amount of each item that has been taken into account in calculating the Monthly Unitary Payment in accordance with Schedule 17 (Payment Mechanism);
    - (C) setting out full details of any relief from Deductions claimed under clause 53.4;
    - (D) setting out any Additional Payments that are or may be due to the Contractor from the Department;
    - (E) setting out a comprehensive explanation of the basis on which such Additional Payments are being claimed, and when the costs associated with such payments were incurred; and
    - (F) setting out any other matters required to be included in Monthly Performance Reports in accordance with Schedule 15 (Reporting); and
  - (ii) an invoice (the form of which must have been previously approved by the Department) (a **valid invoice**) for the amount (if any) shown by the report as owing by the Department to the Contractor and for all GST payable by the Department in respect of that amount.
- (b) If the Contractor renders a report or an invoice that is incomplete, incorrect or in breach of clause 53.2(a), the Department may reject the invoice and that invoice will not be considered as valid.
- (c) If the Contractor becomes entitled to an Additional Payment prior to the Service Commencement Date, the Contractor shall submit to the Department a valid invoice for such amount and a report certified by the Contractor setting out:
  - (i) the Additional Payments that are or may be due to the Contractor from the Department; and
  - (ii) a comprehensive explanation of the basis on which such Additional Payments are being claimed, and when the costs associated with such payments were incurred.

## 53.3 Payment

- (a) No moneys are payable to the Contractor by the Department unless the Department is in receipt of a valid invoice from the Contractor in relation to moneys that have

become due and payable to the Contractor in accordance with the terms of this Agreement, along with the Monthly Performance Report for the Payment Period to which that invoice relates.

- (b) The Department shall pay the amount stated in any valid invoice submitted under clause 53.2 immediately on the 20th of the month in the month following which such invoice was received by the Department (or if such day is not a Business Day, on the Business Day next following (the **Relevant Payment Date**). This clause 53.3(b) is to be read subject to clause 53.5.
- (c) Payment of the Unitary Charge, any Additional Payment or any other moneys by the Department to the Contractor does not constitute acceptance by the Department that the Contractor has performed its obligations, nor does it constitute (nor is it to be construed as) a waiver of any of the Department's rights and remedies, whether under this Agreement or at Law.
- (d) Where a Monthly Performance Report shows a net amount owed by the Contractor to the Department then:
  - (i) that amount shall be deemed to be Moneys Owing, treated as a debt that is due, owing and payable by the Contractor to the Department; and
  - (ii) the Contractor shall pay that amount to the Department no later than the final Business Day of the month immediately following the end of the Payment Period to which the report refers.
- (e) All moneys payable to or by the Department under this Agreement are to be invoiced and paid only in Dollars.

#### **53.4 Relief from Deductions**

No Deductions may be made, no Service Failure Points may be attributed and no Charges will be imposed on the Contractor if and to the extent that it has been demonstrated to the reasonable satisfaction of the Department that the event or circumstance giving rise to the Deduction, Service Failure Points and/or Charge (as applicable) is a direct result of:

- (a) a Change implemented by the Contractor pursuant to clause 50.1 (Contractor's obligations), to the extent specified in the applicable Confirmed Change;
- (b) a Consequential Change implemented by or on behalf of the Department, to the extent specified in the applicable Confirmed Change;
- (c) the Contractor providing fewer than 960 Available Prisoner Places as a result of Scheduled Maintenance in accordance with, and for no longer than the period specified in, the then-current Semi-Annual Work Plan;
- (d) the Department making a specific request to the Contractor or giving specific instructions to the Contractor (in either case, against the reasonable advice of the Contractor, and provided that the Contractor has advised the Department in writing on the impact such request or instruction will have on the ability of the Contractor to perform its obligations under this Agreement) which prevents the Contractor providing 960 Available Prisoner Places in accordance with this Agreement (except that where the instruction is given during an emergency situation, the Contractor shall be entitled to notify the Department verbally, provided that such verbal notification is confirmed in writing as soon as reasonably practicable);
- (e) an Intervening Event, for so long as and to the extent that the Contractor is eligible for relief in respect of that Intervening Event under Part 12 (Events) provided that where there is a rectification period in respect of the relevant Key Performance Indicator, the

balance of the rectification period is to be applied following the expiry of the duration of such Intervening Event; or

- (f) the Department exercising its Step-in Rights under Part 18 (Department Step-in), subject to the Department's rights of deduction under clause 71.2 (Step-in due to Contractor breach) or clause 71.3 (Step-in otherwise than due to Contractor breach) (as the case may be).

### 53.5 Disputed Amounts

- (a) The Department may withhold the payment of any amount invoiced by the Contractor that the Department considers on reasonable grounds:
  - (i) is not a payment to which the Contractor is entitled pursuant to the terms of this Agreement; or
  - (ii) is not a payment to which the Contractor is entitled on the Relevant Payment Date,(each a **Disputed Amount**), pending agreement or determination with respect to that Disputed Amount.
- (b) The Department must pay any amount invoiced by the Contractor that is not disputed by the Department on or before the Relevant Payment Date.
- (c) The Department shall notify the Contractor in writing within 10 Business Days of receipt by the Department of the relevant invoice and supporting report of any Disputed Amount together with a report setting out:
  - (i) particulars as to the quantum of that Disputed Amount;
  - (ii) the reasons for such dispute; and
  - (iii) such supporting evidence as the Department may wish to provide in respect of the dispute.
- (d) Within 10 Business Days following receipt by the Contractor of any notice served by the Department pursuant to clause 53.5(c), the Contractor shall respond by notifying the Department as to whether or not it agrees with the statements made in that notice. If the Contractor indicates that it does agree, or if the Contractor fails to make such a response within that time limit, the Department shall be entitled to:
  - (i) retain on a permanent basis any amounts withheld pursuant to clause 53.5(a); and
  - (ii) reclaim from the Contractor the amount of any over-payment which may have been made to the Contractor together with interest on any such amount at the Prescribed Rate calculated on a daily basis and compounded monthly from the date on which the over-payment was made until that amount has been paid in full and whether before or after judgment.
- (e) If the Contractor responds pursuant to clause 53.5(d) that it does not agree with all or any of the statements made in any notice and report served by the Department pursuant to clause 53.5(c), the matter or matters in question shall be determined in accordance with the Accelerated Dispute Resolution Procedures.
- (f) If it is agreed or determined that:

- (i) the Department has withheld any amount which the Contractor was entitled to be paid; or
- (ii) the Contractor has claimed under clause 53.2 any amount which it was not entitled to be paid,

the Department shall pay such amount to the Contractor or the Contractor shall repay such amount to the Department (as applicable) with interest in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made (in the case of failure to pay by the Department) or from the date on which over-payment was made (in the case of excessive claims by the Contractor) until all relevant moneys have been paid in full and whether before or after judgment.

- (g) The Contractor is not excused from the performance of any obligations under this Agreement because the Department has exercised its rights under this clause 53.5.

### **53.6 Final Payment Periods**

- (a) During the final three Payment Periods of the Contract Term, the Department may (without limiting the Department's rights under clause 53.4) additionally withhold an amount equivalent to the greater of:
  - (i) 25 per cent of the maximum possible aggregate Deductions from the Monthly Unitary Charge in each such Payment Period; and
  - (ii) the average per Payment Period of the sum of the Deductions made from the Monthly Unitary Charge in the previous six Payment Periods until such time as the Contractor shall have provided a report to the Department in respect of those Payment Periods containing the information set out in clause 53.2.
- (b) On receipt of the reports from the Contractor in respect of the final three Payment Periods, the Department may retain from the amount withheld pursuant to clause 53.6(a) a sum equivalent to the sum of the Deductions identified in the report or any other amount agreed by the parties or determined pursuant to the Accelerated Dispute Resolution Procedures as owing to the Department.
- (c) The Department shall pay the balance of any monies withheld to the Contractor or if it is agreed or determined that the Contractor owes monies to the Department in excess of those sums withheld, the Contractor shall pay such additional amounts to the Department, in each case with interest on that amount at the Prescribed Rate calculated on a daily basis and compounded monthly from the date on which the payment was withheld by the Department or from the date on which over-payment was made (in the case of excessive claims by the Contractor) until all relevant moneys have been paid in full and whether before or after judgement.

### **53.7 Rights of set off**

- (a) The Department may at any time deduct from any amount payable to the Contractor:
  - (i) any Moneys Owing to the Department; and
  - (ii) any Claim to Moneys Owing which the Department may have against the Contractor,

whether under this Agreement or any other Project Document.



- (b) The Contractor must not at any time deduct from money otherwise due to the Department (including any Moneys Owing to the Department) under any Project Document:
  - (i) any debt or other money due from the Department to the Contractor; or
  - (ii) any Claim to money which the Contractor may have against the Department, whether under this Agreement or any other Project Document.
- (c) The Department will provide the Contractor with reasonable details of the basis on which it is setting off any amount pursuant to this clause 53.7.
- (d) Notwithstanding clause 53.7(a), the Department acknowledges that it will not be entitled to deduct any amount owed by the Contractor to the Department from any payment to the Contractor or the Senior Lender if:
  - (i) this Agreement has been terminated under clause 78 (Termination for Convenience), clause 80 (Termination on Uninsurable Event) or clause 81 (Termination on Uninsurability); and
  - (ii) such deduction would reduce the amount payable to the Senior Lenders in connection with the termination of this Agreement to an amount less than the Base Senior Debt Termination Amount.

### 53.8 Goods and Services Tax (GST)

- (a) In this clause 53.8 and in clauses 53.9 and 53.10, words and phrases defined in the GST Act have the meaning given in that Act, unless the context requires otherwise.
- (b) Unless expressly provided to the contrary, any consideration payable for a supply made under or in accordance with this Agreement is stated before the addition of any GST chargeable on that supply.
- (c) The parties agree that where GST is chargeable on a supply made by one party (the **Supplier**) to another party (the **Recipient**) under or in accordance with this Agreement, the Supplier will issue a tax invoice to the Recipient and the Recipient will pay to the Supplier the GST chargeable on that supply, in addition to the consideration otherwise to be provided for that supply. Subject to clauses 53.9 and 53.10, the Recipient shall pay GST to the Supplier at the same time as the consideration is provided to the Supplier.
- (d) If an amount payable under or in connection with this Agreement is calculated or determined by reference to an expense, cost, loss or outgoing of a party (**Relevant Expense**), the Relevant Expense amount for the purpose of calculating the payment is to be reduced by an amount equal to any deductible input tax credit or any deduction from output tax available to the person in respect of that Relevant Expense.
- (e) The Contractor shall provide the Department with any information reasonably requested by the Department in relation to the amount of GST chargeable in accordance with this Agreement and payable by the Department to the Contractor.

### 53.9 Zero rating of Facility Lease

- (a) The Contractor undertakes that:
  - (i) it will be a registered person on the Service Commencement Date and will provide its tax registration number to the Department before that date;

- (ii) it is acquiring the Facility Lease with the intention of using it for making taxable supplies;
  - (iii) it does not intend to use the Facility Lease as a principal place of residence for itself or a person treated as associated with it under section 2A(1)(c) of the GST Act; and
  - (iv) it will not at any time be a member of a group registered for GST under section 55 of the GST Act other than any group comprising the Contractor and HoldCo.
- (b) The parties agree that the supply of the Facility Lease evidences a supply of an interest in land and accordingly, in reliance on the Contractor's undertakings given in clause 53.9(a), the Department will treat the supply of the Facility Lease as zero rated for GST purposes under section 11(1)(mb) of the GST Act.
- (c) For the avoidance of doubt, if for any reason it is determined that the supply of the Facility Lease is chargeable with GST other than at a rate of zero per cent, then:
  - (i) if the liability for GST under the GST Act is imposed on the Department, the provisions of clause 53.8(c) will apply and the Contractor will pay any GST chargeable on that supply (but for the avoidance of doubt excluding any interest or penalties thereon) to the Department in cleared funds on or before the later of:
    - (A) the date that is 5 Business Days after the Department has given notice, together with a tax invoice or debit note (if required), to the Contractor requiring such payment; and
    - (B) one Business Day before the latest date the GST can be paid without incurring any penalty for late payment;
  - (ii) if the liability for GST under the GST Act is imposed on the Contractor, the Contractor shall pay such GST to Inland Revenue and shall be entitled to recover (and the Department will pay to the Contractor) the amount of any interest or penalties imposed on the Contractor in respect of such GST, upon demand by the Contractor accompanied by reasonable evidence of the Contractor's liability for such amounts (and for the avoidance of doubt, the Contractor will not be required to pay any amount of GST to the Department under clause 53.8(c)), provided that the liability of the Department to pay the Contractor such interest or penalties shall not extend to interest or penalties which have accrued after the date on which the Department has paid to the Contractor an amount in cleared funds which, if paid by the Contractor to Inland Revenue, would ensure that no further liability for interest or penalties would accrue in relation to the GST (or interest or penalties thereon) payable in respect of the supply of the Facility Lease;
  - (iii) in either case, the Contractor shall be entitled to recover (and the Department will pay to the Contractor) the amount of any costs (including legal or other advisory costs, and any Funding Costs), calculated on an indemnity basis, resulting from the determination that the supply of the Facility Lease is chargeable with GST other than at a rate of zero per cent, upon demand by the Contractor accompanied by reasonable evidence of the Contractor's liability for such costs. Funding Costs in this clause 53.9(c)(iii) means the Contractor's cost of funding the following amounts for the following periods:
    - (A) any GST amount paid to the Department under clause 53.9(c)(i) or to Inland Revenue under 53.9(c)(ii), for the period from and including the date of such payment to and including the date on which the Contractor has received from Inland Revenue a refund of GST for the GST period

which takes into account an input credit for the full amount of the GST imposed in respect of the supply of the Facility Lease or, if there is no refund due for that period, the date on which the Contractor files its GST return for that period, provided that the Contractor must include the GST amount paid to the Department (if applicable) in its next monthly GST return following the payment date; and

- (B) any payment of interest and/or penalties made to Inland Revenue for the period from and including the date of such payment to and including the date on which the Contractor receives from the Department the amount payable to it in respect of such interest and/or penalties; and
- (iv) where any such amount is payable by the Department to the Contractor under clause 53.9(c), then the Department shall also pay to the Contractor such additional amount as will put the Contractor in the same after Tax position as it would have been in had no such payment been required.

### 53.10 Design and Construction Payment - GST Offset

- (a) Each party severally acknowledges and agrees that:
  - (i) the Design and Construction Payment is consideration for a taxable supply (the **Supply**) under the GST Act;
  - (ii) it will not seek to treat the Supply as zero rated for GST purposes; and
  - (iii) on or before the Service Commencement Date it will be registered under the GST Act on a monthly return cycle and on an "invoice" accounting basis.
- (b) The Contractor will notify the Department what the latest date is that the Contractor can pay the GST chargeable on the Supply without incurring any penalty for late payment (the **GST Date**), such notification to be in writing and provided at the same time that the tax invoice for the Supply is issued by the Contractor to the Department.
- (c) The Department may satisfy its obligation to pay the GST chargeable on the Supply to the Contractor by obtaining confirmation from Inland Revenue (**IR**) that IR has, or effective from the GST Date will, transfer to the Contractor the benefit of the Department's GST credit entitlement arising from the Supply (**Offset**). If the Department decides to satisfy its obligation to pay the GST chargeable on the Supply by way of Offset, then the Contractor will cooperate with the Department to facilitate the Offset.
- (d) If, by the date two Business Days before the GST Date IR has not credited the Contractor's GST account or agreed in writing to do so with effect on or before the GST Date, then the Department shall pay to the Contractor the GST chargeable on the Supply in cleared funds one Business Day before the GST Date.
- (e) If the Department fails to pay the GST in cleared funds one day before the GST Date the Department is liable to pay compensation to the Contractor of an amount equivalent to any late payment penalty, use of money interest, or other amount (including legal or other advisory costs), calculated on an indemnity basis, arising as a consequence of late payment of GST by the Contractor. Where any such amount is payable by the Department, then the Department shall also pay to the Contractor such additional amount as will put the Contractor in the same after Tax position as it would have been in had no such payment been required.

### **53.11 Rates and Taxes**

- (a) The Department is responsible for and will pay all Rates and Taxes assessed on or in relation to the Department Site (including the fixed annual charge component of water and waste water rates imposed by a Governmental Entity in respect of the Facility), except to the extent that the Contractor caused or causes such Rates or Taxes to be assessed by or as a result of an act or omission of the Contractor, other than an act or omission expressly permitted by this Agreement (which includes, for the avoidance of doubt, retention of ownership of the Initial Fixtures by the Contractor in accordance with clause 11.2 of this Agreement).
- (b) Subject only to clause 53.11(a), the Contractor will pay all Rates and Taxes assessed:
  - (i) on it; and
  - (ii) on or in relation to the Sites, the Facility or the Project,including pursuant to any Project Document or any transaction evidenced or contemplated by it or in respect of, or because of its involvement in the Project, including any Rates or Taxes imposed by any Governmental Entity of the Department.
- (c) The Contractor will use reasonable endeavours to ensure that any Rates or Taxes for which the Department is liable under this clause are invoiced directly by the relevant Governmental Entity to the Department. Where any such invoices for which the Department is liable are addressed to the Contractor rather than to the Department, the Department will meet the invoiced costs by way of Additional Payment.

### **53.12 Late payment interest**

Save where otherwise specifically provided in this Agreement, where any payment or sum of money due from the Contractor to the Department or from the Department to the Contractor under any provision of this Agreement is not paid on or before its due date, it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgement) until actual payment.

### **53.13 Specific Additional Payments**

- (a) Where the Contractor has supervised a Prisoner in a single hospital visit for more than 72 hours, the Department must pay to the Contractor, as an Additional Payment, an amount calculated by multiplying the then current Escort Services Rate by the number of hours by which the duration of such supervision exceeds 72 hours.
- (b) Where the Contractor provides any Additional Transfer Services, the Department must pay to the Contractor, as an Additional Payment, an amount calculated by multiplying the then current Escort Services Rate by the number of hours of each such transfer comprising Additional Transfer Services.
- (c) Where the Department requires the Contractor to provide any Applicable Reviewable Service on the basis of a Capped Volume Assumption as set out in clause 54.1(e)(ii)(C), and subject to clause 53.13(d), the Department must pay to the Contractor as an Additional Payment, in respect of each month in each applicable Reviewable Services Term where Service Hours for an Applicable Reviewable Service exceeds the Monthly Volume Assumption, an amount calculated by:
  - (i) in the case of Reviewable Escort Services, multiplying the then current Escort Services Rate by the number of hours of Reviewable Escort Services in excess of the relevant Monthly Volume Assumption; and

- (ii) in the case of Reviewable AVL Services, multiplying the then current AVL Services Rate by the number of hours of Reviewable AVL Services in excess of the relevant Monthly Volume Assumption.
- (d) Where the Department has made or is required to make any payments under clause 53.13(c) in respect of an Applicable Reviewable Service, the parties will undertake quarterly reconciliations of such payments within 10 Business Days after the last day of each Performance Quarter with respect to the three months concluding on that date. Following such reconciliation, the Department will be entitled to recover from the Contractor, as Moneys Owning, an amount equal to Y (if positive) where:

$$Y = a - (b \times c)$$

Where:

- a** = the amount paid by the Department in respect of an Applicable Reviewable Service under clause 53.13(c) in the relevant Performance Quarter;
- b** = the Service Hours expended by the Contractor in that Performance Quarter, in respect of that Applicable Reviewable Service, in excess of the applicable Quarterly Volume Cap; and
- c** = the AVL Services Rate or the Escort Services Rate, as applicable, used to calculate any payment under clause 53.13(c).

## **53.14 Payment of Base Fee under Independent Reviewer Agreement**

The Department will pay to the Contractor, following the issue by the Contractor of a valid invoice in accordance with clause 53.2, an amount equal to 50 per cent of the Base Fee (as defined in the Independent Reviewer Agreement) paid by the Contractor under, and in accordance with, the Independent Reviewer Agreement.

## **54. Value Testing**

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### **54.1 Exclusive negotiation**

- (a) No later than:
  - (i) 10 months before the Planned Service Commencement Date, the Department shall provide to the Contractor the Escort Benchmark Information and the AVL Benchmark Information for consideration; and
  - (ii) eight months before each of the dates set out in clause 54.1(c)(i) and 54.1(c)(ii), the Department shall provide to the Contractor any information it holds, in respect of developments or trends in the provision of services comparable to the Reviewable Escort Services and/or the Reviewable AVL Services, that it reasonably believes to be material and relevant to the setting of the relevant volumes for the subsequent Reviewable Services Term.
- (b) No later than eight months before the Planned Service Commencement Date, the Contractor must submit an offer of pricing to undertake each of the Reviewable Services for the first Reviewable Services Term on the basis set out in clause 54.1(d).
- (c) No later than six months before:
  - (i) the fifth anniversary of the Service Commencement Date; and

- (ii) thereafter every five years until the date that is five years prior to the Expiry Date,

the Contractor may, and must if the Department has given no less than two months' prior written notice to the Contractor that the Department requires the Contractor to do so submit an offer of pricing to undertake each of the Reviewable Services for the ensuing Reviewable Services Term on the basis set out in clause 54.1(d).

- (d) The Contractor's offer of pricing for the Reviewable Services for the ensuing Reviewable Services Term must be made on an Open Book Basis as follows:
  - (i) in respect of Applicable Utilities, the payment for which represents a component of the Indexable Element of the Unitary Charge:
    - (A) the pricing of such Applicable Utilities must be on a nominal per-unit basis representing the best pricing the Contractor is able (acting reasonably) to obtain from applicable Utility Service Providers; and
    - (B) the capped volume of usage of such Applicable Utilities to which the pricing applies will be the same as that specified in the definition of Applicable Utilities,with the intention that the price per unit of Applicable Utilities may be reviewed in accordance with this clause 54, but that the capped volume of usage set in the definition of Applicable Utilities will remain fixed for the Contract Term;
  - (ii) in respect of Reviewable Escort Services, the payment for which represents a component of the Indexable Element of the Unitary Charge:
    - (A) the pricing applicable to such Reviewable Escort Services will (subject to adjustment to reflect indexation as set out in Schedule 17 (Payment Mechanism)), be the Escort Services Rate; and
    - (B) the anticipated, risk-adjusted volume of usage of Reviewable Escort Services for the ensuing Reviewable Services Term, based on the Escort Benchmark Information (in respect of the first Reviewable Services Term) and on average annual usage (by event and duration) over the previous Reviewable Services Term (if any) and information (if any) provided by the Department under clause 54.1(a)(ii) for each subsequent Reviewable Services Term; and
  - (iii) in respect of Reviewable AVL Services, the payment for which represents a component of the Indexable Element of the Unitary Charge:
    - (A) the pricing applicable to such Reviewable AVL Services will (subject to adjustment to reflect indexation as set out in Schedule 17 (Payment Mechanism)), be the AVL Services Rate; and
    - (B) the anticipated risk-adjusted volume of usage of Reviewable AVL Services for the ensuing Reviewable Services Term, based on the AVL Benchmark Information (in respect of the first Reviewable Services Term) and on average annual usage (by event and duration) over the previous Reviewable Services Term (if any) and information (if any) provided by the Department under clause 54.1(a)(ii) for each subsequent Reviewable Services Term.
- (e) If the Contractor submits an offer for a Reviewable Service within the time permitted by clause 54.1(b) or 54.1(c) (as applicable), then for a period of two months after the offer is made under that clause:

- (i) the Department agrees to negotiate exclusively with the Contractor for the provision of the relevant Reviewable Services during the ensuing Reviewable Services Term; and
- (ii) the Department will by a date no later than one month after the expiration of that two month period, advise the Contractor whether:
  - (A) the Contractor's offer (or any lower offer made by it during negotiation) is acceptable to the Department for the provision of the relevant Reviewable Services during the ensuing Reviewable Services Term (in which case the Base Case is to be updated in accordance with clause 5.2 (Updating Base Case) and the Unitary Charge will be adjusted in accordance with clause 5.3 (Application to Base Case));
  - (B) the Department requires Market Testing to be conducted in relation to Applicable Utilities or, where the Department confirms in its reasonable opinion that there are likely to be three or more prospective tenderers, the Reviewable Escort Services;
  - (C) the Department requires the Contractor to provide the relevant Reviewable Escort Services or the Reviewable AVL Services on the basis of the Department's reasonable assumption in respect of the number of instance that such Reviewable Services will need to be performed, the duration of each such instances and, where applicable, the relevant category of each such instance, for the ensuing Reviewable Services Term for each such Reviewable Service (each a **Capped Volume Assumption**) (in which case the Base Case is to be updated in accordance with clause 5.2 (Updating Base Case) and the Unitary Charge will be adjusted in accordance with clause 5.3 (Application to Base Case)). Any Capped Volume Assumption must be expressed on an hours per annum basis; and
  - (D) the Department wishes to omit the relevant Reviewable Services from the Operational Services by way of a Consequential Change Notice and to carry out the relevant Reviewable Services itself or procure a third party to carry out the relevant Reviewable Services, in which case clause 50.2(f) shall apply.
- (f) Notwithstanding that the Department may require the Contractor to conduct Market Testing, in accordance with clause 54.1(e)(ii)(B), each of the Contractor's offers must remain open for subsequent acceptance by the Department until 12 months after the then-current Reviewable Services Term.
- (g) If the Contractor does not offer, and the Department does not require an offer under clause 54.1(b) or 54.1(c) in respect of any Reviewable Services following the first Reviewable Services Term, provision of the Reviewable Services will continue on the then current terms for the ensuing Reviewable Services Term.
- (h) If the Contractor fails to submit an offer in accordance with clause 54.1(b) or 54.1(c) upon receipt of a notice to do so from the Department, then without limiting its other rights, the Department may require the Contractor to conduct Market Testing subject to and in accordance with clause 54.1(e)(ii)(B).
- (i) If the Department requires the Contractor to provide the Reviewable Escort Services and/or the Reviewable AVL Services pursuant to clause 54.1(e)(ii)(C), the Contractor shall, in respect of the first Reviewable Services Term only, be entitled within 30 Business Days following the first anniversary of the Service Commencement Date submit a revised offer to the Department in relation to such Reviewable Services, based on the actual data received in respect of the Prison in such 12 month period for

the remainder of the first Reviewable Services Term. In such circumstances, the process set out in this clause 54.1 shall be repeated.

## **54.2 Market Testing**

- (a) If the Department requires Market Testing to be undertaken in respect of any Reviewable Services pursuant to and in accordance with clause 54.1, then the parties must use reasonable endeavours to agree on the identity of at least three prospective tenderers that are to be invited to submit tenders for those Reviewable Services. Each prospective tenderer must possess an appropriate degree of skill, resources, experience, reputation and financial standing to provide those Reviewable Services on terms and conditions the same or substantially similar to those currently governing the supply of those Reviewable Services.
- (b) Any Dispute as to the selection of prospective tenderers is to be resolved in accordance with the Accelerated Dispute Resolution Procedures.
- (c) A prospective tenderer may include the existing supplier of the relevant Reviewable Service but otherwise must not include:
  - (i) any Contractor Related Person;
  - (ii) the Department, any Department Related Person or any Department Personnel (excluding any incumbent third party contractor of the Department);
  - (iii) any person that is an Affiliate of any other service provider asked by the Contractor to submit an offer; or
  - (iv) any person that has committed a Probity Event.
- (d) Once agreement on the number and identity of the prospective tenderers has been made under clause 54.2(a) or resolved in accordance with the Accelerated Dispute Resolution Procedures, the Contractor must issue a request for tender and use its best endeavours to obtain offers by competitive tender from those prospective tenderers:
  - (i) which reflect competitive pricing for the relevant Reviewable Services in the then current market; and
  - (ii) for the provision of the relevant Reviewable Services for the ensuing Reviewable Services Term on terms that enable the Contractor to continue to meet the relevant Corrections Services Requirements and Facility Maintenance Requirements and otherwise comply with the other terms of this Agreement.
- (e) The request for tender must:
  - (i) provide such information concerning the relevant Reviewable Services and the Project Documents as the Department reasonably requires to ensure the tenderers are fully informed of the opportunity tendered;
  - (ii) impose a duty of confidentiality on tenderers;
  - (iii) require each tenderer to grant such consents as may be required by the Department to carry out Probity Investigations as the Department may deem fit;
  - (iv) require the offers to be conforming and irrevocable until 12 months after the current Reviewable Services Term;



- (v) require each tenderer to comply with the sub-contracting requirements set out in clause 16 (Sub-contractors);
  - (vi) be accompanied by a draft sub-contract that is on substantially the same terms (other than price and term) as the current sub-contract for the relevant Reviewable Services, and that bind the tenderer to accept its terms;
  - (vii) provide for the review of the relevant Reviewable Services in accordance with the terms of this clause 54; and
  - (viii) otherwise be on terms and conditions that in form and substance are reasonably acceptable to the Department.
- (f) The Department may require the Contractor at any time to appoint an independent tender manager on terms satisfactory to the Department to oversee the tender process referred to in this clause 54. In addition, the Contractor must:
- (i) provide all assistance and information reasonably required by the independent tender manager; and
  - (ii) comply with all reasonable directions of the independent tender manager,
- in respect of the tender process. The costs and expenses of the independent tender manager shall be paid by the Contractor and the Department in equal shares.
- (g) The Contractor must, within four weeks of the date of the request for tenders under clause 54.2(d), provide to the Department:
- (i) copies of all conforming offers it has been given under the tender pursuant to clause 54.2(d) and clause 54.2(e);
  - (ii) its comments on each of the offers;
  - (iii) its recommendation as to the preferred tenderer and the reasons why; and
  - (iv) such further details as the Department reasonably requires in relation to the tender and the offers.
- (h) During the period of four weeks following provision of the information under clause 54.2(g), the Contractor will consult with the Department concerning the offers for the provision of the relevant Reviewable Services made in accordance with clause 54.2(d) and clause 54.2(e) to attempt to reach agreement on the appointment of one of the tenderers for the provision of the Reviewable Services for the ensuing Reviewable Services Term, having regard to (among other things):
- (i) the experience and capability of each tenderer;
  - (ii) the extent to which each offer provides value for money to the Department as against each of the other offers; and
  - (iii) the ability of the Contractor to continue to meet the Corrections Services Requirements and Facility Management Requirements and otherwise comply with this Agreement on sub-contracting the Reviewable Service to any of the tenderers.
- (i) The Contractor must not enter into any such contract with any tenderers for the provision of the relevant Reviewable Services without the prior agreement of the Department.

- (j) If, notwithstanding the parties using reasonable endeavours to identify three or more prospective tenderers, no offers are made or none of the offers made by the tenderers are acceptable to the Department, the Department may (entirely at its discretion):
  - (i) accept the offer made by the Contractor under clause 54.1(b) or 54.1(c) (as applicable); or
  - (ii) where applicable, require the Contractor to proceed to provide the relevant Reviewable Services under the current terms and pricing until three months after the expiry of the then current Reviewable Services Term; and/or
  - (iii) omit the relevant Reviewable Services from the Operational Services by way of a Consequential Change Notice and carry out the relevant Reviewable Services itself or procure a third party to carry out the relevant Reviewable Services, in which case clause 50.2(f) shall apply.
- (k) If the Department advises the Contractor that it considers a particular tenderer whose offer has been obtained by the Contractor pursuant to clause 54.2(g) to be the preferred proposed Sub-contractor of the relevant Reviewable Services on the basis of the criteria described in clause 54.2(h), and the Contractor does not agree that these criteria have been satisfied for any such tenderer nominated by the Department, the matter will be referred for resolution under the Accelerated Dispute Resolution Procedures.
- (l) Subject to clause 54.2(k), if Market Testing is undertaken in accordance with this clause 54, the Contractor will (subject only to the conduct of Probity Investigations satisfactory to the Department) sub-contract, or ensure that the relevant Sub-contractor sub-contracts, the provision of the relevant Reviewable Services for the ensuing Reviewable Services Term, pursuant to a sub-contract that complies with the tender requirements of clause 54.2(d) and clause 54.2(e), to the tenderer:
  - (i) agreed with the Department under this clause 54.2; or
  - (ii) determined pursuant to the Accelerated Dispute Resolution Procedures in accordance with clause 54.2(k),

the Base Case is to be updated in accordance with clause 5.2 (Updating Base Case) and the Unitary Charge will be adjusted in accordance with clause 5.3 (Application to Base Case) for the period of the ensuing Reviewable Services Term.
- (m) A sub-contract entered into in accordance with this clause 54 is deemed to be approved by the Department for the purposes of clause 16 (Sub-contractors).
- (n) Without limiting the Department's rights under this Agreement, where an offer is made by the Contractor under clause 54.1(b) or 54.1(c) (as applicable) and the Department does not accept the Contractor's offer, and a sub-contractor has not yet been appointed under clause 54.2(l) to provide the relevant Reviewable Services as at the date of the commencement of the ensuing Reviewable Services Term, the Contractor will continue to provide the relevant Reviewable Services on the terms and pricing for the then previous Reviewable Services Term in accordance with the Corrections Services Requirements, the Facility Management Requirements and the other terms of this Agreement, until such time as a Sub-contractor appointed under clause 54.2(l) commences provision of the relevant Reviewable Services.
- (o) If the period for provision of the relevant Reviewable Services by the Contractor extends beyond three months after the end of the then current Reviewable Services Term, the Department will pay the price tendered under clause 54.1(b) or 54.1(c) (as applicable) backdated to the date that is six weeks after the end of that Reviewable Services Term.

## **55. Refinancing and Effective Base Rate**

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### **55.1 Refinancing**

- (a) The Contractor shall not undertake or permit any Refinancing other than in accordance with this clause 55.
- (b) Every Refinancing is subject to and must comply with clause 55.11.
- (c) Subject to the other provisions of this Agreement and in particular to the other provisions of this clause 55 and, to the extent applicable, to Schedule 17 (Payment Mechanism) and Schedule 23 (Calculation of Compensation on Termination) (which will prevail if there is any inconsistency with this clause), it is intended that the following principles will apply to the Refinancing regime:
  - (i) Refinancings that are proposed to be General Refinancings or Permitted Refinancings may be undertaken by the Contractor with the prior written consent (or deemed consent) of the Department, with the grounds on which the Department may grant or withhold its consent being set out in this clause 55;
  - (ii) Refinancings that are proposed to be Exempt Refinancings may be undertaken by the Contractor without the prior written consent of the Department, provided that certain Exempt Refinancings must be reported to the Department to the extent required by clause 57.2(a);
  - (iii) as at the first Drawdown Date of a Scheduled Refinancing, Rollover Refinancing or General Refinancing, the Contractor must ensure that the notional amount of Permitted Hedging in place (together with any Swaps entered into on or prior to Financial Close and which remain in place at that date) is no less than 97 per cent and no greater than 103 per cent of Core Senior Debt as at that date (disregarding any Swaps in place in respect of any Senior Debt which is not Core Senior Debt);
  - (iv) the Department will take the risk and reward of EBR Re-sets in respect of Core Senior Debt as set out in clause 55.13 and as calculated in Schedule 17 (Payment Mechanism);
  - (v) the Department will not be entitled to receive, and will not be required to pay, any amount on account of any Additional Rescue Refinancing Amount other than to the extent set out in Schedule 23 (Calculation of Compensation on Termination); and
  - (vi) the Department will be entitled to a payment equal to 50 per cent of any Refinancing Gain arising from a Qualifying Refinancing as set out in clause 55.12.

### **55.2 Department consent to Refinancing**

- (a) Subject to this clause 55.2, the Contractor shall not undertake or permit any Refinancing without the prior written consent of the Department.
- (b) If the Contractor wishes to effect a Refinancing (other than an Exempt Refinancing) the Contractor shall first request and obtain the Department's prior written consent and shall provide the Department with details of the proposed Refinancing in accordance with clause 55.11.

- (c) The Department shall approve or reject the Contractor's request for consent to a General Refinancing within 20 Business Days of receiving the details of the proposed Refinancing as required under clause 55.11. The Department will not unreasonably withhold or delay giving consent to a proposed General Refinancing.
- (d) The Department shall approve or reject the Contractor's request for consent to a proposed Permitted Refinancing within five Business Days of receiving the details of the proposed Permitted Refinancing as required under clause 55.11. The Department may only withhold such consent if the proposed Permitted Refinancing does not meet one or more of the applicable Permitted Refinancing Conditions. If the Department does not approve or reject a request for consent to a proposed Permitted Refinancing within the five Business Day period referred to in this clause 55.2(d), the Department will be deemed to have consented to the Permitted Refinancing.
- (e) If the Contractor wishes to effect an Exempt Refinancing it may do so without the prior consent of the Department provided that the Exempt Refinancing meets such of the Exempt Refinancing Conditions as the Contractor reasonably considers are applicable in the circumstances, and any such Exempt Refinancing shall be deemed to have received the consent of the Department for the purposes of this Agreement.

### **55.3 General Refinancing Conditions**

Without limitation to the Department's rights under clause 55.2, it will be reasonable for the Department to withhold its consent to a proposed General Refinancing if, in the Department's reasonable opinion, that General Refinancing would not meet one or more of the following conditions:

- (a) that Refinancing would not result in a material increase or material adverse change in the profile of the risks or liabilities of the Department under any Project Document without adequate compensation to the Department except to the extent the Refinancing is an arm's length resetting of interest rate hedging that complies with the Swap Pricing Protocol and this clause 55.3;
- (b) the terms and conditions of that Refinancing (taken as a whole) are in accordance with market practice at the time;
- (c) the terms and conditions of that Refinancing (taken as a whole) are not materially more onerous or disadvantageous to the Contractor than the terms and conditions under the then existing Senior Financing Agreements and the Department considers (acting reasonably) that the Contractor's ability to perform its obligations under the Project Documents will not be materially and adversely affected by those terms and conditions or the indebtedness assumed under that Refinancing;
- (d) the Base Case (amended to reflect the Refinancing) shows that the Contractor will be able to adequately service and repay the indebtedness assumed under that Refinancing;
- (e) the indebtedness assumed under that Refinancing (if any) will be used solely for the Project; and
- (f) that Refinancing is not, in whole or in part, arranged or funded by an Unsuitable Third Party.

### **55.4 Permitted Refinancing Conditions**

- (a) If the Contractor wishes to effect a Permitted Refinancing it must seek the consent of the Department in accordance with clause 55.2 and:

- (i) in the case of a proposed Scheduled Refinancing, the Refinancing must meet the Scheduled Refinancing Conditions as set out in clause 55.5(b);
  - (ii) in the case of a proposed Rollover Refinancing, the Refinancing must meet the Rollover Refinancing Conditions as set out in clause 55.6(b);
  - (iii) in the case of a proposed Swap Breakage Refinancing, the Refinancing must meet the Swap Breakage Refinancing Conditions as set out in clause 55.7(b);
  - (iv) in the case of a proposed Permitted Hedging, the Refinancing must meet the Permitted Hedging Conditions as set out in clause 55.8(d); and
  - (v) in the case of a proposed Rescue Refinancing, the Refinancing must meet the Rescue Refinancing Conditions as set out in clause 55.9(b).
- (b) Where any proposed Refinancing (other than an Exempt Refinancing) does not meet the applicable Permitted Refinancing Conditions, the Contractor may only effect that Refinancing as a General Refinancing in accordance with clause 55.2 (Department consent to Refinancing).

## **55.5 Scheduled Refinancing Conditions**

- (a) For a Refinancing to be a Scheduled Refinancing, it must meet the conditions set out in clause 55.5(b).
- (b) A Refinancing will only be a Scheduled Refinancing if it:
  - (i) has a first Drawdown Date that falls after the end of the Lock-in Period;
  - (ii) has a scheduled final maturity date between two years and 10 years after its first Drawdown Date;
  - (iii) has a maximum principal amount (at any time during its scheduled term) of up to the lesser of:
    - (A) the aggregate of Core Senior Debt and the Incremental Debt Headroom applicable to the Scheduled Refinancing; or
    - (B) the aggregate of Modelled Senior Debt and the Modelled Senior Debt Cap,

in each case as at the date immediately prior to the first Drawdown Date of that Scheduled Refinancing;
  - (iv) if the terms of the Scheduled Refinancing include a Lock-up DSCR, such Lock-up DSCR (as it relates to the period from the first Drawdown Date for the Scheduled Refinancing until its scheduled maturity date) is no less than 0.05 below the Minimum Projected DSCR at any time during its scheduled term (as determined at the time of the relevant Scheduled Refinancing); and
  - (v) is not, in whole or in part, arranged or funded by an Unsuitable Third Party.

## **55.6 Rollover Refinancing Conditions**

- (a) For a Refinancing to be a Rollover Refinancing, it must meet the conditions set out in clause 55.6(b).

- (b) A Refinancing will only be a Rollover Refinancing if it:
  - (i) effects an extension to the maturity date of the then-current Core Senior Debt;
  - (ii) has a first Drawdown Date that falls after the end of the Lock-in Period;
  - (iii) has a scheduled final maturity date no later than two years after its first Drawdown Date;
  - (iv) has a maximum principal amount (at any time during its scheduled term) of up to the lesser of:
    - (A) the aggregate of Core Senior Debt and the Incremental Debt Headroom applicable to a Rollover Refinancing; or
    - (B) the aggregate of Modelled Senior Debt and the Modelled Senior Debt Cap,
 in each case as at the date immediately prior to the first Drawdown Date of that Rollover Refinancing;
  - (v) if the terms of the Rollover Refinancing include a Lock-up DSCR, such Lock-up DSCR (as it relates to the period from the first Drawdown Date for the Rollover Refinancing until its scheduled maturity date) is no less than 0.05 below the Minimum Projected DSCR at any time during its scheduled term (as determined at the time of the relevant Scheduled Refinancing); and
  - (vi) is not, in whole or in part, arranged or funded by an Unsuitable Third Party.
- (c) Where the then applicable maturity date of any Core Senior Debt is extended on more than one occasion, each such extension will be treated as a new Rollover Refinancing and must meet the Rollover Refinancing Conditions to qualify as a Rollover Refinancing.

## **55.7 Swap Breakage Refinancing**

- (a) For a Refinancing to be a Swap Breakage Refinancing, it must meet the conditions set out in clause 55.7(b).
- (b) A Refinancing will only be a Swap Breakage Refinancing if it:
  - (i) comprises Senior Debt incurred for the sole purpose of enabling the Contractor to fund any Swap Breakage Costs for which it is liable and any fees and costs incurred in connection with the raising of the financial indebtedness for the Swap Breakage Refinancing to the extent such fees and costs may not be met from funds then available to the Contractor;
  - (ii) has a maximum principal amount (at any time during its scheduled term) sufficient to fund such Swap Breakage Costs and fees and costs; and
  - (iii) has a scheduled final maturity date no later than the original scheduled maturity date for the Swap in respect of which the Swap Breakage Costs were incurred.

## **55.8 Permitted Hedging**

- (a) The Contractor must not enter into any interest rate swap or other equivalent or comparable transaction other than:

- (i) a Swap in accordance with this clause 55.8; or
  - (ii) by way of a General Refinancing under clause 55.2.
- (b) The Contractor:
  - (i) must ensure that, as at the first Drawdown Date of any Scheduled Refinancing, Rescue Refinancing to the extent it is not an Additional Rescue Refinancing Amount, Rollover Refinancing or General Refinancing pursuant to which Core Senior Debt is incurred, the aggregate of all notional amounts of Permitted Hedging in place (together with any Swaps entered into on or before Financial Close and which remain in place at that date) is no less than 97 per cent and no greater than 103 per cent of Core Senior Debt (disregarding any Swaps in place in respect of any Senior Debt which is not Core Senior Debt); and
  - (ii) may enter into Permitted Hedging in respect of Additional Rescue Refinancing Amounts and Swap Breakage Refinancings,

provided clause 55.8(b)(i) shall cease to apply immediately after the Fifth EBR Reset.
- (c) For a Swap entered into by the Contractor:
  - (i) on or prior to Financial Close to be permitted under this Agreement, it must be entered into in accordance with the Financial Close Adjustment Protocol; and
  - (ii) to be Permitted Hedging, it must meet each of the Permitted Hedging Conditions.
- (d) A Swap will only be Permitted Hedging if it:
  - (i) has a term of between two years and 10 years, other than in the case of:
    - (A) any Swap entered into solely in respect of any Additional Rescue Refinancing Amount, Incremental Debt Amount or Swap Breakage Refinancing (which, in the case of Swaps in respect of Additional Rescue Refinancing Amount and Incremental Debt Amounts only, must have a term no longer than 10 years but may have a term of less than two years);
    - (B) any Swap entered into as a replacement for all or any portion of an existing Swap that has been closed-out or terminated (in which case, the term of the replacement Swap must be no longer than the original term of the Swap that has been closed-out or terminated); or
    - (C) any Swap to the extent entered into solely to ensure compliance with clause 55.8(b)(i); and
  - (ii) is entered into in accordance with and complies with the Swap Pricing Protocol.
- (e) Permitted Hedging attributable to Additional Rescue Refinancing Amounts and Swap Breakage Refinancings will, where applicable, be included within any Base Senior Debt Termination Amount but will not, prior to the termination of this Agreement, impose any Liability on the Department.

## 55.9 Rescue Refinancing Conditions

- (a) For a Refinancing to be a Rescue Refinancing, it must meet the conditions set out in clause 55.9(b).

- (b) A Refinancing will only be a Rescue Refinancing if it:
  - (i) is arranged and drawn down as a consequence of, or to cure, prevent, avoid, remedy or mitigate the effects of, a default, review event or mandatory prepayment event under a Senior Financing Agreement;
  - (ii) has a scheduled maturity date no later than five years after its first Drawdown Date; and
  - (iii) is not, in whole or in part, arranged or funded by an Unsuitable Third Party.

## **55.10 Exempt Refinancing Conditions**

- (a) For a Refinancing to be an Exempt Refinancing, it must meet such of the Exempt Refinancing Conditions set out in clause 55.10(b) as the Contractor reasonably considers are applicable in the circumstances.
- (b) The Exempt Refinancing Conditions are:
  - (i) that Refinancing would not result in a material increase or material adverse change in the profile of the risks or liabilities of the Department under any Project Document without adequate compensation to the Department;
  - (ii) the Contractor considers (acting reasonably) that its ability to perform its obligations under the Project Documents will not be materially and adversely affected by the terms and conditions of that Refinancing (taken as a whole);
  - (iii) that the indebtedness assumed under that Refinancing (if any) will be used solely for the Project; and
  - (iv) that Refinancing is not, in whole or in part, arranged or funded by an Unsuitable Third Party.

## **55.11 Refinancing – general provisions**

- (a) The Contractor must not undertake any Refinancing other than with Qualifying Lenders. Where the Contractor wishes to effect a Refinancing (or, where applicable, a Qualifying Bank Transaction) with a person that does not meet the criteria set out in any of paragraphs (a) to (c) of the definition of Qualifying Lender, it must first obtain the written consent of the Department as contemplated by paragraph (d) or (e) of the definition of Qualifying Lender. Such consent must not be unreasonably withheld or delayed and will be deemed to have been given if no response is received within 10 Business Days after a written request for consent has been provided to the Department. Where the request for consent is made in respect of a person who would otherwise fall within paragraph (d) of the definition of Qualifying Lender, the only grounds on which the Department may withhold its consent are that that person is, in its reasonable opinion, an Unsuitable Third Party (disregarding paragraph (a) of the definition of Unsuitable Third Party) or is a person to which paragraphs (c) or (d) of the definition of Reputable applies).
- (b) The Contractor shall promptly provide the Department with the following details of any proposed Refinancing (other than an Exempt Refinancing):
  - (i) where it considers the Refinancing to be a Permitted Refinancing, a certificate stating that that Refinancing complies with the applicable Permitted Refinancing Conditions, including reasonable particulars as to how that Refinancing meets the applicable conditions;



- (ii) a copy of the draft financial model relating to it (if any), including the basis for the assumptions used in that draft financial model;
  - (iii) a comparison of the Refinancing (together with all other then-current Core Senior Debt) with the Modelled Senior Debt assumed within the Base Case as at the time of the Refinancing, together with a description of the material changes (if any) to the obligations of the Contractor or HoldCo to its funders;
  - (iv) the identity of the persons intending to arrange or fund the Refinancing;
  - (v) drafts of the documentation anticipated to effect the Refinancing;
  - (vi) particulars of the Refinancing Gain, where applicable;
  - (vii) particulars of the anticipated change in the Effective Base Rate, if applicable; and
  - (viii) such other information as the Department may reasonably request for the purpose of assessing whether or not any proposed Refinancing meets, as applicable, the General Refinancing Conditions or the relevant Permitted Refinancing Conditions.
- (c) The Department shall (before, during and at any time after any Refinancing) have unrestricted rights of audit (on an Open Book Basis) over any financial model and documentation (including any aspect of the calculation of the Refinancing Gain or the change to the Effective Base Rate, where applicable) used in connection with that Refinancing.
- (d) The Contractor shall, within a reasonable period following completion of any Refinancing (other than an Exempt Refinancing), provide the Department with true copies of the applicable Senior Financing Agreements.
- (e) No entry into or termination of, amendments to or replacements of any Financing Agreement shall have the effect of increasing the Department's Liabilities on early termination of this Agreement except to the extent:
- (i) the Contractor has obtained the Department's prior written consent, or deemed consent, under this Agreement to such entry into or termination of, amendments to or replacements of any Financing Agreement; and
  - (ii) such Liabilities are payable by the Department under Schedule 23 (Calculation of Compensation on Termination).
- (f) Nothing in this clause 55 shall prevent a proposed Refinancing that meets all of the applicable Refinancing Conditions from qualifying as a Permitted Refinancing or a General Refinancing (as applicable) solely by reason of the type of financial accommodation being provided pursuant to that proposed Refinancing being a bond or other debt product or instrument other than a loan.
- (g) Where a single transaction comprises two or more component parts, each of which is or may be a Refinancing in its own right, each such component will be considered individually for compliance with the applicable Permitted Refinancing Conditions and/or Exempt Refinancing Conditions and/or for the purposes of the Department's consent under clause 55.2(c).

## **55.12 Refinancing Gain**

- (a) The Department will receive a 50 per cent share of any Refinancing Gain arising from a Qualifying Refinancing.
- (b) The Department will receive its share of any Refinancing Gain arising from a Qualifying Refinancing by way of an adjustment to the Monthly Unitary Payment in accordance with paragraph 1 of Schedule 17 (Payment Mechanism).
- (c) The Department and the Contractor will negotiate in good faith to agree the inputs required to derive the Refinancing Gain under clause 55.12(a). If the parties fail to agree such inputs, the Dispute shall be determined in accordance with the Accelerated Dispute Resolution Procedures.
- (d) The Refinancing Gain shall be calculated after taking into account the reasonable and proper professional costs that each party directly incurs in relation to that Refinancing and on the basis that all reasonable and proper professional costs incurred by the Department will be paid to the Department by the Contractor within 20 Business Days of the applicable Qualifying Refinancing.

## **55.13 Effective Base Rate**

Where a Refinancing occurs:

- (a) the basis of calculating the financial consequences (if any) of any EBR Re-set is set out in paragraph 7 of Schedule 17 (Payment Mechanism); and
- (b) the basis of calculating the financial consequences of any Qualifying Refinancing, where it gives rise to a Refinancing Gain, is set out in clause 55.12 (Refinancing Gain) and paragraph 1 of Schedule 17 (Payment Mechanism).

## Part 15 – Warranties, undertakings and reporting

### 56. Contractor warranties

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The Department has entered into this Agreement in reliance on, and the Contractor makes the warranties and representations to the Department set out under, clause 56.1 and clause 56.2.

#### 56.1 General warranties

The Contractor warrants and represents to the Department that:

- (a) it is properly constituted and incorporated under the Companies Act 1993 and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (b) neither it nor any of its assets enjoys any immunity from set off, suit or execution;
- (c) it has the corporate power to enter into and to exercise its rights and perform its obligations under the Project Documents;
- (d) all actions necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under the Project Documents have been taken or, in the case of any Project Document executed after the Execution Date, will be taken before such execution;
- (e) the obligations expressed to be assumed by the Contractor under the Project Documents to which it is party, are, or in the case of any Project Document executed after the Execution Date, will be on their execution, legal, valid, binding and enforceable;
- (f) each Project Document is, or in the case of any Project Document executed after the Execution Date, will be on its execution, in proper form for enforcement in New Zealand; and
- (g) the execution, delivery and performance by it of the Project Documents to which it is party, does not contravene any provision of:
  - (i) any existing Laws either in force, or enacted but not yet in force, which are binding on the Contractor;
  - (ii) the Contractor's constitution;
  - (iii) any order or decree of any court or arbitrator which is binding on the Contractor; or
  - (iv) any obligation which is binding upon the Contractor or upon any of its assets or revenues.

#### 56.2 Information warranties

The Contractor further warrants and represents to the Department that:

- (a) the particulars regarding the Contractor, HoldCo and each Major Sub-contractor as set out in Schedule 2 (Contractor Warranted Data) are true and correct and:

- (i) no other person has any legal or beneficial interest in the Contractor, Holdco or a Major Sub-contractor; and
- (ii) there is no agreement, arrangement or understanding in existence:
  - (A) under which further shares or other interests in the Contractor or HoldCo may be issued to any person or under which any person is entitled to call for the issue of any shares or other interest; or
  - (B) that has or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of such shares;
- (b) all information provided by the Contractor to the Department under or in relation to this Agreement is, or will be when disclosed, complete and accurate in all material respects and that the use of that information by either party (for the purpose for which it was disclosed) will not breach the Intellectual Property rights of any third party;
- (c) the Contractor has not, other than in connection with the Project, traded at any time since its incorporation as a company under the Companies Act 1993, nor has the Contractor incurred any liabilities or entered into any document or agreement in respect of the Project, other than the Project Documents, or as contemplated under any Project Document;
- (d) no Probity Event has occurred or is continuing in relation to the Contractor, a Sub-contractor or a Contractor Related Person;
- (e) no Claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor (after having made due enquiry), pending or threatened against it or any of its assets which will or might have a Material Adverse Effect; and
- (f) the copies of the Project Documents which the Contractor has delivered or, when executed, will deliver to the Department are or, as the case may be, will be, true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of the Project Documents which would materially affect the interpretation or application of any of the Project Documents.

### **56.3 Deemed repetition**

Each of the warranties set out in clause 56.1 and clause 56.2 are deemed to be repeated each day during the Contract Term by reference to the facts existing on that day, except that:

- (a) the warranty in clause 56.2(a) is made only as at the Execution Date and the date of Financial Close; and
- (b) the warranty in clause 56.2(b) is made only as at the time that the relevant information is provided.

### **56.4 No limitation**

The Department and the Contractor acknowledge and agree that none of the representations and warranties made by the Contractor under clause 56.1 or clause 56.2 or elsewhere in this Agreement will be interpreted as being limited or affected by any endorsement or failure to endorse, or failure to review or comment upon, any of the Reviewable Documents under the Review Procedures, or by any report or failure to report, or comment made by the Independent Reviewer or an Independent Expert.

## 57. Contractor undertakings

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### 57.1 General undertakings

The Contractor undertakes with the Department that, for so long as this Agreement remains in full force:

- (a) it shall not cease to be resident in New Zealand or transfer in whole or in part its undertaking, business or trade outside New Zealand;
- (b) it shall not undertake the performance of its obligations under this Agreement for Works Provisioning, the provision of the Operational Services and the performance of its other obligations under this Agreement, otherwise than through itself or a Sub-contractor;
- (c) it shall not, without the written consent of the Department (such consent not to be unreasonably withheld or delayed), incorporate any company or purchase or acquire or subscribe for any shares in any company save where such company is solely involved in Works Provisioning or in providing the Operational Services;
- (d) it shall not, without the written consent of the Department (such consent not to be unreasonably withheld or delayed), make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of business and as contemplated by the Project Documents;
- (e) it shall not change or cease its business or start any other business;
- (f) it shall take reasonable care not to do anything, or omit to do anything, that would cause the Department to be in breach of applicable Laws;
- (g) it shall consult with the Department as soon as practicable as to any event that has or may materially and adversely affect the performance of its obligations under this Agreement;
- (h) it will not create, permit or suffer to exist any Security Interest over all or any of its assets, without the prior written consent of the Department, except for Permitted Security Interests and Security Interests arising as a result of the Financing Agreements to which the Department has given consent pursuant to the Financier Direct Deed;
- (i) it shall not, without the prior written consent of the Department, (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend, create or permit a Security Interest to subsist over, or to otherwise dispose of:
  - (i) any of its rights under any Project Document or Financing Agreement to which it is party, all or any part of, or any interest in the Works other than as expressly provided for in any Project Documents (and then only if the Department has first given its express approval to the same); or
  - (ii) the whole or any part of its business or assets which would affect the ability of the Contractor to perform its obligations under this Agreement,

nor agree, offer, attempt or purport to do any of those things, other than:

- (iii) as expressly provided in the Project Documents;

- (iv) a Permitted Security Interest; or
- (v) Security Interests granted under Financing Agreements to which the Department has given its prior approval; and
- (j) it shall not (unless otherwise expressly permitted by this Agreement) contract with, assume or permit to subsist any Liability in favour of, or buy, sell or dispose of assets to or from a Contractor Related Person otherwise than on Arms Length Terms.

## **57.2 Financial information**

The Contractor shall:

- (a) provide to the Department on or before the date five Business Days after each Performance Quarter in each Contract Year a certificate setting out certain information in relation to certain Exempt Refinancings in the form set out in Annexure B (Form of Quarterly Finance Summary) to Schedule 4 (Funding Requirements and Financing Agreements);
- (b) at the request of the Department, provide to the Department any information provided by it or on its behalf to the Senior Lenders during the term of this Agreement and any other information relating to the Project that the Department may reasonably require;
- (c) provide to the Department copies of:
  - (i) its monthly management accounts within five Business Days of their preparation;
  - (ii) its annual audited and half yearly consolidated and unconsolidated accounts within 10 Business Days after publication (in each case prepared in accordance with GAAP) and those of any Contractor Related Person who is a Major Sub-contractor; and
  - (iii) its annual report and annual business plan (within 10 Business Days of their preparation) showing in the case of the annual business plan the Contractor's budget for its current and each of the two following financial years; and
- (d) promptly upon the occurrence of a Financing Default notify the Department of such Financing Default.

## **57.3 Event information**

The Contractor shall:

- (a) promptly advise the Department of any material damage to or destruction of all or any part of the Works;
- (b) promptly advise the Department of any event of or in relation to the Works or the provision of the Services that may give rise to:
  - (i) any material health or safety risk (including any failure to comply with any Law relating to health and safety); or
  - (ii) any accident, injury or damage to persons (including death) which occurs on or about the Department Site or the Facility or in connection with any act or omission on the part of the Contractor or any Sub-contractor;

- (c) promptly advise the Department of any industrial action which may affect the Project, and the actions the Contractor has taken or proposes to take to minimise or overcome the effects of the industrial action;
- (d) promptly advise the Department of any substantial dispute between the Contractor, an Affiliate or a Major Sub-contractor with any Governmental Entity;
- (e) promptly advise the Department on becoming aware of the occurrence of any Termination Event or any other material breach by it of its warranties or obligations under this Agreement, another Project Document or a Financing Agreement;
- (f) upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or Governmental Entity (**Legal Proceedings**) may be threatened against the Contractor or that is pending, immediately give the Department notice of such Legal Proceedings;
- (g) upon becoming aware of the same, promptly advise the Department of any circumstances which would, with the giving of notice and/or lapse of time, constitute a Contractor Default;
- (h) upon becoming aware of the same, promptly advise the Department of any circumstances which:
  - (i) give rise to a drawstop or change the drawdown milestones as specified in the Senior Financing Agreements; or
  - (ii) would, with the giving of notice and/or lapse of time give rise to an event of default, cancellation, prepayment event or similar event (whatever called) under any Financing Agreement to which the Contractor or any Contractor Related Person is party; and
- (i) in respect of Legal Proceedings that are against:
  - (i) the Contractor or HoldCo; or
  - (ii) a Major Sub-contractor where they relate to, or might have a Material Adverse Effect on the performance of, any of the Services undertaken by that Major Sub-contractor,

within five Business Days after becoming aware that such Legal Proceedings may be threatened or pending, give the Department notice of such Legal Proceedings.

## 58. Reporting

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### 58.1 Periodic reporting

- (a) As from the Service Commencement Date, the Contractor must submit:
  - (i) the reports and information required under Schedule 15 (Reporting) in accordance with the terms of that Schedule; and
  - (ii) such additional reports and information relating to the Project as the Department, the Chief Executive or the Primary Monitor may reasonably request.
- (b) The provision of reports by the Contractor to the Department, the Chief Executive or the Primary Monitor and any other information provided by the Contractor to the

Department, the Chief Executive or the Primary Monitor about the Operational Services does not relieve or affect the Contractor's obligations under this Agreement.

## **58.2 Reporting under Ombudsmen Act 1975, Official Information Act, Public Finance Act 1989 and Parole Act 2002**

- (a) The Contractor acknowledges that:
- (i) for the purposes of the Ombudsmen Act 1975 and the Official Information Act, the Prison is to be treated as part of the Department;
  - (ii) in relation to the carrying out of Escort Services, the Contractor and every Security Officer employed by it, is to be treated, for the purposes of the Ombudsmen Act 1975 and the Official Information Act, as an employee of the Department;
  - (iii) for the purposes of the Public Finance Act 1989, the Department will require information concerning the operation of the Prison in order to produce an annual report and to provide information on the Department's future operating intentions; and
  - (iv) for the purposes of the Parole Act 2002, the Department will require information concerning the use of electronic monitoring in order to produce an annual report,

and the Contractor must provide any information required by the Department, within the timeframes required by the Department, to allow the Department to comply with those Acts.

- (b) The Contractor acknowledges and agrees that, where it is required to respond directly to any request for information in accordance with any Law, it shall provide a copy to the Department of its proposed response prior to issuing such response to the person requesting the information.



## **Part 16 – Confidentiality and Intellectual Property**

### **59. Confidential Information**

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#### **59.1 Non-disclosure**

Subject to clause 59.2 and clause 59.3, each party shall treat as confidential and not disclose to any third party nor use for its own benefit (other than for the purposes of this Agreement) any Confidential Information that is the Confidential Information of, or provided by, the other party.

#### **59.2 General exceptions**

Clause 59.1 does not preclude a party disclosing Confidential Information:

- (a) if that information was known, or becomes known, to the public through no act or default of the recipient;
- (b) that the recipient is required by Law to disclose so long as the recipient provides written notice of the required disclosure promptly upon receipt of notice of the required disclosure (if it is permitted to do so by Law);
- (c) that was lawfully known to the recipient prior to the date it was received;
- (d) that becomes available to the recipient from a source other than the person that disclosed that information provided that the recipient has no reason to believe such source is itself bound by an obligation of confidence to the person that disclosed that information or is otherwise prohibited under Law from disclosing such information;
- (e) that has been or is independently developed by the recipient;
- (f) to any rating agency in connection with the credit rating of a party;
- (g) as required by the rules of any recognised stock exchange;
- (h) to the extent that such disclosure is authorised by this Agreement; or
- (i) if such disclosure is approved for release with the prior written consent of the party from whom the Confidential Information is first received.

#### **59.3 Limited disclosure**

- (a) The Contractor may, subject to clause 59.3(b), disclose (or permit a Major Sub-contractor to disclose) the Confidential Information of the Department to:
  - (i) any of its directors, officers, employees, or contractors, Sub-contractors or Professional Advisors who need to know the same for the purposes of this Agreement;
  - (ii) a Senior Lender or to the Senior Lender's Professional Advisors or to any person and its Professional Advisors where it is proposed that such person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor and/or HoldCo in accordance with the provisions of this Agreement, or to a Major Sub-contractor or its Affiliates but only to the extent reasonably necessary to enable a decision to be taken in relation to the funding proposal; and

- (iii) any prospective purchaser of shares in the Contractor or Holdco in accordance with the provisions of this Agreement, or any prospective purchaser of shares in the Major Sub-contractor or its Affiliates but only to the extent reasonably necessary to enable a decision to be taken on the proposal.

The Contractor will ensure (and must procure that any Major Sub-contractor ensures) that the proposed recipient of any information disclosed pursuant to this clause 59.3(a) is made aware of and will comply with the terms of this clause 59.

- (b) The Contractor will not disclose the Department's Confidential Information pursuant to clause 59.3(a) unless, where the Department provides notice to the Contractor that the same is required, that person has given a written confidentiality undertaking to the Contractor and for the benefit of the Department substantially similar to those set out in this clause (the form of the undertaking to first be approved by the Department). All such undertakings from third parties will be provided to the Department on request.
- (c) The Department may disclose Confidential Information of the Contractor to:
  - (i) Department Related Persons and potential New Contractors;
  - (ii) Department Personnel (including where required to answer any Parliamentary question or question from any statutory or investigating body); and
  - (iii) those who otherwise need to know the same in connection with the operation, administration and management of the Services and this Agreement,

provided that the Department may only disclose the Contractor's Confidential Information to a potential New Contractor or a person under clause 59.3(c)(iii) if it is, and to the extent such disclosure of Confidential Information is, necessary for the then current and/or ongoing operation, administration and management of the Services and this Agreement. The Department will ensure that any person to which the Department is authorised to disclose Contractor's Confidential Information is aware of the terms of this clause 59 and that the Confidential Information must not be disclosed to any person other than is permitted by this clause 59. The Department will ensure that its employees and any potential New Contractor comply with the terms of this clause 59 and will use reasonable endeavours to ensure that any other person to whom Contractor's Confidential Information may be disclosed under this clause 59.3(c) will comply with the terms of this clause 59.

- (d) The Contractor acknowledges that the Department is or may be subject to the Official Information Act and that the Department is obliged to disclose Confidential Information under that Act if so requested and if there is no good reason pursuant to the terms of that Act to withhold that information. The Department shall use reasonable endeavours to advise the Contractor of any request received by it under the Official Information Act that relates to the Contractor's Confidential Information.
- (e) The Department may, in its own right or through another Governmental Entity, permit public access to or distribution of this Agreement, provided that the Department will, prior to providing public access to or distributing the Agreement, consult and seek to agree with the Contractor in relation to which, if any, sections of the Agreement should be withheld from public access or distribution.

## **60. Intellectual Property**

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### **60.1 Preliminary**

In this Part 16, the term:

- (a) **Background IP** means Intellectual Property Material of the Department, Department Related Persons, or their respective licensors, or the Contractor, a Contractor Related Person or any Contractor Personnel, or their respective licensors, that is utilised as part of the Services or for the purposes of the Services or this Agreement and is:
  - (i) already in existence prior to the date of this Agreement; or
  - (ii) developed other than solely:
    - (A) as part of the Services; or
    - (B) for the purposes of the Services or this Agreement.
- (b) **Developed IP** means Intellectual Property Material, including additions to or adaptations, customisations or enhancements of or deletions or derivatives from Background IP, that is developed solely as part of the Services, or solely for the purposes of the Services or this Agreement (regardless of whether developed prior to the Execution Date).
- (c) **Use** means, in relation to any Intellectual Property Material, the accessing, possessing, using, storing, copying, translating, adapting, customising, enhancing, sub-licensing of that material, and includes the incorporation of that Intellectual Property Material with other materials and the creation of new versions of or derivatives from those Intellectual Property Materials.

## 60.2 Sub-contractors

- (a) The Contractor shall ensure that its obligations under clauses 60.3, 60.4 and 60.5 are flowed down to Major Sub-contractors of the Contractor in accordance with clause 16.1(f).
- (b) The Department shall be entitled to directly enforce any contractual rights it may have in relation to Sub-contractors of the Contractor pursuant to the Contracts (Privity) Act 1982.
- (c) Clause 60.2(a) is not to be construed as preventing or limiting the right of the Department to include provisions as to Intellectual Property in any Major Sub-contractor's Direct Deed.

## 60.3 Background IP

- (a) The Contractor acknowledges and agrees that the Department, a Department Related Person or their respective head licensors is and remains the owner of all Department Background IP. Neither the Contractor, nor any Contractor Related Person, or Contractor Personnel has (by virtue of this Agreement or otherwise) any Claim on, entitlement to, or rights in relation to any Department Background IP except to the extent provided by the terms of this clause 60.
- (b) The Department acknowledges and agrees that the Contractor, a Contractor Related Person, or Contractor Personnel or their respective head licensors is and remains the owner of all Contractor Background IP. Neither the Department, nor any Department Related Person has (by virtue of this Agreement or otherwise) any Claim on, entitlement to, or rights in relation to any Contractor Background IP except to the extent provided by the terms of this clause 60.

## 60.4 Developed IP

- (a) Subject to clause 60.5, all Intellectual Property rights in the Developed IP vest in the Department at the time of its creation and at each and every stage of its development as Department Developed IP.
- (b) The Contractor shall ensure, where necessary, that it secures the right to effect such vesting and shall do all such things and sign such documents to ensure that all Developed IP is transferred and assigned to the Department to ensure compliance with clause 60.4(a). The Contractor shall mark any copyright work comprising Department Developed IP with the legend "© Department of Corrections copyright [insert the year of generation of the work]".

## 60.5 Licensing of Department IP

- (a) The Department hereby grants to the Contractor a non-exclusive, royalty-free, transferable, perpetual, irrevocable, worldwide licence to Use all Developed IP without restriction (subject to confidentiality and security obligations) and to grant sub-licences to its Sub-contractors on the same basis.
- (b) The Department shall make available to the Contractor all Department Background IP the Department reasonably considers is required for the Contractor's performance of the Agreement. The Department hereby grants to the Contractor a non-exclusive, royalty-free, non-transferable and, subject to clauses 60.5(c) and 60.5(d), irrevocable for the Contract Term licence to Use such Department Background IP during the Contract Term solely for the purpose of the Contractor's performance of the Agreement. The Contractor will comply with the terms of such licence. The Department may, at its discretion and by written notice to the Contractor, impose restrictions on the Contractor's Use of all or part of the Department Background IP, provided that the Department shall ensure that such restrictions do not prevent or materially hinder or disrupt the Contractor in the implementation of the Project, or adversely affect or prejudice the Contractor's performance of the Services. This clause 60.5(b) is to be read subject to clause 60.5(f) and clause 60.5(g).
- (c) To the extent the Department is not legally able, or is no longer legally able (including due to termination of a licence with a third party licensor, in which case, for the avoidance of doubt, the licence in clause 60.5(b) in respect of the relevant Department Background IP will terminate), to grant such licence in respect of certain Department Background IP, the Department shall notify the Contractor and shall use all reasonable endeavours to procure the consent of the relevant licensor to grant such a licence to the Contractor. Without prejudice to the foregoing, the parties shall work together to obtain such rights or an alternative working arrangement for the Contractor in respect of such Department Background IP as are necessary for the Contractor's performance under the Agreement (but without imposing any obligation on the Contractor to independently source a licence from any such third party licensor at its own cost).
- (d) If the Contractor is in material breach of the terms of the licence granted under clause 60.5(b) in respect of any item of the Department Background IP owned by a third party licensor, and such third party licensor has notified the Department in writing that:
  - (i) such breach must be remedied within a certain period:
    - (A) the Department must notify the Contractor and allow it to take steps to remedy such breach within the remedy period; and
    - (B) if such breach is remedied within the relevant period, the licence to the relevant item of Department Background IP owned by the relevant third party licensor shall remain unaffected; or

- (ii) such breach is irremediable, or such breach has not been remedied within the remedy period, and the Department must revoke the licence to the Contractor,

then the Department may revoke such licence in its discretion by providing written notice to the Contractor, provided that the Department may only revoke the licence in respect of the relevant item of Department Background IP owned by that third party licensor (**Revoked IP**).

For the avoidance of doubt, the Contractor will continue to have a licence to Use all other items of Department Background IP (in accordance with clause 60.5(b)) which do not comprise Revoked IP. Without prejudice to the foregoing, the parties shall work together to obtain such rights or an alternative working arrangement for the Contractor in respect of the Revoked IP as are necessary for the Contractor's performance under the Agreement.

- (e) The Department gives no warranty as to the suitability for the Contractor's purpose of any Department Background IP licensed under this clause 60.5. The Contractor shall not do anything (or fail to do anything) that in any way prejudices ownership by the Department in any Department Background IP or the Developed IP.
- (f) Any licence granted to the Contractor under clause 60.5(b) includes the right on the part of the Contractor to grant a sub-licence to each Sub-contractor engaged in the performance of any part of this Agreement for the Contractor, provided that each such Sub-contractor has entered into an undertaking with the Department and the Department will act reasonably regarding the terms of such undertaking.
- (g) No sub-licence may be granted by the Contractor otherwise than as permitted by this clause 60.5, without the Department's prior written consent.

## **60.6 Licensing of Contractor Intellectual Property**

- (a) The Contractor:
  - (i) hereby grants to the Department and will grant to such New Contractors as the Department may for the time being specify; and
  - (ii) shall procure that Contractor Related Persons will grant to such New Contractors,  
  
a non-exclusive, transferable, irrevocable, perpetual, royalty-free licence to Use (subject to clause 60.6(g)) Contractor Background IP (with the right to grant sub-licences, in the same) in order to use, operate, maintain, support, modify and develop, and obtain the full benefit of, the Services and the Works, and otherwise obtain the full benefit of this Agreement and other agreements to which the Department is party in relation to the Project, including:
    - (iii) to receive and use replacement, follow on or substitute services and assets substantially similar to those of the Works and the Services; and
    - (iv) to operate, perform, maintain, modify, update and develop the Services, the Works and replacement, follow on or substitute services and assets substantially similar to those of the Works and the Services.
- (b) The Contractor shall ensure that none of the Contractor Background IP is assigned, transferred, sold or made subject to an exclusive licence to Use for the benefit of any third party during or after the Contract Term, unless it preserves for the Department and any Department Related Persons (where relevant) the rights granted under this clause 60.6.

- (c) Notwithstanding the terms of this clause 60.6, to the extent that any item of Contractor Background IP is commercially available off the shelf third party software (**Shrink-wrapped IP**) the Contractor shall only be obliged to license that Shrink-wrapped IP to the Department, if the Contractor is legally able to do so and on the terms of the licence granted to the Contractor by the third party licensor (and the Contractor will use all reasonable endeavours to procure the consent of that licensor to grant that licence to the Department).
- (d) If, despite using all reasonable endeavours to do so, the Contractor is unable to license any item of Shrink-wrapped IP owned by a third party that is not a Major Sub-contractor to the Department as required under this clause 60.6, the Contractor shall consult with the Department and do all things reasonable and necessary to obtain for the Department's benefit such rights or arrangements as the Department reasonably requires for any purpose under or contemplated by any Project Document and for the Project generally and for any purpose directly arising out of or in connection with the Department's ongoing use of the Facility during the Contract Term.
- (e) The Department will only Use the Contractor Background IP in accordance with the rights granted under this clause 60.6.
- (f) The Department shall not do anything (or fail to do anything) that in any way prejudices ownership by the Contractor, its licensors, Contractor Related Persons or Contractor Personnel (as applicable) in any Contractor Background IP.
- (g) For the avoidance of doubt, in relation to any Contractor Background IP in any software, the Contractor:
  - (i) does not licence the source code of such software (**Source Code**) for Use by the Department or any New Contractors pursuant to clause 60.6(a); and
  - (ii) is not required to provide to the Department or any New Contractor, or otherwise allow access by the Department or any New Contractor to, the Source Code, except to the extent expressly required under this Agreement.
- (h) The Contractor warrants and represents to the Department that:
  - (i) as at the Execution Date it will not be necessary for the Contractor, the Department or any New Contractor to use any Source Code in order for the Department to obtain the full benefit of this Agreement; and
  - (ii) without limitation to clause 60.6(h)(i), the Contractor, the Department and any New Contractor will, without the use of the Source Code, be able to make all necessary adaptations, customisations and enhancements to such Contractor Background IP as are required in order for the Department to obtain the full benefit of this Agreement,

in each case subject always to the limitations of the tools incorporated within the relevant Contractor Background IP (as delivered for the purposes of this Agreement), provided that (notwithstanding the foregoing) the functionality of the Contractor's ICT System, as required under this Agreement (including Schedule 10B (Works (Retrofit) Requirements), Schedule 13 (ICT Requirements) and Schedule 14 (Corrections Services Requirements)), is preserved.

- (i) The Contractor undertakes to ensure that, during the Contract Term, the Department will continue to be able to obtain the full benefit of this Agreement through the licence to the Contractor Background IP without the use of the Source Code as set out in clause 60.6(h), provided that if during the Contract Term the Contractor becomes aware that for any reason the Department is or will be unable to obtain the full benefit of this Agreement through the licence to the Contractor Background IP without the use

of the Source Code, the Contractor shall promptly notify the Department in writing of such proposed change and the parties shall discuss, agree and implement:

- (i) an appropriate escrow arrangement for the relevant Source Code; or
- (ii) such other alternative mechanism or software agreed by the parties,

in each case so as to provide an equivalent ability for the Department to obtain the full benefit of this Agreement.

## **60.7 Back-up and access to information**

To the extent that any of the Background IP of either party (for the purpose of this clause 60.7 only, **materials**) are generated by or maintained on any computer or database which is specified in this Agreement as being the responsibility of the Contractor, the Contractor shall:

- (a) ensure the backup and storage in safe custody of those materials in accordance with Good Industry Practice;
- (b) submit to the Department for approval its proposals for the back-up and storage in safe custody and the Department shall be entitled to object if the same is not in accordance with Good Industry Practice;
- (c) comply, and ensure that all Sub-contractors and all Contractor Related Persons comply, with all procedures to which the Department has given its approval; and
- (d) not change its procedures for such back-up and storage without the Department's prior written approval and the Department shall be entitled to withhold its approval if such proposed change is not in accordance with Good Industry Practice.

## **60.8 Moral Rights**

The Contractor, in respect of all Developed IP:

- (a) to the extent permitted by any Laws, will not and will take all reasonable steps to ensure that all Contractor Personnel and Sub-contractors do not sue, enforce any Claim, bring any action or exercise any cure in respect of any breach or alleged breach of any person's Moral Rights (whether before or after the Execution Date) in respect of any Developed IP, against the Department, Department Related Person, or any third party whom the Department or Department Related Person licenses (whether express or implied), or grants any other rights to use, possess, modify, vary or amend any Developed IP;
- (b) will procure (without coercion) that all individuals who are, or may be, authors of any Developed IP, sign date and return to the Contractor, a Moral Rights Consent, prior to those individuals commencing work on the creation of any Developed IP;
- (c) within five Business Days of a request by the Department, will provide to the Department a Moral Rights Consent which is obtained pursuant to clause 60.8(b); and
- (d) will maintain an up-to-date record of the names and contact details of each person who is an author of Developed IP and the Developed IP of which such person is an author, and provide a copy of any updated records to the Department upon request.

## 60.9 Documentation

- (a) The Contractor must deliver to the Department a list of all material Contractor Background IP, all Department Developed IP and all licenses of third party intellectual property supplied or used by the Contractor including complete copies of the terms of those licenses, at any time following the Service Commencement Date, within 10 Business Days (or such longer period as may be agreed between the parties acting reasonably) of receiving a written request from the Department.
- (b) If the Department reasonably considers the documents provided by the Contractor under clause 60.9(a) to be inadequate, it shall notify the Contractor to this effect, specifying the amendments and new documents required. The Contractor must within 10 Business Days (or such longer period as may be agreed between the parties acting reasonably) of that notification create and deliver any amended or new documents specified.

## 61. Intellectual Property Indemnity

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### 61.1 Indemnity

- (a) Subject to clauses 61.1(c) and 61.2, the Contractor indemnifies the Department and all Department Related Persons (the **Indemnified Party**) and undertakes that it will keep the Indemnified Party fully indemnified against all Losses and Liabilities suffered or incurred by the Indemnified Party as a result of any possession or utilisation by the Indemnified Party of:
  - (i) the Background IP of the Contractor, Contractor Related Persons or Contractor Personnel or their respective licensors; and
  - (ii) the Developed IP developed by, or constituted by additions to or adaptations, customisations or enhancements of, or derivatives sourced from the Contractor, Contractor Related Persons or Contractor Personnel,

that is found or alleged to have infringed the Intellectual Property rights of any third party (an **Intellectual Property Claim**).

- (b) The Department shall at all times take all reasonable steps to minimise and mitigate any Loss for which the Department is entitled to bring a Claim against the Contractor pursuant to this Agreement.
- (c) The Contractor has no liability or responsibility (whether in contract, tort (including negligence) or otherwise) for the use of Background IP and/or Developed IP by the Indemnified Parties other than for a purpose reasonably consistent with that for which the Contractor, any Contractor Related Person or any Contractor Personnel developed the Developed IP or provided the Background IP.

### 61.2 Special cases

The indemnity set out in clause 61.1 will not apply to the extent the Intellectual Property Claim:

- (a) arises from any modification, updating or development carried out by or for the Indemnified Party to any relevant Background IP or Developed IP supplied by the Contractor under this Agreement, where such modification, updating or development is not authorised or approved by the Contractor in writing; or



- (b) is in respect of Contractor Background IP and has been made as a direct result of the Department, acting in breach of clause 60.6 (Licensing of Contractor Intellectual Property).

### **61.3 Notification**

The Indemnified Party shall notify the Contractor as soon as reasonably practicable upon it becoming aware of an Intellectual Property Claim. The Indemnified Party will not settle or compromise any Intellectual Property Claim made against it without the prior written consent of the Contractor so long as the Contractor complies with its obligations under this clause 61.

### **61.4 Assumption of control**

The Contractor shall assume the conduct of the defence of the Intellectual Property Claim within 5 Business Days of that request being made and on the following conditions:

- (a) the Contractor shall be solely responsible for all the costs and expenses of that defence (including any negotiations associated with, and the settlement of, the claim);
- (b) the Contractor shall keep the Indemnified Party regularly and fully informed as to all matters pertaining to the claim and shall consult with and take into account the Indemnified Party's views on the conduct of the defence and in relation to any negotiation associated with, and any settlement of, the claim;
- (c) where Legal Proceedings have been issued against the Indemnified Party, the Contractor shall, if so requested by the Department, use its best endeavours to obtain leave of the court for itself to be substituted as defendant in place of the Indemnified Party and/or for the Indemnified Party to withdraw from the Legal Proceedings;
- (d) while the Indemnified Party remains a party to any Legal Proceedings issued in connection with an Intellectual Property Claim, the Contractor shall use its best endeavours to diligently defend, arbitrate and otherwise conduct the litigation or settle the claim;
- (e) the Contractor shall not enter into any settlement or compromise in relation to any Intellectual Property Claim without first obtaining the prior written consent of the Department (which must not be unreasonably withheld or delayed); and
- (f) the Department, at the Contractor's expense, will offer reasonable assistance to the Contractor in its defence of the Intellectual Property Claim.

### **61.5 Cabinet directions for the conduct of Crown legal business**

The Contractor acknowledges that the Department is, and in some cases the Department Related Persons are, subject to the 'Cabinet Directions for the Conduct of Crown Legal Business 1993' (and any successor to those Cabinet directions). The Contractor accepts that in accordance with those Cabinet directions the Department, and any Department Related Person that is subject to the Cabinet directions, is entitled to receive representation or advice from the Crown Law Office or as the Solicitor-General directs, in relation to actual or imminent litigation to which the Department or the Department Related Person is a party. The Contractor accepts that the Department, or Department Related Person as applicable, may accordingly obtain such representation or advice notwithstanding the Contractor's assumption of the conduct of the defence of any Intellectual Property Claim in accordance with clause 61.4 where the Department or Department Related Person considers this necessary or appropriate to ensure their or the Crown's (as defined in section 2 of the Public Finance Act 1989) wider interests in relation to such litigation are protected and advanced. If the Department or Department Related Person obtains such representation or advice this will not derogate from the Department's, Department Related Person's or Contractor's rights

and obligations under clause 61.4 or under any other provision in this clause 61 (Intellectual Property Indemnity), provided that the Contractor's obligation under clause 61.4(a) shall not extend to any costs and expenses incurred by the Department or Department Related Person in obtaining and implementing that separate representation or advice.

## **61.6 Final judgment**

Where a final judgment or award is made in legal or arbitral proceedings to which the Indemnified Party remains a defendant, or if settlement of the Intellectual Property Claim is made between the parties that are concerned with the claim, the Contractor shall pay to the Indemnified Party an amount equal to that required to be paid by, or awarded against, the Indemnified Party in any such judgment, award or settlement agreement. Such amount will be payable on demand from the date of such judgment, award or settlement agreement takes effect.

## **61.7 Continued use**

Where any Intellectual Property Claim disrupts an Indemnified Party's use or enjoyment of the Services or Works, or otherwise prevents an Indemnified Party from obtaining the full benefit of this Agreement, the Contractor will (unless otherwise requested by the Indemnified Party) at its own expense and option immediately:

- (a) obtain for the Indemnified Party the legal right to continued use of the infringing items;  
or
- (b) replace, modify or resupply the infringing items so that there is no further infringement, without adversely affecting their performance or functionality.

## **Part 17 – Indemnities and Liability**

### **62. Indemnities**

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#### **62.1 General indemnities**

The Contractor shall (subject to clause 62.4) be responsible for, and indemnify and keep indemnified the Department, each Department Related Person and all Department Personnel on demand from and against all Losses and Liabilities arising from:

- (a) death or personal injury;
- (b) loss of or damage to any property, including:
  - (i) the Works;
  - (ii) property belonging to the Department or for which the Department is responsible; and
  - (iii) property belonging to any third party;
- (c) breach of statutory duty; and
- (d) third party actions, Claims and/or demands made against the Department, a Department Related Person and any Department Personnel,

arising out of, or as a consequence of:

- (e) the design, construction, manufacture, operation or maintenance of the Works;
- (f) the performance or non-performance by the Contractor of the Services;
- (g) the performance or non-performance by the Contractor of its other obligations under this Agreement; or
- (h) the presence on the Department Site of the Contractor, any Contractor Related Person or any Contractor Personnel or any other person for which the Contractor, any Contractor Related Person or any Contractor Personnel is responsible.

#### **62.2 Release of Department**

- (a) The Contractor releases, to the maximum extent permitted by Law, the Department, each Department Related Person and all Department Personnel from all Claims and Liabilities resulting from any accident, damage, death or injury arising from the use or occupation by the Contractor or any Contractor Related Person or Contractor Personnel of any or all of the Sites or the Facility.
- (b) The release under clause 62.2(a) is absolute, except to the extent that the accident, damage, death or injury is a direct consequence of a fraudulent, negligent or wilful act or omission of the Department, a Department Related Person or Department Personnel.

### **62.3 Other Contractor's indemnities**

In addition, the Contractor is responsible for, and releases and indemnifies the Department, each Department Related Person and all Department Personnel on demand from and against all Losses and Liabilities pursuant to:

- (a) clause 17.2(e) (Health and Safety obligations);
- (b) clause 20.2 (Department monitoring);
- (c) clause 22.2(b) (Contractor's conduct on Department Site);
- (d) clause 24.6 (Indemnity);
- (e) clause 28.1(d) (Integration);
- (f) clause 61 (Intellectual Property Indemnity); and
- (g) any other term of this Agreement, whereby the Contractor has agreed to indemnify the Department, or any Department Related Person or Department Personnel.

### **62.4 Limits on indemnity cover**

The Contractor is not obliged to indemnify the Department, any Department Related Person or any Department Personnel to the extent that the Losses and Liabilities of the Department or any Department Related Person or any Department Personnel are directly as a result of:

- (a) the Contractor acting on instructions given under written notice issued by the Department in accordance with this Agreement provided that the Contractor has:
  - (i) first notified the Department in writing of the consequences of so acting; and
  - (ii) implemented the instruction in a manner that is not negligent and in accordance with Good Industry Practice,

except that where it is not reasonably practicable to give such written notification in the circumstances, the Contractor shall be entitled to notify the Department verbally provided that such verbal notification is confirmed in writing as soon as reasonably practicable thereafter by the Contractor;

- (b) an unlawful, wilful, reckless or negligent act or omission of the Department, any Department Related Person or any Department Personnel;
- (c) failure on the part of the Department to comply with its obligations under this Agreement or any other Project Document; or
- (d) any Event, but only to the extent that the Contractor is entitled to relief from that Event and/or its consequences in accordance with the provisions of this Agreement,

except to the extent that such act or omission under clause 62.4(b) or such failure to perform under clause 62.4(c), was caused or contributed to by an act or omission by the Contractor.

## **62.5 Interaction with Corrections Act**

Nothing in this Agreement prejudices the rights of the Department under sections 168 and 199B of the Corrections Act.

## **63. Conduct of third party indemnity Claims**

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### **63.1 Notice and compromise**

- (a) Where the Department wishes to make a Claim under this Agreement against the Contractor in relation to a claim made against it, a Department Related Person or any Department Personnel by a third party (a **Third Party Claim**) that is not an Intellectual Property Claim (for which the terms of clause 61 (Intellectual Property Indemnity) shall apply), the Department shall give notice of the relevant claim to the Contractor as soon as reasonably practicable setting out full particulars of the claim.
- (b) The Department will not, and will procure that any applicable Department Related Person or Department Personnel does not, settle or compromise any Third Party Claim made against the relevant person without the prior written consent of the Contractor so long as the Contractor complies with its obligations under this clause 63.

### **63.2 Contractor's undertakings**

The Contractor undertakes that:

- (a) it shall not, without the prior written consent of the Department, settle or compromise any Claim (whether insured or uninsured) to which the Department is, or is likely to become, a party;
- (b) it shall ensure that its Major Sub-contractors give undertakings identical to those given by the Contractor to the Department under this clause 63; and
- (c) where, in the Contractor's reasonable opinion, the Department is reasonably likely to become materially involved in a Third Party Claim, and the Contractor and/or Contractor's insurers elect to instruct any solicitor to investigate or defend any claim against the Contractor, the Contractor must procure that the insurers agree to waive client privilege to any information or documents supplied to the solicitor to the extent necessary to enable such information or documents to be provided to the Department on request.

### **63.3 Assumption of control of Third Party Claims**

The Contractor shall be entitled to assume the conduct of the defence of any Third Party Claim that is not an Intellectual Property Claim (for which the terms of clause 61 (Intellectual Property Indemnity) shall apply) within 5 Business Days of a request to that effect being made by the Contractor and on the following conditions:

- (a) the Contractor shall be solely responsible for all the costs and expenses of that defence (including any negotiations associated with, and the settlement of, that Third Party Claim);
- (b) the Contractor shall keep the Department regularly and fully informed as to all matters pertaining to that Third Party Claim and shall consult with and take into account the Indemnified Party's views on the conduct of the defence and in relation to any negotiation associated with, and any settlement of, that Third Party Claim;

- (c) where Legal Proceedings have been issued against the Department, any Department Related Person or any Department Personnel the Contractor shall, if so requested by the Department, use its best endeavours to obtain leave of the court for itself to be substituted as defendant in place of the Department, any Department Related Person or any Department Personnel (as applicable) and/or for that person to withdraw from the Legal Proceedings;
- (d) while the Department, any Department Related Person or any Department Personnel remains a party to any Legal Proceedings issued in connection with a Third Party Claim, the Contractor shall use its best endeavours to diligently defend, arbitrate and otherwise conduct the litigation or settle the claim;
- (e) the Contractor shall not enter into any settlement or compromise in relation to any Third Party Claim without first obtaining the prior written consent of the Department (which must not be unreasonably withheld or delayed); and
- (f) the Department, at the Contractor's expense, will offer reasonable assistance to the Contractor in its defence of the Third Party Claim.

#### **63.4 Cabinet directions for the conduct of Crown legal business**

The Contractor acknowledges that the Department is, and in some cases the Department Related Persons and Department Personnel are, subject to the 'Cabinet Directions for the Conduct of Crown Legal Business 1993' (and any successor to those Cabinet directions). The Contractor accepts that in accordance with those Cabinet directions the Department, and any Department Related Person or Department Personnel that is subject to the Cabinet directions, is entitled to receive representation or advice from the Crown Law Office or as the Solicitor-General directs, in relation to actual or imminent litigation to which the Department or the Department Related Person or Department Personnel is a party. The Contractor accepts that the Department, or Department Related Person or Department Personnel as applicable, may accordingly obtain such representation or advice notwithstanding the Contractor's assumption of the conduct of the defence of any Third Party Claim in accordance with clause 63.3 where the Department, Department Related Person or Department Personnel considers this necessary or appropriate to ensure their or the Crown's (as defined in section 2 of the Public Finance Act 1989) wider interests in relation to such litigation are protected and advanced. If the Department, Department Related Person or Department Personnel obtains such representation or advice this will not derogate from the Department's, Department Related Person's, Department Personnel's or the Contractor's rights and obligations under clause 63.3 or under any other provision in this Part 17 (Indemnities and Liability), provided that the Contractor's obligation under clause 63.3(a) shall not extend to any costs and expenses incurred by the Department, Department Related Person or Department Personnel in obtaining and implementing that separate representation or advice.

### **64. Contractor's Claims**

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#### **64.1 Compensation Extension Event or Compensation Intervening Event**

Despite any other term of this Agreement, the Contractor is not entitled to any common law or equitable rights including rights to damages or to any other rights under contract, tort or otherwise in relation to any breach of this Agreement by the Department to the extent that such breach gives rise to a Compensation Extension Event or a Compensation Intervening Event or this Agreement otherwise provides an express remedy in relation to the breach. This clause does not prevent the Contractor from referring any claim in respect of an Event to dispute resolution in accordance with Part 22 (Dispute Resolution) of this Agreement.

## **64.2 Recovery**

Despite any other term of this Agreement (other than clause 64.3), the Contractor shall, if it is obliged to effect insurance under Part 19 (Insurance and Reinstatement), not bring any claim or action against the Department, any Department Related Person, or any Department Personnel in respect of any Losses or Liabilities in circumstances where the Contractor is able to recover such loss or damage under such insurance (or where it would have been able to recover such loss had it been complying with its obligations under this Agreement).

## **64.3 Maximum level of insurance**

Clause 64.2 does not by itself prevent the Contractor from claiming against the Department, any Department Related Person, or any Department Personnel for any loss or damage not covered because of the level of deductibles under such insurance permitted by this Agreement or to the extent such loss or damage exceeds the maximum level of such insurance required by this Agreement.

## **65. No double counting**

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Notwithstanding any other provisions of this Agreement, neither party shall be entitled to recover compensation or make a claim under this Agreement in respect of any Loss that it has incurred to the extent that it has already been compensated in respect of that Loss pursuant to this Agreement or otherwise.

## Part 18 – Department Step-in

### 66. Interpretation

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In this Part 18, references to the Department taking action are deemed to include references to the Department procuring the taking of action by others on behalf of the Department.

### 67. When step-in applies

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If the Department reasonably believes that it needs to take action in connection with the Works or the Services:

- (a) because:
  - (i) of injury or death to persons;
  - (ii) the Department assesses that there is a serious risk to the health and safety of persons;
  - (iii) the Contractor has reached Level 3 SFP;
  - (iv) of material damage or destruction to property (including all or part of the Works) where the Contractor is not pursuing the reinstatement of such damage or destruction in accordance with a Reinstatement Plan satisfactory to the Department under clause 76.3;
  - (v) the Department assesses that there is a serious risk to property (including all or part of the Works);
  - (vi) of any Immediate Termination Event or Remediable Contractor Default where the Contractor is not pursuing a cure in accordance with a rectification programme or Prevention Plan accepted by the Department under clause 79.4; or
  - (vii) of serious risk to the Environment following identification of Contamination affecting or threatening to affect all or part of the Department Site or any Adjoining Property;
- (b) to enable it to discharge a statutory duty; or
- (c) to provide any of the Services that have been suspended as a result of an Event pursuant to clause 42.3 (Alternative arrangements),

then the Department will be entitled to take all or any of the actions described in clause 68 (Step-in Rights).

### 68. Step-in Rights

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#### 68.1 Extent of Step-in Rights

To the extent reasonably required to remedy the reason for stepping in as notified to the Contractor under clause 69.1(c), the Department may:



- (a) access those parts of the Department Site occupied by the Contractor or used by the Contractor in the provision of, or for the purposes of providing the Services to the same extent the Contractor is entitled to access the same;
- (b) temporarily assume total or partial management and control of all or part of the Works and/or the provision of the Services;
- (c) take such steps (including suspension of the Services in whole or in part) as in the reasonable opinion of the Department are necessary or desirable to:
  - (i) mitigate the threat or event which caused the risk;
  - (ii) minimise the effects of the threat or event which caused the risk; or
  - (iii) continue the implementation of the Works or the provision of the Services as required by this Agreement;
- (d) do all things and perform such acts that the Contractor is obliged or authorised to do under or in connection with this Agreement, or any other Project Document to which the Contractor is a party; and
- (e) do all things and perform such acts which the Department is authorised or empowered to do with respect to the Contractor under:
  - (i) this Agreement or any Project Document; or
  - (ii) any Law.

## **68.2 Exercise of Step-in Rights**

The Department shall, in exercising its Step-in Rights, use reasonable endeavours to remedy the reason for stepping-in as notified under clause 69.1(c) and shall do so in a manner that does not:

- (a) in respect of any Services provided by the Contractor during the period in respect of which the Department exercises its Step-in Rights; and
- (b) in respect of the Services to be provided by the Contractor from the date that the Department ceases to exercise its Step-in Rights,

prevent or materially hinder or disrupt the Contractor in the implementation of such Services, or adversely affect or prejudice the Contractor's performance of such Services, in accordance with the Project Documents.

## **69. Notice**

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### **69.1 Particulars of notice**

The Department must first notify the Contractor before exercising its rights under this Part 18 of:

- (a) the date that it will be exercising its Step-in Rights;
- (b) the Services that are the subject of step-in; and
- (c) the reasons why the Department is exercising its Step-in Rights.

## **69.2 Emergency**

If there is an emergency, the Department need not comply with clause 69.1 before exercising its rights but it will do so as soon as reasonably practicable following the decision to exercise its rights under this Part 18.

## **69.3 Power of attorney**

The Contractor irrevocably:

- (a) appoints the Department and the Department's nominees from time to time, jointly and severally, as the Contractor's attorney with full power and authority to exercise all or any of the Department's Step-in Rights;
- (b) agrees to ratify and confirm whatever action is taken by the attorney appointed by the Contractor, provided such action is not unlawful or negligent; and
- (c) on request from the Department to execute a separate power of attorney in terms of this clause 69, agrees to execute such separate power of attorney.

## **70. Contractor's rights and obligations on step-in**

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### **70.1 Suspension**

- (a) The Contractor's rights and obligations under this Agreement (other than in respect of clause 70.2) are suspended for the period that the Department is exercising its Step-in Rights but only to the extent necessary to permit the Department to exercise those rights.
- (b) Where the Department exercises its Step-in Rights as a result of, or during the subsistence of, a Remediable Contractor Default, the Contractor's rights and obligations set out in clause 79.4 and/or any rectification programme or Prevention Plan shall also be suspended for such period.

### **70.2 Contractor must co-operate**

Where the Department has exercised, or while the Department is exercising its Step-in Rights under this Part 18, the Department shall keep the Contractor reasonably informed on the actions it proposes to take and, to the extent known, the likely duration or the exercise of the Step-in Rights and the Contractor must:

- (a) do such things as the Department may require to assist the Department in the exercise of those rights (including facilitating ongoing access to any support or other services provided by employees, Sub-contractors or third parties);
- (b) not do anything by either act or omission that impedes or frustrates the Department in the exercise of its Step-in Rights; and
- (c) ensure that none of the Contractor Personnel, nor any Contractor Related Persons, by either act or omission impede or frustrate the Department in the exercise of its Step-in Rights.

## **71. Payments**

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### **71.1 Rights to payment during step-in**

If the Department exercises its rights under this Part 18, the Contractor is entitled to continue to be paid an amount equal to the Monthly Unitary Payment while the Department continues to exercise its Step-in Rights, less the amounts referred to in clause 71.2 or clause 71.3 (as the case may be).

### **71.2 Step-in due to Contractor breach**

Where the Department exercises its Step-in Rights as a result of a breach of the obligations of the Contractor under this Agreement, the Department may deduct from the Monthly Unitary Payments otherwise payable to the Contractor during the Step-in Period any costs incurred by the Department in exercising its Step-in Rights including, if applicable, all reasonable costs and expenses incurred by the Department in delivering the Operational Services affected by the Step-in Rights whether directly or through a contractor to the Department.

### **71.3 Step-in otherwise than due to Contractor breach**

Where the Department exercises its Step-in Rights other than as a result of a breach of the obligations of the Contractor under this Agreement:

- (a) prior to the Service Commencement Date:
  - (i) in relation to the period in which the Contractor is obliged to perform its obligations in order to ensure that Operational Completion occurs on or before the Relevant Service Commencement Date; such period will be extended by a period equal to the Step-in Period, and each of the First Service Commencement Date, the Planned Service Commencement Date and the Last Date for Service Commencement that have not passed at that time will be postponed by a corresponding period; and
  - (ii) the Department will pay, as an Additional Payment, a sum equal to the debt service costs (including capitalised interest) under the Senior Financing Agreements for the period of extension as set out in clause 71.3(a)(i); and
- (b) after the Service Commencement Date, the Department may deduct from the Monthly Unitary Payments otherwise payable to the Contractor during the Step-in Period an amount estimated by the Department acting reasonably, representing the costs not incurred by the Contractor as a result of not providing the Operational Services in accordance with this Agreement during the Step-in Period.

### **71.4 Moneys Owning**

If the amounts calculated in accordance with clause 71.2 are in excess of the Monthly Unitary Payments otherwise payable to the Contractor during the Step-in Period (or arise prior to the Service Commencement Date), all such amounts will be Moneys Owning that are due and payable by the Contractor on demand from the Department.

## **72. Step-out**

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### **72.1 Cessation**

The Department:

- (a) may at any time after it has exercised its Step-in Rights; and
- (b) shall, promptly after the ground for exercising its Step-in Rights has been remedied or no longer subsists,

notify the Contractor that it will cease to exercise those rights and the date on which that will occur, but any such notice must be given at least 10 Business Days (and no more than 30 Business Days unless otherwise agreed by the Contractor acting reasonably) prior to the date on which the Department will cease to exercise those rights.

### **72.2 Consequences**

Upon the date that the Department ceases to exercise its Step-in Rights:

- (a) the Contractor must immediately recommence performance of its obligations which were suspended under clause 70.1 (Suspension);
- (b) the Department will give reasonable assistance to the Contractor to ensure that this process of transition is effected as smoothly as possible; and
- (c) the Contractor may, following that date, require the Department to issue a Consequential Change Notice where paragraph (c) of the definition of Consequential Change applies.

## **73. Contractor's acknowledgements**

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### **73.1 Department not liable**

The Contractor acknowledges and agrees that the Department is not obliged to:

- (a) exercise all or any of its rights under this Part 18 at any time;
- (b) remedy any Contractor Default or other breach by the Contractor of this Agreement;
- (c) effect removal of the effect of, or the event or risk that triggered the Department's exercise of its Step-in Rights; or
- (d) overcome or mitigate any risk or risk consequences in respect of which the Department's Step-in Rights are exercised.

### **73.2 Release**

Except in relation to any claim made under Part 12 (Events) of this Agreement, the Contractor releases the Department from all liability (whether present or future, or quantified or not) that the Department may otherwise incur under this Agreement or at Law, arising directly or indirectly as a result of the Department's exercise of its Step-in Rights, unless and to the extent that it is proven that the Department has acted unlawfully, wilfully, recklessly or negligently.

### **73.3 No Claim**

The Contractor agrees that it will not make any Claim (except any claim made under Part 12 (Events) of this Agreement) against the Department in connection with the Department's exercise of its Step-in Rights, unless and to the extent that it is proven that the Department has acted unlawfully, wilfully, recklessly or negligently.

### **73.4 Other rights not affected**

The Department may exercise its rights under this Part 18 without in any way affecting the other rights and remedies then available to the Department under this Agreement or at law, in equity, under statute or otherwise.

## **Part 19 – Insurance and reinstatement**

### **74. Insurance**

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#### **74.1 Obligations of parties**

No party to this Agreement shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any Insurance Policy in which that party is an insured, a co-insured or an additional insured person.

#### **74.2 Specified insurances**

- (a) Prior to the commencement of Works Provisioning, the Contractor shall take out and maintain or procure the maintenance of the insurances described in Part 1 of Schedule 22 (Required Insurances) and any other insurances as may be required by Law. These insurances must be effective in each case not later than the date on which the relevant risk commences.
- (b) The Contractor shall, from Works Completion and during the balance of the Contract Term, take out and maintain or procure the maintenance of the insurances described in Part 2 of Schedule 22 (Required Insurances) and any other insurances as may be required by Law.
- (c) The Contractor shall, from Works Completion and during the balance of the Contract Term, take out and maintain or procure the maintenance of the insurances described in Part 3 of Schedule 22 (Required Insurances) and any other insurances as may be required by Law.

#### **74.3 Other insurances**

- (a) The Department may at any time notify the Contractor in writing that it requires the Contractor to:
  - (i) effect and maintain an Insurance Policy against a risk not specifically provided for or contemplated by Parts 1, 2 and 3 of Schedule 22 (Required Insurances); or
  - (ii) to increase the amount of cover or change the terms of an existing Insurance Policy.
- (b) In the event that the Contractor receives a notification from the Department under clause 74.3(a)(i), the Contractor will promptly advise the Department of the premium (or additional premium) payable in order to give effect to the requirement of the Department and the Department will promptly advise the Contractor whether it requires the Contractor to give effect to that requirement.
- (c) Any premium (or additional premium) payable by reason of compliance by the Contractor with a notification under clause 74.3(a)(i) (except in the case of insurance mandated by Law), will be borne by the Department by increasing the Unitary Charge by the amount required to meet such premium or additional premium or as otherwise agreed between the parties (acting reasonably). The Base Case will be updated and the adjustment to the Unitary Charge is to be made in accordance with clause 5.2 (Updating Base Case) and clause 5.3 (Application to Base Case) respectively.

## **74.4 General provisions relating to insurances**

- (a) The Insurance Policies:
  - (i) must be effected with Reputable Insurers (with the Department's approval to such Reputable Insurers, if required, not to be unreasonably withheld);
  - (ii) subject to clauses 74.4(b) and 74.4(c), must include the terms or requirements specified in Schedule 22 (Required Insurances) including (without limitation) the endorsement principles set out in Part 4 (Endorsements) of Schedule 22 (Required Insurances), unless the Contractor can demonstrate to the Department (acting reasonably) that substantially those terms, requirements or endorsement principles are not available in respect of reasonably comparable social infrastructure projects in Australasia;
  - (iii) must be on terms consistent with Schedule 22 (Required Insurances) as confirmed by the Department (acting reasonably);
  - (iv) must, to the extent the relevant risk is able to be co-insured, be in the names of the parties specified in Schedule 22 (Required Insurances) as co-insured for their respective rights and interests; and
  - (v) in respect of Physical Damage Policies, provide for payment of any proceeds received by the Contractor to be applied in accordance with clause 76 (Reinstatement).
- (b) Where clause 74.4(a)(ii) applies and the Contractor's reasonable opinion is that the applicable risk is also Uninsurable, the Contractor may give the Department a notice under clause 75.1 (Procedure to follow).
- (c) The parties acknowledge that the terms and requirements specified in Schedule 22 (Required Insurances) in relation to those Insurance Policies set out in Part 2 and Part 3 of Schedule 22 (Required Insurances), are a reflection of the insurance market at Financial Close. If prior to Works Completion and throughout the term of the relevant Insurance Policy, either party considers (acting reasonably) that a certain term or requirement is no longer a reflection of the insurance market at such time, then that party may send a written notice to the other party advising it of the same and the Department and the Contractor (both acting reasonably) will agree the replacement terms or requirements (as applicable).

## **74.5 Evidence of policies and renewal certificates**

- (a) The Contractor shall provide to the Department:
  - (i) for those Insurance Policies set out in Part 2 of Schedule 22 (Required Insurances) no less than 10 Business Days prior to Works Completion certificates of currency evidencing that such insurances as are required to be held from Works Completion are in place;
  - (ii) for those Insurance Policies described in Part 3 of Schedule 22 (Required Insurances), no less than 10 Business Days prior to Works Completion certificates of currency evidencing that such insurances as are required to be held from Works Completion are in place. The parties agree that such certificates of currency will be in a form as agreed by the parties and will contain such additional information as the Department may reasonably request;

- (iii) certificates of currency stipulating the type of policy and the major inclusions and exclusions and evidencing currency of the cover within fourteen days of the expiry of the existing policy;
  - (iv) for those Insurance Policies described in Part 2 of Schedule 22 (Required Insurance), copies on request of such Insurance Policies as soon as they have been received from the insurers;
  - (v) immediately on becoming aware of the same, written notice of any cancellation or proposed cancellation of the Insurance Policies by an insurer;
  - (vi) any other information reasonably requested by the Department relating to the Insurance Policies;
  - (vii) information on any circumstances that may reasonably be expected to materially affect coverage under and in accordance with any of the Insurance Policies; and
  - (viii) evidence that the premiums payable under all Insurance Policies have been paid and that the insurances are in full force and effect in accordance with the requirements of this clause 74 and Schedule 22 (Required Insurances).
- (b) Renewal certificates in relation to the Insurance Policies shall be obtained as and when necessary and copies (certified in a manner acceptable to the Department) shall be forwarded to the Department as soon as reasonably practicable but in any event within 10 Business Days of the renewal date of the Insurance Policies.

#### **74.6 Payment of premiums**

Save where expressly set out in this Agreement, the insurance premiums for the Insurance Policies shall at all times be the responsibility of the Contractor. The Contractor must punctually pay all premiums and other amounts payable in respect of the Insurance Policies and give to the Department copies of receipts for payment of premiums if and when requested by the Department.

#### **74.7 Failure to maintain insurances and savings**

- (a) If the Contractor is in breach of clause 74.2 or clause 74.3, the Department may pay any premiums required to keep such insurance in force or procure such insurance and may in either case recover such amounts from the Contractor on written demand (including, without limitation, by set-off from the next scheduled Monthly Unitary Payments).
- (b) Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve the Contractor of its liabilities and obligations under this Agreement.

#### **74.8 Notification and preservation of claims and known circumstances**

- (a) The Contractor shall give the Department notification within 10 Business Days of any claim being made:
  - (i) in excess of fifty thousand Dollars (\$50,000) on any of the Insurance Policies;
  - (ii) relating to any matter which, if adversely determined, might adversely affect the reputation of the Department; and
  - (iii) relating to any matter of high public interest,



or of any circumstances of which the Contractor is aware which could reasonably be expected to give rise to any such claim.

- (b) Such notice is to be accompanied by full details of the incident giving rise to the claim. The Contractor must promptly take steps to ensure that its rights, and the rights of other persons to whom the benefit of the Insurance Policy extends, are fully preserved.

## **74.9 Other obligations of Contractor in relation to insurances**

Without limiting the Department's rights or the Contractor's other obligations under this clause 74, the Contractor must also:

- (a) not do or permit or omit to do anything which prejudices any Insurance Policy;
- (b) rectify anything which might, if not rectified, prejudice any Insurance Policy;
- (c) promptly reinstate an Insurance Policy if it lapses, with a Reputable Insurer, on terms compliant with the insurance requirements of this Agreement;
- (d) not cancel or allow any Insurance Policy to lapse without the prior written consent of the Department. The Contractor must seek the consent of the Department at least thirty days before the proposed cancellation or lapse;
- (e) not vary any Insurance Policy in Parts 1 and 2 of Schedule 22 (Required Insurances) nor materially vary any Insurance Policy in Part 3 of Schedule 22 (Required Insurances) without the prior written consent of the Department. The Contractor must seek the consent of the Department at least thirty days before the proposed variation;
- (f) notify the insurers of any relevant Insurance Policy of any Change relating to the Works that increases the value of those Works;
- (g) fully and promptly disclose all material information to all relevant insurers (and to any persons acting on their behalf) relating to the Insurance Policies in all respects, including where failure to do so may vitiate or prejudice an Insurance Policy; and
- (h) comply at all times with the terms of each Insurance Policy.

## **74.10 Indexation**

- (a) The limit of indemnity for each of the Required Insurances shall be Indexed, provided such limits of indemnity shall only be increased on each renewal date such that the limit that is Indexed becomes equal to or exceeds the next whole insurable amount available in the insurance market.
- (b) The maximum deductibles for each of the Required Insurances may be Indexed, provided such maximum deductibles may only be increased on each renewal date such that the limit that is Indexed becomes equal to or exceeds the next whole deductible available in the insurance market.

## **74.11 Natural Disaster deductible**

Where:

- (a) a Natural Disaster (as defined or as otherwise described in the Industrial Special Risks (Material Damage) Insurance) occurs after Works Completion; and

- (b) that Natural Disaster results in material damage to the Facility that is or would be (subject to payment of a deductible) recoverable under the Industrial Special Risks (Material Damage) Insurance,

then, where the aggregate reinstatement or repair costs for damage to the Facility caused by any such Natural Disasters exceeds \$3,000,000 (Indexed):

- (c) the Contractor shall be liable to meet the first \$3,000,000 (Indexed) of deductibles across all claims (in aggregate) under the Industrial Special Risks (Material Damage) Insurance in respect of any such Natural Disasters; and
- (d) the Department shall pay to the Contractor, as an Additional Payment, the lesser of:
  - (i) the difference between the proven and reasonable reinstatement or repair costs for damage to the Facility caused by the Natural Disasters and the amount for which the Contractor is liable under clause 74.11(c); and
  - (ii) the difference between the deductibles applicable to the claims in respect of that Natural Disasters and the amount for which the Contractor is liable under clause 74.11(c).

## **75. Uninsurable risks**

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### **75.1 Procedure to follow**

If a risk usually covered by any Required Insurance (other than loss of profits) in each case required under this Agreement becomes Uninsurable, then:

- (a) the Contractor shall notify the Department within five Business Days of becoming aware of the same and in any event at least 10 Business Days before the expiry or cancellation of any existing insurance in respect of that risk;
- (b) if both parties agree, or it is determined in accordance with the Accelerated Dispute Resolution Procedures that the risk is Uninsurable and that the risk that is Uninsurable is not caused by the actions or omissions of the Contractor, any Contractor Related Person or any Contractor Personnel, the parties shall meet to discuss the means by which the risk should be managed or shared (including considering the issue of self-insurance by either party); and
- (c) where and to the extent that the Uninsurable risk is one that would usually be covered by Comparable Contractors in the recognised international insurance market under the Motor Vehicle Insurance Policy and the Statutory Fines and Penalties Liability Policy, the Department shall be entitled to require the Contractor to self-insure in respect of such risk without any alteration to the Unitary Charge.

### **75.2 Consequences of being unable to agree**

- (a) If, and for so long as the requirements of clause 75.1 are satisfied, the parties cannot agree as to how to manage or share a risk usually covered by any Required Insurance (other than loss of profits), the Agreement shall continue and the Department shall, on the occurrence of the risk (at the Department's option), either pay to the Contractor:
  - (i) an amount equal to insurance proceeds that would have been payable had the relevant insurance continued to be available, and the Agreement will continue; or

- (ii) an amount equal to the amount calculated in accordance with Part 4 (Compensation on Uninsurable Event or Uninsurability) of Schedule 23 (Calculation of Compensation on Termination) plus (in relation to third party liability insurance only) the amount of insurance proceeds that would have been payable, whereupon this Agreement will terminate pursuant to clause 81 (Termination on Uninsurability).
- (b) Where pursuant to clause 75.2(a) this Agreement continues:
  - (i) then the Unitary Charge shall be reduced in each year for which the relevant insurance is not maintained by an amount equal to 150 per cent of the premium paid (or which would have been paid) by the Contractor in respect of the relevant risk in the year prior to it becoming Uninsurable (Indexed from the date that the risk becomes Uninsurable). Where the risk is Uninsurable for part of a year only, the reduction in the Unitary Charge shall be pro-rated to the number of months for which the risk is Uninsurable; and
  - (ii) the Contractor shall approach the insurance market at least every quarter to establish whether the risk remains Uninsurable. As soon as the Contractor is aware that the risk is no longer Uninsurable, the Contractor shall take out insurance for such risk as soon as is reasonably practicable, and maintain that insurance in accordance with this Agreement.

### 75.3 No obligation

Nothing in this clause 75 shall oblige the Contractor to take out insurance in respect of a risk which is Uninsurable, save for where the predominant cause of the risk being Uninsurable is any act or omission of the Contractor, any Contractor Personnel or a Contractor Related Person.

## 76. Reinstatement

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### 76.1 Generally

- (a) Upon becoming aware of material damage to, or destruction of all or any part of the Works (the **Relevant Works**), the Department will (as soon as reasonably practicable) notify the Contractor as to whether it requires the Contractor:
  - (i) to rebuild or repair the Relevant Works on the basis of substantially the same specifications as those for the original Relevant Works;
  - (ii) to rebuild or repair the Relevant Works other than on the basis of substantially the same specifications as those for the original Relevant Works; or
  - (iii) not to rebuild the Relevant Works,

and at the same time, the Department will notify the Contractor of the Department's Requirements (if any) regarding provision of the Operational Services. Any notice given by the Department under this clause will not prejudice the rights of the Contractor under clause 41 (Uninsurable Events).
- (b) In the event that the Department notifies the Contractor that the Relevant Works:
  - (i) are to be rebuilt or repaired on the basis of substantially the same specifications as those for the original Relevant Works, clauses 76.2 and 76.3 will apply;

- (ii) are to be rebuilt or repaired other than on the basis of substantially the same specifications as those for the original Relevant Works, the following provisions will apply:
  - (A) clauses 76.2 and 76.3; and
  - (B) Part 13 (Changes); or
- (iii) are not to be rebuilt or repaired, clause 76.4 will apply.

## 76.2 Insurance proceeds

- (a) Subject to clause 76.1(a), all insurance proceeds received under any Physical Damage Policies shall be applied to repair, reinstate and replace each part or parts of the Works in respect of which the proceeds were received.
- (b) All insurance proceeds paid under any Physical Damage Policy in respect of a single event (or a series of related events) in an amount in excess of three hundred thousand Dollars (\$300,000) (Indexed) shall be paid into the Joint Insurance Account. The parties shall operate the signatory requirements of the Joint Insurance Account in order to give effect to the payment terms of this clause 76.

## 76.3 Reinstatement processes

- (a) Where the Department has given notice to the Contractor under clause 76.1(b), the Contractor must make a claim on the Physical Damage Policies. Where in respect of such claim, proceeds of insurance are received or are receivable under any such Physical Damage Policy in an amount in excess of three hundred thousand Dollars (\$300,000) (Indexed) in respect of a single event (or a series of related events) (the **Relevant Incident**) the Contractor shall deliver as soon as practicable and in any event within 20 Business Days after the making of the claim, a plan prepared by the Contractor for the carrying out of the works necessary (the **Reinstatement Works**) to repair, reinstate or replace (the **Reinstatement Plan**) the assets which are the subject of the relevant claim or claims, in accordance with clause 76.3(d).
- (b) The Reinstatement Plan shall set out:
  - (i) if the Major Sub-contractor responsible for the construction of the Works is not to be utilised by the Contractor in the carrying out of the Reinstatement Works, the identity of the person proposed to effect the Reinstatement Works, which shall be subject to the prior written approval of the Department; and
  - (ii) the proposed terms and timetable upon which the Reinstatement Works are to be effected (including the date that the Project will become fully operational), the final terms of which shall be subject to the prior written approval of the Department, which approval shall not be unreasonably withheld.
- (c) When the Department is satisfied (acting reasonably) that the Reinstatement Plan will enable the Contractor to comply with clause 76.3(d) within a reasonable time:
  - (i) the Reinstatement Plan will be adopted;
  - (ii) the Contractor shall enter into contractual arrangements to effect the Reinstatement Works in accordance with clause 76.3(d) with the person and on the terms identified in the Reinstatement Plan and approved by the Department;

- (iii) the Contractor must, at its own cost, maintain a central register of costs of the Reinstatement Works with real time access capability for both the Contractor and the Department;
  - (iv) any amounts standing to the credit of the Joint Insurance Account (the **Relevant Proceeds**) (together with any interest accrued) may be withdrawn:
    - (A) by the Contractor (at any time prior to the earlier of the Actual Termination Date and the Expiry Date) from the Joint Insurance Account as required to enable it to make payments in accordance with the terms of the contractual arrangements referred to in clause 76.3(c)(ii) and to meet any other reasonable costs and expenses of the Contractor for the sole purposes of funding the Reinstatement Works; or
    - (B) by the Department (following the earlier of the Actual Termination Date and the Expiry Date) for the purposes of funding any Reinstatement Works;
  - (v) the Department agrees and undertakes that, subject to compliance by the Contractor with its obligations under this clause 76, and provided that the Contractor procures that the Reinstatement Works are carried out and completed in accordance with the contractual arrangements referred to in clause 76.3(c)(ii), it shall not exercise any right which it might otherwise have to terminate this Agreement by virtue of the event which gave rise to the claim for the Relevant Proceeds;
  - (vi) after the Reinstatement Plan has been implemented to the reasonable satisfaction of the Department and in accordance with clause 76.3(d), the Department shall (subject to any right of set off the Department may have under this Agreement) permit withdrawal by the Contractor of any Relevant Proceeds then held in the Joint Insurance Account that have not been paid under clause 76.3(c)(iv), in respect of the Relevant Incident, together with any interest accrued; and
  - (vii) subject to the provisions of clause 62.4 (Limits on indemnity cover), the Contractor shall be solely responsible for the payment of any deficiency.
- (d) Where insurance proceeds are to be used:
- (i) to rebuild or repair the Relevant Works pursuant to a notice from the Department under clause 76.1(a)(i), the Contractor shall carry out the work in accordance with the Works Requirements so that on completion of the work, the provisions of the Agreement are complied with; or
  - (ii) to rebuild or repair the Relevant Works pursuant to a notice from the Department under clause 76.1(a)(ii), the Contractor shall carry out the work in accordance with the Work Requirements, as amended by the terms of the relevant Change Notice so that on completion of the work, the provisions of this Agreement (as amended by that Change Notice) are complied with.
- (e) Where the Department determines under clause 76.1(a)(ii) that the Relevant Works are to be rebuilt or repaired on the basis of different specifications from the original Works and the incremental cost of rebuilding or repair according to such specifications exceeds the total cost of rebuilding or repair according to the original specifications:
- (i) as agreed between the Department and Contractor; or
  - (ii) if the parties cannot agree, as determined in accordance with the Accelerated Dispute Resolution Procedures,

the Department will bear the amount (if any) of the excess either agreed or determined under this clause 76.3(e).

- (f) Where the rebuilding of the Relevant Works to different specifications will increase or decrease the cost of providing the Operational Services over the remainder of the Contract Term, the Department will, as applicable:
  - (i) pay the reasonable increased costs of the Contractor to the extent there is an increase in cost; and
  - (ii) be entitled to the benefit of decreased costs if there is a decrease in the cost to the Contractor,

and in each case the increase or decrease is to be agreed by the parties, or failing agreement, to be determined in accordance with the Accelerated Dispute Resolution Procedures.

- (g) The Department will pay the amount of any excess and increased costs under clause 76.3(e) and clause 76.3(f) in accordance with Part 13 (Changes), net of any adjustments for any decrease in the cost of provision of the Services under clause 76.3(f).

#### **76.4 Consequences of not rebuilding or repairing**

- (a) If the Department directs the Contractor not to rebuild the Relevant Works under clause 76.1(a)(iii), the Department must elect to either:
  - (i) exclude the Relevant Works and any associated Services from this Agreement, in which case it must provide the Contractor with a Change Notice to effect such Changes as are required and Part 13 (Changes) will apply; or
  - (ii) where the Relevant Works comprise at least the Majority of the Works, terminate this Agreement, in which case clause 76.4(b) will apply.
- (b) If the Department elects to terminate this Agreement under this clause 76.4, and the damage or destruction was caused:
  - (i) by an Uninsurable Event, or an Uninsurable risk to which clause 75 (Uninsurable Risks) applies, then this Agreement will be terminated under clause 80 (Termination on Uninsurable Event) or clause 81 (Termination on Uninsurability), as applicable;
  - (ii) by a breach of this Agreement by the Contractor, then an Immediate Termination Event will be deemed to have occurred and this Agreement will be terminated under clause 79 (Termination on Contractor Default); or
  - (iii) by neither of the circumstances in clause 76.4(b)(i) or clause 76.4(b)(ii), then this Agreement will be terminated under clause 78 (Termination for Convenience).

## Part 20 – Termination

### 77. Termination Events

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#### 77.1 Subject to Financier Direct Deed

This Part 20 is subject to the terms of the Financier Direct Deed.

#### 77.2 Remedies cumulative

The rights and remedies exercisable under this Part 20 are in addition, and without prejudice to, any other rights and remedies of the Department under this Agreement on or following the occurrence of a Termination Event.

#### 77.3 Termination under Agreement only

This Agreement may only be terminated in accordance with its express terms.

#### 77.4 Termination

This Agreement may be terminated:

- (a) for convenience in accordance with clause 78 (Termination for Convenience);
- (b) as a result of Contractor Default in accordance with clause 79 (Termination on Contractor Default);
- (c) following the occurrence of an Uninsurable Event in accordance with clause 80 (Termination on Uninsurable Event); or
- (d) in accordance with clause 81 (Termination on Uninsurability), in the event that the Department exercises its option to terminate this Agreement under clause 75 (Uninsurable risks),

(each a **Termination Event**).

#### 77.5 Termination Date

- (a) Subject to this clause 77.5, the Termination Date will be a fixed date as specified in any Termination Notice served on a party under this Agreement.
- (b) The Termination Date specified in any Termination Notice must be no less than 30 Business Days after the later of the dates on which it is served on the Contractor and on the Security Trustee.
- (c) If the Security Trustee issues a Step-in Notice (as defined in the Financier Direct Deed) before the Termination Date referred to in a Termination Notice, that Termination Date shall be deemed to be suspended and will not take effect until such time as:
  - (i) the Department is entitled to terminate this Agreement in accordance with the Financier Direct Deed; and

- (ii) the Department gives the Contractor and the Security Trustee no less than 5 Business Days notice that this Agreement is to be finally terminated with no further remedy rights for any party and specifying the final Termination Date.

## **78. Termination for Convenience**

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### **78.1 Department may terminate at any time**

The Department may terminate this Agreement at any time on or before the Expiry Date pursuant to this clause 78.

### **78.2 Termination Notice**

If the Department wishes to terminate this Agreement under this clause 78, it must give a Termination Notice to the Contractor stating:

- (a) that the Department is terminating this Agreement under this clause 78; and
- (b) that this Agreement will terminate on the Termination Date specified in the Termination Notice, which must be a minimum of 60 Business Days after the date of receipt of the notice by the Contractor.

## **79. Termination on Contractor Default**

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### **79.1 General provision**

- (a) The Department shall be entitled to terminate this Agreement in accordance with this clause 79 if a Contractor Default has occurred.
- (b) Where the Contractor Default is constituted by a Probity Event, then the terms of clause 79.6 will apply instead of clauses 79.4 and 79.5.

### **79.2 Contractor Default**

For the purposes of this Agreement:

- (a) **Immediate Termination Event** means any one or more of the following:
  - (i) following the Independent Reviewer giving a notice under clause 25.7(e)(ii):
    - (A) the Contractor does not refer any Dispute in respect of such notice to the Accelerated Dispute Resolution Procedure, under clause 25.7(f), within 5 Business Days of receipt of such notice; or
    - (B) any Dispute referred to the Accelerated Dispute Resolution Procedure under clause 25.7(f) is determined in support of the Independent Reviewer's decision as set out in such notice; or
  - (ii) Operational Completion does not occur on or before the Last Date for Service Commencement;
  - (iii) a Major Sub-contractor Breach;
  - (iv) failure by the Contractor to comply with clause 94.3 (Assignment by Contractor);



- (v) the Contractor Abandons the Works at any time;
  - (vi) a Probity Event (as that term is defined by reference to paragraphs (a) to (d) of that definition) occurs to which clause 79.6(b) applies;
  - (vii) an Insolvency Event occurs in relation to the Contractor or HoldCo;
  - (viii) any statement or representation made in any report or invoice provided or rendered to the Department by or through any director, officer or employee of the Contractor (in circumstances where that director, officer or employee was not acting independently of the Contractor, such phrase to have the meaning set out in clause 79.6) is or proves to be false, misleading or incorrect in any material respect in circumstances where the director, officer or employee wilfully or deliberately made a statement or representation having actual knowledge that such a report or invoice was false, misleading or incorrect in any material respect; or
  - (ix) a Shareholder Breach; and
- (b) **Remediable Contractor Default** means any one or more of the following:
- (i) failure by the Contractor to comply with:
    - (A) clause 74.2 (Specified insurances) or clause 74.3 (Other insurances);
    - (B) clause 4.1 (Ancillary Documents and Financing Agreements) and clause 4.2 (Major Sub-contractor's Direct Deed) or clause 5 (Base Case and Base Case Adjustments); or
    - (C) clause 16 (Sub-contractors) (other than a Major Sub-contractor Breach);
  - (ii) a breach by:
    - (A) the Contractor of any of its obligations under this Agreement (other than:
      - (I) those obligations specifically referred to in clause 79.2(a);
      - (II) a KPI Breach; or
      - (III) a Charge Event; or
    - (B) the Contractor or any Contractor Related Person of any of the terms of any Project Document (other than this Agreement),  
  
that has a Material Adverse Effect;
  - (iii) a Persistent General Breach occurs;
  - (iv) any Material Adverse Effect resulting from any of the representations and warranties made (or deemed repeated) by the Contractor under this Agreement being found to be untrue or incorrect when made (or deemed repeated);
  - (v) the occurrence of either:
    - (A) the acceleration by a Senior Lender of repayment of all or a material part of the Senior Debt as a result of a Financing Default; or

- (B) any event that has prevented the Contractor from obtaining or continuing to have available funding under the Financing Agreements to the extent necessary for the performance of the Services in accordance with this Agreement excluding any drawstops under the Senior Financing Agreements that have existed for up to 90 days;
- (vi) all or any material part of any Project Document is or becomes void, voidable, invalid or unenforceable (other than by reason only of a party waiving any of its rights);
- (vii) the Contractor is at Level 4 SFP at any time;
- (viii) an Insolvency Event occurs in relation to a Major Sub-contractor;
- (ix) a Probity Event (of whatever nature) occurs, being a Probity Event that is not also an Immediate Termination Event;
- (x) a Refinancing Breach;
- (xi) an Unsuitable Third Party controls or becomes entitled to the Control of:
  - (A) a Shareholder; or
  - (B) a Major Sub-contractor;
- (xii) on at least 12 occasions in six months statements or representations made in any report or invoice provided or rendered to the Department by or through the Contractor is or proves to be false, misleading or incorrect in any material respect in circumstances where the Contractor or a Contractor Related Person (if that company is the source of that report or invoice) ought reasonably to have known that that report or invoice (if the Contractor or Contractor Related Person had made due enquiry in accordance with Good Industry Practice) was false, misleading or incorrect in any material respect;
- (xiii) failure by the Contractor to comply with clause 95 (Change of Ownership), save where that failure to comply constitutes an Immediate Termination Event under clause 79.2(a)(ix); or
- (xiv) any statement or representation made in any report or invoice provided or rendered to the Department by or through the Contractor (except in circumstances that constitute an Immediate Termination Event) is or proves to be false, misleading or incorrect in any material respect in circumstances where the Contractor or a Contractor Related Person (if that company is the source of that report or invoice) wilfully or deliberately made a statement or representation having actual knowledge that such a report or invoice was false, misleading or incorrect in any material respect.

### **79.3 Notice of General Breach**

- (a) The Department may, no more than 20 Business Days after it became aware of (and the Department is deemed to be aware of any information submitted in a report by the Contractor pursuant to this Agreement) the occurrence of a General Breach or a General Delivery Breach, serve a notice of that General Breach or that General Delivery Breach on the Contractor.
- (b) Each notice of a General Breach or a General Delivery Breach must specify the type and nature of that General Breach or General Delivery Breach that has occurred and require the Contractor to remedy that General Breach or General Delivery Breach or

the underlying circumstances to the Department's satisfaction within 20 Business Days after the date the Contractor receives the notice.

#### 79.4 Warning Notice

- (a) The Department may, at any time after the occurrence of a Remediable Contractor Default, serve a Warning Notice on the Contractor.
- (b) Each Warning Notice must specify the type and nature of Remediable Contractor Default that has occurred, giving reasonable details of the Remediable Contractor Default and stating whether or not the Remediable Contractor Default is able to be remedied. If the Warning Notice states that the Remediable Contractor Default is able to be remedied, then:
  - (i) the Contractor must:
    - (A) put forward a rectification programme that is acceptable to the Department (acting reasonably) within 15 Business Days after the date the Contractor receives the Warning Notice, specifying the timeframe within which that Remediable Contractor Default will be remedied, a work plan for the remedying of that (or those) Remediable Contractor Default within that timeframe, and any temporary measures being put in place to mitigate the effect of that (or those) Remediable Contractor Default, which may also include, where applicable, a mechanism for the Contractor to replace the defaulting Major Sub-contractor within that timeframe;
    - (B) implement such rectification programme in accordance with its terms; and
    - (C) rectify the Remediable Contractor Default within the timeframe specified in the rectification programme; or
  - (ii) the Contractor must remedy that Remediable Contractor Default within 20 Business Days after the date the Contractor receives the Warning Notice,

provided that, in the case of a Remediable Contractor Default under any of clauses 79.2(b)(i)(A) or (B), 79.2(b)(iv), 79.2(b)(x), 79.2(b)(xii), 79.2(b)(xiii) or 79.2(b)(xiv), the Department will be entitled to require that that Remediable Contractor Default is remedied in accordance with clause 79.4(b)(ii) where the Department considers, acting reasonably, that it is practicable to remedy the relevant Remediable Contractor Default within 20 Business Days (or, in relation to a breach of clause 79.2(b)(x), such longer period required by the Department to complete its consideration under clause 55 (Refinancing and Effective Base Rate)) and has, in the relevant Warning Notice, set out the basis on which such Remediable Contractor Default might reasonably be remedied within that period.

- (c) If a Warning Notice states that the Contractor Default cannot be remedied, the Contractor must submit a plan (**Prevention Plan**) that is acceptable to the Department (acting reasonably) within 15 Business Days after the Contractor receives the Warning Notice, with the Prevention Plan setting out:
  - (i) any temporary measures being put in place to mitigate the effect of the consequences of, or compensate the Department for, the Remediable Contractor Default;
  - (ii) how the Contractor intends to appropriately address the underlying issue that gave rise to the Remediable Contractor Default; and

- (iii) a time frame within which the Contractor will appropriately address the consequences of, or compensate the Department for, the Remediable Contractor Default,

and the Contractor must implement the Prevention Plan in accordance with its terms and appropriately address the consequences of, or compensate the Department for, the applicable Remediable Contractor Default, within the time frame specified within the Prevention Plan.

(d) The Contractor:

- (i) must, during the implementation of the rectification programme or Prevention Plan (as the case may be), keep the Department up-to-date with progress against the timeframes set out therein;
- (ii) may, where circumstances adversely affect the implementation of the rectification plan or Prevention Plan (as the case may be) in accordance with its then current terms, request a variation to such rectification programme or Prevention Plan for the Department to approve (acting reasonably), provided that the Contractor:
  - (A) notifies the Department of those circumstances, and submits the proposed variation to such rectification programme or Prevention Plan, as soon as reasonably practicable and in any event within 10 Business Days of becoming aware of such circumstances and no later than five Business Days prior to the due date for completion of the implementation of the rectification programme or Prevention Plan (as applicable);
  - (B) has complied, and continues to comply, with the rectification programme or Prevention Plan (except to the extent adversely affected by the circumstances notified) and has been diligently pursuing such remedy or prevention consistently with Good Industry Practice (having regard to the circumstances notified); and
  - (C) while pursuing such remedy or prevention, did not cause or contribute to such circumstances by its negligence or failure to comply with obligations which the Contractor is required to observe, comply with or perform under this Agreement.

- (e) Where a Warning Notice is issued to which clause 79.4(b)(ii) applies and the Contractor remedies the Contractor Default or the relevant circumstances or event giving rise to or resulting from that Contractor Default (as applicable) within 20 Business Days after the date the Contractor receives the Warning Notice to the satisfaction of the Department (acting reasonably), the Warning Notice in relation to that Remediable Contractor Default will be deemed to be revoked and this Agreement will continue.
- (f) Where a Warning Notice is issued to which clause 79.4(b)(i) applies and the Contractor implements the rectification programme in accordance with its terms, the Warning Notice in relation to that Remediable Contractor Default will be deemed to be revoked and this Agreement will continue.
- (g) Where a Warning Notice is issued to which clause 79.4(c) applies and the Contractor implements the Prevention Plan in accordance with its terms, the Warning Notice in relation to that Remediable Contractor Default will be deemed to be revoked and this Agreement will continue.
- (h) Where the Contractor disagrees with:

- (i) the Department's assessment, as set out in a Warning Notice, that a Remediable Contractor Default is remediable or not (as the case may be); or
- (ii) the Department's assessment, as set out in a Warning Notice, as to whether a Remediable Contractor Default may reasonably be remedied within 20 Business Days; or
- (iii) the Department's failure to approve a rectification programme or Prevention Plan or a variation thereto under clause 79.4(d)(ii),

it:

- (iv) may refer such Dispute for resolution under the Accelerated Dispute Resolution Procedures; and
- (v) must continue to diligently pursue a remedy of the Remediable Contractor Default.

## **79.5 Termination Notice**

- (a) The Department may, at any time after the occurrence of an Immediate Termination Event, serve a Termination Notice on the Contractor.
- (b) If in the case of a Remediable Contractor Default:
  - (i) no acceptable rectification programme has been put forward pursuant to clause 79.4(b)(i)(A) or no acceptable Prevention Plan has been put forward pursuant to clause 79.4(c) (as applicable) within the required time periods;
  - (ii) the Contractor fails to implement its rectification programme or Prevention Plan and rectify the Remediable Contractor Default or put in place measures to prevent the recurrence of the Remediable Contractor Default (as applicable) within the timeframe specified in the rectification programme or Prevention Plan (as applicable) and otherwise in accordance with its terms; or
  - (iii) where the Contractor has elected or is required to remedy that Remediable Contractor Default within the required time period under clause 79.4(b)(ii), it has failed to do so,

the Department may, subject to clause 42.10, serve a Termination Notice on the Contractor.

- (c) Subject to clause 77.5 (Termination Date) this Agreement terminates on the Termination Date specified in the Termination Notice served by the Department on the Contractor.

## **79.6 Probity Event**

- (a) In this clause 79.6:
  - (i) a "Sub-contractor" means a sub-contractor of the Contractor, a sub-contractor of a sub-contractor, and any other sub-contractor of whatever tier involved in matters that are the subject of this Agreement;
  - (ii) the expression "not acting independently of" (when used in relation to the Contractor or a Sub-contractor) means and shall be construed as acting with the knowledge (actual or imputed) of any one or more of the directors of the Contractor or the Sub-contractor (as the case may be); and

- (iii) the phrase “involvement in the matters that are the subject of this Agreement” includes any involvement of whatever nature whether by way of the provision of any service, the exercise of any powers of managerial control, the exercise of any powers of direction or influence, or any other kind of involvement including by way of any financial interest, or the ownership of securities.
- (b) If a Probity Event has occurred for which an officer or an employee of the Contractor is responsible in circumstances where, in the case of an employee, that employee was not acting independently of the Contractor, then the Department may serve a Termination Notice on the Contractor and clause 79.4(h) will apply.
- (c) If a Probity Event has occurred for which an employee of the Contractor is responsible in circumstances where that employee was acting independently of the Contractor, then the Department may give written notice to the Contractor advising it that the Department may serve a Warning Notice on it, unless within 15 Business Days of receipt of such written notice the Contractor terminates the employee's employment and (if necessary) procures the performance of the functions and duties of that employee by another person.
- (d) If a Probity Event has occurred for which an employee of a direct Sub-contractor to the Contractor is responsible in circumstances where that employee was not acting independently of that Sub-contractor, then the Department may give written notice to the Contractor advising that the Department may serve a Warning Notice on it, unless within 20 Business Days of receipt of such written notice the Contractor terminates that Sub-contractor's sub-contract with the Contractor and procures the performance of the services provided by that Sub-contractor under its sub-contract by another person.
- (e) If a Probity Event has occurred for which an employee of a direct Sub-contractor to the Contractor is responsible, in circumstances where that employee was acting independently of that Sub-contractor, then the Department may give written notice to the Contractor advising it that the Department may serve a Warning Notice on it, unless within 20 Business Days of receipt of such written notice that Sub-contractor terminates that employee's employment and (if necessary) procures the performance of the functions and duties of that employee by another person.
- (f) If a Probity Event has occurred for which a person not specified in clauses 79.6(b) to (e) (inclusive) is responsible, then the Department may give written notice to the Contractor advising it that the Department may serve a Warning Notice on it, unless within 20 Business Days of receipt of such written notice the Contractor procures:
  - (i) in the case of an employee (not being an employee employed by the Contractor or a direct Sub-contractor), the termination of that person's employment;
  - (ii) in the case of a contractor (whether or not contracted by the Contractor or a Sub-contractor), termination of that contractor's contract in so far that contract relates to the subject matter of this Agreement; and
  - (iii) in the case of any other person (including a Contractor Related Person, or a director of the Contractor or a Contractor Related Person) who has an ability to influence the Contractor in relation to matters the subject of this Agreement or who exercises Control over the Contractor, a Contractor Related Person or any Sub-contractor, removal of that person from any involvement in the matters that are the subject of this Agreement or from the exercise of any Control over or in relation to the Contractor, a Contractor Related Person or any Sub-contractor (as the case may be).
- (g) A Termination Notice or a Warning Notice served on the Contractor pursuant to this clause 79.6 must specify:

- (i) the nature of the Probity Event that has occurred;
  - (ii) the identity of the persons whom the Department believes has been responsible for the occurrence of the Probity Event; and
  - (iii) where a Termination Notice is served, the Termination Date.
- (h) For the avoidance of doubt, where the Contractor is required to procure the termination of the employment of an employee of a Sub-contractor in order to remedy a Probity Event, the termination of that Sub-contractor's sub-contract will also be deemed to remedy any such Probity Event.

## **80. Termination on Uninsurable Event**

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The parties may terminate this Agreement as a result of an Uninsurable Event only in accordance with clause 41 (Uninsurable Events).

## **81. Termination on Uninsurability**

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### **81.1 Termination Notice**

If a risk becomes Uninsurable and the Department elects to terminate this Agreement under clause 75.2 (Consequences of being unable to agree), the Department must serve a Termination Notice on the Contractor.

### **81.2 Termination to take effect**

Termination of this Agreement will take effect on the Termination Date specified in the Termination Notice, which must be a minimum of 20 Business Days after the date of receipt of the notice by the Contractor.

## **82. Consequences of termination**

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### **82.1 Compensation provisions**

If this Agreement is terminated pursuant to:

- (a) clause 78 (Termination for Convenience), the terms of Part 2 (Compensation on Termination for Convenience) of Schedule 23 (Calculation of Compensation on Termination) shall apply;
- (b) clause 79 (Termination on Contractor Default), the terms of Part 3 (Compensation for Contractor Default) of Schedule 23 (Calculation of Compensation on Termination) shall apply;
- (c) clause 80 (Termination on Uninsurable Event), the terms of Part 4 (Compensation on Uninsurable Event or Uninsurability) of Schedule 23 (Calculation of Compensation on Termination) shall apply; or
- (d) clause 81 (Termination on Uninsurability), the terms of Part 4 (Compensation on Uninsurable Event or Uninsurability) of Schedule 23 (Calculation of Compensation on Termination) shall apply,

in the calculation of the compensation (if any) payable by or to the Department as a result.

## **82.2 Compensation Sum**

- (a) Upon calculation of the compensation (if any) payable by or to the Department pursuant to clause 82.1 and Schedule 23 (Calculation of Compensation on Termination), the Department must determine the Compensation Sum to be paid by the Department in accordance with Schedule 23 (and in the event of any dispute as to that calculation, an Independent Expert shall be appointed pursuant to the Accelerated Dispute Resolution Procedures).
- (b) The Compensation Sum and any other moneys that are paid as a result of termination of this Agreement under and pursuant to this Part 20, are paid in full and final settlement of each party's rights and claims against the other under this Agreement or any Project Document whether under contract, tort, restitution or otherwise, save in respect of:
  - (i) any antecedent liability of the Contractor to the Department which the Department has been unable to set off or deduct pursuant to the terms of this Agreement;
  - (ii) any antecedent liability of either party to the other that arose prior to the Actual Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in determining the Compensation Sum; and
  - (iii) any liabilities arising in respect of any breach by either party of their obligations under clause 10.3 (Continuing obligations) which arise or continue after the Actual Termination Date to the extent not taken into account in the calculation of any Compensation Sum or other payment of compensation on termination pursuant to this Agreement.
- (c) If the Compensation Sum is zero or a negative number, then the Department shall have no obligation to make any payment to the Contractor and, with effect from the time that the Department gives notice of the determination of the Compensation Sum to the Contractor, the Department shall be released from all liability to the Contractor for breaches and/or termination of the Base Agreement and any other Project Document whether under contract, tort, restitution or otherwise save (but only) to the extent provided in this clause.
- (d) If the Compensation Sum is a negative number, then an amount equal to the Compensation Sum shall be due and payable by the Contractor to the Department on the Compensation Date.

## **82.3 Allocation of Compensation Sum**

Any Compensation Sum payable by the Department under this Agreement will be deemed to include repayment in full of such part of the Rental Prepayment as would have, but for the Termination of this Agreement, been attributable to the period from the Actual Termination Date until the Expiry Date. The Department will have no liability to repay any portion of the Rental Prepayment other than through payment of the Compensation Sum calculated in accordance with this Agreement.

## **82.4 Effect of Termination Notice**

Following the date of service of a Termination Notice:

- (a) the Contractor will continue to provide the Services until the Actual Termination Date; and



- (b) the Department will continue to pay the Monthly Unitary Payment, on and subject to the terms of this Agreement, until the Actual Termination Date; and
- (c) on the Actual Termination Date:
  - (i) the Contractor will cease to provide the Services; and
  - (ii) the Department will cease to pay the Monthly Unitary Payment for any period after the Actual Termination Date, but will, where this Agreement is terminated under clause 79 (Termination on Contractor Default) and paragraph 8 of Part 3 of Schedule 23 (Calculation of Compensation on Termination) applies, be liable to pay the Post Termination Date Service Amount from the Actual Termination Date to the Compensation Date in accordance with that Schedule,

in each case without prejudice to the rights and obligations of the parties under clause 10.3 (Continuing obligations).

## **82.5 Termination Date**

On the Actual Termination Date:

- (a) clause 10.3 (Continuing obligations) and the provisions referred to therein will apply;
- (b) the Facility Lease will terminate; and
- (c) without limitation to Part 21 (Hand Back and Disengagement) and Schedule 24 (Disengagement), the Department may require the Contractor to transfer to the Department or its nominee all or part of its rights, title and interest in and to all or part of the Works, including Fitout (as specified by the Department) for no additional consideration.

## **83. Payment of Compensation**

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### **83.1 Payment of Compensation Sum**

- (a) The Department shall (if the Compensation Sum is a positive number) pay to the Contractor the Compensation Sum on the Compensation Date. Subject to subparagraph (b) below, where the Department terminates this Agreement under clause 78 (Termination for Convenience), clause 80 (Termination on Uninsurable Event) or clause 81 (Termination on Uninsurability), the Department will pay the Base Senior Debt Termination Amount within ten Business Days after the Termination Date.
- (b) The Department will not be obliged to pay the Compensation Sum unless and until the Agent has released any registered mortgage over the Facility Lease or has provided undertakings satisfactory to the Department that it will do so on payment of the Compensation Sum.
- (c) The Department may require that, following the date of the Termination Notice, interest payable on the Senior Debt is paid directly by the Department (on behalf of the Contractor) to the Agent and the Monthly Unitary Payment or Post Termination Date Service Amount otherwise payable to the Contractor (as applicable) will be reduced by any sum so paid.
- (d) The Department's obligation to pay the Compensation Sum under this clause 83.1 is, notwithstanding clause 53.7(a) (Rights of set off), irrespective of whether or the extent to which the Contractor has complied or is complying with its obligations under clause 89 (Contractor's disengagement obligations) and Schedule 24 (Disengagement).

- (e) In the event of any dispute as to the calculation of the Compensation Sum, an Independent Expert shall be appointed pursuant to the Accelerated Dispute Resolution Procedures.

## **83.2 Adjustment of Compensation Sum**

- (a) Where:

- (i) an amount payable by the Department under clause 83.1 is attributable to the interest component of amounts to be paid by the Contractor to the Senior Lenders under the Senior Financing Documents; and
- (ii) the Contractor is required, in accordance with the Senior Financing Documents, to gross-up the amount of such interest component to be paid by the Contractor to the Senior Lenders for any Tax that is payable to a Governmental Entity in New Zealand,

then the Department shall pay to the Contractor such additional amount as will put the Contractor in the same after Tax position as it would have been in had no such gross-up payment been required, taking account of any relief, allowances, deduction, setting off or credit in respect of Tax (whether available by choice or not) which may be available to the Contractor to reduce such gross-up payment.

- (b) If part or all of the Compensation Sum payable by the Department to the Contractor under clause 83.1 is characterised by Inland Revenue as taxable income rather than as a capital receipt, and is accordingly subject to Tax payable to a Government Entity in New Zealand, then the Department shall, following receipt of evidence of this assessment and such supporting evidence as it may reasonably require from the Contractor, pay to the Contractor such additional amount as will put the Contractor in the same after Tax position as it would have been in had the payment not been subject to such Tax, taking account of any relief, allowances, deduction, setting off or credit in respect of Tax (whether available by choice or not) that may be available to the Contractor to reduce the Tax to which the payment is subject.

## **83.3 Senior Debt**

- (a) The Department shall be entitled to rely on the certificate of the Agent as conclusive evidence of the amount of the Senior Debt outstanding at any relevant time.
- (b) The receipt by the Contractor of the Compensation Sum in full shall discharge the Department's obligation to pay any element of compensation due to the Contractor that wholly or partly comprises the Senior Debt.

## **Part 21 – Hand Back and Disengagement**

### **84. Exit Survey**

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#### **84.1 Timing**

No later than the date 30 months prior to the Expiry Date, the Department shall be entitled to carry out an exit survey of the Works or to procure the carrying out of an exit survey of the Works by an independent expert jointly appointed by the parties at the time to assess whether the Works have been and are being maintained by the Contractor in accordance with its obligations under this Agreement.

#### **84.2 Notification**

The Department shall consult with and then notify the Contractor in writing a minimum of 10 Business Days in advance of the date it wishes to carry out or procure the carrying out of the exit survey.

#### **84.3 Parties' obligations**

Where the Department carries out or procures the carrying out of the exit survey, the Department shall use reasonable endeavours to minimise any disruption caused to the provision of the Operational Services by the Contractor. The Contractor shall afford the Department or any person carrying out the survey any reasonable assistance required by the Department during the carrying out of the exit survey.

#### **84.4 Results of exit survey**

If the exit survey shows that the Contractor has not complied with or is not complying with any of its other obligations under this Agreement for the maintenance of the Works then the Department will:

- (a) notify the Contractor of the rectification and/or maintenance work that is required to ensure that the Works are brought up to the Required Standard and to achieve the Hand Back Requirements;
- (b) specify a reasonable period within which the Contractor must carry out such rectification and/or maintenance work; and
- (c) recover the cost of the exit survey from the Contractor by means of a withdrawal from the Retention Fund Account, draw down from the Standby Letter of Credit or deduction from the next payment of the Monthly Unitary Payment.

#### **84.5 Contractor must perform Outstanding Work**

The Contractor shall carry out such rectification and/or maintenance work notified pursuant to clause 84.4 in order to reach the Required Standard within the period specified and any costs it incurs in carrying out the Outstanding Work shall be at its own expense.

## **85. Retention Fund Account or Standby Letter of Credit**

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### **85.1 Notification**

If the Contractor has been notified under clause 84.4 (Results of exit survey) that rectification and/or maintenance work is required, then 24 months prior to the Expiry Date the Department may (to the extent the Outstanding Works have not been carried out to the Required Standard in the interim) deduct the costs of that Outstanding Work as quantified by the exit survey from the next following instalment (or, if the amount of such instalment is insufficient, the next instalments as necessary) of the Unitary Charge and pay such amount into an interest bearing account (the **Retention Fund Account**).

### **85.2 Reimbursement**

If and to the extent that the Contractor carries out the Outstanding Work to the Required Standard, the Department shall, to the extent that then (or subsequently) there are funds standing to the credit of the Retention Fund Account, reimburse the Contractor's costs of so doing by withdrawing amounts from the Retention Fund Account and paying these to the Contractor. If the aggregate of the amounts from time to time paid into the Retention Fund Account are insufficient to cover the Contractor's costs, the Contractor shall bear the balance of such costs itself.

### **85.3 Withdrawals from Retention Fund Account**

If and to the extent that the Contractor fails to carry out the Outstanding Work to the Required Standard within the period specified in clause 84.4 (Results of exit survey), the Department shall be entitled to carry out itself, or procure such rectification and/or maintenance work at the Contractor's expense and shall make withdrawals from the Retention Fund Account or, where there is insufficient funds in the Retention Fund Account, make deductions from any subsequent payment owed to the Contractor, to pay for such rectification and/or maintenance work or recover such amounts from the Contractor as Moneys Owning.

### **85.4 Payment of balance**

The Department shall pay any credit balance on the Retention Fund Account to the Contractor if:

- (a) all the Outstanding Work has been carried out to the Required Standard;
- (b) all Outstanding Work has been paid for by the Contractor; and
- (c) no Termination Notice given in accordance with this Agreement is outstanding,

and such payment will be made as soon as practicable following the later of the Actual Termination Date, the Expiry Date or the expiry of the period notified to the Contractor under clause 84.4(b) (Results of exit survey). If Outstanding Work identified by the Department has not been carried out such that the Required Standard for the Outstanding Works has not been met, then clause 85.3 will apply.

### **85.5 Replacement with Standby Letter of Credit**

The Contractor may, on written request to the Department, replace the Retention Fund Account with a Standby Letter of Credit, having a face value of no less than the required balance of the Retention Fund Account and available to be drawn by the Department in the same circumstances as the Retention Fund Account. If the Retention Fund Account is so

replaced, the Contractor will be entitled to be paid the balance of the Retention Fund Account along with accrued net interest (if any) on written request to the Department.

## **86. Expiry Date**

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On and with effect from the Expiry Date:

- (a) clause 10.3 (Continuing obligations) will apply;
- (b) subject to its rights of set off under this Agreement, the Department will make any payments then due and payable by the Department to the Contractor, including without limitation any payment due to the Contractor from the Retention Fund under clause 85.4 (Payment of balance);
- (c) the Contractor must pay any Moneys Owing to the Department; and
- (d) the Department may require the Contractor to transfer to the Department or its nominee all or part of the Contractor's rights, title and interest in and to all or part of the Works, including Fitout (as specified by the Department) for no additional consideration.

## **87. Preparation for Disengagement**

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### **87.1 Handover Package**

The Contractor must, within the timeframes specified in Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents), prepare and deliver to the Department a draft of the Handover Package. The purpose of the Handover Package is to assist the Department in ensuring that services of the type comprising the Operational Services may continue in the event that the Contractor ceases to provide (permanently or temporarily) some or all of the Operational Services whether as a result of Department Step-in, termination or expiry of this Agreement, or for any other reason whatsoever.

### **87.2 Contents of Handover Package**

- (a) The Handover Package is to be prepared by the Contractor in accordance with the requirements of Part 3 (Corrections Services Documentation) of Schedule 5 (Operative Documents).
- (b) The Handover Package must be submitted to the Department for review under the Review Procedures and may be reviewed by the Department pursuant to the Review Procedures.

### **87.3 Updating Handover Package**

The Contractor must ensure that the Handover Package remains complete, up-to-date, and continues to comply with clause 87.2.

## **88. Initiation of Disengagement**

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### **88.1 Disengagement Services Notice**

The Department may give written notice to the Contractor (a **Disengagement Services Notice**) at:

- (a) any time within 120 Business Days prior to the Expiry Date; or
- (b) the same time as the service of a Termination Notice,

requiring the Contractor to supply the Disengagement Services (in each case) during the Disengagement Period.

## 88.2 Disengagement Period

The disengagement period shall start on the date specified in the Disengagement Services Notice and shall continue until the Disengagement Services have been completed to the reasonable satisfaction of the Department (the **Disengagement Period**) provided that in no event and notwithstanding the Contractor's obligations under clause 10.3 (Continuing obligations) will the Disengagement Period in respect of the Additional Disengagement Services continue more than 12 calendar months after the Expiry Date or the Actual Termination Date (as applicable).

## 88.3 Service delivery

During the Disengagement Period:

- (a) the Contractor will deliver the Core Disengagement Services in accordance with the terms of this Agreement, subject to this clause 88.3 and clause 88.4 and the terms of the Disengagement Plan;
- (b) the Contractor will not be required to deliver any Operational Services after the Actual Termination Date unless the Disengagement Services Notice requests that the Contractor continue to provide specified Additional Disengagement Services after the Actual Termination Date (in which case clause 88.4 will apply);
- (c) the Department grants a licence, to the extent required, to access, occupy and remain upon the Department Site for the purposes of the provision of the Disengagement Services; and
- (d) notwithstanding the terms of Schedule 24 (Disengagement) or the Disengagement Plan, the Department, and not the Contractor, will be liable and responsible for insuring the Department Site and any lifecycle expenditure following the Actual Termination Date and the performance of such obligations shall not be included within the scope of, and shall not be paid for as part of, the Additional Disengagement Services.

## 88.4 Disengagement payment

In consideration for the Contractor providing the Additional Disengagement Services, the Department shall, for the duration of the Disengagement Period, pay in accordance with clause 53 (Unitary Charge) (*mutatis mutandis*) an amount equal to the proportion of the Unitary Charge (calculated in accordance with Schedule 17 (Payment Mechanism) and the Base Case as at the Expiry Date or Actual Termination Date, as applicable) payable for the provision of the Operational Services that constitute, or are broadly comparable with, the Additional Disengagement Services, and will remain subject to the applicable provisions of the Performance Regime, provided that in no event shall the Contractor be liable for any Losses or Liabilities (including Charges or Deductions) relating to the Additional Disengagement Services in excess of the amount payable by the Department to the Contractor under this clause 88.4.

## **89. Contractor's disengagement obligations**

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### **89.1 General obligations**

During the Disengagement Period, the Contractor shall:

- (a) co-operate fully with the Department or its nominee and any New Contractor;
- (b) effect such transfers of the Fixtures and Fitout to the extent not already owned by the Department;
- (c) effect such other conveyances and assignments and novations;
- (d) undertake such other transactions;
- (e) give such assurances; and
- (f) do all other acts and things,

as required by the terms of this Agreement or otherwise reasonably required by the Department to support a seamless transfer of responsibility for the Works and/or Services (or any of the Works and/or Services) to the Department or its nominee or any New Contractor of such works and/or services the same as, or similar to, the Works and/or Services.

### **89.2 Disengagement schedule**

The obligations of the Contractor during the Disengagement Period are more particularly described in Schedule 24 (Disengagement).

## **90. Other requirements**

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### **90.1 Attorney**

The Contractor irrevocably appoints the Department (acting through any person expressly nominated by the Department for this purpose), as the Contractor's lawful attorney with full power and agency to carry out the Contractor's obligations under this clause 90.1 and under Schedule 24 (Disengagement).

### **90.2 Step-in Rights not affected**

Nothing in this Part 21 limits or affects the Department's rights and remedies under Part 18 (Department Step-in).

## Part 22 – Dispute Resolution

### 91. Disputes

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#### 91.1 Notice of Dispute

If there is a dispute arising in relation to any aspect of this Agreement or the subject matter of this Agreement (**Dispute**) then the party wishing to invoke the provisions of this Part 22 will serve a notice (a **Notice of Dispute**) on the other party, together with its submissions in relation to the Dispute.

#### 91.2 Agreement to substitute dispute resolution procedures

Where a Dispute arises the parties may elect not to invoke the provisions of this Part 22 and may utilise an alternate dispute resolution process but only if both parties agree.

#### 91.3 Submissions

The submissions referred to in clause 91.1 will include (among other things) a description of the nature of the Dispute, the contractual or other legal basis on which the Dispute is based and (where relevant) the amount claimed.

#### 91.4 Accelerated Dispute Resolution Procedures

- (a) Any Dispute (other than a Dispute of the type referred to in clause 91.4(c)(i)) will be first referred to the Disputes Panel with a view to resolving that Dispute. The Disputes Panel is constituted and will operate pursuant to clause 92 (Disputes Panel).
- (b) If the Disputes Panel is unable to resolve the Dispute pursuant to clause 92.10 (Timeframes for resolution), then either party may submit the Dispute for resolution under the Accelerated Dispute Resolution Procedures.
- (c) A Dispute will be submitted for resolution pursuant to the Accelerated Dispute Resolution Procedures, without first being submitted to the Disputes Panel for resolution, if:
  - (i) the Dispute relates to any of the matters specified in this Agreement as being subject to the Accelerated Dispute Resolution Procedures;
  - (ii) the Dispute has been submitted by either party for resolution under the Accelerated Dispute Resolution Procedures pursuant to clause 91.4(b), clause 92.3(a), clause 92.4(b), clause 92.5(c) or clause 92.10 (Timeframes for resolution); or
  - (iii) both parties agree in writing that the Dispute should be resolved by way of the Accelerated Dispute Resolution Procedures.
- (d) A Dispute that is determined pursuant to the Accelerated Dispute Resolution Procedures will be final and binding on the parties if:
  - (i) the amount in Dispute (as determined under the Accelerated Dispute Resolution Procedures) is \$2,000,000 or less;
  - (ii) the Dispute relates to a claim for a postponement or other relief under this Agreement where the amount associated with such postponement or other relief (as determined under the Accelerated Dispute Resolution Procedures),



whether liquidated damages, Charges, Deductions, delay or disruption costs or otherwise, would be \$2,000,000 or less; or

(iii) where both paragraphs (i) and (ii) apply, the aggregate disputed amount as determined under those paragraphs would be \$2,000,000 or less.

(e) Where a Dispute has been determined pursuant to the Accelerated Dispute Resolution Procedures and the Dispute (as determined under the Accelerated Dispute Resolution Procedures) exceeds the relevant threshold referred to in clause 91.4(d), either party may refer the Dispute to the competent courts of New Zealand for resolution.

## **91.5 Obligations continue**

Despite the existence of a Dispute or the referral of the Dispute for resolution under this Part 22:

- (a) the Contractor must continue Works Provisioning, performing the Operational Services and performing its other obligations under this Agreement; and
- (b) the Department will continue to perform its obligations under this Agreement and may exercise its rights under this Agreement without regard to the existence of the Dispute, while that Dispute has not been resolved pursuant to this Part 22.

## **91.6 Urgent relief**

Nothing in this Agreement shall preclude a party from seeking urgent injunctive or declaratory relief or from otherwise seeking urgent interlocutory relief from the courts. If interlocutory relief is sought by a party, then that party shall, subject to the extent of the relief obtained from the courts and following the period required to dispose of the application, submit the Dispute for resolution under this Part 22.

## **91.7 Timeframes**

Any of the timeframes specified in clauses 92 (Disputes Panel) or 93 (Accelerated Dispute Resolution Procedures) may be varied by written agreement between the parties.

# **92. Disputes Panel**

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## **92.1 Establishment of Disputes Panel**

As soon as is practicable after the Execution Date, the Department and the Contractor will establish a panel (**Disputes Panel**) as a forum for representatives of the parties to meet and attempt to resolve Disputes (other than Disputes of the type referred to in clause 91.4(c)(i)) arising between the parties in an informed and good faith manner.

## **92.2 Appointments**

- (a) The Disputes Panel will comprise four members, two appointed by each of the Department and the Contractor. The Department and the Contractor will each nominate two persons to be its representatives on the Disputes Panel together with alternative representatives to represent that party when any of those nominees cannot act.

- (b) Each of the representatives of the parties to the Disputes Panel will be empowered to make decisions on behalf of, and to bind contractually, the party appointing such representative in all matters raised for determination of the Disputes Panel.

### **92.3 Convening of meetings of Disputes Panel**

- (a) The Disputes Panel must meet within five Business Days of the date on which a Notice of Dispute is served on one party by the other, in respect of a Dispute that is not one that requires immediate referral to an Independent Expert pursuant to clause 93 (Accelerated Dispute Resolution Procedures). In the event the Disputes Panel fails to meet within the timeframes specified by this clause 92.3(a), then either party may submit the Dispute for resolution under the Accelerated Dispute Resolution Procedures.
- (b) A meeting of the Disputes Panel may be convened on other occasions by any member of the panel giving not less than 10 Business Days' notice in writing to every other member of the Disputes Panel.

### **92.4 Quorum**

- (a) The quorum of any meeting of the Disputes Panel will be at least one representative of each of the Department and the Contractor. If a quorum is not present within 45 minutes after the time appointed for commencement of the meeting of the Disputes Panel, that meeting will be adjourned to the same time two Business Days after that meeting at the same place or at such other time, day or place as representatives of both the Contractor and the Department may agree.
- (b) In the event there is no quorum at the adjourned meeting, either party may submit the Dispute for resolution under the Accelerated Dispute Resolution Procedures.

### **92.5 Decision making**

- (a) At any meeting the Disputes Panel may, by unanimous resolution, elect to appoint a mediator to assist them in resolving a Dispute on such terms as they then may agree or adopt.
- (b) At any meeting of the Disputes Panel, voting on any issue requiring decision on the Dispute will be by unanimous resolution, each representative having one vote, provided that if there is not a unanimous vote at a meeting of the Disputes Panel, then that issue will be referred to the next succeeding meeting of the Disputes Panel (which will be held as soon as possible but in any event no later than two Business Days after the initial meeting takes place).
- (c) If at the succeeding meeting the issue requiring decision on the Dispute is again not decided then either party may give written notice to the other that it requires such matter to be resolved under the Accelerated Dispute Resolution Procedures, and in any such case that party may then submit the Dispute for resolution under the Accelerated Dispute Resolution Procedures.

### **92.6 Resolutions**

Duly passed resolutions of the Disputes Panel (whether or not involving determination of the Dispute) will be final and contractually binding upon the Department and the Contractor provided they are in writing and signed by all members of the Disputes Panel.

## 92.7 Appointments

The Department and the Contractor will each be entitled to terminate the appointment of a representative appointed by it to the Disputes Panel pursuant to clause 92.2 and to appoint a replacement.

## 92.8 Notices

Notices convening meetings of the Disputes Panel will specify the nature of business to be transacted and, unless otherwise agreed by members of the Disputes Panel, no business other than that specified in the notice will be transacted at such meeting.

## 92.9 Location of meetings

Meetings of the Disputes Panel will be held at convenient venues in the city in which the Department is headquartered unless otherwise agreed by the parties.

## 92.10 Timeframes for resolution

The Disputes Panel will attempt to resolve a Dispute within 10 Business Days, following the date on which the panel initially convenes to consider the Dispute pursuant to clause 92.3. If the Disputes Panel is unable to resolve the Dispute within that 10 Business Day period, either party may submit the Dispute for resolution under the Accelerated Dispute Resolution Procedures.

## 92.11 Minutes

The Department will appoint one member of the Disputes Panel to be the secretary who will perform such duties as are specified by the Disputes Panel and will arrange for minutes of each meeting to be kept. A copy of the minutes of each meeting of the Disputes Panel will be given to each member of the Disputes Panel within 10 Business Days of each meeting and each member of the Disputes Panel will as soon as possible ratify the minutes as a true and correct record of the meeting.

# 93. Accelerated Dispute Resolution Procedures

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## 93.1 Accelerated Dispute Panel

- (a) As soon as is practicable after the Execution Date, the parties will request each of the Chair for the time being of LEADR, New Zealand, the President for the time being of the New Zealand Institute of Chartered Accountants, and the President of the Institution of Professional Engineers New Zealand for a list from each of not less than three people with suitable expertise and experience to act as independent experts to resolve the disputes which are to be resolved using the Accelerated Dispute Resolution Procedures (each an **Independent Expert**). That list will constitute the Accelerated Dispute Panel.
- (b) From time to time the Accelerated Dispute Panel will be reviewed at the written request of either party stating whether it wishes to remove any Independent Expert from that list and requesting replacement or additional Independent Experts to that list. The request will be forwarded to the parties for consideration and (if applicable) agreement on any such removal, replacement or addition will be made.
- (c) A party will not request a review of the Accelerated Dispute Panel under clause 93.1(b) without first consulting the other party and the then-current chair of the panel.

## **93.2 Accelerated dispute resolution process**

- (a) Within five Business Days of a written request by either the Contractor or the Department to the other, the parties will meet to agree (if they have not previously agreed in writing) on an Independent Expert or, if the parties agree and the Dispute involves more than one area of expertise, Independent Experts from the Accelerated Dispute Panel to determine a Dispute referred for resolution under the Accelerated Dispute Resolution Procedures pursuant to clause 91.4(c).
- (b) If the parties fail to meet or are unable to reach agreement within five Business Days after that meeting, then such person will be nominated by the Department from the Accelerated Dispute Panel from the discipline the Department considers most appropriate to the nature of the Dispute.
- (c) Once the Independent Expert has been agreed or nominated in accordance with clause 93.2(a) or clause 93.2(b), then either party may within five Business Days of such agreement or nomination, refer the matter to the Independent Expert by providing written notice to the other party and the expert of its intention to refer the Dispute to that Independent Expert.
- (d) The Independent Expert appointed or nominated under clause 93.2(a) or clause 93.2(b) will be required under his or her terms of engagement to make the determination based upon the information made available to him or her by the parties and will notify the parties in writing of that determination as expeditiously as possible and in any event within 20 Business Days of the referral of the matter to him or her (or such later date as the parties agree). The Independent Expert's determination will include a determination as to any amount in dispute. The Independent Expert will provide reasons for his or her determination unless the parties otherwise agree.
- (e) Either party will be entitled to make written submissions to the Independent Expert detailing (amongst other things) that party's understanding of the factual background to the Dispute, each party's position as to how the dispute should be resolved and its arguments in support of that position. Such submissions will be provided to the Independent Expert and the other party no later than the expiry of five Business Days after the referral of the matter to the Independent Expert under clause 93.2(c).
- (f) Either party will be entitled to submit a written response to the other party's written submissions, but such a response will be provided to the Independent Expert and the other party no later than five Business Days after the referral of the matter to the Independent Expert under clause 93.2(c).
- (g) If the Independent Expert decides that further information is required for the purposes of his or her determination, the Independent Expert may call for further submissions, documents or information from either or both parties and/or may call a conference between the parties.
- (h) The Independent Expert may conduct a conference as the Independent Expert sees fit but will give the parties reasonable notice of the conference and of the matters to be addressed at it. At the conference, the parties may be legally represented and both parties shall be entitled to be heard. The conference will be held in private.
- (i) In reaching a determination, the Independent Expert will take account of the parties' written and oral submissions (if a conference should be convened) and the relevant terms of this Agreement. The Independent Expert may also:
  - (i) rely on his or her own knowledge, skill and experience in relation to the matter in dispute;

- (ii) open up, review and revise any opinion, instruction, determination or decision of whatever nature given or made under this Agreement;
  - (iii) make his or her own enquiries without reference to the parties; and
  - (iv) (following consultation with the parties) commission his or her own advisers or consultants to assist the Independent Expert in making his or her determinations.
- (j) In making his or her determination, the Independent Expert is not required to observe the rules of evidence.
- (k) The Independent Expert will act as an expert and not an arbitrator and his or her determination will be final and binding on the parties, unless:
  - (i) there is manifest error (by way of clerical error, miscalculation or defect of form); or
  - (ii) unless and to the extent otherwise expressly provided in the Agreement.
- (l) The parties will comply with the Independent Expert's directions as to how his or her determination is to be implemented.
- (m) The Independent Expert may establish procedures and a timetable for resolution of the Dispute to the extent that those matters are not already laid down in this clause 93.
- (n) All information, data or documentation disclosed or delivered by a party to the Independent Expert in consequence of or in connection with his or her appointment as Independent Expert shall be treated as confidential. The Independent Expert shall not, save as permitted by clause 59 (Confidential Information) disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Independent Expert's work.
- (o) The cost of the Independent Expert in making his or her determination will be borne equally by each of the parties to the Dispute. Each party is responsible for its own costs in connection with resolution of a Dispute under the Accelerated Dispute Resolution Procedures unless the Independent Expert orders otherwise.
- (p) If the Independent Expert fails to provide a determination within the timeframes stipulated in this Agreement (or otherwise agreed in writing between the parties), either party may terminate the process then underway and resubmit the Dispute to the Accelerated Dispute Resolution Procedures, with this clause 93 to then reapply to that Dispute as if it had not previously been submitted to the Accelerated Dispute Resolution Procedures.
- (q) The Independent Expert will not be liable to the parties arising out of, or in any way in connection with the Accelerated Dispute Resolution Procedures, except in the case of fraud or where the Independent Expert is proven to have acted in bad faith.

## **Part 23 – Miscellaneous terms**

### **94. Assignment**

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#### **94.1 Agreement binding**

This Agreement is binding on the parties and their respective successors and permitted assigns.

#### **94.2 Assignment by Department**

The Department may only assign and/or transfer the whole of its rights and obligations under this Agreement without the prior written consent of the Contractor to:

- (a) any part of the Crown, as that term is defined in section 2 of the Public Finance Act 1989; and
- (b) any other public body whose obligations under this Agreement, the Financier Direct Deed and the Major Sub-contractor's Direct Deed are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Crown or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Department under this Agreement, the Financier Direct Deed and each Project Document,

and the Department must ensure that no assignment or transfer of the Department's rights and/or obligations under this Agreement occurs unless the assignee and/or transferee becomes subject to, and agrees to be bound by, the same rights and obligations as all of the Department's rights and obligations under the Financier Direct Deed and each Project Document.

#### **94.3 Assignment by Contractor**

- (a) The Contractor may not assign or transfer the whole or any part of its rights and obligations under this Agreement without the prior written consent of the Department and any purported assignment or transfer on the part of the Contractor without such prior written consent is deemed to be void.
- (b) A merger or amalgamation of the Contractor with another person or a merger or amalgamation of a substantial part of the Contractor's business with another person's business shall be deemed to be an assignment or transfer for the purposes of this clause 94.3.
- (c) Clause 94.3(a) does not apply to the grant of any security for any loan made to the Contractor under the Financing Agreements or to the enforcement of the same.

### **95. Change of Ownership**

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#### **95.1 Restriction on Change of Ownership**

- (a) A Change of Ownership must not occur during the Lock-in Period without the prior written consent of the Department, to be given or withheld at the Department's absolute discretion.

- (b) A Change of Ownership may only occur after the Lock-in Period if the Department determines (acting reasonably) that there are no grounds for withholding its consent under clause 95.3.
- (c) Notwithstanding clauses 95.1(a) and 95.1(b), the Contractor must at all times remain a wholly owned subsidiary (as defined in sections 5 and 6 of the Companies Act 1993) of HoldCo.
- (d) Clauses 95.1(a) and 95.1(b) are each subject to clause 95.4.

## **95.2 Notification**

- (a) If a Change of Ownership is proposed, whether in the circumstances contemplated in clause 95.1(a) or clause 95.1(b), the Contractor shall notify the Department of that proposed Change of Ownership as soon as it becomes aware of the same.
- (b) The Contractor must promptly provide such particulars relating to the proposed Change of Ownership as the Department may reasonably require, including:
  - (i) the identity of each proposed Controller and its Affiliates;
  - (ii) the legal and beneficial owners of the proposed Controller and the proposed Controller's ultimate holding company;
  - (iii) the extent and nature of the proposed Change of Ownership; and
  - (iv) any other information necessary for the Department to determine whether to consent, or not to consent, to the Change of Ownership.
- (c) The Contractor will:
  - (i) promptly provide such further information as the Department reasonably requires; and
  - (ii) obtain such written consents as are required by the Department to undertake Probity Investigations in relation to each proposed Controller and its Affiliates.

## **95.3 Department determination**

The Department may withhold consent to a Change of Ownership under clause 95.1(b) if:

- (a) it has not been given all of the information required under clause 95.2(b) or under clause 95.2(c); or
- (b) the Department determines that:
  - (i) the proposed Controller:
    - (A) is not solvent or reputable;
    - (B) is an Unsuitable Third Party; or
    - (C) does not have a sufficient level of financial, managerial and technical capacity to deliver the Project or provide the Operational Services (as applicable) relative to the financial, managerial and technical capacity of the existing Controller; or

- (ii) the proposed Change of Ownership:
  - (A) is against the public interest;
  - (B) could lead to the occurrence of a Probity Event; or
  - (C) would result in an increase in the level of risk or liabilities of the Department, or any Department Related Person.

## 95.4 Exceptions

- (a) Clauses 95.1(a) and 95.1(b) do not apply in respect of any Change of Ownership of any shares in HoldCo or the Major Sub-contractor responsible for delivering the Corrections Services or of any Shareholder Debt:
  - (i) as part of an intra-group transfer, restructure or reorganisation of the group of companies of which a Shareholder or the Major Sub-contractor responsible for delivering the Corrections Services is a member as at the Execution Date and there is no resulting change in ultimate beneficial shareholding;
  - (ii) where the transferee is an existing Shareholder;
  - (iii) where the transferee is a corporate or unincorporated fund managed by, or under common management or Control with, the transferor;
  - (iv) as a consequence of any change in legal or beneficial ownership of any equity interest (including shares and/or units) in any direct or indirect equity holder of any Shareholder or the Major Sub-contractor responsible for delivering the Corrections Services that:
    - (A) does not result in a change in Control of such person; or
    - (B) where it results in a change of Control of such person, the new Controller is Reputable;
  - (v) where the transferee is an Associate of an existing Shareholder or the Major Sub-contractor responsible for delivering the Corrections Services, provided that such transferee is not an Unsuitable Third Party; and/or
  - (vi) as a result of any disposal by the Accident Compensation Corporation required under any Change in Law where the Accident Compensation Corporation has no discretion as to the class or identity of the recipients of any such disposal or as a result of any disposal by the Crown (as that term is defined in section 2 of the Public Finance Act 1989) of any direct or indirect interest in, or a demerger of, the Accident Compensation Corporation.
- (b) Subject to the Department's rights under clause 95.3, clauses 95.1(a), 95.1(b) and 95.1(c) do not apply in respect of any Change of Ownership of any shares in the Contractor or HoldCo or of any Shareholder Debt which is being transferred as a consequence of the exercise by the Senior Lenders of their rights in respect of shares of the Contractor, HoldCo and/or a Sub-contractor granted in any document conferring security over any of the shares of the Contractor, HoldCo and/or a Sub-contractor.



## 96. Notices

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### 96.1 Notices and references

Each notice or other communication under this Agreement is to be made in writing by facsimile, email, personal delivery or by post to the addressee at the facsimile number, email address or address, and marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other parties. The initial facsimile number, email address, address and addressee or office holder of the Department and the Contractor is set out in clause 96.2.

### 96.2 Addresses

The address and facsimile numbers of the Department and the Contractor are:

#### Department

Address: The Department's Representative

PPP at Wiri Project  
Private Bag 1206  
Mayfair House, 44-52 The Terrace  
Wellington 6140

Facsimile: +64 (4) 460 3208

Email address: Prior to the Service Commencement Date:  
[Natasha.Possenniskie@corrections.govt.nz](mailto:Natasha.Possenniskie@corrections.govt.nz), copied to  
[pppatwiriproject@corrections.govt.nz](mailto:pppatwiriproject@corrections.govt.nz)

Following the Service Commencement Date:  
[pppatwiriproject@corrections.govt.nz](mailto:pppatwiriproject@corrections.govt.nz)

#### Contractor

Address: The General Manager

**Physical address**  
Suite 1, Level 2  
20 Augustus Terrace  
Parnell  
Auckland 1052

**Postal address**  
c/- Russell McVeagh  
PO Box 8  
Shortland Street  
Auckland 1140

Facsimile: c/- Russell McVeagh  
+64 (9) 367 8163

Email address: Prior to the Service Commencement Date:  
[colin.shields@serco.com](mailto:colin.shields@serco.com), copied to [allanba@fcc.co.nz](mailto:allanba@fcc.co.nz)

Following the Service Commencement Date:  
[colin.shields@serco.com](mailto:colin.shields@serco.com), copied to [scott.mcnaught@serco-ap.com.au](mailto:scott.mcnaught@serco-ap.com.au)

or any replacement address notified to the other party by notice from time to time.

### **96.3 Deemed delivery**

A communication will be deemed to be received:

- (a) in the case of a letter, on the second Business Day after posting;
- (b) in the case of a facsimile, on the Business Day on which it is dispatched or, if dispatched after 5.00pm (in the place of receipt) on the next Business Day after the date of dispatch;
- (c) in the case of an email, on the Business Day on which it arrives in the recipient's information system (provided that if it is received in that system after 5.00pm on a Business Day, then it will be deemed to be received on the next Business Day), provided that if there is any dispute as to whether an email has been received, the email shall only be deemed to have been received at that time where the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice; and
- (d) in the case of personal delivery, when delivered.

## **97. Counterparts**

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This Agreement may be signed in any number of counterparts all of which, when taken together, constitute one and the same instrument. A party may enter into this Agreement by executing any counterpart.

## **98. Severability**

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If any provision of this Agreement is or becomes unenforceable, illegal or invalid for any reason, the relevant provision shall be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity. If such modification is not possible, then such provision shall be severed from this Agreement without affecting the enforceability, legality or validity of any other provision of this Agreement.

## **99. Waiver**

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Any delay, failure or forbearance by a party to exercise (in whole or in part) any right, power or remedy under, or in connection with, this Agreement shall not operate as a waiver of such right, power or remedy. A waiver of any breach of any provision of this Agreement shall not be effective unless that waiver is in writing and is signed by the party against whom that waiver is claimed. A waiver of any breach shall not be, or be deemed to be, a waiver of any other or subsequent breach.

## **100. Legal fees**

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If any legal action or other proceeding is brought for the enforcement of an obligation under this Agreement, the prevailing party shall be entitled to legal fees and other costs incurred in

that action or proceeding on a solicitor/client basis (subject to review under the Lawyers and Conveyancers Act 2006) in addition to any other relief to which it may be entitled.

## **101. Public disclosure**

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All public disclosure by the Contractor relating to this Agreement including promotional or marketing material (but not including any announcement intended solely for internal distribution or any disclosure required by legal, accounting or regulatory requirements) shall be co-ordinated with and must first be approved in writing by the Department prior to its release.

## **102. Entire agreement**

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This Agreement and the other Project Documents constitute the entire agreement between the parties and supersedes and extinguishes all prior agreements and understandings between the parties about their respective subject matter.

## **103. Amendments in writing**

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No amendment to this Agreement will be effective unless it is in writing and signed by duly authorised signatories of both parties.

## **104. Governing law and jurisdiction**

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This Agreement is governed by, and is to be construed in accordance with, the Laws of New Zealand. Each party irrevocably submits to the non-exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining all disputes under or in connection with this Agreement.

## Execution

### Signed as an Agreement


**SIGNED** by Her Majesty the Queen, in  
**Right of New Zealand** acting by and through  
the Chief Executive of the Department of  
Corrections and the Deputy Chief Executive  
of the Department of Corrections by


Raymond Stanley Smith, Chief Executive,  
Department of Corrections  
in the presence of:

  
\_\_\_\_\_  
Witness name  
Hugh Charles Kettle  
\_\_\_\_\_  
Address  
Solicitor  
\_\_\_\_\_  
Occupation  
Wellington  
\_\_\_\_\_  
Witness signature

  
\_\_\_\_\_  
Signature

Christine Alison Stevenson, Deputy Chief  
Executive, Department of Corrections  
in the presence of:

  
\_\_\_\_\_  
Witness name  
Hugh Charles Kettle  
\_\_\_\_\_  
Address  
Solicitor  
\_\_\_\_\_  
Occupation  
Wellington  
\_\_\_\_\_  
Witness signature

  
\_\_\_\_\_  
Signature

SecureFuture Wiri Limited by



Director

Gregory J Pauli

Print Name



Director

HUGH FITZSIMMONS

Print Name

## Schedule 1: Conditions Precedent

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*(Clause 10.4 (Conditions Precedent))*

### 1. Conditions Precedent

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This Agreement is conditional on the Contractor delivering to the Department all of the following in a form and substance reasonably satisfactory to the Department:

- (a) **Director's Certificate:** a duly completed Director's Certificate in respect of the Contractor in substantially the form set out in Annexure A to this Schedule 1;
- (b) **Legal opinions:** a legal opinion from solicitors acting for:
  - (i) the Contractor; and
  - (ii) each Major Sub-contractor and the Sub-contractor for the Facility Management Services,

in relation to those persons entering into and performing their obligations under each of the Project Documents to which it is a party;
- (c) **Project Documents:** original counterparts of all Project Documents and certified copies of all Ancillary Documents, all duly executed by all parties other than (if applicable) the Department;
- (d) **Financing Agreements and shareholding agreements:**
  - (i) certified copies of the Initial Financing Agreements and the shareholding agreements, equity subscription and subordinated debt documents duly executed by all parties to them; and
  - (ii) evidence that all conditions precedent to funding under the Initial Financing Agreements and the shareholding agreements have been satisfied (or waived in accordance with their terms) save for the giving of the notice by the Department described in clause 10.4(c) (Conditions Precedent) of the Base Agreement;
- (e) **Model Audit:** a copy of the final report of the model auditor in respect of its audit of the Base Case;
- (f) **Revised Base Case:** the Base Case, as varied from the Base Case at the Execution Date (if applicable) with the approval of the Department;
- (g) **Copies of Insurance Policies:** copies of all Insurance Policies for the insurances required under clause 74 (Insurance) of the Base Agreement for the period from Financial Close to Works Completion;
- (h) **Broker's Letter of Undertaking:** a letter of undertaking from the Contractor's insurance broker as to the currency of each policy under, and the compliance of each policy with, the requirements of clause 74 (Insurance) of the Base Agreement;
- (i) **Binding ruling:** a copy of a binding ruling and Special Determination from Inland Revenue in relation to specified aspects of the Contractor's tax treatment of the Project (including members of the Contractor's wholly owned group) as follows:
  - (i) the Project is a composite financial arrangement;

- (ii) the Special Determination applies to determine the allocation of income and expenditure arising in respect of the Contractor's financing structure;
  - (iii) the financial arrangements expenditure incurred in respect of the specified aspects of the Contractor's financing structure is deductible;
  - (iv) the substituting debenture rules and the stapled debt security rules do not apply to the shareholder convertible notes to be entered into by a member of the Contractor's wholly owned group;
  - (v) the Rental Prepayment is deductible over the term of the Facility Lease on a straight-line basis;
  - (vi) the Contractor will be assessable for the Design and Construction Payment and will be able to claim a deduction for the Design and Construction expenditure on the Service Commencement Date (also being the Transfer Date); and
  - (vii) the general anti-avoidance rule does not apply to the Project.
- (j) **Overseas Investment Act:** evidence that the Contractor has obtained such consents as are required under the Overseas Investment Act 2005.

## Annexure A: Form of Director's Certificate

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### Director's Certificate

**TO:** Her Majesty, The Queen in Right of New Zealand acting by and through the Chief Executive of the Department of Corrections (the **Department**)

I am a [director] of [insert] (the **Company**) and am authorised to execute this certificate in the name of the Company.

I refer to the Agreement relating to the Wiri Prison PPP between the Department and the Company dated [ ] (**Project Agreement**).

Terms defined in the Project Agreement have the same meaning when used in this certificate.

**THE COMPANY CERTIFIES** as follows:

1. Attached to this certificate are true, complete and up to date certified or original copies of the following:
  - (a) the constitution of the Company, certificate of registration or other constituent documents of the Company (marked "A");
  - (b) [a power of attorney granted by the Company for the purpose of permitting the execution on behalf of the Company of the relevant Project Documents (marked "B"), which power of attorney has not been revoked by the Company and remains in full force and effect;] and
  - (c) [insert others].
2. The Company has passed resolutions authorising the Company to enter into, and perform and observe its obligations under, the Project Agreement, the Project Documents and the Ancillary Documents:
  - (a) these resolutions have been duly passed [at a properly convened meeting of the duly appointed directors of the Company] OR [in accordance with the constitution of the Company by way of written resolution of the duly appointed directors] and have been approved and ratified by special resolution duly passed by the shareholders of the Company; **[to be deleted as applicable]**
  - (b) [a duly qualified quorum of directors was present and voting at the meeting of the Company and the requisite majority of directors of the Company voted in favour of approving the resolutions;] **[delete if written resolution]**
  - (c) all provisions contained in the Companies Act 1993 and the constitution of the Company relating to the declaration of interests and the powers of interested directors to vote were observed; [and]
  - (d) the resolutions have not been amended or rescinded and are in full force and effect[.]; and
  - (e) the power of attorney of the Company referred to in those resolutions has not been revoked.]



3. The following signatures are the true signatures of the authorised representatives of the Company and the persons who have been authorised to sign the relevant Project Documents and to give, on behalf of the Company, notices and communications under, or in connection with, the relevant Project Documents.

**Authorised Representatives**

Name	Position	Signature

**Signatories**

Name	Position	Signature

Signed .....

.....

Date:

.....

(Print Full Name of Director)

## Schedule 2: Contractor Warranted Data

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### 1. Registered name, registered office and incorporation number

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#### 1.1 Contractor

Registered name:	SecureFuture Wiri Limited
Registered office:	Russell McVeagh Level 30 Vero Centre 48 Shortland Street Auckland Central, 1010 New Zealand
Incorporation number:	3781278

#### 1.2 HoldCo

Registered name:	SecureFuture Wiri Holdings Limited
Registered office:	Russell McVeagh Level 30 Vero Centre 48 Shortland Street Auckland Central, 1010 New Zealand
Incorporation number:	3781298

#### 1.3 Major Sub-contractors

##### Construction Sub-contractor

Registered name:	The Fletcher Construction Company Limited
Registered office:	810 Great South Road Penrose Auckland New Zealand
Incorporation number:	952004

##### Major Sub-contractor undertaking the Operational Services

Registered Name:	Serco New Zealand Limited
Registered office:	Kensington Swan Level 4, KPMG Centre 18 Viaduct Harbour Avenue Auckland, 1010 New Zealand
Incorporation number:	3057825

## 2. Directors

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### 2.1 Contractor

Hugh John Elliot Fitzsimmons	1702/37 Glen Street Milsons Point Sydney NSW, 2061 Australia
Brian William Harrison	3 Brookfield Street St Heliers Auckland, 1071 New Zealand
James Donald Bramley	3 Palmer Street Balmain NSW, 2041 Australia
Gregory John Pauli	27 Tyneside Avenue Willoughby NSW, 2068 Australia
Mark Christopher Wayment	2 Rusland Avenue Orpington Kent United Kingdom BR6 8AU
Sébastien Jerome Pochon	3 Metropolis Apartments Shipka Road London United Kingdom SW12 9QU

### 2.2 HoldCo

Hugh John Elliot Fitzsimmons	1702/37 Glen Street Milsons Point Sydney NSW, 2061 Australia
Brian William Harrison	3 Brookfield Street St Heliers Auckland, 1071 New Zealand
James Donald Bramley	3 Palmer Street Balmain NSW, 2041 Australia
Gregory John Pauli	27 Tyneside Avenue Willoughby NSW, 2068 Australia

Mark Christopher Wayment	2 Rusland Avenue Orpington Kent United Kingdom BR6 8AU
Sébastien Jerome Pochon	3 Metropolis Apartments Shipka Road London United Kingdom SW12 9QU

## 2.3 Major Sub-contractors

### Construction Sub-contractor

Graham Brockway Darlow	12 Crown Hill Close Forrest Hill Auckland, 0620 New Zealand
Willem Jan Roest	2 Sylvia Road Saint Heliers Auckland, 1071 New Zealand
Carl Cedric Munkowits	279 Riddell Road Glendowie Auckland, 1071 New Zealand

### Major Sub-contractor undertaking the Operational Services

David Maxwell Campbell	Unit 2, 16-18 Munro Street McMahons Point NSW, 2060 Australia
Hugh John Elliot Fitzsimmons	1702/37 Glen Street Milsons Point Sydney NSW, 2061 Australia
Paul Kenneth Mahoney	6 Ranger Road Croydon NSW, 2132 Australia

## 3. Shareholders and shareholdings

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### 3.1 Contractor

SecureFuture Wiri Holdings Limited (100%)	Russell McVeagh Level 30 Vero Centre 48 Shortland Street Auckland Central, 1010
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New Zealand

### 3.2 HoldCo

Serco Group Pty Limited (10%)	Level 10 90 Arthur Street Sydney NSW, 2060 Australia
Accident Compensation Corporation (30%)	Vogel Centre 19 Aitken Street Thorndon Wellington, 6011 New Zealand
John Laing Investments NZ Holdings Limited (30%)	1 Kingsway London United Kingdom WC2B 6AN
InfraRed Infrastructure (NZ) B.V. (30%)	Diakenhuisweg 11 2033AP Haarlem The Netherlands

### 3.3 Major Sub-contractors

#### Construction Sub-contractor

Fletcher Building Holdings Limited (100%)	810 Great South Road Penrose Auckland New Zealand
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#### Major Sub-contractor undertaking the Operational Services

Serco Holdings Limited (100%)	16 Bartley Wood Business Park Bartley Way Hook Hampshire, RG27 9UY United Kingdom
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## Schedule 3: Project Documents

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### Part 1 – Overview of Project Documents and Ancillary Documents

- (a) The Project Documents are as follows:
  - (i) this Agreement between the Department and the Contractor;
  - (ii) the Major Sub-contractors' Direct Deeds, being:
    - (A) the direct deed between the Department, the Contractor and The Fletcher Construction Company Limited in relation to the Works Provisioning; and
    - (B) the direct deed between the Department, the Contractor and Serco New Zealand Limited in relation to the Operational Services;
  - (iii) the direct deed between the Department, Serco New Zealand Limited and Spotless Facility Services (NZ) Limited in relation to the Facility Management Services;
  - (iv) the Financier Direct Deed between the Department, the Contractor and the Security Trustee;
  - (v) the Independent Reviewer Agreement between the Department, the Contractor, The Fletcher Construction Company Limited, Serco New Zealand Limited and Davis Langdon New Zealand Limited; and
  - (vi) the Facility Lease (with effect from Service Commencement).
- (b) The Ancillary Documents are as follows:
  - (i) the Construction sub-contract between the Contractor and The Fletcher Construction Company Limited;
  - (ii) the Operational Services sub-contract between the Contractor and Serco New Zealand Limited;
  - (iii) the Interface Agreement between the Contractor, The Fletcher Construction Company Limited, Serco New Zealand Limited and Spotless Facility Services (NZ) Limited;
  - (iv) the Securityholders' Agreement between the Contractor, Holdco, the Accident Compensation Corporation, Serco Group Pty Limited, John Laing Investments NZ Holdings Limited and InfraRed Infrastructure (NZ) B.V.;
  - (v) the Investment Commitment Deed between the Contractor, Holdco, the Accident Compensation Corporation, Serco Group Pty Limited, John Laing Investments NZ Holdings Limited and InfraRed Infrastructure (NZ) B.V.;
  - (vi) the Asset Management Agreement between the Contractor, Holdco and Serco New Zealand (Asset Management Services) Limited;
  - (vii) the parent company guarantee from Serco Group PLC in favour of the Contractor and ANZ National Bank Limited;

- (viii) the parent company guarantee from Fletcher Building Limited in favour of the Contractor and ANZ National Bank Limited;
- (ix) the parent company guarantee from Spotless Group Limited in favour of the Contractor and Serco New Zealand Limited;
- (x) the parent company guarantee from Saab Technologies Australia Pty Limited in favour of the Contractor, Serco New Zealand Limited and Spotless Facility Services (NZ) Limited;
- (xi) the parent company guarantee from Saab Technologies Australia Pty Limited in favour of the Contractor and The Fletcher Construction Company Limited;
- (xii) the parent company guarantee from Serco Group PLC in relation to the Asset Management Agreement in favour of the Contractor and HoldCo; the direct deed between the Contractor, Serco New Zealand Limited and Spotless Facility Services (NZ) Limited;
- (xiii) the security maintenance direct deed between the Contractor, Spotless Facility Services (NZ) Limited and Saab SDS New Zealand Limited; and
- (xiv) the security installation direct deed between the Contractor, The Fletcher Construction Company Limited and Saab SDS New Zealand Limited.

## **Part 2 – Forms of certain Project Documents**

- Annexure A: Form of Major Sub-contractor's Direct Deed (and subcontractor direct deed)
- Annexure B: Form of Facility Lease
- Annexure C: Independent Reviewer Agreement

**Annexure A: Form of Major Sub-contractor’s Direct Deed**

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## Annexure A: Major Sub-contractor's Direct Deed

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*(Clause 4.2 (Major Sub-contractor's Direct Deed))*

This **Major Sub-contractor's Direct Deed** is made on 2012

between (1) **Her Majesty, the Queen in Right of New Zealand acting by and through the Chief Executive of the Department of Corrections (Department)**

and (2) **[insert name of major sub-contractor] (Major Sub-contractor)**

and (3) **SecureFuture Wiri Limited (Contractor)**

### Introduction

- A. The background to the Project is set out in the Project Agreement.
- B. The Contractor has subcontracted its obligations under the Project Agreement to *[insert description of subcontracted obligations]* to the Major Sub-contractor, pursuant to the Major Sub-contract.
- C. The parties agree that the Department will have the option of exercising certain rights in relation to the Major Sub-contract, on the terms set out in this Deed.

### It is agreed

#### 1. Definitions

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##### 1.1 Project Agreement

Definitions in the Project Agreement apply in this Deed unless the relevant term is defined in this Deed.

##### 1.2 Definitions

In this Deed, unless the context otherwise requires, the following terms have the following meanings:

**Additional Obligor** means an entity that is wholly owned by the Department or a Successor Governmental Entity;

**Additional Obligor Step-in Notice** has the meaning given to it in clause 7.1(a)(ii);

**Additional Obligor Step-out Date** has the meaning given to it in clause 7.4(d);

**Affiliate** means in respect of the Major Sub-contractor or the Contractor (as applicable):

- (a) any holding company or subsidiary of the Major Sub-contractor or the Contractor (as applicable) or another subsidiary of that holding company; or

- (b) any company, body corporate or partnership (including a limited partnership) where 50% or more of the votes exercisable, directly or indirectly, at a meeting or partners meeting, or more than 50% of the profits of which, are controlled by such person;

**Assumption Date** has the meaning given to it in clause 7.4(a);

**Consent Date** has the meaning given to it in clause 8.4(a);

**Contractor's Rights** has the meaning given to it in clause 7.4(b)(i)(A);

**Default Event** means:

- (a) any breach by the Contractor of its obligations under the Major Sub-contract; or
- (b) any other event or circumstance,

that alone or with the giving of notices or passage of time or both, entitles the Major Sub-contractor to terminate, rescind, accept the repudiation of, or suspend any or all of the Major Sub-contractor's obligations under the Major Sub-contract but only where any such breach, event or circumstances has not been remedied within any relevant cure period set out in the Major Sub-contract or at Law;

**Default Event Notice** has the meaning given to it in clause 6.2(a);

**Event of Contractor Default** has the meaning given to it (or to the term "Event of Default" as that term relates to the default of the Contractor) in the Major Sub-contract;

**Guarantor** means *[details to be inserted]*;

**Intervention Failure** has the meaning given to it in clause 9.1;

**Major Sub-contract** means that agreement dated on or around the date of this Deed between the Contractor and the Major Sub-contractor, with respect to the Project;

**Major Sub-contract Documentation** means the Major Sub-contract and each other bank guarantee, performance bond, stand-by letter of credit, or other guarantee or security held by the Contractor to secure the obligations of the Major Sub-contractor under the Major Sub-contract;

**Major Sub-contractor Notice** has the meaning given to it in clause 6.2(c);

**Notice of Dispute** has the meaning given to it in clause 15;

**Novation Agreement** has the meaning given to it in clause 8.4(b)(ii);

**Novation Effective Date** means the date of commencement of the performance of the obligations under the Novation Agreement, as set out in the Novation Agreement;

**Power** means any power, right, authority, discretion or remedy, whether express or implied;

**Project Agreement** means that agreement dated on or around the date of this Deed, between the Contractor and the Department, with respect to the Project;

**Proposed Novation Date** has the meaning given to it in clause 8.1(b);

**Proposed Novation Notice** has the meaning given to it in clause 8.1(a);

**Proposed Substitute** has the meaning given to it in clause 8.1(a)(iii);

**Related Loss** has the meaning given to it in clause 18.10;

**Revised Proposed Novation Notice** has the meaning given to it in clause 8.3(e)(i);

**Services** means the services required to be performed by the Major Sub-contractor, for the Contractor, pursuant to the terms of the Major Sub-contract;

**Statement Beneficiary** means the Department or an Additional Obligor;

**Step-in Date** means the date on which the Major Sub-contractor receives notice from the Department of the exercise of any Step-in Right;

**Step-in Period** has the meaning given to it in clause 7.1(b);

**Step-in Right** means each right exercisable by the Department and/or an Additional Obligor pursuant to clause 7.1(a);

**Step-out** means the Department ceasing to exercise its Step-in Rights;

**Step-out Date** means the date on which Step-out occurs;

**Sub-contractor** means a person engaged by the Major Sub-contractor to act as a sub-contractor for the purposes of the Project; and

**Successor Governmental Entity** means any Governmental Entity that is the transferee or successor in title to the rights and obligations of the Department under the Project Agreement.

## **2. Interpretation**

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### **2.1 Interpretation**

In this Deed, unless the context otherwise requires:

- (a) a reference to a clause is a reference to a clause of this Deed;
- (b) a gender includes each other gender;
- (c) the singular includes the plural and vice versa;
- (d) a reference to a person includes:
  - (i) a partnership and also a body of persons, whether corporate or unincorporated; and
  - (ii) its respective successors in title and permitted assigns;
- (e) a reference to documentation includes:
  - (i) a reference to that document as varied, supplemented, novated or substituted from time to time; and
  - (ii) a reference to that documentation in any form, whether paper based or in electronic form encoded on or as part of any form of media;
- (f) a reference to materials means a reference to materials of any kind whether in the form of documentation, software, hardware, componentry or otherwise;
- (g) any agreement not to do a thing also constitutes an agreement not to suffer or permit or cause that thing to be done;

- (h) any reference to a consent requires the prior written consent of the party required to give that consent;
- (i) whenever the words “includes” or “including” are used in this Deed, they are deemed to be followed by the words “without limitation”;
- (j) a reference to any legislation includes a modification of that legislation or legislation enacted in substitution for that legislation and a regulation, order-in-council and other instrument from time to time issued or made under that legislation;
- (k) headings and the table of contents are included for the purpose of ease of reference only and are not to have any effect on construction and interpretation;
- (l) the “Introduction” forms part of this Deed;
- (m) a reference to days, other than Business Days, is a reference to any calendar day of the year;
- (n) a reference to currency is a reference to New Zealand currency;
- (o) if an obligation falls to be performed or a right is to be exercised on or by a day that is not a Business Day then, unless otherwise specified, that obligation is due to be performed or that right may be exercised on the Business Day next following that day;
- (p) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (q) none of the terms nor any of the parts of this Deed are to be construed against a party, by reason of the fact that that term or that part was first proposed or was drafted by that party; and
- (r) a party who has an obligation is to perform that obligation at its own cost, unless a term of this Deed expressly provides otherwise.

## **2.2 Priority of documents**

- (a) To the extent of any inconsistency between this Deed and the Major Sub-contract, this Deed will prevail.
- (b) To the extent of any inconsistency between this Deed and the Project Agreement, the Project Agreement will prevail.

## **2.3 Joint and several liability**

If the Major Sub-contractor comprises more than one person:

- (a) the obligations of those persons are joint and several;
- (b) a reference to the Major Sub-contractor is a reference to each of those persons separately, so that (for example), a representation, warranty or undertaking is given by each of them separately; and
- (c) the Contractor or the Department may proceed against any or all of them for any failure of the Major Sub-contractor to comply with any obligation under this Deed or otherwise.

## **2.4 Construction Contracts Act 2002**

If and to the extent that the Major Sub-contract comprises a construction contract as defined in the Construction Contracts Act 2002, this Deed will be subject to the Construction Contracts Act 2002.

## **3. Condition precedent**

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The rights and obligations of the parties under this Deed will not commence until Financial Close.

## **4. Relationship of parties**

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### **4.1 Relationship of parties**

Nothing in, or contemplated by, this Deed will be construed or interpreted as:

- (a) constituting a relationship between the Department and the Major Sub-contractor or the Contractor or any other person, as partners, joint venturers, fiduciaries, employer and employee or principal and agent; or
- (b) imposing any general duty of good faith on the Department to the Major Sub-contractor or the Contractor or any Major Sub-contractor Affiliate or Contractor Affiliate in relation to or arising out of the Project, other than to comply with the obligations (if any) expressly stated to be assumed by the Department under the Project Documents on a good faith basis; or
- (c) unlawfully restricting or otherwise unlawfully affecting the unfettered discretion of the Department to exercise any of its executive or statutory powers or functions under any Law.

### **4.2 Limitation of Department's obligations**

The Major Sub-contractor and the Contractor each acknowledge and agree that:

- (a) anything that the Department or any Governmental Entity does, fails to do or purports to do pursuant to its executive or statutory functions and powers will be deemed not to be or cause an act or omission by the Department under this Deed and will not entitle the Contractor or the Major Sub-contractor to make any Claim against the Department under this Deed;
- (b) notwithstanding clause 4.2(a), the Department is not relieved from any Claim that the Major Subcontractor may have against the Department for exercising any of its executive or statutory functions or powers under any law in a manner contrary to an express obligation of the Department under this Deed and the existence of such obligations, and the existence and the amount of such Claim is to be assessed in accordance with the terms of this Deed;
- (c) notwithstanding anything else contained or implied in the Project Documents to the contrary, the Department is not obliged, in performing any of the duties and obligations of the Department under the Project Documents, to exercise a power, function or duty which is granted to or within the responsibility of any other Governmental Entity, or to influence, over-ride or direct any other Governmental Entity in the proper exercise and performance of its legal duties and functions; and

- (d) if there is any statement in this Deed that the Department will use "reasonable endeavours" in relation to an outcome then it means that the Department will take steps to bring about the relevant outcome so far as it is reasonably able to do so having regard to its resources and other responsibilities but the Department cannot guarantee the relevant outcome, and the Department, by undertaking to exercise reasonable endeavours, does not agree:
  - (i) to interfere with or influence the exercise of any statutory power or discretion by any body, including a Governmental Entity; or
  - (ii) to exercise a power or discretion in a manner that promotes the objectives and expected outcomes of this Deed if the Department regards that exercise as not in the public interest; or
  - (iii) to develop or implement new policy in a manner that is only consistent with the objectives and expected outcomes of this Deed; or
  - (iv) to procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of this Deed; or
  - (v) to act in any other way that the Department regards as not in the public interest.

## **5. Acknowledgements**

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### **5.1 By Major Sub-contractor**

- (a) The Major Sub-contractor acknowledges the Department's rights under the Project Agreement.
- (b) The Major Sub-contractor agrees with the Department that the Major Sub-contractor will exercise its rights under the Major Sub-contract in a way that facilitates the effective exercise by the Department of the Department's rights under the Project Agreement and will on reasonable notice permit one or more delegates of the Department to have access to, and take copies of, the records, reports, documents and other papers to which the Department is entitled to have access pursuant to the Project Agreement to the extent that:
  - (i) such items are in the possession of the Major Sub-contractor or any third party acting on its behalf; and
  - (ii) compliance with this clause 5.1(b) would not cause the Major Sub-contractor to breach any obligation of confidence which it owes to any other person or to infringe the Intellectual Property rights of any third party,

and subject always to the Department entering into a confidentiality undertaking in a form reasonably acceptable to the Major Sub-contractor prior to the Major Sub-contractor being required to provide access to such records, reports, documents and other papers.

- (c) During the period in which the Department is exercising its Step-in Rights under the Project Agreement, the Department may in accordance with the Project Agreement require the suspension or the continuation of performance by the Major Sub-contractor of its obligations under the Major Sub-contract subject to and in accordance with the terms of the Major Sub-contract and, if it does so, the Major Sub-contractor agrees that it will comply with this requirement and with all reasonable directions of the Department in relation to the performance of the Major Sub-contract by the Major Sub-contractor during such period.

- (d) The requirement of the Department that the Major Sub-contractor either suspend or continue to perform its obligations under the Major Sub-contract and the giving of any direction under clause 5.1(c) by the Department will not, except to the extent expressly acknowledged by the Department in writing, be construed as an assumption by the Department of any obligations of the Major Sub-contractor under or in relation to the Major Sub-contract and will not in itself constitute a breach by the Major Sub-contractor of the Major Sub-contract.
- (e) The Major Sub-contractor will not subcontract any of its obligations under the Major Sub-contract without the prior written consent of the Department where so required pursuant to clause 16 (Sub-contractors) of the Project Agreement.

## **5.2 By Contractor**

The Contractor is bound by, and must co-operate in the implementation of, this Deed. It acknowledges that this Deed is intended to benefit the Major Sub-contractor and the Department and does not in any way affect any obligation of the Contractor under the Major Sub-contract or under any Project Document.

## **5.3 In relation to Major Sub-contract**

The Contractor and the Major Sub-contractor acknowledge and agree that:

- (a) any information, data and documents (including Department Information) provided by the Department:
  - (i) are provided for information purposes only (except any specific reports that the Department may procure directly for the benefit of, and reliance on by, the Contractor, as may be advised by the Department prior to the date of this Deed, and subject to any limitations specified by the Department) and all of the Department's or Department Related Persons' Intellectual Property rights therein remain the property of the Department or the Department Related Person (as the case may be); and
  - (ii) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of the Department or any Department Related Person;
- (b) to the extent permitted by Law, neither the Department nor any Department Related Person will have any Liability to the Major Sub-contractor or any of its Affiliates, nor will the Major Sub-contractor or any of its Affiliates be entitled to make, continue or enforce any Claim against, or seek, pursue or obtain an indemnity against or contribution to Liability from the Department or any of the Department Personnel arising out of or in respect of or in connection with:
  - (i) the provision of any information, data and documents (including the Department Information) referred to in clause 5.3(a); or
  - (ii) any reference to the Department in the Major Sub-contract; or
  - (iii) any review of, comments on, or approval of the form or substance of the Major Sub-contract (or any associated documentation) by the Department;
- (c) where the Major Sub-contractor is expressed in the Major Sub-contract to have a right (or possible right) to compensation or relief that is dependent on or determined by reference to the Project Agreement:
  - (i) this does not of itself expand the Contractor's rights, or the Department's Liability, under the Project Agreement to include the compensation or relief to which the

Major Sub-contractor is or may become entitled under the Major Sub-contract;  
and

- (ii) the Contractor's rights, and the Department's Liability, under the Project Agreement will be determined solely in accordance with the terms of the Project Agreement;
- (d) as between the Department (on the one hand) and the Contractor and the Major Sub-contractor (on the other hand), the Contractor and the Major Sub-contractor accept and will bear the risk of any ambiguity, discrepancy or inconsistency between the terms of the Major Sub-contract and the Project Agreement; and
- (e) notwithstanding anything to the contrary in the Major Sub-contract but save as expressly contemplated by this Deed, the Major Sub-contractor has no right to deal directly with the Department or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:
  - (i) expressly provided to the contrary in the Project Agreement; or
  - (ii) the Department consents.

## 6. Major Sub-contractor Notice

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### 6.1 Department's cure rights

- (a) The Major Sub-contractor must give the Department:
  - (i) Default Event Notices; and
  - (ii) Major Sub-contractor Notices,as required by clause 6.2.
- (b) On receiving a Major Sub-contractor Notice, and subject to the Financier Direct Deed, the Department may (but is not obliged to) take steps:
  - (i) to cure or remedy, or procure the cure or remedy of, that Default Event; or
  - (ii) if the Default Event is not capable of cure or remedy, to commence and continue to perform the obligations of the Contractor under the Major Sub-contract.

### 6.2 Termination or suspension with cause

The Major Sub-contractor may only exercise a Power to terminate, rescind, accept the repudiation of, or (subject to clause 6.3) suspend the performance of any or all of its obligations under the Major Sub-contract if:

- (a) the Major Sub-contractor has given to the Department prior notice (a **Default Event Notice**) setting out details of the Default Event giving rise to that proposed exercise in accordance with clause 6.4;
- (b) the Power of the Major Sub-contractor to terminate, rescind, accept the repudiation of, or suspend the performance of any of its obligations under the Major Sub-contract is subject to any right of a Senior Lender to cure or remedy the Default Event, the cure or remedy period available to the Senior Lender in respect of the Default Event under any Financing Agreement has expired without a cure or remedy being achieved;



- (c) the Major Sub-contractor has given notice to the Department (a **Major Sub-contractor Notice**) confirming that either:
  - (i) the requirements of clause 6.2(b) are satisfied; or
  - (ii) the Major Sub-contractor's Power to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Major Sub-contract is not subject to any right of the Senior Lender to cure or remedy the Default Event; and
- (d) one or more of paragraphs (i) to (v) below (inclusive) apply:
  - (i) the relevant Default Event is capable of cure or remedy within 20 Business Days (including by the payment of any sum), if that Default Event has not been cured or remedied within 20 Business Days after the date on which the Department received the Major Sub-contractor Notice; or
  - (ii) the relevant Default Event is not capable of cure or remedy within 20 Business Days but is nevertheless reasonably capable of cure or remedy, if the Department (or an Additional Obligor appointed under clause 7) has not commenced curing or remedying the Default Event within 20 Business Days after the date on which the Department received the Major Sub-contractor Notice or has not continued to diligently pursue that cure or remedy; or
  - (iii) the relevant Default Event is not reasonably capable of cure or remedy and the Default Event Notice contains a claim for reasonable compensation for the Default Event:
    - (A) where a dispute in relation to the amount of compensation claimed in the Default Event Notice as reasonable compensation has been referred to expert determination under clause 15 within 10 Business Days of the date on which the Department received the Major Sub-contractor Notice:
      - (I) if the Contractor or the Department (or another person on behalf of either of them) has not paid or otherwise provided that amount of compensation which is in dispute within 20 Business Days after that dispute is resolved; and/or
      - (II) if the Contractor or the Department (or another person on behalf of either of them) has not paid any amount of compensation that is not in dispute within 20 Business Days (or such longer period as is permitted under the Major Sub-contract) after the date on which the Department received the Major Sub-Contractor Notice; or
    - (B) where there has been no such referral within the time period specified under clause 6.2(d)(iii)(A), if the Contractor or the Department (or another person on behalf of either of them) has not paid or otherwise provided that compensation within 20 Business Days (or such longer period as is permitted under the Major Sub-contract) after the date on which the Department received the Major Sub-contractor Notice; or
  - (iv) the relevant Default Event is not reasonably capable of cure or remedy and the Default Event Notice does not contain a claim for reasonable compensation for the relevant Default Event, if the Department (or an Additional Obligor) does not commence and continue to perform the Contractor's obligations under the Major Sub-contract within 20 Business Days (or such longer period as is permitted under the Major Sub-contract) after the date on which the Department received the Major Sub-contractor Notice; or

- (v) the Department notifies the Major Sub-contractor in writing that it elects not to cure or remedy, or procure the cure or remedy of, the relevant Default Event.

### **6.3 Termination or suspension without cause**

If there is no Default Event, the Major Sub-contractor may only exercise a right to terminate, or suspend the performance of its obligations under, the Major Sub-contract to the extent that the Contractor is entitled to terminate the Project Agreement or suspend its corresponding obligations under the Project Agreement.

### **6.4 Major Sub-contractor Statements**

As part of any Default Event Notice, the Major Sub-contractor must submit statements (**Major Sub-contractor Statements**) to the Department (for the reliance of the Statement Beneficiaries) of:

- (a) all amounts due and payable to the Major Sub-contractor under the Major Sub-contract on or before the date of the Default Event Notice but remaining unpaid at such date;
- (b) the nature and, to the best of the Major Sub-contractor's knowledge and belief, the amount of any monetary claim asserted by the Major Sub-contractor under or arising out of the Major Sub-contract against the Contractor; and
- (c) where the Major Sub-contractor intends to terminate the Major Sub-contract due to a default or breach of condition of a non-financial nature or intends to claim damages or to seek some other form of relief from the Contractor under the Major Sub-contract:
  - (i) the provisions of the Major Sub-contract alleged to have been breached or not fulfilled;
  - (ii) sufficient information to enable the Department to identify the material facts;
  - (iii) the steps reasonably required to cure or remedy the Default Event (if reasonably capable of cure or remedy);
  - (iv) the time within which the specified steps can reasonably be expected to be taken;
  - (v) if applicable, the amount of damages claimed and the manner in which the amount has been calculated; and
  - (vi) if applicable, the other relief to be sought.

### **6.5 Warranty of accuracy**

The Major Sub-contractor warrants to each Statement Beneficiary that the Major Sub-contractor Statements submitted by it under clause 6.4 will be, subject to unintended error that the Major Sub-contractor agrees to rectify, true, complete and accurate statements of the amounts to which the Major Sub-contractor considers itself entitled.

### **6.6 Major Sub-contractor Statements to be conclusive evidence**

- (a) Each Statement Beneficiary is entitled to rely on the Major Sub-contractor Statements for the purpose of determining the extent of the matters occurring prior to a Default Event that are required to be cured or remedied and the requirements to effect the cure or remedy of that Default Event by a Statement Beneficiary (if it elects to cure or remedy).

- (b) The Major Sub-contractor Statements will, to the extent provided in clauses 6.4 and 6.5, be conclusive evidence in favour of any Statement Beneficiary that the Major Sub-contractor has waived and abandoned all other claims then known or that ought reasonably to have been known to the Major Sub-contractor arising out of or in connection with the Major Sub-contract prior to the date of the Default Event Notice (other than claims set out in the Major Sub-contractor Statement).
- (c) Clauses 6.6(a) and 6.6(b) are without prejudice to the rights of the Major Sub-contractor to pursue any claims against the Contractor following the end of the Step-in Period.
- (d) For the avoidance of doubt, a Major Sub-contractor Statement will not prevent any Statement Beneficiary from disputing the amount of any claim by the Major Sub-contractor or the existence of any default by the Contractor under the Major Sub-contract. In the case of any such dispute:
  - (i) the relevant Statement Beneficiary must pay the amount (if any) not in dispute;
  - (ii) the dispute must be referred to expert determination in accordance with clause 15;
  - (iii) upon resolution of the dispute, the parties must make payments as determined by the expert; and
  - (iv) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the Project Documents.

## 7. Department's Step-in Rights

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### 7.1 Department right

- (a) On or after receipt of a Major Sub-contractor Notice or at any time at or after which the Department is permitted under any Project Document to do so, the Department may:
  - (i) take such other action permitted pursuant to Part 18 (Department Step-in) of the Project Agreement or any similar action permitted under the Project Agreement; or
  - (ii) by notice to the Major Sub-contractor (**Additional Obligor Step-in Notice**), procure that an Additional Obligor assumes jointly and severally with the Contractor all of the Contractor's rights and obligations under the Major Sub-contract and the Major Sub-contract Documentation,

and, on taking the steps referred to in clause 7.1(a)(i), shall provide written notice to the Major Sub-contractor of that exercise of its Step-in Right.
- (b) The **Step-in Period** is the period from the date on which the Major Sub-contractor receives notice of the exercise of any Step-in Right to the earliest of:
  - (i) the Additional Obligor Step-out Date;
  - (ii) the date on which the Major Sub-contractor validly terminates the Major Sub-contract;
  - (iii) the date of any novation under clause 8; and
  - (iv) the Step-out Date.

- (c) The Major Sub-contractor acknowledges that the exercise by the Department of a Step-in Right will not of itself contravene, or constitute a Default Event under, the Major Sub-contract or entitle the Major Sub-contractor to exercise any Power (including termination) under the Major Sub-Contract.

## 7.2 Step-in by Department

- (a) The Department may (subject to the Financier Direct Deed), at any time after the Department has given notice to the Major Sub-contractor notifying it of the Department's exercise of its Step-in Rights, exercise all or any of the Contractor's Powers and perform all or any of the obligations of the Contractor under or in relation to the Major Sub-contract and the Major Sub-contract Documentation, as if it were the Contractor, to the exclusion of the Contractor. Where the Department notifies the Major Sub-contractor that it is to exercise its Step-in Rights under this Deed, it will also notify the Major Sub-contractor of the Department Personnel that are authorised to exercise such rights on its behalf.
- (b) The Contractor and the Major Sub-contractor acknowledge and agree that, subject to clause 7.4(b) and the Project Agreement, neither the Department, any Department Personnel nor any Department Related Persons will have any Liability, nor will the Contractor or the Major Sub-contractor be entitled to make, continue or enforce any Claim against the Department, any Department Personnel or any Department Related Persons arising out or in respect of or in connection with, the Major Sub-contract, the Major Sub-contract Documentation or this Deed by reason only of exercise of any of the Contractor's Powers, or performing any of the Contractor's obligations in accordance with the Major Sub-contract or the Major Sub-contract Documentation (as permitted by the Project Documents) other than, and then only to the extent of, Liability for fraudulent, unlawful, negligent or wilful acts or omissions of the Department, any Department Personnel or any Department Related Persons.

## 7.3 Department Step-out

The Department may Step-out at any time, in accordance with Part 18 (Department Step-in) of the Project Agreement. The Department shall provide not less than 10 Business Days prior written notice to the Major Sub-contractor informing it of the Step-out Date.

## 7.4 Step-in using Additional Obligor

- (a) The Department shall ensure that the Additional Obligor will become a party to the Major Sub-contract on the date on which the Additional Obligor Step-in Notice is given to the Major Sub-contractor, or such later date as the Major Sub-contractor and the Department may agree (**Assumption Date**).
- (b) During the Step-in Period:
  - (i) the Department shall ensure that the Additional Obligor will be jointly and severally:
    - (A) entitled with the Contractor to exercise the rights, powers and discretions of the Contractor under the Major Sub-contract and the Major Sub-contract Documentation (excluding any accrued rights of the Contractor in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that the rights arose prior to the Assumption Date) (the **Contractor's Rights**); and
    - (B) liable with the Contractor for the performance or non-performance of all the Contractor's obligations under the Major Sub-contract and the Major Sub-contract Documentation arising on or after the Assumption Date, except as released in accordance with clause 7.4(e);

- (ii) as between the Contractor, the Major Sub-contractor and the Additional Obligor, only the Additional Obligor is authorised to deal with the Major Sub-contractor and to exercise the Contractor's Rights but for the avoidance of doubt, this shall not extend to any right to surrender, terminate or suspend the Major Sub-contract, except where the Project Agreement has been terminated or otherwise in accordance with the terms of the Major Sub-contract;
  - (iii) the Contractor acknowledges that it will be legally bound by all the acts and omissions of the Additional Obligor in so dealing with the Major Sub-contractor and in exercising the Contractor's Rights;
  - (iv) the Department shall ensure that the Additional Obligor will be bound by any earlier decision, directions, approvals or consents given or made prior to the Assumption Date;
  - (v) clause 17 will apply to the Major Sub-contractor and the Additional Obligor as if the address, facsimile number and email address of the Additional Obligor were set out in addition to those of the Contractor; and
  - (vi) the Major Sub-contractor will owe its obligations under the Major Sub-contract to the Contractor and the Additional Obligor jointly but the performance by the Major Sub-contractor in favour of either the Contractor or the Additional Obligor will be a good discharge of the relevant obligations under the Major Sub-contract.
- (c) The Additional Obligor will have no obligation to cure, and no liability in respect of curing, any default or breach of the Contractor under the Major Sub-contract arising prior to the Assumption Date.
- (d) The Additional Obligor may at any time give the Major Sub-contractor notice terminating the Additional Obligor's rights and obligations under the Major Sub-contract and the Major Sub-contract Documentation (without affecting the continuation of the Contractor's obligations or liabilities towards the Major Sub-contractor under the Major Sub-contract). The Department shall ensure that such notice must specify the date on which it takes effect, which must be:
- (i) a date not less than 30 days after the date of the notice; or
  - (ii) if a Proposed Novation Notice has been given, the Proposed Novation Date,
- (being the **Additional Obligor Step-out Date**).
- (e) On and from the Additional Obligor Step-out Date, between the Major Sub-contractor and the Additional Obligor, each of the Additional Obligor and the Major Sub-contractor will be released from all obligations under the Major Sub-contract and the Major Sub-contract Documentation (except for those obligations that have arisen during the Step-in Period, whether or not a Claim has been made in respect of those obligations or they have not fallen due to be performed or have not been performed).

## 7.5 Indemnity

Subject to clause 62.4 (Limits on indemnity cover) of the Project Agreement, the Contractor indemnifies the Department, all Department Personnel and all Department Related Persons against any Claim or Liability (including any Claim made by, or Liability to, a third party) the Department, any Department Personnel or any Department Related Persons suffers or incurs arising out of, or in respect of, or in connection with:

- (a) taking any action under clause 7.2 or clause 7.3 (except in respect of any action taken by the Department under Part 18 of the Project Agreement, which action shall be

subject to the rights and remedies of the Department set out in Part 18 of the Project Agreement instead); and/or

- (b) taking any action to prevent, or as a result of, the Major Sub-contractor suspending or, following the expiry of the requisite notice and/or remedy period, threatening to suspend the performance of its obligations under the Major Sub-contract where the Major Sub-contractor is entitled to do so under the Construction Contracts Act 2002.

## 8. Department's novation rights

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### 8.1 Proposed Novation Notice

- (a) The Department may at any time on or after the issue of a Major Sub-contractor Notice:
  - (i) while it is entitled to exercise its Step-in Rights; or
  - (ii) during the Step-in Period,give notice (a **Proposed Novation Notice**) to the Major Sub-contractor that:
  - (iii) it wishes itself or another person (in either case, a **Proposed Substitute**) to assume, by way of sale, transfer or other disposal, the rights and obligations of the Contractor under the Major Sub-contract and the Major Sub-contract Documentation; and
  - (iv) it wishes full legal and equitable title to any retention account, or other guarantee or security or assurance constituting Major Sub-contract Documentation that is held by the Contractor to secure the obligations of the Major Sub-contractor under the Major Sub-contract to vest in the Proposed Substitute, subject to any rights or interests over the same held by the Senior Lenders or their representative.
- (b) The Proposed Novation Notice shall specify a date on which the proposed novation is to take effect (the **Proposed Novation Date**). The Proposed Novation Date must fall not later than 30 Business Days after the date of the Proposed Novation Notice.
- (c) Without prejudice to (and save as permitted by) clause 8.6 and/or clause 9, the Major Sub-contractor will not exercise or seek to exercise any Power that may be or become available to it to terminate or treat as terminated or repudiated the Major Sub-contract or discontinue or suspend the performance of any duties or obligations under the Major Sub-contract and that is the subject of a Major Sub-contractor Notice:
  - (i) during the notice period specified in a Proposed Novation Notice; or
  - (ii) against any Proposed Substitute that is party to a Novation Agreement.
- (d) The Major Sub-contractor acknowledges that the exercise by the Department of its rights under this clause 8 does not of itself contravene, or entitle the Major Sub-contractor to exercise any right or remedy (including any right to terminate) under the Major Sub-contract.
- (e) Nothing in this clause 8 operates to require the Department to assume any obligations or liabilities arising, or which are required to be performed under the Major Sub-contract, except to the extent expressly provided in this clause 8.

## **8.2 Proposed Substitute**

Where the Proposed Substitute is not the Department or a Successor Governmental Entity, the Department shall (as soon as practicable) supply the Major Sub-contractor with the following information:

- (a) the name and registered address of the Proposed Substitute;
- (b) the names of the directors of the Proposed Substitute;
- (c) details of the means by which it is proposed to finance the Proposed Substitute (including the extent to which such finance is committed and any conditions precedent as to its availability for drawing); and
- (d) the technical competency and resources (including financial resources, key personnel and contractual arrangements) that are to be available to the Proposed Substitute to enable it to perform its obligations under the Major Sub-contract.

## **8.3 Consent to novation**

- (a) Where the Proposed Substitute is the Department or a Successor Governmental Entity, the Major Sub-contractor will be deemed to have given its consent to the novation. In that case, the Major Sub-contractor irrevocably:
  - (i) appoints the Department and the Department's nominees from time to time, jointly and severally, as the Major Sub-contractor's attorney with full power and authority to sign on its behalf all documents the Department requires to legally effect the novation of the Major Sub-contract Documentation to the Department or the Governmental Entity; and
  - (ii) agrees to ratify and confirm whatever action is taken by that attorney or those attorneys for the purposes of giving legal effect to that novation.
- (b) Where the Proposed Substitute is not the Department or a Successor Governmental Entity, the Major Sub-contractor must consent to the proposed novation, unless the Major Sub-contractor demonstrates to the Department's reasonable satisfaction that:
  - (i) the Proposed Substitute does not have the legal capacity, power and authorisation to become a party to and perform the obligations of the Contractor under the Major Sub-contract; or
  - (ii) the technical competence and financial standing of, and the technical and financial resources available to, the Proposed Substitute are not sufficient to perform the obligations of the Contractor under the Major Sub-contract;
  - (iii) the Major Sub-contractor would be placed in breach of Law by the proposed novation; or
  - (iv) the Proposed Substitute holds a controlling interest in any entity providing private custodial prison services.
- (c) Where the Proposed Substitute is not the Department or a Successor Governmental Entity, within 10 Business Days of the later of receipt of a Proposed Novation Notice and all information required under clause 8.2, the Major Sub-contractor must:
  - (i) notify the Department in writing as to whether or not it consents to the novation of the Major Sub-contract Documentation; and

- (ii) where that consent is being withheld, provide an explanation of its reasons it is withholding its consent.
- (d) The Major Sub-contractor is deemed to have given its consent to the novation of the Major Sub-contract Documentation to the Proposed Substitute for the purposes of clause 8.3(c) if the Major Sub-contractor fails to serve notice in writing on the Department within the period required by that sub-clause.
- (e) If, in accordance with this clause 8.3, the Major Sub-contractor withholds its consent to a Proposed Novation Notice:
  - (i) the Department shall be entitled to give one or more subsequent Proposed Novation Notices, pursuant to the provisions of clause 8.1 and clause 8.2, (a **Revised Proposed Novation Notice**) containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute, provided that:
    - (A) only one Proposed Novation Notice may be outstanding at any one time; and
    - (B) any revised Proposed Novation Date shall be a date falling not later than 15 Business Days after the date of the Revised Proposed Novation Notice;
  - (ii) the Major Sub-contractor will not:
    - (A) exercise or seek to exercise any right that may be or become available to it to terminate or treat as terminated or repudiated the Major Sub-contract; or
    - (B) discontinue or suspend the performance of any duties or obligations under the Major Sub-contract,

during the notice period specified in a Revised Proposed Novation Notice; and
  - (iii) clauses 8.3(b), 8.3(c) and 8.3(d) will apply in relation to that Revised Proposed Novation Notice, as if that notice was a Proposed Novation Notice.

## 8.4 Implementation of novation

- (a) Promptly following the date on which the Major Sub-contractor consents or is deemed to have consented to a novation of the Major Sub-contract pursuant to a Proposed Novation Notice or a Revised Proposed Novation Notice (the **Consent Date**), the Contractor must (subject to the Proposed Substitute first providing a confidentiality undertaking in a form reasonably acceptable to the Major Sub-contractor) give the Proposed Substitute an updated copy of all information in the possession of the Contractor in relation to the Major Sub-contract.
- (b) Within three Business Days of the Consent Date:
  - (i) the Department shall procure that the Proposed Substitute shall become a party to, or beneficiary of the Major Sub-contract Documentation in place of the Contractor and, thereafter, shall be treated as if it was and had always been named as a party or beneficiary of the Major Sub-contract Documentation in place of the Contractor; and
  - (ii) the Major Sub-contractor and the Contractor shall enter into a novation agreement (the **Novation Agreement**) and any other requisite agreements, in form and substance satisfactory to the Major Sub-contractor (acting reasonably) and the Department (acting reasonably) and the Department shall procure that



the Proposed Substitute validly executes such Novation Agreement and any other requisite agreements, pursuant to which:

- (A) the Proposed Substitute shall be granted all of the rights of the Contractor under the Major Sub-contract Documentation and this Deed (including those arising prior to the end of the Step-in Period); and
  - (B) the Proposed Substitute shall assume all of the obligations and liabilities of the Contractor under the Major Sub-contract and this Deed.
- (c) Unless otherwise agreed, the assumption by the Proposed Substitute of the obligations and liabilities of the Contractor under the Major Sub-contract will:
- (i) not include:
    - (A) any payment obligations of the Contractor that are in dispute as at the Consent Date, provided that the Department shall, on the determination of such dispute, procure that the Proposed Substitute shall assume such obligation in accordance with that determination; and
    - (B) any payment for the performance of the Services that the Department has already paid for under the terms of the Project Agreement; and
  - (ii) only include (in relation to any other obligation of the Contractor (not being an obligation to pay money which the Proposed Substitute must pay under clause 8.4(b)(ii)(B))) those obligations that fall due to be performed as at or following the Consent Date.
- (d) On and after the Novation Effective Date, the Major Sub-contractor shall owe its obligations under the Major Sub-contract to the Proposed Substitute and will be bound by and must comply with the terms of the Major Sub-contract binding on it, for the benefit of the Proposed Substitute as if the Proposed Substitute were the Contractor.
- (e) The Department and the Major Sub-contractor shall use all reasonable endeavours to agree and the Department shall use reasonable endeavours to procure that the Proposed Substitute agrees any amendments to the Major Sub-contract necessary to reflect this clause 8 and the fact that the Project Agreement may have terminated at the time of the Novation Effective Date.
- (f) For the avoidance of any doubt the total liability incurred by the Major Sub-contractor to the Proposed Substitute under the Major Sub-contract as at the Novation Effective Date shall be identical to the total liability incurred by the Major Sub-contractor to the Contractor up to and immediately prior to the Novation Effective Date, and the entering into of the Novation Agreement shall not reduce, limit or otherwise affect the total aggregate liability incurred by the Major Sub-contractor under the Major Sub-contract in any way.

## **8.5 Contractor's obligations to continue**

Until completion of a novation pursuant to clause 8.4, the Contractor shall continue to be liable for all its obligations and liabilities, whenever occurring, under or arising from the Major Sub-contract notwithstanding:

- (a) the service of a Proposed Novation Notice or any Revised Proposed Novation Notice; or
- (b) any other provision of this Deed.

## 8.6 Termination after Novation

After the Novation Effective Date, the Major Sub-contractor shall only be entitled to exercise its rights of termination under the Major Sub-contract:

- (a) in respect of any Event of Contractor Default arising after that date in accordance with the Major Sub-contract; or
- (b) if the Proposed Substitute does not discharge, within 10 Business Days following the Novation Effective Date, the obligations and liabilities assumed by it under clause 8.4(b) (read subject to clause 8.4(c)) that relate to matters arising prior to the Novation Effective Date,

(in each case subject to the terms of this Deed as it applies after the Novation Effective Date).

## 9. Rights and obligations under Major Sub-contract

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### 9.1 Rights preserved

Notwithstanding the other terms of this Deed, the Major Sub-contractor shall be entitled:

- (a) to exercise all of its rights under the Major Sub-contract and act upon any and all grounds for termination available to it in relation to the Major Sub-contract whenever occurring; and/or
- (b) to pursue any and all claims and exercise any and all rights and remedies against the Contractor,

in any of the circumstances described in clause 9.2 (an **Intervention Failure**).

### 9.2 Intervention Failures

An Intervention Failure constitutes circumstances where:

- (a) no Proposed Novation Notice (including a Revised Proposed Novation Notice) is given before the date or by the expiry of the period in which the Department is entitled to serve the same pursuant to clause 8.1(a) in accordance with the terms of this Deed; or
- (b) the Step-in Period ends before the occurrence of the Novation Effective Date; or
- (c) (in circumstances in which the Major Sub-contractor is entitled to withhold its consent under this Deed), the Major Sub-contractor withholds its consent to a novation pursuant to a Proposed Novation Notice and does not subsequently grant consent to a novation in accordance with clause 8.3(e) on or before the Proposed Novation Date set out in any Proposed Novation Notice issued under clause 8.1(a); or
- (d) the Department or an Additional Obligor exercises its right to Step-out (in which case, an Intervention Failure exists from the Step-out Date or the Additional Obligor Step-out Date (as applicable)).

## **10. Warranties and acknowledgments**

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### **10.1 General warranties**

The Major Sub-contractor warrants and represents to the Department:

- (a) it is properly constituted and incorporated under the Companies Act 1993 and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (b) neither it nor any of its assets enjoys any immunity from set off, suit or execution;
- (c) it has the corporate power to enter into and to exercise its rights and perform its obligations under this Deed and the other Project Documents to which it is party;
- (d) all actions necessary on its part have been taken to authorise the execution of and the performance of its obligations under this Deed and the other Project Documents to which it is party;
- (e) the obligations expressed to be assumed by it under this Deed and the other Project Documents to which it is party, are, or in the case of any Project Document executed after the date of this Deed, will be, on their execution, legal, valid, binding and, subject to laws affecting creditors' rights generally and equitable principles, enforceable;
- (f) this Deed and each other Project Document to which it is party is in proper form for enforcement in New Zealand; and
- (g) the execution, delivery and performance by it of this Deed and the other Project Documents to which it is party do not contravene any provision of:
  - (i) any existing Laws either in force, or enacted but not yet in force, that are binding on it; or
  - (ii) its constitution; or
  - (iii) any order or decree of any court or arbitrator that is binding on it; or
  - (iv) any obligation that is binding upon it or upon any of its assets or revenues.

### **10.2 Additional warranties**

The Major Sub-contractor further warrants, represents and undertakes to the Department that:

- (a) the Major Sub-contract to which it and the Contractor are party, has been entered into on Arms Length Terms;
- (b) it has complied with and fulfilled and shall continue to comply with and fulfil its duties and obligations arising under or by virtue of the Major Sub-contract;
- (c) without limiting the other terms of this Deed:
  - (i) it is aware of those terms of the Project Agreement that apply to it, in its capacity as a Major Sub-contractor or as a Contractor Related Person; and
  - (ii) it will ensure at all times that:

- (A) it shall not by act, do or (to the extent of its obligations under the Major Sub-contract only), by omission fail to do anything that would result in the Contractor being in breach or being put in breach of its obligations under the Project Agreement; and
  - (B) it will co-operate and assist the Department and/or the Contractor to facilitate (and will not impede or frustrate) the Contractor's compliance with its obligations under the Project Agreement;
- (d) there are no documents or agreements in existence or contemplated as at the date of this Deed to which the Major Sub-contractor is or would be a party that have not been or will not be disclosed to the Department that (in each case) is or would:
  - (i) be material in the context of this Deed and the other Project Documents to which it is a party; or
  - (ii) be, or be likely to be, material in the context of the Project; or
  - (iii) have the effect of varying this Deed or any other such Project Document,

and in respect of this Deed or the Project Documents, performance of which by the Major Sub-contractor would have a material adverse effect on the ability of the Major Sub-contractor to perform and observe its obligations under any Project Document;
- (e) all information provided to the Department by the Major Sub-contractor under this Deed constitutes true, accurate and complete statements of the Major Sub-contractor; and
- (f) in entering into this Deed and the other Project Documents to which it is a party, it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by:
  - (i) the Department; or
  - (ii) the Contractor or any other person (unless otherwise expressly stated in the Major Sub-contract).

### 10.3 Acknowledgments

The Major Sub-contractor acknowledges and agrees as follows:

- (a) nothing in or contemplated by this Deed or any other Project Document will be construed or interpreted as restricting or otherwise affecting the unfettered discretion of the Department or any other Governmental Entity to exercise any of its executive or statutory powers or functions under any Law, or to require the Department or any Governmental Entity:
  - (i) to interfere with or influence the exercise of any statutory power or discretion by any person, including the Department or a Governmental Entity; or
  - (ii) to exercise a power or discretion in a manner that promotes the objectives and expected outcomes of this Deed or any other Project Document if the Department regards that exercise as not in the public interest; or
  - (iii) to develop or implement new policy in a manner that is only consistent with the objectives and expected outcomes of this Deed or any other Project Document; or
  - (iv) to procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of this Deed or any other Project Document; or

- (v) to act in any other way that the Department regards as not in the public interest;
- (b) anything that the Department or any Governmental Entity does or fails to do pursuant to its executive or statutory functions and powers will be deemed not to be or cause an act or omission by the Department under this Deed or any other Project Document and will not entitle the Major Sub-contractor to make any claim against the Department under this Deed or another Project Document; and
- (c) notwithstanding clause 10.3(a) or clause 10.3(b) or anything else contained or implied in this Deed or another Project Document to the contrary, the parties expressly acknowledge and agree that the Department is not obliged, in performing any of the duties and obligations of the Department under this Deed or another Project Document, to exercise a power, function or duty that is granted to or within the responsibility of any other Governmental Entity, or to influence, override or direct any Governmental Entity in the proper exercise and performance of its legal duties and functions.

## 11. General Undertakings

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The Major Sub-contractor undertakes to the Department that it must:

- (a) notify the Department of any Event of Contractor Default promptly after it gives notice of that Event of Contractor Default pursuant to the Major Sub-contract;
- (b) in relation to documents:
  - (i) promptly give the Department a copy of all documents issued by the Major Sub-contractor to the Contractor in relation to an Event of Contractor Default; and
  - (ii) return a copy of all plans, drawings, specifications and other documents that come into its possession for the purpose of the Project to the Department at the expiration or termination of the Major Sub-contract;
- (c) not, without first obtaining the consent of the Department:
  - (i) make or permit any material amendment, replacement of, or addition to; or
  - (ii) subject to the terms of this Deed, terminate, surrender, rescind or accept repudiation of (provided that such consent will be deemed to have been given where the Major Sub-contractor is expressly permitted to do so under this Deed); or
  - (iii) permit the novation, assignment or substitution of its rights, obligations or interest in; or
  - (iv) allow any express waiver of its material rights and obligations under, the Major Sub-contract, provided that the Department will not withhold its consent to an amendment that corresponds to an amendment to which it has consented in accordance with the Project Agreement;
- (d) not novate, assign or substitute any of its rights, obligations or interest in the Major Sub-contract without first procuring that the proposed novatee, assignee or substitute executes a deed in favour of the Department (in form and substance approved by the Department) pursuant to which the novatee, assignee or substitute agrees to accept and be bound by this Deed as if it were the Major Sub-contractor;
- (e) in relation to records and meetings:

- (i) when reasonably requested by the Department, attend meetings with the Department or any Department Related Person; or
- (ii) subject to the relevant persons entering into confidentiality undertakings with the Major Sub-contractor on terms reasonably acceptable to the Major Sub-contractor, when reasonably requested by the Department, provide the Department, or any Department Related Person authorised by the Department, with such information, records or documents that the Department (acting reasonably) requires in relation to the carrying out of Services or compliance with the Major Sub-contract; or
- (iii) subject to the relevant persons entering into confidentiality undertakings with the Major Sub-contractor on terms reasonably acceptable to the Major Sub-contractor, permit the Department or any Department Related Person authorised by the Department to do so, to inspect all records, reports, plans, programmes, specifications and design documents prepared or kept by the Major Sub-contractor in relation to the Project and supply the Department or any Department Related Person with a copy of any such report or document they may require from time to time,

provided that nothing in this clause 11(e) shall require the Major Sub-contractor to breach any obligation of confidence which it owes to any other person or to infringe the Intellectual Property rights of any third party;

- (f) to the extent provided in the Project Agreement, permit the Department, any Department Related Person and the Independent Reviewer to attend all tests and inspections to be carried out in connection with the Project in accordance with the terms of the Project Agreement and/or the Major Sub-contract;
- (g) subject to the Independent Reviewer entering into confidentiality undertakings with the Major Sub-contractor on terms reasonably acceptable to the Major Sub-contractor, provide the Independent Reviewer with all such access to the Works and to the Major Sub-contractor and its records as the Independent Reviewer may reasonably require to perform its obligations under the Project Agreement and the Independent Reviewer Agreement;
- (h) take all steps reasonably practical to mitigate and minimise Sub-contractor Breakage Costs in respect of any Termination Date; and
- (i) not contract with the Contractor otherwise than on Arms Length Terms.

## **12. Security and Probity**

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Without limiting the Major Sub-contractor's obligations to comply with other provisions passed through to it from the Project Agreement, the Major Sub-contractor undertakes to the Department that it will comply with the terms of:

- (a) clause 21.2 (Criminal records check) of the Project Agreement;<sup>1</sup>
- (b) clause 21.5 (Probity Investigations) of the Project Agreement; and
- (c) clause 21.6 (Security clearance) of the Project Agreement.

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<sup>1</sup> This clause is not required where the Major Sub-contractor is only the provider of D&C services and works.

## 13. Termination

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- (a) This Deed will terminate upon the performance and satisfaction of all of the obligations under the Major Sub-contract.
- (b) The termination of this Deed does not affect the rights of any party that have accrued to that party before the date of termination.

## 14. Insurance

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- (a) Notwithstanding anything else, the Major Sub-contractor will:
  - (i) take out all insurances as are required under the Major Sub-contract; and
  - (ii) otherwise comply with all of its obligations in relation to insurance in the Major Sub-contract.
- (b) The Major Sub-contractor must ensure that it does not do or omit to do anything or does not permit anything to be done or omitted to be done whereby any such insurance policy may be prejudiced.
- (c) If any default is made by the Major Sub-contractor in effecting or maintaining such insurance policy or if any such insurance policy becomes void or voidable, the Department may (but is not obliged to) effect or maintain that insurance policy at the cost of the Major Sub-contractor or, failing the Major Sub-contractor paying such costs, at the cost of the Contractor (but only to the extent that the relevant insurance policy required to be effected and maintained by the Major Subcontractor is also a Required Insurance as defined under the Project Agreement).
- (d) If required by the Project Agreement, on any insurance contract entered into by the Major Sub-contractor pursuant to clause 14(a), the Major Sub-contractor will ensure that the Department is specified as a person to whom the insurance cover provided by that contract extends.
- (e) Subject to the provisions of the Project Agreement in respect of the Contractor and the provisions of the Major Sub-contract in respect of the Major Sub-contractor, each will do all things reasonably necessary and (subject to the Department providing a confidentiality undertaking in a form reasonably acceptable to the Major Sub-contractor) provide all documents, evidence and information reasonably necessary to enable the Department to collect or recover any moneys due or to become due in respect of any insurance policy referred to in clause 14(a)(i) to which the Department is an insured party at the cost of the Major Sub-contractor or, failing the Major Sub-contractor paying such costs, at the cost of the Contractor (but only to the extent that the relevant insurance policy required to be effected and maintained by the Major Subcontractor is also a Required Insurance as defined under the Project Agreement).
- (f) Without prejudice to the above requirements, the Major Sub-contractor will not cause or take any steps to bring about the cancellation, lapse, material change, reduction or any rescinding of any such insurance policy unless it has first obtained the written consent of the Department after giving 60 days' prior written notice to the Department.
- (g) The Major Sub-contractor will immediately notify the Department of any cancellation, lapse, material change, reduction, or any rescinding of any such insurance policy, and of the occurrence of any event giving rise to any claim under any such insurance policy in respect of the Works.

- (h) Notwithstanding clause 14(g), but subject to the obligations of the Contractor under the terms of the Project Agreement, the obligations of the Contractor and the Major Sub-contractor in this clause 14 shall be several.

## 15. Dispute resolution

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If there is a dispute arising in relation to this Deed between the Department and the Major Sub-contractor, then:

- (a) the party wishing to invoke this Deed's dispute resolution procedure provisions may serve a notice (a **Notice of Dispute**) on the other party, together with its submissions in relation to the dispute;
- (b) each such dispute is to be treated as a dispute to which the Accelerated Dispute Resolution Procedures will apply;
- (c) the terms of clause 93 (Accelerated Dispute Resolution Procedures) of the Project Agreement are accordingly deemed incorporated by reference into this Deed, save that all references to a "party" or "parties" are deemed to be references to the Department and/or the Major Sub-contractor and all references to the "Contractor" are deemed to be a reference to the Major Sub-contractor; and
- (d) the parties shall keep confidential any information received by them pursuant to this clause 15 save to the extent that disclosure is permitted under clause 59 (Confidential Information) of the Project Agreement which clause shall be deemed incorporated by reference into this Deed for these purposes, save that all references to a "party" or "parties" shall be deemed to be reference to the parties to this Deed and all references to the "Contractor" shall be deemed to be references to the Contractor or the Major Sub-contractor as applicable.

## 16. Assignment

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- (a) Except as expressly contemplated by this Deed, neither the Contractor nor the Major Sub-contractor may assign or transfer any of its rights or obligations under this Deed or the Major Sub-contract without the Department's consent.
- (b) Clause 16(a) does not apply to any assignment by way of security under the Financing Agreements (in respect of the Contractor only) or any direct agreement entered into between the Contractor, the Senior Lenders or their representative and the Major Sub-contractor (in respect of the Contractor and the Major Sub-contractor).
- (c) The Department shall not assign or transfer its rights or obligations under this Deed except to a permitted assignee under and in accordance with clause 94.2 (Assignment by Department) of the Project Agreement.

## 17. Notices

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### 17.1 Method of giving notices

A notice, consent, approval or other communication (each a **Notice**) under this Deed must:

- (a) be in writing addressed to the address of the recipient from time to time designated for the purpose by the addressee to the other parties. The initial address of each party is set out under its name on the execution pages of this Deed; and



- (b) be signed by an authorised representative of the sender.

## **17.2 Notice effective**

- (a) No notice or other communication is to be effective until it is received.
- (b) A communication will be deemed to be received:
  - (i) in the case of a letter, on the second Business Day after posting (with all postage paid);
  - (ii) in the case of an email, on the Business Day on which it arrives in the recipient's information system (provided that if it is received in that system after 5.00pm on a Business Day, then it will be deemed to be received on the next Business Day), provided that if there is any dispute as to whether an email has been received, the email shall only be deemed to have been received at that time where the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice; and
  - (iii) in the case of personal delivery, when delivered.

## **18. General**

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### **18.1 Limitation of liability**

- (a) Subject to clause 18.1(b), but despite any other provision in this Deed, the maximum aggregate liability of the Major Sub-contractor and the Guarantor to the Contractor, the Department and any Additional Obligor in respect of any Claim or Loss:
  - (i) under, arising out of or in connection with the Services, the Works, this Deed, the Major Sub-contract and/or any other Relevant Project Documents (as defined in the Major Sub-contract);
  - (ii) in tort (including negligence);
  - (iii) under any statute; and
  - (iv) otherwise at law,and irrespective of how it arises, is limited to the Major Sub-contractor's cap on liability as set out in the Major Sub-contract.
- (b) The maximum aggregate liability stated in clause 18.1(a) is subject to the same limitations set out in clause [●] of the Major Sub-contract.
- (c) Without prejudice to clause 18.1(a), the Major Sub-contractor shall owe no duty, obligation or liability to the Department and/or the Contractor under this Deed which is greater or of longer duration than that which it would owe to the Department and the Contractor under the Major Sub-contract had the Department and the Contractor jointly appointed the Major Sub-contractor to perform the obligations of the Major Sub-contractor under the Major Sub-contract.
- (d) Without prejudice to clauses 15(a) and 15(c), save to the extent necessary to enable the Department to exercise its rights of cure and step-in under clauses 6, 7, 8 and 9, the Department shall only be entitled to make any claim against the Major Sub-Contractor for breach of this Deed (including any warranty), if:

- (i) the Project Agreement has terminated; and
- (ii) the Department has exercised its Step-in Rights,

provided that if and to the extent that the Department has been compensated for any Losses under the Project Agreement, the Department shall not be entitled to claim or recover Moneys Owing for a breach of this Deed from the Major Sub-contractor to the extent it has already been compensated for the same.

- (e) The Major Sub-contractor shall be entitled to raise the same defences to any claim made against it by the Contractor or the Department under this Deed as it would be entitled to raise under the Major Sub-contract if the Contractor and the Department had jointly appointed the Major Sub-contractor to perform its obligations under the Major Sub-contract.

## **18.2 Counterparts**

This Deed may be signed in any number of counterparts all of which, when taken together, constitute one and the same instrument. A party may enter into this Deed by executing any counterpart.

## **18.3 Severability**

If any provision of this Deed is or becomes unenforceable, illegal or invalid for any reason, the relevant provision shall be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity. If such modification is not possible, then such provision shall be severed from this Deed without affecting the enforceability, legality or validity of any other provision of this Deed.

## **18.4 Waiver**

Any delay, failure or forbearance by a party to exercise (in whole or in part) any right, power or remedy under, or in connection with, this Deed shall not operate as a waiver of such right, power or remedy. A waiver of any breach of any provision of this Deed shall not be effective unless that waiver is in writing and is signed by the party against whom that waiver is claimed. A waiver of any breach shall not be, or be deemed to be, a waiver of any other or subsequent breach.

## **18.5 Public disclosure**

All public disclosure by the Contractor or the Major Sub-contractor relating to this Deed including promotional or marketing material (but not including any announcement intended solely for internal distribution or any disclosure required by legal, accounting or regulatory requirements) shall be co-ordinated with and must first be approved in writing by the Department prior to its release.

## **18.6 Entire agreement**

This Deed and the other Project Documents constitute the entire agreement between the parties and together supersede and extinguish all prior agreements and understandings between the parties about their respective subject matters.

## **18.7 Amendments in writing**

No amendment to this Deed will be effective unless it is in writing and signed by duly authorised signatories of the Department, the Contractor and the Major Sub-contractor.

## **18.8 Governing Law and jurisdiction**

This Deed is governed, and is to be construed in accordance with, the Laws of New Zealand. Each party irrevocably submits to the non-exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining all disputes under or in connection with this Deed.

## **18.9 Contracts (Privity) Act 1982**

- (a) This Deed is not intended to create any obligation enforceable at the suit of any person who is not a party to this Deed.
- (b) A person who is not a party to this Deed shall have no right under the Contracts (Privity) Act 1982 to enforce any term of this Deed. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## **18.10 Related Loss**

Notwithstanding any other provision of this Deed or the Project Agreement, to the extent that the Department is liable to the Contractor for any Claim arising under the Project Agreement, the Department will not be entitled to avoid or reduce its Liability to the Contractor on the basis that the Contractor has not suffered all or part of the relevant loss or damage (**Related Loss**) solely because such Related Loss is incurred by a sub-contractor (of any tier) of the Contractor or because the sub-contractor's right to recover such Related Loss from the Contractor or any other sub-contractor is deferred, suspended or dependent upon recovery or entitlement from the Department, the Contractor or any other sub-contractor or is dependent upon determination of any such entitlement.



## Annexure B: Form of Facility Lease

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## DEED OF LEASE

Her Majesty, The Queen in Right of New Zealand acting by and through the Chief Executive of the Department of Corrections (the **Lessor**) **LEASES** to *[insert name of Contractor]* (the **Lessee**) all the Land for the Term, from the Commencement Date, at the rent and upon the other terms as set out in the First Schedule and the Lessor and the Lessee covenant as set out in the Second Schedule.

**AND THE LESSEE ACCEPTS** this lease of the Land to be held by the Lessee as tenant and subject to the conditions restrictions and covenants referred to above.

## FIRST SCHEDULE

<b>LAND:</b>	Lot 1 on LT 442050 being part of the land comprised and described in certificate of title 575590 (North Auckland Registry) as shown on the plan attached together with and subject to the easements or interests registered against that title.
<b>TERM:</b>	25 years.
<b>COMMENCEMENT DATE:</b>	<i>[Service Commencement Date]</i> .
<b>RENT:</b>	The Rental Prepayment as provided for and to be paid in the manner described in the Agreement.

## SECOND SCHEDULE

### 1. Definitions and interpretation

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#### 1.1 Definitions

In this Lease, unless the context otherwise requires:

**Actual Termination Date** has the meaning set out in the Agreement;

**Agreement** means the agreement relating to the PPP at Wiri Prison Project entered into between the Lessor and the Lessee and dated [ ];

**Compensation Sum** has the meaning set out in the Agreement;

**Facility** has the meaning set out in the Agreement;

**First Schedule** means the schedule described as such and forming part of the Lease;

**Gross Laden Weight** has the meaning given to that term in the Land Transport Act 1998;

**Heavy Motor Vehicle** means a motor vehicle (other than a motor car that is not used, kept or available for the carriage of passengers for hire or reward) or motor vehicle and trailer (including equipment) having a combined Gross Laden Weight exceeding 4000kg;

**Incident** has the meaning set out in the Agreement;

**Land** means that land described in the First Schedule;

**Lease** means this instrument and the First Schedule and the Second Schedule;

**Lessee** includes the successors and where not repugnant to the context, includes the officers, employees, contractors, agents and invitees of the Lessee;

**Lessor** includes the successors and where not repugnant to the context, includes the officers, employees, contractors, agents and invitees of the Lessor;

**Project** has the meaning set out in the Agreement;

**Rental Prepayment** has the meaning set out in the Agreement;

**Second Schedule** means the schedule described as such and forming part of this Lease; and

**Term** means the term described in the First Schedule.

## 1.2 Interpretation

In this Lease, unless the context otherwise requires:

- (a) words importing the singular shall include the plural and vice versa;
- (b) headings shall be ignored;
- (c) references to clauses are references to clauses in the Second Schedule and references to parties are references to the parties of this Lease unless expressly stated otherwise; and
- (d) any reference in this Lease to any statute is deemed to include all amendments, revisions, substitutions or consolidations made from time to time to that statute.

## 2. Term

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**2.1** In consideration of the rent payable under this Lease, and of the Lessee's covenants, terms and agreements, express and implied, contained in this Lease and the Agreement, the Lessor leases to the Lessee all the Land and the Facility on the Land for the term set out in the First Schedule.

**2.2** The expiry date shall be the earlier of the date which is 25 years from the Commencement Date and the Actual Termination Date.

## 3. Rent

---

**3.1** The Lessee shall pay the rent specified in the First Schedule in the manner described in the First Schedule.

**3.2** For the avoidance of doubt, in the event this Lease is terminated prior to the Actual Termination Date, the Lessor will have no obligation to apportion or repay any rent paid in advance other than through payment of the Compensation Sum calculated in accordance with the Agreement.

## 4. Use of the Land

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The Lessee shall use the Land for the Project.

## 5. Lessor's Access to Lessor's Wetlands

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**5.1** Subject to the provisions of clause 5.3, the Lessee grants to the Lessor at all times by day and by night to pass and re-pass, with or without vehicles (other than Heavy Motor Vehicles) and equipment of any kind, over and along the all weather access track off the existing Auckland Region Women's Corrections Facility access road (**Access Track**) for all purposes connected with the use and enjoyment of the wetland area located, and immediately adjacent to, the south-western corner of the Land (**Wetlands**). The Lessee shall, at its own cost, be responsible for the construction and maintenance of the all weather access track.

**5.2** Prior to using the Access Track the Lessor shall, save in the case of an emergency (where no notice shall be required) provide not less than 24 hours' written or verbal notice (unless otherwise agreed between the parties) of the need for access. The notice shall include the following details:

- (a) the times when access is required;
- (b) the registration number or number(s) of the vehicles which will be using the Access Track (if known); and
- (c) the names of the people who will be using the Access Track.

If any of the above details are unknown or uncertain, the Lessor shall confirm those details as soon as reasonably practicable and in any event prior to attempting to gain access.

The Lessee shall be entitled to refuse access to the Access Track where it considers, acting reasonably, that there is an Incident, the threat of an Incident or a security risk at the Facility which necessitates refusing the Lessor access to the Access Track.

**5.3** When using the Access Track the Lessor shall:

- (a) ensure that at all times, other than for the purposes of accessing and leaving the Access Track, any gates are securely locked and are not left open; and
- (b) not use Heavy Motor Vehicles.

**5.4** Where the Lessor:

- (a) negligently or wilfully damages the Access Track; or any part of the Facility adjoining the Access Track; or
- (b) damages the Access Track by using a Heavy Motor Vehicle,

then the Lessor shall be liable for making good the Access Track or the part of the Facility damaged by it.

**5.5** The Lessee acknowledges that the use of the Access Track in accordance with the provisions of this clause 5 shall not be a breach of clause 7 (Quiet enjoyment).



## **6. Discharge permits**

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**6.1** The Lessor grants to the Lessee the right to discharge stormwater into the Wetlands, in accordance with the terms and conditions of Discharge Permit 37740 and to enter onto the Wetlands in order to undertake any repairs and maintenance required to any stormwater pipes, which discharge into the Wetlands or to remove items from the Wetlands which are impeding the flow of stormwater.

**6.2** Prior to accessing the Wetlands, the Lessee shall, save in the case of an emergency (where no notice shall be required) provide not less than 24 hours' written or verbal notice (unless otherwise agreed between the parties) of the need for access to the Wetlands. The notice shall include the following details:

- (a) the times when access is required;
- (b) the registration number or number(s) of the vehicles which will be taken onto the Wetlands (if known); and
- (c) the names of the people who will be entering onto the Wetlands.

If any of the above details are unknown or uncertain, the Lessee shall confirm those details as soon as reasonably practicable and in any event prior to attempting to gain access.

**6.3** Where the Lessee negligently or wilfully damages the Wetlands or anything on the Wetlands, then the Lessee shall be liable for making good the Wetlands or the item on the Wetlands damaged by it.

**6.4** In exercising its rights under clause 6.1, the Lessee shall at all times comply with the provisions of Discharge Permit 37740.

## **7. Quiet enjoyment**

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Provided the Lessee complies with all of its obligations under this Lease, the Lessee shall be entitled to quietly hold and enjoy possession of the Land throughout the term without any interruption by the Lessor, subject to any right of access or inspection the Lessor has under the Agreement.

## **8. Property Law Act 2007**

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To the extent permitted by law, the covenants and conditions set out in section 218 and 219 of the Property Law Act 2007 are excluded from this Lease.

**Executed as a Deed**

[ ]  
in the presence of :

Signature

Occupation

Witness signature

Witness name

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Signature

Occupation

Witness signature

## **Annexure C: Independent Reviewer Agreement**

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## Annexure C: Independent Reviewer Agreement

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This **Independent Reviewer Agreement** is made on

2012

between (1) **Her Majesty the Queen in Right of New Zealand acting by and through the Chief Executive of the Department of Corrections (Department)**

and (2) **SecureFuture Wiri Limited (Contractor)**

and (3) **[insert] (Builder)**

and (4) **[insert] (Services Provider)**

and (5) **[insert](Independent Reviewer)**

### Introduction

- A. The Department invited tenderers to bid to undertake the Project on behalf of the Department.
- B. The Contractor is the successful tenderer and the Department has agreed to enter into the Project Agreement in which the Contractor has agreed with the Department, amongst other things, to finance, design, construct and commission the Facility, undertake the Works Provisioning and deliver the Operational Services.
- C. The Contractor, the Agent and the Senior Lenders have entered into various documents pursuant to which the Senior Lenders have agreed to provide finance to the Contractor for the Project including a facility agreement (**Credit Agreement**).
- D. The Contractor and the Builder have entered into a building contract for, amongst other things, the carrying out and completion of certain of the Works Provisioning (**Construction Contract**).
- E. The Contractor and the Services Provider have entered into a services contract for, amongst other things, the Fitout of the Facility and the carrying out of the Operational Services (**Services Contract**).
- F. For the purposes of the Project Agreement, the Department and the Contractor have agreed to appoint the Independent Reviewer, and the Independent Reviewer has agreed to act as independent reviewer and certifier on the terms and conditions contained in this Agreement.

### It is agreed

#### 1. Definitions and interpretation

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##### 1.1 Defined terms

In this Agreement any word, expression, reference or term used that is defined in the Project Agreement and is not specifically defined in clause 1.2 will, unless the context requires otherwise, have the same meaning in this Agreement.

## 1.2 Definitions

The following words or phrases, where they appear in this Agreement, have the following meaning unless the context requires otherwise:

**Additional Services** means the provision of additional reports or services (which are not Base Services) requested under clause 8.5;

**Agent** means [insert];

**Agreement** means this agreement, including the Schedules;

**Associate** means any officers, agents, advisers, consultants, contractors, sub-contractors and employees of the applicable Party;

**Author** has the meaning given to it in clause 18.9;

**Background Documents** means the Services Contract, the FM Sub-contract, the Interface Agreement and the Credit Agreement;

**Base Fee** is the fee payable for the Term, set out in Part 2 of Schedule 1, in respect of the performance of the Base Services (excluding the Time Cost Fee);

**Base Services** means:

- (a) the performance of the services set out in Schedule 3;
- (b) all other things or tasks that the Independent Reviewer must do to comply with its obligations under this Agreement in relation to the services required under paragraph (a); and
- (c) without limiting paragraph (b), all other things and tasks not described in this Agreement or any other Relevant Document, if those things and tasks should have been reasonably anticipated by an experienced and competent professional provider of services the same as or substantially similar to the services described in paragraphs (a) and (b) above as being necessary for the performance of such services or that are otherwise necessarily incidental to this Agreement or any other Relevant Document;

**Claimed Amount** has the meaning given to it in clause 12.2(a);

**Confidential Information** means:

- (a) all information and trade secrets already communicated or subsequently communicated under or in connection with this Agreement or with respect to the Independent Reviewer Services or otherwise with respect to the subject matter of this Agreement including (without limitation) any information obtained:
  - (i) in the course of negotiations leading to the conclusion of this Agreement; or
  - (ii) in the performance of this Agreement;
- (b) any information about the business or property of a person including (without limitation) any information:
  - (i) relating to the financial position of that person; or

- (ii) concerning that person's suppliers and customers or its agents or brokers; or
- (iii) relating to that person's internal management, structure, personnel or strategies; or
- (iv) comprising the terms of this Agreement;
- (c) all information in respect of any materials in which that person has Intellectual Property rights in accordance with the terms of the Relevant Documents; and
- (d) all information otherwise defined as "confidential information" within the Relevant Documents or, to the extent applicable, the Background Documents;

**Construction Contract** is defined in the Introduction;

**Contract Material** is all material:

- (a) provided to the Independent Reviewer by any Party (including Design Documentation);
- (b) brought or required to be brought into existence by the Independent Reviewer as part of, or for the purpose of, performing the Independent Reviewer Services including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored by any means); or
- (c) provided to the Independent Reviewer or acquired by the Independent Reviewer in connection with, or during the performance of, the Independent Reviewer Services;

**Contract Particulars** means the particulars set out in Part 1 of Schedule 1 of this Agreement;

**Contractor's Proportion** means:

- (a) 100% of the Base Fee, as determined in respect of each Payment Period in accordance with clause 12.4;
- (b) the Time Cost Fee for any Additional Services requested by the Contractor in accordance with clause 8.5 and completed during the relevant Payment Period; and
- (c) 50% of the Time Cost Fee for any Variation (to the extent that paragraph (b) does not apply) that the Independent Reviewer carries out pursuant to a Variation Direction given in accordance with clause 14.1(a);

**Contractor's Representative** is the person named in the Contract Particulars or any other person nominated by the Contractor under this Agreement to replace that person and advised in writing to the Department and the Independent Reviewer;

**Credit Agreement** is defined in the Introduction;

**Department's Proportion** means:

- (a) the Time Cost Fee for any Additional Services requested by the Department in accordance with clause 8.5 and completed during the relevant Payment Period; and

- (b) 50% of the Time Cost Fee for any Variation (to the extent that paragraph (a) does not apply) that the Independent Reviewer carries out pursuant to a Variation Direction given in accordance with clause 14.1(a);

**Department's Representative** is the person named as such in the Contract Particulars or any other person nominated by the Department under this Agreement to replace that person and advised in writing to the Contractor and the Independent Reviewer;

**Fee** is the sum of the Base Fee and the Time Cost Fee (if any);

**FM Sub-contract** means the sub-contract between the Services Provider and [insert];

**FM Sub-contractor** means each person (if any) appointed from time to time by the Services Provider to provide part of the Operational Services being, at the date of this Agreement, [insert];

**Financier's Certifier** means [insert];

**GST** means tax as defined in the GST Act;

**GST Act** means the Goods and Services Tax Act 1985;

**Independent Reviewer Services** mean:

- (a) the Base Services; and
- (b) the Additional Services;

**Independent Reviewer's Representative** is the person named in the Contract Particulars or any other person appointed by the Independent Reviewer with the approval of the Project Parties from time to time to replace that person;

**Interface Agreement** means the agreement entered into by the Contractor, the Builder, the Services Provider and the FM Sub-contractor that sets out the arrangements between those parties in connection with certain interface arrangements in respect of the Works Provisioning and the Operational Services;

**Joint Notice** means a Notice signed by both the Project Parties' Representatives (or their duly authorised nominees);

**Key People** means the people identified as key people in Part 3 of Schedule 1;

**Liability Cap** has the meaning given to it in clause 11.4;

**Mediation Notice** has the meaning given to it in clause 16.4;

**Monthly Base Fee** is the amount described as such in the Contract Particulars in respect of each relevant month of the Term as adjusted in accordance with the terms of this Agreement;

**Non-Project Party** means either of the Builder and the Services Provider;

**Notice** has the meaning given to it in clause 17.1;

**Parties** means the parties to this Agreement, namely the Department, the Contractor, the Builder, the Services Provider and the Independent Reviewer, and **Party** is any one of them;

**Payment Period** means each month following Financial Close until the expiry or earlier termination of this Agreement;

**Personal Information** has the meaning given to it in the Privacy Act 1993;

**Progress Report** means a monthly report covering the issues set out in clause 8.2 in a form to be agreed by the Parties, all acting reasonably;

**Project Agreement** means the project agreement in relation to the PPP at Wiri Prison Project entered into between the Department and the Contractor dated on or about the date of this Agreement;

**Project Parties** are the Department and the Contractor, and **Project Party** is either one of them;

**Project Parties' Representatives** means the Department's Representative and the Contractor's Representative collectively;

**Project Party's Proportion** means either the Contractor's Proportion or the Department's Proportion (as the context may require);

**Quality Assurance System** means the quality assurance system that the Independent Reviewer must plan, develop and implement in accordance with clause 9.1;

**Recipient** has the meaning given to it in clause 13.1;

**Relevant Documents** means this Agreement, the Project Agreement (including the Site Access and Interface Protocols) and the Construction Contract;

**Revenue** has the meaning given to it in clause 13.4;

**Schedule of Rates** is means the rates and prices, applicable for each calendar year of the Term, used for the calculation of the Time Cost Fee, set out in Schedule 2 of this Agreement;

**Services Contract** is defined in the Introduction;

**Supplier** has the meaning given to it in clause 13.1;

**Tax** includes all forms of taxation (whether direct or indirect), duties, charges, dues, imposts, levies, rates or other governmental impositions of whatever nature, imposed in New Zealand or elsewhere;

**Tax Invoice** has the meaning given to that term in the GST Act;

**Taxation Authority** means any governmental authority that is responsible for administering or levying Tax, whether in New Zealand or elsewhere, including (without limitation) the New Zealand Inland Revenue;

**Term** means the period specified as such in the Contract Particulars, or any extended period notified by the Project Parties under clause 4.2 or as may be agreed between the Parties;

**Time Cost Fee** is the amount payable for:

- (a) any Additional Services; or
- (b) any Variation that the Independent Reviewer carries out after being given a Variation Direction in accordance with clause 14.1; or



- (c) for any suspension under clause 10.3,

in each case calculated and assessed on the basis of the Schedule of Rates;

**Variation** means a material change in the nature or scope of the Base Services that will result in a material increase in the resourcing levels required to provide, or the costs of the Independent Reviewer in providing, the Base Services;

**Variation Direction** means a direction given in accordance with clause 14.1(a);

**Works Completion Test(s)** means those tests described as such in the Schedule 27 of the Project Agreement (including any additional tests and re-run tests requested by the Independent Reviewer pursuant to the Project Agreement); and

**Wilful Default** means:

- (a) fraud, including fraudulent concealment or dishonesty;
- (b) wilful misconduct; and/or
- (c) a breach of this Agreement or any statutory duty by the Independent Reviewer (or its Associates) in circumstances in which the Independent Reviewer (or its Associates) acts with an intentional, conscious or reckless disregard.

### 1.3 Interpretation

In this Agreement, headings are inserted for convenience of reference only and will be ignored in construing this Agreement and unless the context otherwise requires:

- (a) words importing the singular number include the plural and vice versa, a gender includes both genders and words importing persons include partnerships, trusts, corporations, joint ventures, unincorporated associations, unincorporated or statutory bodies, other entities and Governmental Entities;
- (b) references to clauses and Schedules are references to clauses of, and schedules to, this Agreement, in each case unless expressly stated otherwise;
- (c) references to any legislation or to any section or provision of any legislation include any modification or re-enactment of, or any legislative provision substituted for, and all legislation, regulations and statutory instruments under, such legislation;
- (d) references to any agreement or document (including this Agreement) are to the agreement or document as amended, novated, supplemented, or replaced from time to time, except to the extent prohibited by this Agreement or that other agreement or document;
- (e) references to a notice, notification, record, report, consent, agreement, disclosure, evidence or approval or any variation of those words, are references to a notice, notification, record, report, consent, agreement, disclosure, evidence or approval or any variation of those words, in writing;
- (f) a reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible form (including facsimile);
- (g) references to conduct include an omission, statement or undertaking, whether or not in writing;

- (h) references to an authority, institute, association, instrumentality, statutory body or body politic (each a person) are:
  - (i) if that person is reconstituted, renamed or replaced, deemed to refer to that person as reconstituted, renamed or replaced; or
  - (ii) if the powers or functions of that person are transferred to, or assumed by, another person, deemed to refer to that other person; or
  - (iii) if that person ceases to exist, deemed to refer to the person which substantially serves the same purposes or object of that person who has ceased to exist;
- (i) references to any party to this Agreement or any other document includes its successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (j) a reference to months is a reference to calendar months;
- (k) where a word or phrase is defined, any other capitalised grammatical form of that word or phrase has a corresponding meaning;
- (l) nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or any part of it;
- (m) a reference to an agreement includes any undertaking, deed, agreement or legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- (n) a reference to dollars and \$ is to New Zealand currency;
- (o) whenever the words "includes" or "including" are used in this Agreement, they are deemed to be followed by the words "without limitation";
- (p) where a right or remedy is conferred on the Department under this Agreement, that right or remedy is in addition to, and not in substitution of or to be limited or affected by, a right or remedy conferred on the Department in another provision of this Agreement or otherwise at Law; and
- (q) the term **may** when used in the context of a right or remedy exercisable by the Department or a delegate of the Department means that the Department or its delegate can exercise that right or remedy in its sole and absolute discretion and the Department or its delegate has no obligation to the Contractor or the Independent Reviewer to do so unless expressly stated.

## 1.4 Consents or approvals

A consent or approval under this Agreement from either of the Project Parties or any delegate of either of the Project Parties may be given or withheld, or may be given subject to such conditions, as the relevant Project Parties or the delegate of the relevant Project Parties (in their absolute discretion) think fit, unless this Agreement expressly provides otherwise.

## 1.5 Priority of documents

- (a) To the extent of any inconsistency between this Agreement and the Relevant Documents (otherwise than in respect of Schedule 3), this Agreement prevails.

- (b) For the purposes of Schedule 3, in the event of any inconsistency between this Agreement and the Relevant Documents, the Project Agreement shall prevail in respect of Part A and the Construction Contract shall prevail in respect of Part B.

## **1.6 Business Day**

Where the day on or by which any payment is to be made under this Agreement is not a Business Day, it will be made on the next Business Day.

## **2. Conditions Precedent**

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- (a) This Agreement (other than this clause 2 and clauses 11.4, 11.6, 18.3, 18.4, 18.5, 18.6, 18.7, 18.11, 18.15 and 18.19) is conditional upon:
  - (i) the satisfaction or waiver of the Conditions Precedent in accordance with clause 10.4 (Conditions Precedent) of the Project Agreement; and
  - (ii) the Department reviewing the disclosed conflicts of interest in respect of the Independent Reviewer and confirming that such conflicts of interest (if any) are acceptable to the Department.
- (b) If the Conditions Precedent are not satisfied or waived in accordance with the Project Agreement, this Agreement shall automatically terminate and none of the Parties shall have any liability to other Parties or each other arising out of or relating to any such termination.

## **3. Relationships and roles**

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### **3.1 Relationship of the Parties**

- (a) Nothing in, or contemplated by, this Agreement will be construed or interpreted as:
  - (i) constituting a relationship between the Parties, or any other person, of partners, joint venturers, fiduciaries, employer and employee or principal and agent; or
  - (ii) imposing any general duty of good faith on the Department to the other Parties in relation to or arising out of the Project, other than where this is expressly stated to be the case under this Agreement; or
  - (iii) unlawfully restricting or otherwise unlawfully affecting the unfettered discretion of the Department to exercise any of its executive or statutory powers or functions under any Law.
- (b) The Independent Reviewer, its officers, employees, servants and agents and any other persons engaged by the Independent Reviewer in the performance of the Independent Reviewer Services will not by virtue of this Agreement or the performance of the Independent Reviewer Services become in the service or employment of any of the other Parties for any purpose.
- (c) The Independent Reviewer will be responsible for all matters relating to its position as employer or otherwise in relation to such officers, employees, servants and agents and other persons who are so engaged.

### **3.2 Limitation of Department's obligations**

Each of the Parties acknowledges and agrees that:

- (a) nothing in or contemplated by this Agreement will be construed or interpreted as restricting or otherwise affecting the unfettered discretion of the Department or any other Governmental Entity to exercise any of its executive or statutory powers or functions under any Law, or to require the Department or any Governmental Entity:
  - (i) to interfere with or influence the exercise of any statutory power or discretion by any person, including the Department or a Governmental Entity; or
  - (ii) to exercise a power or discretion in a manner that promotes the objectives and expected outcomes of this Agreement, if the Department regards that exercise as not in the public interest; or
  - (iii) to develop or implement new policy in a manner that is only consistent with the objectives and expected outcomes of this Agreement; or
  - (iv) to procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of this Agreement; or
  - (v) to act in any other way that the Department regards as not in the public interest;
- (b) anything that the Department or any Governmental Entity does, or fails to do pursuant to its executive or statutory functions and powers will be deemed not to be or cause an act or omission by the Department under this Agreement, and will not entitle any other party to make any claim against the Department under this Agreement;
- (c) notwithstanding clause 3.2(b), the Department is not relieved from any claim that any other party may have against the Department for its exercising any of its executive or statutory functions or powers under any Law in a manner contrary to an express obligation of the Department under this Agreement. The existence of such obligations, and the existence and amount of such claim is to be assessed in accordance with the express terms of this Agreement; and
- (d) notwithstanding clause 3.2(a) or clause 3.2(b) or anything else contained or implied in this Agreement to the contrary, the Parties expressly acknowledge and agree that the Department is not obliged, in performing any of the duties and obligations of the Department under this Agreement, to exercise a power, function or duty which is granted to or within the responsibility of any other Governmental Entity, or to influence, override or direct any Governmental Entity in the proper exercise and performance of its legal duties and functions.

### **3.3 Liability and rights of Non-Project Parties**

- (a) Nothing in this Agreement shall make any Non-Project Party liable to the Independent Reviewer for any payment or other sum due to the Independent Reviewer pursuant to clause 12.
- (b) No Non-Project Party shall be entitled or authorised to instruct the Independent Reviewer to undertake any additional services under this Agreement as Independent Reviewer Services.
- (c) The Non-Project Parties hereby acknowledge and agree that their sole rights under this Agreement are to obtain the benefit of the warranties and undertakings of the Independent Reviewer under clauses 4.1(b), 4.1(c)(iii), 4.3, 4.4, 4.5, 4.8, 4.9, 6.4, 8.6, 9.3, 10.1 and 11.1 enforceable in accordance with the terms hereof.

### **3.4 Liability and rights of Agent and Senior Lenders**

- (a) Prior to making available to the Agent and Senior Lenders any reports or other documents prepared by the Independent Reviewer hereunder, the Contractor will procure that the Agent and Senior Lenders execute, and deliver to the Independent Reviewer, a Third Party Reliance Deed (in the form attached at Schedule 4).
- (b) The Independent Reviewer will not be liable to the Agent and/or the Senior Lenders in contract, tort or otherwise for any liability which arises from the provision of the Independent Reviewer Services if the Third Party Reliance Deed has not been executed by the Agent and the Senior Lenders.
- (c) Any liability of the Independent Reviewer to the Agent and/or the Senior Lenders (save in respect of any Wilful Default, abandonment of the Independent Reviewer Services, liability that cannot be excluded by Law and / or any breach of clauses 4.5, 18.7, 18.10 or 18.11) shall, for the purposes of the Liability Cap, be aggregated with any liability of the Independent Reviewer to the Department, the Contractor, the Builder and the Services Provider.

## **4. Role of Independent Reviewer Generally**

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### **4.1 Engagement**

- (a) The Independent Reviewer is engaged:
  - (i) as an independent professional experienced in:
    - (A) the provision of services in the nature of the Independent Reviewer Services; and
    - (B) projects in the nature of the Project; and
  - (ii) to carry out the Independent Reviewer Services for the Term in accordance with this Agreement.
- (b) The Independent Reviewer warrants to the other Parties that it will comply with all Laws in the provision of the Independent Reviewer Services.
- (c) The Independent Reviewer:
  - (i) acknowledges that it has been provided with a complete copy of each of the Relevant Documents and the Background Documents and shall be deemed to have studied the same;
  - (ii) acknowledges that any breach by it of this Agreement may result in one or more of the other Parties incurring Losses and/or Liabilities under or in respect of the Relevant Documents and/or the Background Documents, including in the case of the Senior Lenders through the non-payment of amounts owed to it by the Contractor; and
  - (iii) shall, subject to its overriding duty of independent judgment set out in clause 4.4, perform its obligations under this Agreement so that no negligent act, omission or default, breach of this Agreement or Wilful Default on its part shall cause or contribute to any breach or default by the other Parties of their respective obligations under the applicable Relevant Documents or, to the extent relevant, the Background Documents.

## **4.2 Extension of Term**

The Project Parties may, but are under no obligation to, extend the Term by a further period or periods by a Joint Notice to the Independent Reviewer of their intention to do so before the end of the Term, which specifies the date to which the Term is extended.

## **4.3 Standard of care**

- (a) The Independent Reviewer warrants and undertakes for the benefit of each of the other Parties that it will exercise the standard of skill, care, foresight, prudence and diligence in the performance of the Independent Reviewer Services that would be expected of a professional experienced in providing similar services for projects similar to the Project.
- (b) The Independent Reviewer acknowledges that each of the other Parties is relying upon and shall continue to rely upon such exercise of skill, care, foresight, prudence and diligence in the performance of the Independent Reviewer Services.
- (c) The Independent Reviewer must keep the other Parties fully and regularly informed as to all matters affecting or relating to the Independent Reviewer Services.

## **4.4 Duty of independent judgment**

- (a) In exercising its functions and performing its duties under this Agreement, the Independent Reviewer undertakes for the benefit of each of the other Parties:
  - (i) to act professionally, independently and in a timely manner;
  - (ii) subject to the terms of the Relevant Documents, to arrive at a reasonable measure or value of work, quantities or time;
  - (iii) to exercise its functions impartially, honestly, reasonably and fairly and in no circumstances place the interests of any one Party above those of any other Party or person;
  - (iv) to exercise the powers, duties, discretions and authorities as an independent reviewer, and not as agent for any of the other Parties; and
  - (v) to take into account any submissions made by the Project Parties in accordance with the Relevant Documents in a manner consistent with its obligations in clause 4.3(a).
- (b) The Independent Reviewer acknowledges and agrees that the other Parties are relying upon and shall continue to rely upon the Independent Reviewer's compliance with the above undertakings in the performance of the Independent Reviewer Services.
- (c) The Project Parties must not improperly interfere with or attempt to improperly influence the Independent Reviewer in the performance of the Independent Reviewer Services.

## **4.5 Conflict of interest**

- (a) The Independent Reviewer warrants for the benefit of each of the other Parties that:

- (i) at the date of execution of this Agreement, no conflict of interest (actual or perceived) exists or is likely to arise in the performance of its obligations under this Agreement;
  - (ii) it will not, during the Term, undertake any activities, work or provide any services that may give rise to a conflict or risk of conflict of interest; and
  - (iii) if, during the Term, without limiting clause 4.5(a)(ii), any conflict or risk of conflict of interest arises, the Independent Reviewer will notify the Project Parties' Representatives immediately of that conflict or risk and take such action to avoid or mitigate the conflict or risk of conflict of interest as the Project Parties' Representatives may require.
- (b) Without the prior consent of the Project Parties' Representatives, the Independent Reviewer will not be appointed or accept any appointment to act for any other person in respect of the Project.

#### **4.6 Communication with Project Parties**

The Independent Reviewer must ensure that a copy of all written communications (relating to the scope and/or performance of the Independent Reviewer Services, requests for Additional Services, Variations and/or questions / responses in respect of any report, opinion or other aspect of the Independent Reviewer Services), reports, opinions and notices provided by or on behalf of a Project Party to the Independent Reviewer, or by or on behalf of the Independent Reviewer to a Project Party, is forwarded or otherwise made available from a secure access website to the other Project Party.

#### **4.7 Authority to act**

The Independent Reviewer:

- (a) is an independent consultant and is not, and must not purport to be, a partner, joint venturer or agent of any other Party;
- (b) other than as expressly set out in a Relevant Document, has no authority to give any directions to any of the other Parties; and
- (c) has no authority to waive or alter any terms of the Project Documents, nor to discharge or release a party from any of its obligations under the Project Documents.

#### **4.8 Knowledge of requirements under the Relevant Documents**

The Independent Reviewer warrants for the benefit of each of the other Parties that:

- (a) it has informed and will be deemed to have informed itself fully of the requirements of the Relevant Documents;
- (b) without limiting clause 4.8(a), it has and will be deemed to have informed itself fully of all time limits and other requirements for any function that the Independent Reviewer has to carry out under this Agreement and the other Relevant Documents;
- (c) it has and will be deemed to have informed itself completely of the nature of the work necessary for the performance of the Independent Reviewer Services and (to the maximum extent possible) the means of access to and facilities within the Department Site including any restrictions on any such access;
- (d) it has satisfied itself as to the correctness and sufficiency of its tender for the Independent Reviewer Services and that the Fee covers the cost of complying with all

of its obligations under this Agreement and of all matters and things necessary for the due and proper performance and completion of the Independent Reviewer Services; and

- (e) it will, in performing the Independent Reviewer Services, comply with the Relevant Documents (insofar as such Relevant Documents are relevant to the scope or provision of the Independent Reviewer Services).

#### **4.9 Coordination by Independent Reviewer**

The Independent Reviewer must, during the period of the Project:

- (a) fully cooperate with the other Parties, including the Project Parties' Representatives;
- (b) carefully coordinate the Independent Reviewer Services with the work and services performed by the other Parties;
- (c) perform the Independent Reviewer Services so as to avoid interfering with, disrupting or delaying, the Works Provisioning and the Operational Services to be performed under the applicable Relevant Documents or Background Documents except to the extent the interference, disruption or delay is as an unavoidable consequence of performing the Independent Reviewer Services in accordance with this Agreement; and
- (d) reasonably co-operate and co-ordinate with the Financier's Certifier.

### **5. Role of Project Parties**

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#### **5.1 Information and Independent Reviewer Services**

- (a) The Project Parties must as soon as practicable make available to the Independent Reviewer all information, documents and particulars relating to the Independent Reviewer Services.
- (b) The Project Parties must ensure that the Independent Reviewer is provided with all information, assistance, documents and particulars:
  - (i) required under the Relevant Documents or, to the extent applicable, the Background Documents to be provided by either of the Project Parties to the Independent Reviewer or as otherwise reasonably required by the Independent Reviewer within the time (if any) required by the Relevant Document or, to the extent applicable, the relevant Background Document, or, where no period is specified, as soon as reasonably practicable; and
  - (ii) as may be reasonably requested by the Independent Reviewer to enable it to perform the Independent Reviewer Services effectively and otherwise in accordance with this Agreement, including any relevant documents prepared by or on behalf of any of the other Parties, including, where requested by the Independent Reviewer, electronic copies in application format of such information, documents or particulars.
- (c) The Independent Reviewer shall:
  - (i) be entitled to rely on the accuracy and completeness of all information provided by the Project Parties (but no other person), except in relation to any information which the Independent Reviewer knows, or ought to know, in



accordance with the standard of care set out in clause 4.3(a) contains any manifest errors, omissions or inconsistencies; and

- (ii) not be required to verify any such information,

unless:

- (iii) inconsistent with the scope of the Base Services; or

- (iv) agreed under clause 8.5 to be undertaken as Additional Services.

- (d) Except to the extent required to be performed as part of the Independent Reviewer Services (or where necessarily incidental to such performance), the Parties acknowledge that the Independent Reviewer's role does not extend to peer review or checking of any Design Documentation or Final Design Documentation or the conduct of construction monitoring or construction supervision.

## **5.2 Access to systems**

Without limiting the obligations under clause 5.1, the Contractor, Builder and Services Provider must, to the extent applicable, each provide the Independent Reviewer with access, as reasonably required, to each of their respective books, records and systems relating to or in connection with the Project, including, where requested by the Independent Reviewer and available, electronic access to such books, records and systems to the extent that such access is required for the performance of the Independent Reviewer Services.

## **5.3 Additional information**

If:

- (a) any information, documents or particulars are reasonably required to enable the Independent Reviewer to perform the Independent Reviewer Services; and
- (b) the information, documents or particulars are not provided by the relevant Party,

then:

- (c) the Independent Reviewer must give notice to the Project Parties' Representatives of the details of that information, documents or particulars and demonstrate the need and the reasons why they are required; and
- (d) if the Department and the Contractor are satisfied that the need and the reasons have been demonstrated to their satisfaction, then at their own cost, the Contractor (if the information, documents or particulars are in its possession or the possession of the Builder or Services Provider) or otherwise the Department (if the information, documents or particulars are in its possession) must ensure that the Independent Reviewer is provided with the required information, documents or particulars.

Subject to clause 11.7, nothing in this clause 5.3 (including any notice from the Independent Reviewer under paragraph (c)) limits or otherwise affects the Independent Reviewer's obligations under this Agreement.

## **5.4 Right to enter, inspect and test**

- (a) The Independent Reviewer must attend (with personnel of appropriate experience and expertise) all of the Works Completion Tests as required under the terms of the Project Agreement.

- (b) The Independent Reviewer (and any person authorised by the Independent Reviewer) may enter the Department Site and any other place where Works Provisioning is being performed or materials are being prepared or stored and inspect and test, or witness any test of, any part of the Works Provisioning undertaken under the Project Agreement at any time, conditional, however, upon the Independent Reviewer:
  - (i) giving reasonable notice to the Contractor and the Builder (except in the case of any emergency, in which case no notice will be required);
  - (ii) observing and complying with (and ensuring that any such authorised person observes and complies with) the Site Access and Interface Protocols and any other reasonable rules or requirements of the Contractor and the Builder (and the rules and requirements of the Builder's and the Contractor's Associates, where applicable) in relation to safety or security on the Department Site and any other place where Works Provisioning is being carried out or materials are being prepared or stored that are applied generally by the Contractor and/or the Builder, as may be notified in writing to the Independent Reviewer from time to time;
  - (iii) not delaying (and ensuring that any authorised person does not delay) the carrying out of the Works, except to the extent that any such delay is the unavoidable consequence of the proper performance of the Independent Reviewer Services; and
  - (iv) not damaging (and ensuring that any authorised person does not damage) the Works, the Department Site and/or any adjoining land in connection with the exercise or purported exercise of rights under this clause 5.4.
- (c) The Contractor and Builder must each give such reasonable assistance as is required by the Independent Reviewer in respect of any inspection or testing under this clause 5.4, including:
  - (i) providing access to such part of the Works and/or the Department Site and all relevant Design Documentation as may be required by the Independent Reviewer;
  - (ii) preparing samples of materials used in connection with the Works Provisioning to the reasonable satisfaction of the Independent Reviewer; and
  - (iii) forwarding the samples prepared under clause 5.4(c)(ii) to the Independent Reviewer or such other place as notified by the Independent Reviewer.

## 5.5 Access to premises of others

The Contractor, Builder and Services Provider must each ensure, to the extent applicable to them, that at all reasonable times:

- (a) provided that it has received reasonable notice from the Independent Reviewer, the Independent Reviewer's Representative, or any person authorised in writing by the Independent Reviewer's Representative, is given access at reasonable times to premises that it occupies to inspect the Works or the performance of the Works Provisioning relating to the Project, subject to all such persons:
  - (i) complying with the Site Access and Interface Protocols and any other reasonable rules of the Builder and/or the Services Provider (as applicable) regarding safety on site as notified, from time to time, in writing to the Independent Reviewer;

- (i) not delaying (and ensuring that any authorised person does not delay) the carrying out of the Works, except to the extent that any such delay is the unavoidable consequence of the proper performance of the Independent Reviewer Services in accordance with this Agreement; and
  - (ii) not damaging (and ensuring that any authorised person does not damage) the Works, the Department Site and/or any adjoining land in connection with the exercise or purported exercise of rights under this clause 5.4; and
- (b) where persons referred to in clause 5.5(a) inspect the Works or the performance of any of the Works Provisioning or any relevant information or material relating thereto, that they are able to do so in the presence of persons authorised by the Contractor, Builder and/or Services Provider (as applicable) and in a manner that:
  - (i) allows for the Corrections Services to be effectively provided by the Services Provider (to the extent applicable) in priority over any such inspection; and
  - (ii) does not interfere with the Operational Services (to the extent applicable) except to the extent that such interference is the unavoidable consequence of the proper performance of the Independent Reviewer Services in accordance with this Agreement.

## 5.6 Coordination with the Independent Reviewer

The Contractor, Builder and Services Provider must each, severally, ensure that, to the extent applicable to it:

- (a) during the carrying out of the Project, it, and any advisor, consultant and sub-contractor engaged by it:
  - (i) fully co-operates with the Independent Reviewer; and
  - (ii) provides the Independent Reviewer with whatever information and support as is reasonably necessary to facilitate the performance of the Independent Reviewer Services in accordance with the Relevant Documents;
- (b) it is aware of the matters referred to in clauses 5.5 and 5.6(a); and
- (c) the respective contracts under which any sub-contractor is engaged contain terms that require those parties to comply with the matters referred to in clauses 5.5 and 5.6(a).

## 5.7 Facilities for Independent Reviewer

- (a) The Contractor shall, until Works Completion, provide the Independent Reviewer with up to three hot desks or workstations (**Workstations**) in the serviced construction or administration office located at the Department Site (where "**serviced**" means the provision of electricity, lighting and internet connections).
- (b) The Workstations will be provided to the Independent Reviewer free of charge. However, the Contractor will not be responsible for supplying any computers or IT equipment at the Workstations.
- (c) The Independent Reviewer shall procure that all of the Independent Reviewer's employees or authorised persons who utilise the Workstations comply with the Site Access and Interface Protocols (and all other obligations set out in clauses 5.4(b) and 5.5) whilst on the Department Site.

- (d) The Independent Reviewer acknowledges and agrees that the Workstations will be located in a multi-purpose office and that the Independent Reviewer's employees or authorised persons who utilise the Workstations may be privy to Confidential Information. Accordingly, the Independent Reviewer shall procure that all such employees and authorised persons comply with clause 18.7 in relation to any such Confidential Information which they become privy to.

## **5.8 Acknowledgement**

Nothing in this clause 5 obliges the Contractor, the Builder or the Services Provider to act, or omit to act, where to do so, or to omit to do so, may delay the execution of, or cause or result in damage to, the Works or the Facility, unless such delay or damage is an unavoidable consequence of facilitating the Independent Reviewer Services.

## **5.9 Effect of Schedule 3**

Each Project Party and the Independent Reviewer acknowledges that Schedule 3:

- (a) is indicative only;
- (b) is not intended to be a complete description of the functions of the Independent Reviewer under the Relevant Documents and this Agreement; and
- (c) does not limit or otherwise affect the Base Services or the performance of the Base Services.

## **6. Representatives**

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### **6.1 Independent Reviewer's Representative**

The Independent Reviewer:

- (a) has nominated the Independent Reviewer's Representative as the person to act as its representative for the Project;
- (b) may, from time to time, in writing nominate another person to act as the Independent Reviewer's Representative, subject to the Project Parties' approval (in their sole and absolute discretion), in which case that person will be the relevant representative in lieu of the person named in the Contract Particulars; and
- (c) confirms that the Independent Reviewer's Representative has the power and authority to bind the Independent Reviewer.

### **6.2 Project Parties' Representatives**

The Department and the Contractor respectively:

- (a) have appointed the Department's Representative and the Contractor's Representative as the persons to act as their respective representatives for the purposes of this Agreement;
- (b) may, from time to time, in accordance with the terms of the Project Agreement, in writing nominate another person to act as the Department's Representative or the Contractor's Representative (as the case may be), in which case that person will be the relevant representative in lieu of the person named in the Contract Particulars; and

- (c) confirm that the Department's Representative and the Contractor's Representative respectively have the power and authority to bind the Department and the Contractor (as the case may be) for all purposes in connection with this Agreement.

### **6.3 Key People**

The Independent Reviewer must:

- (a) ensure that the Key People perform the functions in the Contract Particulars and, unless reasonably directed otherwise by the Project Parties' Representatives, ensure that they are committed to the Project for the percentage of time specified in the Contract Particulars;
- (b) subject to clauses 6.1(b) and 6.3(c), not replace the Key People without the Project Parties' Representatives' approval, which approval will not be unreasonably withheld or delayed;
- (c) without limiting clause 6.3(a), use its best endeavours to ensure that none of the Key People resign or otherwise become unavailable to perform their functions as required by clause 6.3(a); and
- (d) if any of the Key People die, become seriously ill, resign from or are no longer employed by the Independent Reviewer or are on leave of absence, replace them as soon as practicable with persons of at least equivalent experience and expertise approved by the Project Parties' Representatives (acting reasonably).

### **6.4 Restriction on Delegation and Sub-Contracting**

- (a) The Independent Reviewer must not delegate or sub-contract any of its powers, duties, obligations, responsibilities or discretions under this Agreement without prior written consent of the Project Parties, which consent may be given or withheld at those Parties' discretion.
- (b) The Independent Reviewer will remain liable to the other Parties for any acts or omissions of any person to whom it has delegated or sub-contracted any of its powers, duties, obligations, responsibilities or discretions (even if that delegation or sub-contract has been consented to by the Project Parties).
- (c) The Independent Reviewer remains fully responsible for the Independent Reviewer Services notwithstanding that the Independent Reviewer has delegated or sub-contracted the performance of any part of the Independent Reviewer Services.

## **7. Conduct of Independent Reviewer**

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Subject to clause 11.7, no other Party will be liable for any act or omission by the Independent Reviewer whether under or purportedly under a provision of this Agreement or the Relevant Documents, or otherwise.

## **8. Obligations of Independent Reviewer**

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### **8.1 Obligations under Project Agreement**

The Independent Reviewer must perform each obligation and discharge each duty and function of the Independent Reviewer described in the Relevant Documents.

## 8.2 Progress reports

The Independent Reviewer must submit written monthly Progress Reports to each Project Party:

- (a) each month, at least two Business Days before each scheduled meeting of the Relationship Management Group;
- (b) that set out details of the general progress of the Works Provisioning up to the date of the report including:
  - (i) the results of the review of the Works Provisioning Programme or any sub-programme and of the progress of the Works as against the Works Provisioning Programme and any sub-programme, and any matters or departures notified, or directions given under the Project Agreement;
  - (ii) the results of review of any placement, location, relocation or installation of equipment, and any matters or departures notified, under the Project Agreement;
  - (iii) the results of any Works Completion Test, carrying out of sampling, measuring or other testing and any matters or departures notified or additional tests required under the Project Agreement;
  - (iv) any notices or reports given by the Contractor to the Independent Reviewer, any further testing requested by the Independent Reviewer, and any notices or certificates issued, any list, comments or amendments provided or approval given, by the Independent Reviewer under the Project Agreement;
  - (v) the results of the review of the progress of the Works, and any determinations (including in relation to disputes), notices or certifications, by the Independent Reviewer and any notices or submissions by the Project Parties under the Project Agreement;
  - (vi) any claims made by the Contractor to the Independent Reviewer;
  - (vii) any determination made, or extensions of time granted or reduced, under clauses 39 (Extension Events) and 42 (General provisions relating to Events) of the Project Agreement;
  - (viii) any certifications by the Independent Reviewer under the Project Agreement;
  - (ix) whether the Works Provisioning Programme and sub-programmes accurately reflect the progress of the Works; and
  - (x) any other matter or issue that the Independent Reviewer is aware of in relation to the Works Provisioning or the Works Completion Tests; and
- (c) in a form and covering such other matters in respect of the performance of the Independent Reviewer Services and the Project as may be reasonably required by either of the Project Parties and notified to the Independent Reviewer.

The Independent Reviewer must promptly and fully respond to any questions that a Project Party may ask in relation to any such report from time to time.

### 8.3 Form of notices and certificates

Any notice or certificate given by the Independent Reviewer pursuant to the Project Agreement must be in the form (if any) prescribed under the Project Agreement and otherwise in a form acceptable to the Department and the Contractor (each acting reasonably).

### 8.4 Meetings

- (a) The Project Governance Group and the Relationship Management Group will be established under the Project Agreement.
- (b) The Independent Reviewer must:
  - (i) attend each meeting of the Relationship Management Group;
  - (ii) attend each meeting of the Project Governance Group when requested by either the Department or the Contractor;
  - (iii) present and explain each progress report prepared under clause 8.2 at the relevant meetings;
  - (iv) provide such other information as is necessary to ensure that the Relationship Management Group and the Project Governance Group are kept well informed as to the progress of the Independent Reviewer Services and the Project generally; and
  - (v) at such meetings where it requires instructions from the Project Parties, do everything to facilitate the giving of such instructions.
- (c) The Project Parties must attend any further meetings with the Independent Reviewer, as the Independent Reviewer may reasonably request (and must procure the attendance of any other representatives of other persons reasonably requested by the Independent Reviewer):
  - (i) to provide such assistance to the Independent Reviewer in carrying out the Independent Reviewer Services as is reasonably necessary; and
  - (ii) to provide such explanations and additional information relating to any document, notice or information provided to the Independent Reviewer.
- (d) The Independent Reviewer must attend any further meetings with the Project Parties as the Project Parties may request, and if required by the Project Parties must procure the attendance of any sub-contractor, employee or representative of the Independent Reviewer at any meeting between the Independent Reviewer and the Project Parties.

### 8.5 Additional Services requested by one Project Party

- (a) A Project Party may require the Independent Reviewer to prepare an additional report or undertake additional services that are not contemplated by the Base Services (including any report providing information or assistance relating to a Change or proposed Change). Where so requested, the Independent Reviewer must within five Business Days of such request:
  - (i) confirm whether the Independent Reviewer (acting reasonably) is of the opinion that it would be inappropriate, in light of the performance and nature of the Independent Reviewer Services, for the Independent Reviewer to undertake those Additional Services; or

- (ii) provide an estimate (**Estimate**) for the provision of such Additional Services, based on the fees set out in the Schedule of Rates (broken down into the anticipated hours of each of the relevant Key People) if it is reasonably capable of doing so.
- (b) Upon receipt of the Estimate, the Project Party requesting the Additional Services under clause 8.5(a) shall as soon as reasonably practicable confirm whether the Estimate is accepted and thereupon the Independent Reviewer shall commence the work necessary to provide the Additional Services.
- (c) The Project Party requesting the Additional Services under clause 8.5(a) is solely responsible for the payment of the Time Cost Fee in respect of an Additional Service and any reasonable disbursements or expenses of the Independent Reviewer in providing the Additional Services, and such Time Cost Fee (together with the disbursements and expenses) must not exceed the amount of the Estimate unless otherwise agreed between such Project Party and the Independent Reviewer.
- (d) For the avoidance of doubt:
  - (i) the request by one of the Project Parties to the Independent Reviewer to provide Additional Services under clause 8.5(a) is not a Variation to the Independent Reviewer Services under this Agreement.
  - (ii) notwithstanding that one Project Party has paid the Time Cost Fee in respect of the Additional Services in accordance with this clause 8.5, the Independent Reviewer must provide a copy of the report or other material (if any) prepared by the Independent Reviewer to each of the other Parties, and each of the Parties to this Agreement may rely upon the content of any such additional report or other material (if any).

## 8.6 Health and safety

Without limiting clause 5.4(b)(ii), the Independent Reviewer is responsible for health and safety issues relating to the provision of the Independent Reviewer Services. The Independent Reviewer must have in place a health and safety management plan that is appropriate for the Independent Reviewer Services and must comply with any health and safety plan and processes operated by the Contractor, the Builder, the Services Provider or any party in control of the Department Site.

## 8.7 Look forward tests

The Independent Reviewer must, if directed to do so by the Contractor, carry out the look forward tests under clause 26A.3 of the Construction Contract. For the avoidance of doubt, such direction by the Contractor under this clause 8.7 shall not be a request for an Additional Service and the Independent Reviewer acknowledges that the provision of the look forward tests under clause 26A.3 of the Construction Contract forms part of the Base Services for the purposes of this Agreement.

# 9. Quality

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## 9.1 Quality Assurance System

The Independent Reviewer must:

- (a) plan, develop and implement a Quality Assurance System:



- (i) complying with all requirements of the relevant AS/NZS ISO Standards published by Standards New Zealand as and when they are published; and
  - (ii) that is otherwise satisfactory to the Project Parties' Representatives, in respect of the Independent Reviewer Services;
- (b) within 14 days of the date of this Agreement or, where clause 9.1(c)(iii) applies, within 14 days of receiving notice from the Project Parties' Representatives specifying that the Quality Assurance System is not satisfactory (as the case may be), provide the Project Parties' Representatives with details of the Quality Assurance System it proposes (**QAS Details**); and
- (c) if:
- (i) the Project Parties' Representatives issue a Joint Notice to the Independent Reviewer, within 14 days of receiving the QAS Details, that the Quality Assurance System is satisfactory; or
  - (ii) both of the Project Parties' Representatives fail to notify the Independent Reviewer, within 14 days of receiving the QAS Details, as to whether the Quality Assurance System is satisfactory,
- implement the Quality Assurance System; or
- (iii) either or both of the Project Parties' Representatives notify the Independent Reviewer, within 14 days of receiving the QAS Details, that the Quality Assurance System is not satisfactory to that Project Party's Representative (acting reasonably), implement any reasonable changes to the Quality Assurance System requested by that Project Party's Representative, in which case the Independent Reviewer will be required to comply again with clauses 9.1(b) and (c).

## 9.2 **Quality assurance not to relieve Independent Reviewer**

The Independent Reviewer will not be relieved of any responsibilities or obligations in respect of the performance of the Independent Reviewer Services and will remain solely responsible and liable for them notwithstanding:

- (a) the obligation of the Independent Reviewer to plan, develop and implement a Quality Assurance System; or
- (b) any comment or direction upon, review or acceptance of, approval to proceed with or request to vary any part of the Quality Assurance System by a Project Party's Representative.

## 9.3 **Non-compliant Independent Reviewer Services**

The Independent Reviewer must, at its own cost:

- (a) unless directed otherwise in writing by the Project Parties, re-perform all Independent Reviewer Services that have not been performed in accordance with this Agreement; and
- (b) take all such steps as may be reasonably necessary:
  - (i) to mitigate the effect on the Project Parties of the failure to perform the Independent Reviewer Services in accordance with this Agreement; and

- (ii) to put the Project Parties (as closely as possible) in the positions in which they would have been had the Independent Reviewer performed the Independent Reviewer Services in accordance with this Agreement, including all such steps as may be reasonably directed by the Project Parties in writing.

## **10. Time and suspension**

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### **10.1 Timely provision of Independent Reviewer Services**

- (a) The Independent Reviewer must perform the Independent Reviewer Services in a timely manner:
  - (i) in accordance with the times prescribed under the Relevant Documents; or
  - (ii) if no time is prescribed, within a time period that the Independent Reviewer determines is reasonably necessary to enable the Independent Reviewer to properly perform that Independent Reviewer Service in accordance with its obligations under this Agreement and so as not to prejudice the Project Parties' rights and obligations under the Project Agreement.
- (b) During Works Provisioning, the Independent Reviewer must be available to perform the Independent Reviewer Services on Business Days between the hours of 8:00am and 5:00pm so as to ensure that Works Provisioning is not delayed due to the Independent Reviewer's unavailability.

### **10.2 Suspension notice**

The Independent Reviewer Services (or any part of the Independent Reviewer Services) may be suspended at any time by the Project Parties:

- (a) if the Independent Reviewer fails to comply with its obligations under this Agreement, immediately by giving Joint Notice to the Independent Reviewer; or
- (b) by giving five Business Days' Joint Notice to the Independent Reviewer.

### **10.3 Costs of suspension**

The Independent Reviewer will:

- (a) subject to clause 10.3(b), have no right to be paid any costs, expenses or damages (including any amount otherwise payable under clause 12) arising from a suspension under clause 10.2; and
- (b) subject to the Independent Reviewer complying with clause 14, be entitled to recover the costs reasonably incurred by the Independent Reviewer by reason of a suspension directed under clause 10.2(b), valued as a Variation to the Independent Reviewer Services under clause 14.5.

### **10.4 Recommencement**

The Independent Reviewer must immediately recommence the carrying out of the Independent Reviewer Services (or any part) on receipt of a notice from the Project Parties' Representatives requiring it to do so.

## **11. Insurance and liability**

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### **11.1 Professional indemnity insurance**

- (a) The Independent Reviewer must have in place, during the period commencing on the date of this Agreement and ending on the cessation of the performance of the Independent Reviewer Services, professional indemnity insurance in the amount referred to in the Contract Particulars from a Reputable Insurer. Such professional indemnity insurance must cover liability that the Independent Reviewer might incur as a result of a breach by it of its obligations under clause 4.3 or any other breach of a duty (including under statute) owed by the Independent Reviewer in a professional capacity (subject to standard policy terms and conditions).
- (b) Following the cessation of the performance of the Independent Reviewer Services and unless otherwise agreed in writing by the Project Parties, the Independent Reviewer shall renew its professional indemnity insurance annually for the period of 10 years following such cessation on substantially the same terms as required under clause 11.1(a) above, to the extent that such insurance is commercially available in the Australasian insurance market on commercially reasonable terms having regard to the time of each renewal.

### **11.2 Public liability insurance**

The Independent Reviewer must have in place at the date of this Agreement public liability insurance in the amount referred to in Contract Particulars from a Reputable Insurer and on terms satisfactory to the Project Parties.

### **11.3 Insurance policies**

- (a) The Independent Reviewer must not, without obtaining the prior written consent of the Project Parties:
  - (i) materially alter the terms of; or
  - (ii) alter, in breach of clause 11.1, the risks covered by; or
  - (iii) reduce the sum insured below the levels set out in Schedule 1 under,the professional indemnity insurance policy referred to in clause 11.1 or the public liability insurance policy referred to in clause 11.2.
- (b) The Independent Reviewer must provide the Project Parties, upon request from the Project Parties, with:
  - (i) copies of the then current certificate of currency of its insurance policies required under this Agreement to the Project Parties upon request;
  - (i) information on any circumstances that may reasonably be expected to materially affect coverage under and in accordance with any of the policies of insurance required to be effected by the Independent Reviewer in accordance with this Agreement; and
  - (ii) evidence that the premiums payable under each policy of insurance required to be effected by the Independent Reviewer in accordance with this Agreement have been paid and that each policy of insurance required to be effected by the Independent Reviewer in accordance with this Agreement is in full force and effect in accordance with the requirements of this Agreement.

- (c) If, after being notified by the Project Parties to do so, the Independent Reviewer fails to produce the information in paragraph (b) above evidencing compliance with its insurance obligations under this clause 11 to the reasonable satisfaction of the Project Parties within five Business Days of that notice, the Project Parties may effect and maintain the relevant insurance and pay the premiums for that insurance. Any amount paid by the Project Parties will be a debt due from the Independent Reviewer to the Project Parties payable on demand.
- (d) Except to the extent prohibited by Law, the Independent Reviewer must ensure that:
  - (i) whenever the insurer gives to or serves upon the Independent Reviewer, or any of its Associates, a notice of cancellation or other notice concerning the policy, at the same time to give to the Project Parties a copy of the notice that has been given or served upon the Independent Reviewer or its Associates; and
  - (ii) whenever the Independent Reviewer fails to renew the policy or to pay a premium, to give notice of that failure to the Project Parties prior to the insurer giving any notice of cancellation or non-renewal.
- (e) If a claim, or claims, in any one period of professional indemnity insurance exhausts any first aggregate limit under such policy, the Independent Reviewer must immediately give the Project Parties written notice of this.

#### 11.4 Limitation of liability

Notwithstanding any other provision of this Agreement, the Independent Reviewer's total liability to the Department, the Contractor, the Builder and the Services Provider under all Claims that the Department, the Contractor, the Builder or the Services Provider might have (whether jointly or severally) against the Independent Reviewer to the extent:

- (a) under, arising out of, or in connection with this Agreement; or
- (b) arising otherwise at law or in equity including:
  - (i) any statute (insofar as it is possible to exclude such liability); or
  - (ii) in tort for negligence or otherwise,

in respect of any fact, matter or thing under, arising out of or in connection with the Independent Reviewer Services, the Project, any Relevant Document or any Background Document (save in respect of any Wilful Default, abandonment of the Independent Reviewer Services, liability that cannot be excluded by Law and/or any breach of clauses 4.5, 18.7, 18.10 or 18.11), is limited in aggregate to \$20 million (**Liability Cap**) and any amount for which the Independent Reviewer is liable may only be recovered once as between the other Parties to this Agreement.

#### 11.5 Independent Reviewer's indemnity

Subject to clauses 11.4 and 11.6, the Independent Reviewer indemnifies the other Parties against all actions, claims, charges, expenses, liabilities, losses, damages and costs (including legal costs on an indemnity basis and whether incurred by or awarded against the other Parties) that the other Parties may sustain or incur in respect of:

- (a) loss of or damage to any property (including the Works); or
- (b) Claims by any person in respect of personal injury or death,

to the extent arising out of or in connection with the negligent performance of the Independent Reviewer Services, the Independent Reviewer's breach of this Agreement or the Independent Reviewer's Wilful Default; or

- (c) breach by the Independent Reviewer of its obligations under this Agreement.

## **11.6 Consequential and indirect losses**

- (a) Subject to clause 11.6(b), the Independent Reviewer shall not be liable under this Agreement for any indirect or consequential losses falling within the second limb of the principles set out in *Hadley v Baxendale* (1854), or loss of profits, loss of use, loss of revenue, loss of goodwill, loss of business opportunity or loss of production, whether arising in contract, in tort (including negligence), in equity, under any statute, under an indemnity, under any Law or otherwise.
- (b) Clause 11.6(a) shall, to the maximum extent permitted by Law, not apply to:
  - (i) any losses of any Party specified or expressly contemplated (including where calculated on the basis of liquidated damages) in any Relevant Document or Background Document; or
  - (ii) any liquidated damages that arise under the Project Agreement, the Construction Contract or the Services Contract; or
  - (iii) any losses owed to the Department by the Contractor; or
  - (iv) any loss arising from any Wilful Default, criminal acts or fraud on the part of the Independent Reviewer or its Associates; or
  - (v) any loss or liability, to the extent the Parties cannot limit or contract out of such loss or liability.

## **11.7 Contributory actions**

The Independent Reviewer's liability to indemnify a Party, or their respective Associates, shall be reduced proportionally to the extent that an act or omission by that Party (or its Associates) contributed to the loss, damages, death or injury, and to the extent that the relevant Party failed to take reasonable steps to mitigate the loss, damage, death or injury.

## **11.8 No representations**

Without limiting the Independent Reviewer's obligations under this Agreement, the Parties acknowledge and agree that the Independent Reviewer does not give any express or implied representation as to the quality of the Works carried out by the Builder.

## **11.9 Survival**

The Parties acknowledge and agree that the terms of this clause 11 shall survive the expiry and/or termination of this Agreement.

## 12. Payment for Independent Reviewer Services

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### 12.1 Fee

- (a) In consideration of the Independent Reviewer performing the Independent Reviewer Services in accordance with this Agreement, the Independent Reviewer will be paid the Fee (comprising the Base Fee and the Time Cost Fee (if any)).
- (b) The Fee includes all disbursements and expenses (including accommodation, equipment, car hire and travel expenses), overheads and profit required to perform the Independent Reviewer Services.
- (c) The Fee is inclusive of all Tax, charges, imports and fees of any nature, but exclusive of any GST.

### 12.2 Payment claim

The Independent Reviewer must, within five Business Days of the expiry of each Payment Period:

- (a) prepare and submit to the Project Parties' Representatives for approval a payment claim for that Payment Period setting out:
  - (i) a breakdown of the Base Services (in a form and including such information as the Project Parties may require from time to time) actually carried out during that Payment Period;
  - (ii) a breakdown of any Additional Services (in a form and including such information as the Contractor may require from time to time) undertaken in that Payment Period, including the identity of the requesting Project Party for each such Additional Service;
  - (iii) a breakdown of any Variations (in a form and including such information as the Project Parties may require from time to time) undertaken in that Payment Period;
  - (iv) the part of the Base Fee then-payable; and
  - (v) any Time Cost Fee then-payable (in respect of any Additional Services, Variation or any suspension under clause 10.3), and the basis for, and components of, the Time Cost Fee,

(the **Claimed Amount**), and setting out the Independent Reviewer's professional opinion of the Department's Proportion and the Contractor's Proportion of the Claimed Amount;
- (b) provide to the Project Parties' Representatives all supporting documentation that they may reasonably require to substantiate the quantum and extent of the Claimed Amount; and
- (c) allow the Project Parties' Representatives access to all records relating to the Independent Reviewer Services in order to check the accuracy of the Claimed Amount.

### 12.3 **Payment**

Within 30 days of the Project Parties receiving a payment claim, subject to clauses 12.4, 12.6, 12.7 and 12.9:

- (a) the Department will pay the Department's Proportion of the Fee (if any); and
- (b) the Contractor will pay the Contractor's Proportion of the Fee,

to the Independent Reviewer in respect of the Independent Reviewer Services performed by the Independent Reviewer during the relevant Payment Period.

### 12.4 **Base Fee**

- (a) Subject to clause 14, where the Independent Reviewer makes a payment claim in accordance with clause 12.2, the Independent Reviewer will be entitled to payment equal to the relevant Monthly Base Fee.
- (b) The Base Fee payable in any month shall be the relevant Monthly Base Fee.
- (c) The Project Parties acknowledge that the Base Fee has been calculated by reference to the Base Services as at Financial Close and the Project Parties and the Independent Reviewer acknowledge that, to the extent the nature or scope of the Base Services (including the nature or scope of the Works Completion Tests) are materially varied or amended after Financial Close, then such variation of amendment shall be deemed to be a Variation.

### 12.5 **Agreement of amounts payable for Additional Services and Variations**

- (a) Where the Project Parties receive a payment claim from the Independent Reviewer under clause 12.2, the Project Parties' Representatives must, subject to clause 12.5(b), seek to agree the amount payable to the Independent Reviewer in respect of any Variation within 15 days of the Project Parties receiving the payment claim.
- (b) Where the Project Parties' Representatives are unable to agree on the amount payable to the Independent Reviewer in respect of any Variation within the time required under clause 12.5(a):
  - (i) the amount payable to the Independent Reviewer will be determined by the Department in accordance with this Agreement;
  - (ii) the amount payable as determined by the Department under clause 12.5(b)(i) will be paid in full by the Department;
  - (iii) the Contractor will reimburse the Department one half of the amount paid by the Department under clause 12.5(b)(ii), subject to clause 12.7; and
  - (iv) if the Contractor wishes to dispute any amount paid by the Department under clause 12.5(b)(iii), it must:
    - (A) first, reimburse the Department in accordance with clause 12.5(b)(iii); and
    - (B) then refer the dispute for resolution in accordance with the Project Agreement as if it were a dispute arising under the Project Agreement.
- (c) Where either of the Project Parties does not agree with the amount claimed by the Independent Reviewer with respect to any Time Cost Fee for Additional Services

provided by the Independent Reviewer to that Project Party, that Project Party shall pay the undisputed portion to the Independent Reviewer, and clause 12.7 shall apply to the unpaid portion.

## **12.6 Set off**

Notwithstanding any other provision of this Agreement, each of the Project Parties may set off or deduct from any moneys payable by the relevant Project Party to the Independent Reviewer, under this Agreement or otherwise, any amounts:

- (a) for which the Independent Reviewer must reimburse that Project Party; or
- (b) which that Project Party pays on the Independent Reviewer's behalf; or
- (c) that are then due and payable by the Independent Reviewer to that Project Party (whether or not such amounts are expressed to be a debt due from the Independent Reviewer to that Project Party), under or in connection with this Agreement or arising out of or in respect of or in connection with the Independent Reviewer Services; or
- (d) on account of Tax required by Law to be deducted or withheld from payments made by that Project Party to the Independent Reviewer.

## **12.7 Disputed Payments**

- (a) If either of the Project Parties, in good faith, disputes the accuracy of the Claimed Amount (in respect of that Project Party's Proportion), that Project Party shall, within 10 Business Days after receipt of the relevant payment claim under clause 12.2, give notice of that fact to the Independent Reviewer, copied to the other Project Party.
- (b) Any notice under clause 12.7(a) shall state the basis of the dispute and give relevant supporting details.
- (c) The relevant Project Party shall pay the undisputed portion of any Claimed Amount (in respect of that Project Party's Proportion) and may withhold payment of the portion disputed. If the disputed payment is not agreed between that Project Party and the Independent Reviewer within 30 days of the date of the payment claim, the dispute shall be determined in accordance with clause 16.

## **12.8 Payment on account only**

The payment of moneys to the Independent Reviewer by the Project Parties is not evidence of the value of the Independent Reviewer Services provided, an admission of liability or evidence that the Independent Reviewer Services were executed properly but are paid on account only.

## **12.9 Payment of first instalment(s) of the Fee conditional**

- (a) Notwithstanding anything to the contrary in clause 12 or otherwise in this Agreement:
  - (i) the obligations imposed on the Contractor by this clause 12 are conditional upon the Independent Reviewer planning, developing and implementing the Quality Assurance System in accordance with clause 9 of this Agreement; and
  - (ii) the Contractor shall be entitled to withhold payment of 50% of the Fee, in accordance with this clause 12.9, payable in respect of the Independent Reviewer Services performed by the Independent Reviewer in the first month following the commencement of the Term of this Agreement (**Withheld Fee**).



- (b) The Independent Reviewer shall provide the Project Parties with notice immediately after the implementation of the Quality Assurance System has been completed in accordance with clause 9. Such notice shall include a payment claim for any amount of the Fees which have been withheld from payment pursuant to clause 12.9 and within 30 days of the Project Parties receiving that payment claim but subject to clauses 12.4, 12.6 and 12.7 the Contractor will pay the Contractor's Proportion of the Withheld Fees to the Independent Reviewer.

## 13. Goods and Services Tax

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### 13.1 Payment

Subject to clause 13.3, if GST is chargeable on any supply made by one party (the **Supplier**) to another party (the **Recipient**), under or in connection with this Agreement the Recipient of that supply will pay to the person making that supply an amount equal to the GST chargeable on that supply in addition to and at the same time as any other consideration payable to the Supplier for that supply, or if there is no consideration otherwise payable for that supply then, no later than the day before the Supplier is required to account to the Taxation Authority for GST on that supply.

### 13.2 Excess or deficiency

Subject to clause 13.3, if the amount of GST shown in the Tax Invoice issued by the Supplier:

- (a) is more than the GST charged on that taxable supply, then the Supplier shall refund the excess to the Recipient; and
- (b) is less than the GST charged on that taxable supply, then the Recipient shall pay the deficiency to the Supplier.

### 13.3 GST Documentation

The Recipient is not obliged to pay any amount in respect of GST to the Supplier under clause 13.1 unless and until the Supplier issues a Tax Invoice to the Recipient in respect of the taxable supply. No payment is required under clause 13.2 unless and until the Supplier issues a debit note or credit note (as applicable) to the Recipient in respect of the taxable supply.

### 13.4 Revenue net of GST

Any reference in this Agreement to price, value, sales, revenue, profit or a similar amount (**Revenue**), will be a reference to the GST-exclusive component of that Revenue net of GST unless the contrary intention is expressed.

## 14. Notification of claims and Variations

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### 14.1 Variations

- (a) The Project Parties may, by a Joint Notice, give a written direction entitled **Variation Direction** to the Independent Reviewer to carry out a Variation. Subject to clause 14.1(b), the Independent Reviewer must comply with that direction. The Independent Reviewer must not carry out a Variation except as directed by the Project Parties under this clause 14.1(a).

- (b) If the Independent Reviewer believes a direction by one or both of the Project Parties will involve a Variation, notwithstanding that it is not a "Variation Direction", it must notify both of the Project Parties accordingly within two Business Days of receiving the direction and before complying with the direction. The Independent Reviewer's notice must include the information required under clause 14.2(b). The Project Parties may on receipt of the Independent Reviewer's notice confirm or revoke the direction by a Joint Notice.
- (c) Subject to giving a notice in accordance with clause 14.1(b), if applicable, and to any revocation of a direction under and in accordance with clause 14.1(b), the Independent Reviewer must continue to perform the Independent Reviewer Services in accordance with this Agreement and all directions, including any direction in respect of which notice has been given under this clause, notwithstanding that the Independent Reviewer has issued a notice under this clause 14.1.
- (d) For the avoidance of doubt, the Project Parties must give a Variation Direction to the Independent Reviewer (and the Independent Reviewer must, without delay, comply with that Variation Direction), in the event that the Independent Reviewer is required to carry out any verifications of Snagging Defects after Operational Completion.

## 14.2 Prescribed notices

Without limiting clause 14.1, if the Independent Reviewer wishes to make a Claim (other than a claim for payment under clause 12.2 for any part of the Fee previously agreed or determined under this Agreement) against the Project Parties under, arising out of, or in connection with, this Agreement, the Independent Reviewer Services or the Project, it must give the Project Parties:

- (a) within seven days of the first occurrence of the events on which the Claim is based, a notice that it proposes to make the Claim and of the events upon which the Claim will be based; and
- (b) within 21 days of giving the notice under clause 14.2(a), a written claim including:
  - (i) detailed particulars concerning the events on which the Claim is based;
  - (ii) the legal basis for the Claim, whether based on a term of this Agreement or otherwise, and if based on a term of this Agreement, clearly identifying the specific term;
  - (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
  - (iv) details of the amount claimed and how it has been calculated (including all supporting documentation that the Project Parties may reasonably require to substantiate the quantum and extent of the amount claimed).

Nothing in this clause 14.2 shall be construed as preventing the Independent Reviewer from defending or fully exercising any right it would otherwise have had in respect of any claim brought against the Independent Reviewer, including bringing a claim against a Project Party as a party (existing or future) to any such claim.

## 14.3 Continuing events

If the events upon which the Claim under clauses 14.1 or 14.2 is based or the consequences of the events are continuing, the Independent Reviewer must continue to give the information required by clause 14.2(b) every 28 days (or such other time period as the Project Parties may reasonably require by Joint Notice) after the written claim under clauses

14.1 or 14.2(b) (as the case may be) was submitted or given, until after the events or the consequences have ceased.

#### **14.4 No Claim or adjustment**

If the Independent Reviewer fails to comply with clauses 14.1, 14.2 and 14.3 (as the case may be):

- (a) the Fee will not be adjusted as a result of; and
- (b) the Project Parties will not be liable upon any Claim by the Independent Reviewer arising out of or in connection with,

the relevant direction or fact, matter or thing (as the case may be).

#### **14.5 Cost of Variation**

Subject to clause 14.4, the Independent Reviewer will be entitled to be paid the Time Cost Fee in respect of a Variation. The Time Cost Fee will be calculated for all Variations to the Independent Reviewer Services or suspensions under clause 10.3 carried out by the Independent Reviewer by:

- (a) an amount determined by the Project Parties' Representatives, acting reasonably, using any rates or prices that are applicable and appear in the Schedule of Rates; or
- (b) if the rates referred to in clause 14.5(a) are not applicable, a reasonable amount to be agreed between the Independent Reviewer and the Project Parties or, failing agreement, determined by the Project Parties' Representatives on the basis of prevailing market rates at that time.

#### **14.6 Payment under Schedule of Rates**

- (a) The rates and prices in the Schedule of Rates will be deemed to cover all labour, materials, overheads and profit and include, in accordance with clause 12.1(b) this Agreement, all disbursements and expenses (including accommodation, equipment, car hire and travel expenses) which do not exceed, in aggregate for that Variation, \$500, required to perform all of the Independent Reviewer Services and any Variation in the Independent Reviewer Services, valued in accordance with clause 14.5.
- (b) The Independent Reviewer must obtain the approval of the Project Parties' Representatives prior to incurring any disbursements or expenses which, in aggregate for that Variation, exceed \$500 (such approval not to be unreasonably withheld or delayed). If the Project Parties' Representatives approval is not obtained, the Project Parties will not be liable to pay for those disbursements and expenses.

#### **14.7 Assistance for dispute resolution/technical advice**

Subject to receipt of a Variation Direction, without limiting clause 14.1, the Independent Reviewer must, if requested by the Project Parties, provide:

- (a) such independent assistance to the Project Parties as may be required for the purposes of the determination of any dispute or difference under any Relevant Document; and
- (b) such specific technical advice, not otherwise required to be provided under this Agreement, on any matter relating to the Project within the time, in the form and covering such matters as may be required by the Project Parties.

## **15. Termination**

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### **15.1 Breach**

- (a) If the Independent Reviewer commits a breach of this Agreement, the Project Parties may, by Joint Notice, give notice to the Independent Reviewer:
  - (i) specifying the breach; and
  - (ii) directing its rectification within the period specified in the notice.
- (b) If the Independent Reviewer fails to rectify such breach within the period specified in the notice issued under clause 15.1(a), the Project Parties may, without prejudice to any other rights of the Project Parties, immediately terminate this Agreement by Joint Notice.

### **15.2 Termination for Insolvency or Probity Event**

The Project Parties may, without prejudice to any other rights which the Project Parties may have, terminate this Agreement immediately by Joint Notice if an Insolvency Event or Probity Event occurs in relation to the Independent Reviewer, whether or not the Independent Reviewer is then in breach of this Agreement.

### **15.3 Termination for convenience**

Notwithstanding anything to the contrary in this Agreement:

- (a) this Agreement does not terminate automatically upon the termination of the Project Agreement; and
- (b) the Project Parties may, by Joint Notice, at any time for their convenience terminate this Agreement upon 10 Business Days' written notice to the Independent Reviewer and appoint another person to act as the Independent Reviewer.

### **15.4 Independent Reviewer's rights upon termination for convenience**

Upon a termination under clause 15.3, the Independent Reviewer will:

- (a) be entitled to be reimbursed by the Project Parties:
  - (i) any amount already due to it (and not yet paid) under a payment claim submitted under clause 12.2; and
  - (ii) a reasonable amount in respect of any work performed by it that is not covered by any such payment claim; and
- (b) not be entitled to make any other Claim against the Project Parties arising out of or in connection with the termination, this Agreement, the Independent Reviewer Services or the Project.

### **15.5 Procedure upon termination**

Upon termination of this Agreement under clauses 15.1, 15.2 or 15.3 or upon expiry of the Term, the Independent Reviewer must:

- (a) co-operate with the Project Parties;
- (b) hand to the Project Parties' Representatives all Contract Material and all other information concerning the Project held by the Independent Reviewer;
- (c) prepare and submit a written report to the Project Parties if requested by a Project Party covering the matters requested; and
- (d) as and when reasonably required by the Project Parties' Representatives, meet with them and such other persons nominated by them (including any replacement provider of the Independent Reviewer Services) with a view to providing them with sufficient information to enable the Project Parties to execute the Project or the persons nominated by them to provide the Independent Reviewer Services.

## **15.6 No effect**

Subject to clause 15.4, nothing in this clause 15 or that either Project Party does or fails to do pursuant to this clause 15 will prejudice the right of that Project Party to exercise any right or remedy (including terminating this Agreement and/or recovering damages) that it may have where the Independent Reviewer breaches (including repudiates) this Agreement.

## **16. Dispute resolution**

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### **16.1 Notice of dispute**

If any dispute arises between the Parties in respect of any fact, matter or thing arising out of or in connection with the Independent Reviewer Services or this Agreement, a Party may give notice to the other relevant Parties specifying:

- (a) the dispute or difference;
- (b) particulars of the reasons for that dispute or difference; and
- (c) the position that is believed to be correct.

### **16.2 Executive negotiation**

The dispute or difference identified in the notice given under clause 16.1 is to be referred to the relevant persons of the Project Parties involved in the dispute, as described in the Contract Particulars, or, in the case of any dispute involving the Builder and/or the Services Provider, the relevant person notified by those Parties from time to time, who must:

- (a) meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference; and
- (b) if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute or difference.

### **16.3 Mediation**

If the relevant persons described in the Contract Particulars cannot resolve, or agree upon a procedure to resolve, the dispute or difference within 10 Business Days after the date a notice is given under clause 16.1, or within such longer period of time as these persons may agree, the dispute or difference is to be submitted to mediation in accordance with the following clause.

#### 16.4 Mediation Notice

- (a) If the Party that gave the notice under clause 16.1 requires the dispute or difference to be referred to mediation, it must give to the other relevant Parties within five Business Days of the expiration of the period referred to in clause 16.3 a notice in writing (**Mediation Notice**) stating that the dispute will within five Business Days of the date of the Mediation Notice (unless the dispute is meanwhile resolved) be referred for mediation to a person appointed by the President of the New Zealand Law Society (or his delegate).
- (b) The place of mediation will be Auckland. The language will be English.
- (c) Failing any agreement to the contrary between the relevant Parties, the costs of the mediation (including any fees charged by the mediator) will be shared equally between the Parties involved in the dispute.

#### 16.5 Arbitration

- (a) If, after 20 Business Days, or such longer period as the Parties involved in a dispute may agree, from the referral of a dispute to mediation in accordance with clause 16.4, the dispute or difference remains unresolved in any respect, any of such Parties may refer the dispute or difference to arbitration in accordance with this clause 16.5.
- (b) Provided always that the dispute has first been referred to the executives in accordance with clause 16.2 and to mediation in accordance with clause 16.4, then any Party to a dispute may require such dispute to be referred to arbitration in accordance with the Arbitration Act 1996.
- (c) For the purposes of any arbitration conducted pursuant to this clause 16.5:
  - (i) the place of arbitration shall be Auckland and the language will be English;
  - (ii) the provisions of the Second Schedule of the Arbitration Act 1996 shall apply; and
  - (iii) there shall be a single arbitrator appointed by agreement between the Parties, provided that, if the Parties cannot agree on an arbitrator within five Business Days of a Party proposing an arbitrator, any Party may request that an arbitrator is appointed by the President of the New Zealand Law Society (or his nominee) or its successor body.
- (d) Each of the Parties to this Agreement irrevocably consents and agrees to be joined, and for each other Party to be joined, to any arbitration under this Agreement if reasonably required by any other Party on a basis that entitles all Parties to fully participate as a party to such arbitration, provided that no Party shall be required to participate in an arbitration if all relevant Parties and third parties to the matter the subject of the arbitration are unable to be joined as fully participating parties.

#### 16.6 Interlocutory or injunctive relief

This clause does not affect any Party's right to seek urgent interlocutory and/or injunctive relief from any Court of competent jurisdiction.

#### 16.7 Independent Reviewer Services to continue

The Independent Reviewer must continue to perform the Independent Reviewer Services in accordance with this Agreement notwithstanding the existence of a dispute referred to in clause 16.1.

## 17. Notices

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### 17.1 Method of giving notices

A notice, consent, approval or other communication (each a **Notice**) under this Agreement must:

- (a) be in writing addressed to the address of the recipient from time to time designated for the purpose by the addressee to the other Parties. The initial address of each Party is set out under its name on the execution pages of this Agreement; and
- (b) be signed by an authorised representative of the sender.

### 17.2 Notice effective

- (a) No notice or other communication is to be effective until it is received.
- (b) A communication will be deemed to be received:
  - (i) in the case of a letter, on the second Business Day after posting (with all postage paid);
  - (ii) in the case of personal delivery, when delivered; and
  - (iii) in the case of email, when accessible by the recipient during a Business Day between the hours of 8.30am and 5.30pm at the email address designated in the Contract Particulars.

### 17.3 Joint Notices

Any notices given or received, or actions taken, by the Project Parties under clauses 4.2, 10.2, 14.1(a) or (b), 14.3, 15.1, 15.2 or 15.3(b) (or where otherwise expressly required to be effected by Joint Notice) will only be effective if given by a Joint Notice or received jointly by the Project Parties.

## 18. General

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### 18.1 Several liability

- (a) Notwithstanding any other provision of this Agreement, the liability of the Parties under this Agreement shall be several and shall not be joint or joint and several.
- (b) If a provision of this Agreement binds two or more Parties, that provision binds those Parties severally and not jointly or jointly and severally.

### 18.2 Entire Agreement

This Agreement (together with the Relevant Documents and Background Documents) constitutes the entire agreement between the Parties and supersedes and extinguishes all prior agreements and understandings between the Parties about their respective subject matter.

### 18.3 **Waiver**

Any delay, failure or forbearance by a Party to exercise (in whole or in part) any right, power or remedy under, or in connection with, this Agreement shall not operate as a waiver of such right, power or remedy. A waiver of any breach of any provision of this Agreement shall not be effective unless that waiver is in writing and is signed by the Party against whom that waiver is claimed. A waiver of any breach shall not be, or be deemed to be, a waiver of any other or subsequent breach.

### 18.4 **Amendments**

No amendments to this Agreement will be effective unless it is in writing and signed by duly authorised signatories of all the Parties.

### 18.5 **Assignment**

Except as expressly contemplated by this Agreement, the Independent Reviewer may not assign or transfer any of its rights or obligations under this Agreement or any Relevant Document.

### 18.6 **Governing law**

This Agreement is governed, and is to be construed in accordance with, the Laws of New Zealand. Each Party irrevocably submits to the non-exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining all disputes under or in connection with this Agreement.

### 18.7 **Confidentiality**

- (a) The Independent Reviewer must ensure that:
  - (i) neither it nor any of its officers, employees, servants and agents disclose, or otherwise make public, any Contract Material without the prior written approval of the Project Parties and, where the Contract Material or other information or material originated from a Non-Project Party, that Non-Project Party; and
  - (ii) no Contract Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Independent Reviewer Services under this Agreement.
- (b) Subject to clause 18.7(c), the Independent Reviewer shall treat as confidential and not disclose to any third party nor use for its own benefit (other than for the purposes of this Agreement) any Confidential Information of another person.
- (c) Clause 18.7(b) does not preclude the disclosure of Confidential Information:
  - (i) if that information was known, or becomes known, to the public through no act or default of the Independent Reviewer; or
  - (ii) that the Independent Reviewer is required by Law to disclose so long as the Independent Reviewer provides the Project Parties with written notice of the required disclosure promptly upon receipt of notice of the required disclosure (if it is permitted to do so by Law); or
  - (iii) that was lawfully known to the Independent Reviewer prior to the date it was received, provided that the Independent Reviewer has no reason to believe that such disclosure would cause a Party to breach an obligation of confidence; or



- (iv) that becomes available to the Independent Reviewer from a source other than the person that disclosed that information, provided that the Independent Reviewer has no reason to believe, having made due enquiry, that such source is itself bound by an obligation of confidence to the person that disclosed that information or is otherwise prohibited under Law from disclosing such information; or
- (v) that has been or is independently developed by the Independent Reviewer; or
- (vi) as required by the rules of any recognised stock exchange on which the Independent Reviewer's securities are listed; or
- (vii) to the extent that such disclosure is authorised by this Agreement; or
- (viii) if such disclosure is approved for release with the prior written consent of the person from whom the Confidential Information is first received.

## 18.8 Contract Material

- (a) All Contract Material falling within paragraph (a) of the definition of Contract Material remains the property of the Party providing the Contract Material.
- (b) The Independent Reviewer retains any Intellectual Property rights in any original ideas, equipment, processes or systems created outside the terms of this Agreement and used in performing the Independent Reviewer Services. The Independent Reviewer grants a perpetual, irrevocable, royalty-free and non-exclusive licence to each of the other Parties to exercise such Intellectual Property rights for any purpose.
- (c) Subject to clauses 18.8(a) and 18.8(b), all Intellectual Property rights created in respect of any Contract Material under this Agreement vest in the Project Parties upon their creation, with a perpetual, irrevocable, royalty-free and non-exclusive licence automatically granted to each of the Non-Project Parties for the use of such Intellectual Property rights. The Independent Reviewer must do everything necessary to perfect such vesting.
- (d) To the extent any Intellectual Property rights that exist in or relate to the Contract Material are created under this Agreement and are not capable of being vested in the Project Parties because the Independent Reviewer does not have such Intellectual Property rights, the Independent Reviewer must ensure that the Parties are granted a perpetual, irrevocable, royalty-free and non-exclusive licence to exercise such Intellectual Property rights for any purpose connected with the Project.

## 18.9 Moral Rights

The Independent Reviewer must, at its own expense, procure from every person (including its officers, employees, contractors or agents) who is the author of any Contract Material falling within paragraph (b) of the definition of Contract Material in which Intellectual Property subsists under or by virtue of the Copyright Act 1994 (each person being called an **Author**), an unconditional, irrevocable consent to the other Parties, or persons authorised by them, doing, or omitting to do, with respect to any Contract Material falling within paragraph (b) of the definition of Contract Material (or a substantial part or adaptation of them), any act that the other Parties require.

## 18.10 Intellectual Property indemnity

The Independent Reviewer will indemnify and keep indemnified the other Parties, and persons authorised by them (**Indemnified Persons**), against any Claim or Liability, whether direct or indirect, arising out of a Claim by a third party that the use of any Contract Material

falling within paragraph (b) of the definition of Contract Material by the Indemnified Persons, or the use of any Intellectual Property licensed by the Independent Reviewer to the Indemnified Persons in accordance with this Agreement, infringes any Intellectual Property rights or Moral Rights.

#### 18.11 **Publicity**

- (a) The Independent Reviewer must not, and must ensure that each of its Associates do not, make any public announcements or statements in relation to the Project without the prior written consent of the Project Parties to the proposed announcement or statement (including its wording and timing). Each of the Project Parties may withhold its consent in its absolute discretion.
- (b) The Department may at any time disclose Confidential Information and the contents of this Agreement, including:
  - (i) where disclosure is made in the course of the official duties of the Department or the Minister;
  - (ii) to satisfy the requirements of parliamentary accountability;
  - (iii) in annual reports of the Department; and
  - (iv) pursuant to the Official Information Act 1982 (being the Department's **Public Disclosure Obligations**),

and the other Parties will use their respective reasonable endeavours to assist the Department to meet its Public Disclosure Obligations arising in relation to this Agreement.

- (c) The Contractor may, with the prior written consent of the Department (not to be unreasonably withheld or delayed), at any time disclose Confidential Information and the contents of this Agreement, where that disclosure is required or permitted under any Relevant Document, Background Document or the agreement between the shareholders of SecureFuture Wiri Holdings Limited (being the holding company of the Contractor).

#### 18.12 **Further obligations**

The Independent Reviewer must:

- (a) collect, use, disclose, store or otherwise handle Personal Information in a manner as directed by the Project Parties from time to time, provided that the direction does not cause the Independent Reviewer to breach any legislation, principle, industry codes or policies by which the Independent Reviewer is bound; and
- (b) notify the Project Parties' Representatives immediately if it becomes aware that it has or will breach any of the terms of this Agreement.

#### 18.13 **Further assurance**

Each Party must sign, execute, deliver and do all such acts and things as may reasonably be required of it to carry out and give full effect to the terms of this Agreement and the rights and obligations of the parties hereto.

#### **18.14 Counterparts**

This Agreement may be signed in any number of counterparts all of which, when taken together, constitute one and the same instrument. A Party may enter into this Agreement by executing any counterpart.

#### **18.15 Surviving provisions**

- (a) An indemnity given under this Agreement survives the termination of this Agreement.
- (b) The obligations of the Parties under clauses 18.7, 18.8, 18.9 and 18.10, and any obligations which are expressed to survive termination of this Agreement, will survive the termination of this Agreement.
- (c) Any rights or obligations accrued as a result of a breach of this Agreement survive termination of this Agreement.

#### **18.16 Severability of provisions**

If any provision of this Agreement is or becomes unenforceable, illegal or invalid for any reason, the relevant provision shall be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity. If such modification is not possible, then such provision shall be severed from this Agreement without affecting the enforceability, legality or validity of any other provision of this Agreement.

#### **18.17 No merger**

The rights and obligations of the Parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

#### **18.18 Cost of performing obligations**

A Party who has an obligation to do any thing under this Agreement must perform that obligation at its own cost and expense, unless a provision of this Agreement expressly provides otherwise.

#### **18.19 Representations and warranties**

Each Party represents and warrants to each other party that:

- (a) it has the power to execute, deliver and perform its obligations under or as contemplated by this Agreement and all necessary action has been taken to authorise its execution, delivery and performance;
- (b) this Agreement constitutes its valid and binding obligations enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject to the availability of equitable remedies; and
- (c) the execution by it of, the performance by it of its obligations under, and the compliance by it with the provisions of, this Agreement does not and will not contravene any existing Law to which it is subject.

## 18.20 **Contracts (Privity) Act 1982**

The Parties acknowledge and agree that the provisions of the Contracts (Privity) Act 1982 shall not apply to this Agreement.

## **Execution**

**Executed** as an agreement.

*[insert execution blocks]*

## Schedule 1: Contract Particulars

### Part 1. Particulars

Item	Reference	Details
1	Department's Representative (Definitions)	Natasha Possenniskie
2	Independent Reviewer's Representative (Definitions)	Chris Sutherland
3	Contractor's Representative (Definitions)	Colin Shields
4	Monthly Base Fee (Definitions)	As set out in Part 2 of this Schedule 1.
5	Term (Definitions)	From Financial Close until 15 months after Works Completion.
6	Professional Indemnity Insurance (clause 11.1(a))	\$10 million
7	Public liability insurance (clause 11.2)	\$20 million
8	Executive negotiations (clause 16.2)	Department: Natasha Possenniskie  Contractor: Colin Shields  Independent Reviewer: Chris Sutherland

## Part 2. Fee Schedule

Month	Monthly Base Fee	Cumulative monthly amount (excl GST)
September 2012	\$25,000.00	\$25,000.00
October 2012	\$25,000.00	\$50,000.00
November 2012	\$15,100.00	\$65,100.00
December 2012	\$15,100.00	\$80,200.00
January 2013	\$15,700.00	\$95,900.00
February 2013	\$15,700.00	\$111,600.00
March 2013	\$15,700.00	\$127,300.00
April 2013	\$13,900.00	\$141,200.00
May 2013	\$13,900.00	\$155,100.00
June 2013	\$13,900.00	\$169,000.00
July 2013	\$13,900.00	\$182,900.00
August 2013	\$13,900.00	\$196,800.00
September 2013	\$13,900.00	\$210,700.00
October 2013	\$13,900.00	\$224,600.00
November 2013	\$13,900.00	\$238,500.00
December 2013	\$13,900.00	\$252,400.00
January 2014	\$14,600.00	\$267,000.00
February 2014	\$29,500.00	\$296,500.00
March 2014	\$42,300.00	\$338,800.00
April 2014	\$29,500.00	\$368,300.00
May 2014	\$68,500.00	\$436,800.00
June 2014	\$111,200.00	\$548,000.00
July 2014	\$111,200.00	\$659,200.00
August 2014	\$111,200.00	\$770,400.00
September 2014	\$111,200.00	\$881,600.00
October 2014	\$151,600.00	\$1,033,200.00

Month	Monthly Base Fee	Cumulative monthly amount (excl GST)
November 2014	\$151,600.00	\$1,184,800.00
December 2014	\$151,600.00	\$1,336,400.00
January 2015	\$151,600.00	\$1,488,000.00
February 2015	\$153,000.00	\$1,641,000.00
March 2015	\$5,000.00	\$1,646,000.00
April 2015	\$2,000.00	\$1,648,000.00
May 2015	\$2,000.00	\$1,650,000.00

### Part 3. Key people

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Type of Resource	Position	Name
Independent Reviewer's Representative	Technical Director	Chris Sutherland
Independent Reviewer's Delegate	Associate Director	Paul Garlick
Technical Advisory	(Security) Associate Director	Bob Campbell
Technical Advisory	(Fire) Senior Professional	Russell Cooper
Technical Advisory	(Mechanical & Lifts) Principal Professional	Kevin Miller
Technical Advisory	(Hydraulics) Principal Engineer	Jeffrey Potkins
Technical Advisory	(Architecture) Principal Professional	Rob Ansell
Project Advisory Team	Technical Director	Gernot Schubert
Project Advisory Team	Technical Director	Peter Duffy



## Schedule 2: Schedule of Rates

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Team Member	Hourly Rate - Period up to 31.12.2012	Hourly Rate - Period 1.1.2013 to 31.12.2013	Hourly Rate - Period 1.1.2014 to 31.12.2014	Hourly Rate - Period 1.1.2015 to 31.12.2015	Hourly Rate - Period 1.1.2016 to 31.12.2016
Technical Director	\$280.00	\$288.40	\$299.94	\$308.93	\$318.20
Associate Director	\$225.00	\$231.75	\$241.02	\$248.25	\$255.70
Associate	\$200.00	\$206.00	\$214.24	\$220.67	\$227.29
Principal Professional	\$200.00	\$206.00	\$214.24	\$220.67	\$227.29
Senior Professional	\$175.00	\$180.25	\$187.46	\$193.08	\$198.88
Professional	\$150.00	\$154.50	\$160.68	\$165.50	\$170.47
Graduate	\$110.00	\$113.30	\$117.83	\$121.37	\$125.01
Technical Officer	\$105.00	\$108.15	\$112.48	\$115.85	\$119.33
Administration	\$95.00	\$97.85	\$101.76	\$104.82	\$107.96
Communications Fee	5%	5%	5%	5%	5%

## Schedule 3: Indicative Independent Reviewer Services Specification

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### Base Services

#### Part 1. General Duties in relation to the Project Agreement and this Agreement

The Independent Reviewer must:

- (a) become familiar with the role (express or implied) under the Project Agreement of the "Independent Reviewer" within the context of the other Relevant Documents and review information made available to the Independent Reviewer by the Project Parties in order to become fully acquainted with the Project;
- (b) attend meetings as required by the Project Parties (or as the Independent Reviewer considers necessary) to become fully acquainted with the Department Site in sufficient detail to perform the Independent Reviewer Services;
- (c) attend meetings and report as required at such meetings from time to time by the Project Parties;
- (d) discharge the functions that the Project Agreement contemplates will be discharged by the Independent Reviewer;
- (e) undertake such inspections, tests and assessments as the Independent Reviewer deems necessary during Works Provisioning to ensure that the Acceptance Criteria are met in relation to such parts of the Works as may be covered up at Works Completion;
- (f) review the Works Provisioning Programme and any updates monthly and provide a statement addressed to the Project Parties and to the Agent (copied to the Financier's Certifier) where Service Commencement will commence on or before the respective Planned Service Commencement Date or, if this is not the case, an estimate of the Service Commencement Date;
- (g) liaise with the Project Parties as required for the performance of the Independent Reviewer Services, including inviting and have due regard to any representations received from the Parties in respect of the Works Provisioning and/or Completion;
- (h) engage the staff listed in Part 3 (Key People) of Schedule 1 (Contract Particulars) to the positions listed in that clause, or engage other persons to each position having at least equivalent qualifications and experience as the persons listed therein;
- (i) ensure Peter Duffy is available for the Milestone test that relates to the first Residence Completion;
- (j) visually inspect the Works, (and any material components located offsite, but within the greater Auckland area), and confirm that the Works are complete to the extent claimed and appear to be in accordance with the design;
- (k) undertake sample testing to verify that any Snagging Defects have been rectified to the satisfaction of the Independent Reviewer;
- (l) satisfy itself that the Delivery Proposals and Works Completion Tests have been met;

- (m) maintain records and compile reports on the progress and quality of the Works Provisioning as and when required by the Project Parties; and
- (n) provide all professional technical and administrative support and resources necessary for the provision of the Independent Reviewer Services.

## **Part 2. General Duties in relation to the Relevant Documents**

The Independent Reviewer must:

- (a) become familiar with the role (express or implied) under the Relevant Documents (excluding the Project Agreement) of the "Independent Reviewer" and review information made available to the Independent Reviewer by the Project Parties in order to become fully acquainted with the Project;
- (b) attend meetings and report as required at such meetings from time to time by the Contractor and any Non-Project Party;
- (c) discharge the functions which the Relevant Documents (excluding the Project Agreement) contemplate will be discharged by the Independent Reviewer;
- (d) review the Works Provisioning Programme and any updates from time to time and provide:
  - (i) advice as required on the programme to the Contractor; and
  - (ii) sufficient information on progress to the Financier's Certifier for the Financier's Certifier to be able to calculate the results of the cost to complete tests (as required under the Credit Agreement and Construction Contract);
- (e) liaise with the Project Parties and Non-Project Parties as required for the performance of the Independent Reviewer Services, including inviting and have due regard to any representations received from the Parties in respect of the Works Provisioning and/or Completion;
- (f) liaise with the other technical advisers appointed by the Contractor and/or the Agent in respect of the Project;
- (g) maintain records and compile reports on the progress and quality of the Works Provisioning as and when required by the Contractor and/or the Agent; and
- (h) provide all professional technical and administrative support and resources necessary for the provision of the Independent Reviewer Services.

### Part 3. Specific Duties in relation to the Project Agreement and Relevant Documents

The Independent Reviewer's functions and obligations under the Project Agreement and Relevant Documents include the following (and all services ancillary or related thereto):

Project Agreement Reference	Function	Key Tasks Within Scope	Tasks NOT within Scope	IR Role under the Project Agreement	IR Role under the Sub-contracts	Base Fee Work	Time Cost Fee Work
15.1	Attendance at Project Governance Group meetings (if required) and attendance at the Relationship Management Group	<ul style="list-style-type: none"> <li>The Project Agreement currently specifies the PGG is to meet quarterly and the RMG is to meet monthly (Schedule 7)</li> <li>Meetings with the Contractor representatives, Sub-contractors and the Department as required should be included as per the normal undertakings of the Independent Reviewer and captured as tasks ancillary to and necessarily required to discharge the duties of the Independent Reviewer</li> </ul>	<ul style="list-style-type: none"> <li>N/a</li> </ul>	✓	✓	✓	
25.6	Take receipt of, review and assess written reports from the Contractor / Builder where Works cease or where a Milestone will not be achieved	<ul style="list-style-type: none"> <li>As described</li> </ul>	<ul style="list-style-type: none"> <li>N/a</li> </ul>	✓	✓		✓ (to account of Project Parties as agreed through dispute process)

Project Agreement Reference	Function	Key Tasks Within Scope	Tasks NOT within Scope	IR Role under the Project Agreement	IR Role under the Sub-contracts	Base Fee Work	Time Cost Fee Work
25.7 (a)(b)(c)	Monitor actual progress of Works Provisioning against the Works Provisioning Programme and certify as to the achievement of Milestones or give Notice where a Milestone has not been achieved  (Please note that outside of formal Milestones, the Independent Reviewer would also be expected to attend and observe events at various key points in the Works Provisioning Programme)	<ul style="list-style-type: none"> <li>Review of the Works Provisioning Programme and monitor progress of the Works against the programme</li> <li>Formal Milestones are anticipated to mainly be around the completion of key buildings (including secure perimeter and other important structures)</li> <li>The Independent Reviewer is expected to understand the critical path of the Works Provisioning Programme and undertake inspections or attend key events as necessary</li> </ul>	<ul style="list-style-type: none"> <li>The Independent Reviewer is not expected to be onsite every day during Works Provisioning – the frequency and timing of the Independent Reviewer's visits to the site are dependent on the progress of construction on site and key activities being undertaken on site</li> </ul>	✓	✓	✓	
25.7 (d)(e)	When required, review progress of the Works Provisioning to determine whether the Planned Service Commencement Date or the Last Date for Service Commencement will be achieved and to issue the required notices	<ul style="list-style-type: none"> <li>Monitor the activities to determine progress and report on any work that is not complete or is non-compliant and identify risks to the programme which may compromise the PSCD or LDSC</li> </ul>	<ul style="list-style-type: none"> <li>The Independent Reviewer is not expected to be onsite every day during Works Provisioning – the frequency and timing of the Independent Reviewer's monitoring will be as for 25.7 (a)(b)(c)</li> </ul>	✓	✓	✓	

Project Agreement Reference	Function	Key Tasks Within Scope	Tasks NOT within Scope	IR Role under the Project Agreement	IR Role under the Sub-contracts	Base Fee Work	Time Cost Fee Work
25.7(f)	Participation in Accelerated Dispute Resolution Procedures as required	<ul style="list-style-type: none"> <li>As described</li> </ul>	<ul style="list-style-type: none"> <li>N/a</li> </ul>	✓	✓		✓
29.1(c), 29.3(i)	Issue the Works Completion Certificate upon the Contractor achieving Works Completion and the Independent Reviewer determining that Works Completion Tests have been satisfied such that the Works are Fit for the Intended Purpose	<ul style="list-style-type: none"> <li>As described</li> </ul>	<ul style="list-style-type: none"> <li>N/a</li> </ul>	✓	✓	✓	
29.1(d)	Certify that all Defects the subject of the Works Completion Certificate have been rectified to its reasonable satisfaction	<ul style="list-style-type: none"> <li>It is not anticipated that there would be any Defects other than Snagging Defects at Works Completion</li> <li>However, if there were Defects and it is agreed that Works Completion can be achieved with a Defects list then the Independent Reviewer would be required to monitor and review rectification of such Defects</li> </ul>	<ul style="list-style-type: none"> <li>N/a</li> </ul>	✓	✓		✓ (post Service Commencement, if any - to account of the Contractor)

Project Agreement Reference	Function	Key Tasks Within Scope	Tasks NOT within Scope	IR Role under the Project Agreement	IR Role under the Sub-contracts	Base Fee Work	Time Cost Fee Work
29.3(c)	Attend and observe all Works Completion Tests and take samples, make measurements and otherwise carry out whatever tests or checks the Independent Reviewer may reasonably require in order to ensure that any Completion Test has been properly carried out and satisfied	<ul style="list-style-type: none"> <li>As described and further detailed in the Works Completion Tests</li> <li>Where relevant it would be appropriate for the Independent Reviewer to rely on evidence of results of factory tests, installer certification, warranties or other relevant work already undertaken</li> </ul>	<ul style="list-style-type: none"> <li>Completion Tests will be finalised prior to Financial Close and are not anticipated to be re-opened post Financial Close</li> </ul>	✓	✓	✓	
29.3(g)	Receive and verify the completion report	<ul style="list-style-type: none"> <li>As described</li> </ul>	<ul style="list-style-type: none"> <li>N/a</li> </ul>	✓	✓	✓	
29.3(h)(i)	Advise and attend additional Works Completion tests if required and satisfy itself as to completion of any additional Works Completion Tests	<ul style="list-style-type: none"> <li>Where Works Completion Tests are not satisfied, the Independent Reviewer is required to consult with the Contractor and the Department. The Independent Reviewer is also entitled to request additional tests to resolve outstanding issues</li> </ul>	<ul style="list-style-type: none"> <li>N/a</li> </ul>	✓	✓	✓	
29.3(k)	Determine the list of Defects (if any) for inclusion in the Works Completion Certificate	<ul style="list-style-type: none"> <li>Agree a list of Snagging Defects (or Defects if any) with the Builder together with its programme for completion</li> </ul>	<ul style="list-style-type: none"> <li>N/a</li> </ul>	✓	✓	✓	

Project Agreement Reference	Function	Key Tasks Within Scope	Tasks NOT within Scope	IR Role under the Project Agreement	IR Role under the Sub-contracts	Base Fee Work	Time Cost Fee Work
29.3(l) and 29.4(g)(iii)	Take delivery of and approve the proposed programme for the rectification of Snagging Defects and any subsequent changes to that programme as well as to assess and certify whether Snagging Defects have been rectified in accordance with the programme to the Independent Reviewer's reasonable satisfaction	<ul style="list-style-type: none"> <li>Monitor and review rectification of Snagging Defects (or Defects if any)</li> </ul>	<ul style="list-style-type: none"> <li>N/a</li> </ul>	✓	✓	✓ (Snags rectification pre Service Commencement)	✓ (Snags rectification post Service Commencement, if any - to account of the Contractor)
39.2	Take delivery of and assess notices by the Contractor following the occurrence of an Event	<ul style="list-style-type: none"> <li>As described</li> </ul>	<ul style="list-style-type: none"> <li>N/a</li> </ul>	✓	✓		✓
39.3	Determine in conjunction with the Department whether an Extension Event entitles the Contractor to an extension to the Planned Service Commencement Date and the Last Date for Service Commencement	<ul style="list-style-type: none"> <li>As described</li> </ul>	<ul style="list-style-type: none"> <li>N/a</li> </ul>	✓	✓		✓
42.6	Apportion delays and/or Change in Costs in relation to an Extension Event where the Extension Event is not the only cause of the delay	<ul style="list-style-type: none"> <li>As described</li> </ul>	<ul style="list-style-type: none"> <li>N/a</li> </ul>	✓	✓		✓
Schedule 5	Operative Documents	<ul style="list-style-type: none"> <li>The Independent Reviewer will need to be familiar with the key Operative</li> </ul>	<ul style="list-style-type: none"> <li>The Independent Reviewer will not be required to opine on the</li> </ul>	✓	✓	✓ (Familiarisation and verification)	



Project Agreement Reference	Function	Key Tasks Within Scope	Tasks NOT within Scope	IR Role under the Project Agreement	IR Role under the Sub-contracts	Base Fee Work	Time Cost Fee Work
		Documents as well as other documentation (e.g. Project Agreement, Subcontracts etc) to the extent necessary to be in a position to carry out the Independent Reviewer Services	Operative Documents prior to their finalisation. The Independent Reviewer should expect that it will be informed of any changes to the Operative Documents if changes are agreed between the Contractor and the Department			only)	
Schedule 6	Review Procedures	<ul style="list-style-type: none"> <li>As part of its monitoring role, the Independent Reviewer should keep abreast of changes to the documentation or Works including the procedures for such changes so as to be able to identify risks to programme</li> <li>Monitor the procedures for the identification, approval and recording of agreed Changes to the Works in accordance with the Project documents</li> <li>Design review is anticipated to be</li> </ul>	<ul style="list-style-type: none"> <li>The Independent Reviewer is not expected to actively participate in any review procedures between the Contractor and the Department</li> </ul>	✓	✓	✓ (Monitoring role only)	

Project Agreement Reference	Function	Key Tasks Within Scope	Tasks NOT within Scope	IR Role under the Project Agreement	IR Role under the Sub-contracts	Base Fee Work	Time Cost Fee Work
		ongoing for only some months post Financial Close					
Schedule 20	Change Notice	<ul style="list-style-type: none"> <li>The Independent Reviewer will need to understand any Changes that are agreed to the documentation, Works Requirements or Services Requirements to the extent necessary to discharge its duties</li> <li>While Changes cannot be anticipated, being familiar with any Changes would be a core undertaking by the Independent Reviewer</li> </ul>	<ul style="list-style-type: none"> <li>The Independent Reviewer is not expected to participate directly in the Change review process between the Contractor and the Department</li> </ul>	✓	✓	✓ (Familiarisation only)	
Construction Contract: clause 26A.3	Look forward tests under the Construction Contract (ascertain at certain points in time whether the Independent Reviewer reasonably believes the Builder will not achieve the Planned Works Completion Date or the Last Date for Works Completion)	<ul style="list-style-type: none"> <li>As described</li> <li>Determine status and progress of Works and certify whether Milestones and Works Completion will be achieved</li> </ul>	<ul style="list-style-type: none"> <li>N/a</li> </ul>		✓	✓	
Other	Monitors/spot checks the Builder's Quality Assurance systems	<ul style="list-style-type: none"> <li>Monitor the operation of the Quality Assurance procedures at regular</li> </ul>	<ul style="list-style-type: none"> <li>N/a</li> </ul>	✓	✓	✓	

Project Agreement Reference	Function	Key Tasks Within Scope	Tasks NOT within Scope	IR Role under the Project Agreement	IR Role under the Sub-contracts	Base Fee Work	Time Cost Fee Work
		(every 2-3 months) intervals during Works Provisioning					
n/a	Independent Reviewer management	<ul style="list-style-type: none"> <li>General requirement for the Independent Reviewer to manage relevant subject matter experts, documentation review and production, and probity and quality assurance</li> </ul>	<ul style="list-style-type: none"> <li>N/a</li> </ul>	✓	✓	✓	
Ancillary Tasks	The Independent Reviewer must be able to perform the tasks identified above	<ul style="list-style-type: none"> <li>The Independent Reviewer is to undertake all other tasks ancillary to and necessarily required to perform the tasks identified above</li> </ul>	<ul style="list-style-type: none"> <li>N/a</li> </ul>	✓	✓	✓	

## Schedule 4: Form of Third Party Reliance Deed

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### PPP at Wiri Men's Prison– Independent Reviewer Services - Third Party Reliance Deed

Pursuant to the Independent Reviewer Agreement (the **Agreement**) between [insert] (**DL**), Her Majesty the Queen in right of New Zealand acting by and through the Chief Executive of the Department of Corrections, SecureFuture Wiri Limited (the **Contractor**), [insert] and [insert], DL has acted as the Independent Reviewer in connection with the purpose described in Section 2 below and has performed the Independent Reviewer Services as detailed in Schedule 3 of the Agreement (the **Independent Reviewer Services**).

#### 1. Reliance

DL has undertaken the Independent Reviewer Services for the Department and the Contractor (together the **Client**). The Client has requested, and pursuant to the terms and conditions contained in this reliance deed (**Reliance Deed**) DL agrees, to make the Independent Reviewer Services available to you as if you were an addressee thereof (the **Recipient**), and you agree to accept the Independent Reviewer Services, subject to the terms and conditions set forth herein, including, but not limited to, the terms and conditions set forth in the section entitled "Acceptance and Acknowledgement". The receipt of an executed acceptance of this Reliance Deed in the manner set forth below from you shall be the material consideration for DL's agreement to make the Independent Reviewer Services available to you. The parties hereby mutually acknowledge the adequacy of such consideration, and you agree that your review and reliance upon the Independent Reviewer Services shall be expressly subject to the terms and conditions set forth herein.

#### 2. Purpose

Without limiting the Recipient's rights under this Reliance Deed, the purpose of the Independent Reviewer Services is to independently verify by witnessing or by testing, certain prescribed building works or operational plans, to certify Works Completion and to undertake the look forward tests under clause 26A.3 of the Construction Contract (as that term is defined in the Agreement) for the Wiri Prison PPP Project.

#### 3. Confirmation

Subject to the caveats and disclaimers contained in the Agreement, we confirm that you may rely upon the Independent Reviewer Services and our compliance with the Agreement and anything produced or prepared in carrying out the Independent Reviewer Services, as if the Independent Reviewer Services were expressly provided to you and you were a party to the Agreement. We give the same promises, warranties, indemnities and acknowledgements to you as if you were a party to the Agreement. We also confirm that we are prepared to answer reasonable queries you may have with respect to the Independent Reviewer Services. The fees and expenses relating to the foregoing will be borne by the Client in accordance with the terms of the Agreement which, for the avoidance of doubt, are included in the Base Fee (as that term is defined in the Agreement).

#### 4. No Third Party Beneficiary

- A. Notwithstanding anything to the contrary contained herein, DL is providing this Reliance Deed solely for the benefit of the Recipient, provided that the Recipient executes and delivers this Reliance Deed to DL. DL does not grant, transfer or convey any rights to any third party to rely upon the Independent Reviewer Services, except to the Recipient who may rely on the Independent Reviewer Services in accordance with this Reliance Deed. Except as provided herein, there are no beneficiaries to the agreement set forth herein, and DL does not grant any authority to the Client or to any Recipient to provide a copy of any report on the Independent Reviewer Services to any third party, except as specifically provided herein (or as provided for in the Agreement). The Recipient may not

assign, convey or otherwise transfer the rights hereunder to any third party without the express written consent of DL.

- B.** The Recipient may disclose materials, information, data, advice and written answers received from DL in connection with the provision of the Independent Reviewer Services **(Materials)**:
- I.** to its officers, directors, employees, any Related Company (as that term is defined in the Companies Act 1993, read as if the expression 'company' in that subsection included any body corporate of any jurisdiction), auditors and professional advisers or the officers, directors and employees of its Affiliates (as that term is defined in the Project Agreement (which in turn is defined in the Agreement)); or
  - II.** to any other person to (or through) whom the Recipient assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations in relation to the PPP at Wiri Prison Project,

(each a **Third Party Recipient**), provided that each such Third Party Recipient agrees to keep such Material confidential and may not, in any way, rely upon the Materials.

## **5. Acceptance and Acknowledgement**

The parties agree that the Recipient's ability to rely upon the Independent Reviewer Services is subject to the following:

- A.** The Recipient has been provided with a copy of the Agreement, a copy of which is attached to this Reliance Deed and is made a part hereof. The Recipient understands, acknowledges and accepts, the terms, conditions and limitations contained therein, including, but not limited to, the provisions expressly limiting DL's aggregate liability for any claims, damages, causes of action, costs or expenses (including legal fees) from the Client and all Recipients. The Recipient acknowledges and agrees that the terms, conditions, and limitations of the Agreement are expressly incorporated into this Reliance Deed, as though fully stated herein.
- B.** The Recipient agrees that any claims, damages, causes of action, costs or expenses to which it may be entitled to pursuant to its reliance hereunder shall be limited to the provisions expressly limiting DL's aggregate liability under the Agreement (without giving effect to any indemnity payment or right of reimbursement) and it shall not claim any amount in excess thereof.
- C.** The Recipient is a sophisticated entity and acknowledges that it has had an opportunity to review the terms of this Reliance Deed, as well as the terms, conditions and limitations of the Agreement, with its financial representatives and legal counsel.
- D.** The Recipient's acceptance of the terms, conditions and limitations set forth herein is a material inducement for DL to agree to allow the Client to make the Independent Reviewer Services available to the Recipient as an addressee thereof, and any reliance upon the Independent Reviewer Services by the Recipient is expressly subject to the terms and conditions set forth herein and in the Agreement.
- E.** This Reliance Deed shall be governed in accordance with the laws of New Zealand.

**Deed**

Executed as a deed by  
**[insert]** by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director

Executed as a deed by  
**[insert Recipient name]** by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director

## Schedule 4: Funding Requirements and Financing Agreements

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### Part 1 – Financial Close Adjustment Protocol

#### 1. Financial Close Adjustment Protocol

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The parties must comply with the terms of the Financial Close Adjustment Protocol to determine specific changes to be made to the Base Case to address any changes in the Relevant Rates (as defined in the Financial Close Adjustment Protocol) from those included in the RFP submission on 1 August 2011, in addition to updating the Financial Model (as defined in the Financial Close Adjustment Protocol) to meet the Financial Close requirement as outlined in clause 5 (Financial Close Requirement) of the Financial Close Adjustment Protocol.

### Part 2 – Swap Pricing Protocol

#### 2. Swap Pricing Protocol

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The parties must comply with the terms of the Swap Pricing Protocol as appended to Schedule 26 (Related Documents) for the setting of any swaps after Financial Close.

### Part 3 – Financing Agreements

#### 3. Senior Financing Agreements

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The Senior Financing Agreements are:

- (a) Senior Bank Debt Syndicated Facilities Agreement between the Contractor, HoldCo, the Security Trustee, ANZ National Bank Limited (as senior agent, mandated lead arranger and initial senior bank debt lender), Bank of New Zealand (as mandated lead arranger and initial senior bank debt lender) and BOS International (Australia) Limited (as mandated lead arranger and initial senior bank debt lender);
- (b) Financier Direct Deed between the Department, the Contractor and the Security Trustee;
- (c) Security Trust and Intercreditor Deed between the Contractor, HoldCo, the Security Trustee, ANZ National Bank Limited (as senior agent, initial senior bank debt lender and initial hedge counterparty), Bank of New Zealand (as initial senior bank debt lender and initial hedge counterparty), BOS International (Australia) Limited (as initial senior bank debt lender) and Lloyds TSB Bank plc, Sydney Branch (as initial hedge counterparty);
- (d) General Security Deed between the Security Trustee, the Contractor and HoldCo;
- (e) Featherweight Specific Security Deed between the Security Trustee and the Contractor;
- (f) Featherweight Specific Security Deed between the Security Trustee and HoldCo;
- (g) ISDA Master Agreement and Schedule between the Contractor and ANZ National Bank Limited;

- (h) ISDA Master Agreement and Schedule between the Contractor and Bank of New Zealand;
- (i) ISDA Master Agreement and Schedule between the Contractor, BOS International (Australia) Limited and Lloyds TSB Bank plc, Sydney Branch;
- (j) Financier Builder Direct Deed between, inter alia, the Security Trustee and The Fletcher Construction Company Limited;
- (k) Financier O&M Contractor Direct Deed between, inter alia, the Security Trustee and Serco New Zealand Limited;
- (l) Financier FM Contractor Direct Deed between the Contractor, the Security Trustee, Serco New Zealand Limited and Spotless Facility Services (NZ) Limited;
- (m) Financier Security Systems Provider Direct Deed between the Contractor, the Security Trustee, The Fletcher Construction Company Limited and Saab SDS New Zealand Limited;
- (n) Financier Security Systems Provider Direct Deed between the Contractor, the Security Trustee, Spotless Facility Services (NZ) Limited and Saab SDS New Zealand Limited;
- (o) Subordination Deed between HoldCo, the Security Trustee, Accident Compensation Corporation, InfraRed Infrastructure (NZ) B.V., John Laing Investments NZ Holdings Limited and Serco Group Pty Limited;
- (p) Fee Letter between the Contractor and ANZ National Bank Limited, Bank of New Zealand and BOS International (Australia) Limited (as mandated lead arrangers);
- (q) Fee Letter between the Contractor and ANZ National Bank Limited (as security trustee and senior agent); and
- (r) Financiers' Certifier Deed of Appointment between the Contractor, the Security Trustee and Rider Levett Bucknall Auckland Limited.

#### **4. Subordinated Financing Agreement**

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The Subordinated Financing Agreement is the Investment Commitment Deed between the Contractor, HoldCo, Accident Compensation Corporation, InfraRed Infrastructure (NZ) B.V., John Laing Investments NZ Holdings Limited and Serco Group Pty Limited.



**Annexure A: Form of Financier Direct Deed**

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## Annexure A: Form of Financier Direct Deed

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This **Financier Direct Deed** is made on

2012

between           (1)   **Her Majesty The Queen in Right of New Zealand acting by and through the Chief Executive of the Department of Corrections (Department)**

and                (2)   **[insert] (Security Trustee)**

and                (3)   **SecureFuture Wiri Limited (Contractor)**

### Introduction

- A.       The background to the Project is set out in the Project Agreement.
- B.       The Contractor has granted Security Interests to the Security Trustee in relation to the Project.
- C.       The parties agree that the Security Trustee will have the option of exercising certain rights in relation to the Contractor, on the terms set out in this Deed.

### It is agreed

#### 1. Interpretation

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##### 1.1 Project Agreement

Definitions in the Project Agreement apply in this Deed unless the relevant term is defined in this Deed.

##### 1.2 Definitions

In this Deed, unless the context otherwise requires, the following terms have the following meanings:

**Affiliate** means any person that is a “related company” of the Security Trustee or any Senior Lender (as the case may be), as that term is defined in section 2(3) of the Companies Act 1993;

**Appointed Representative** means a Representative that has been notified to the Department pursuant to a Step-in Notice;

**D&C Direct Deed** means the Major Sub-contractor’s Direct Deed relating to the Project entered into between the Contractor, [insert] and the Department and dated on or about the date of this Deed;

**Deed** means this financier direct deed;

**Event of Default** has the meaning given to that term in the Senior Financing Agreements;

**FM Direct Deed** means the FM Sub-contractor's Direct Deed relating to the Project entered into between [insert], [insert] and the Department and dated on or about the date of this Deed;

**LDSC Cure Period** means the period ending on the earlier of:

- (a) the date 10 months after the Last Date for Service Commencement, as extended from time to time pursuant to clause 5.3; and
- (b) the date on which the Department terminates this Deed under clause 5.2;

**O&M Direct Deed** means the Major Sub-contractor's Direct Deed relating to the Project entered into between the Contractor, [insert] and the Department and dated on or about the date of this Deed;

**O&M Sub-contractor** means the Major Sub-contractor responsible for all or any part of the Operational Services at any time;

**Project Agreement** means the agreement relating to the Project dated [insert] 2012 between the Department and the Contractor;

**Representative** means:

- (a) the Security Trustee, any Senior Lender and/or any of their Affiliates; or
- (b) a receiver, a receiver and manager or an administrator of the Contractor appointed under the Security Documents, being:
  - (i) partners, directors or the equivalent of PwC, KPMG, Deloitte, Ernst & Young, Grant Thornton, KordaMentha, McGrathNicol, BDO or any of their respective successor firms; and/or
  - (ii) any other insolvency practitioners agreed by the Department and the Security Trustee (acting reasonably) in writing to be pre-approved for the purposes of clause 4.3 of this Deed, provided that no party may withhold its agreement if the insolvency practitioner is of national or international repute and is not an Unsuitable Third Party; or
- (c) a person directly or indirectly owned or controlled by the Security Trustee and/or any Senior Lender(s) and/or any of their Affiliates; or
- (d) any other person approved by the Department under clause 4.3 of this Deed (such approval not to be unreasonably withheld or delayed);

**Required Period** means, in respect of any Termination Notice, the period starting on the date on which that Termination Notice is provided to the Security Trustee under clause 3.2 of this Deed and ending 30 Business Days later;

**Security Documents** has the meaning given to that term in the Senior Financing Agreements;

**Security Trust and Intercreditor Deed** has the meaning given to that term in the Senior Financing Agreements;

**Step-in Date** means the date on which the Security Trustee serves a valid Step-in Notice on the Department pursuant to clause 4.1;

**Step-in Notice** means a notice served on the Department by the Security Trustee, advising the Department:

- (a) of the appointment and identity of the Appointed Representative; and
- (b) that the Appointed Representative is to exercise the rights specified in clause 4.4;

**Step-in Period** means the period from the Step-in Date up to and including the earlier of:

- (a) the Step-out Date;
- (b) the date of any novation under clause 7;
- (c) the date of any termination of the Project Agreement in accordance with clause 5.2; and
- (d) the date of expiry of the Project Agreement;

**Step-out Date** means:

- (a) the date specified in the Step-out Notice, to be no less than 7 days after the date of that notice, if:
  - (i) on such date no Contractor Default is subsisting; or
  - (ii) the Step-out Notice is issued in circumstances where clause 8.8 or where the Department has been requested to, but has not, given its consent to a novation under clause 7 of this Deed; and
- (b) in all other cases, the date falling 30 days after the date the Step-out Notice is served on the Department;

**Step-out Notice** means a notice served on the Department by the Appointed Representative pursuant to clause 6;

**Suitable Substitute Contractor** and **Suitable Substitute Sub-contractor** means a person approved by the Department (such approval not to be unreasonably withheld or delayed) as:

- (a) not being an Unsuitable Third Party;
- (b) having the legal capacity, power and authority to become a party to and perform the obligations of the Contractor under the Project Agreement, or of the Sub-contractor under the applicable Major Sub-contract (as the case may be); and
- (c) employing persons or engaging sub-contractors having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Contractor under the Project Agreement or of the Sub-contractor under the applicable Major Sub-contract (as the case may be);

**Suitable Substitute Sub-contractor List** means the list of potential Suitable Substitute Sub-Contractors set out in the Appendix, as may be updated by the parties from time to time in accordance with this Deed; and

**Termination Notice** has the meaning given to that term in the Project Agreement.

### 1.3 Interpretation

In this Deed, unless the context otherwise requires:

- (a) a reference to a clause is a reference to a clause of this Deed;
- (b) a gender includes each other gender;
- (c) the singular includes the plural and vice versa;
- (d) a reference to a person includes:
  - (i) a partnership and also a body of persons, whether corporate or unincorporated; and
  - (ii) reference to its respective successors in title and permitted assigns;
- (e) a reference to documentation includes:
  - (i) a reference to that document as varied, supplemented, novated or substituted from time to time; and
  - (ii) a reference to that documentation in any form, whether paper based or in electronic form encoded on or as part of any form of media;
- (f) any agreement that a party not to do a thing also constitutes an agreement that, to the extent it is within the control of that party, it will not suffer or permit or cause that thing to be done;
- (g) any reference to a consent or approval requires the prior written consent or approval of the party required to give that consent;
- (h) whenever the words “includes” or “including” are used in this Deed, they are deemed to be followed by the words “without limitation”;
- (i) a reference to any legislation includes a modification of that legislation or legislation enacted in substitution for that legislation and a regulation, order-in-council and other instrument from time to time issued or made under that legislation;
- (j) the “Introduction” forms part of this Deed;
- (k) headings and the table of contents are included for the purpose of ease of reference only and are not to have any effect on construction and interpretation;
- (l) a reference to days, other than Business Days, is a reference to any calendar day of the year;
- (m) a reference to currency is a reference to New Zealand currency;
- (n) if an obligation falls to be performed or a right is to be exercised on or by a day that is not a Business Day then, unless otherwise specified, that obligation is due to be performed or that right may be exercised on the Business Day next following that day;
- (o) none of the terms nor any of the parts of this Deed are to be construed against a party, by reason of the fact that that term or that part was first proposed or was drafted by that party; and

- (p) a party who has an obligation is to perform that obligation at its own cost, unless a term of this Deed expressly provides otherwise.

## **1.4 Priority of documents**

To the extent of any inconsistency between this Deed and any other Project Document, this Deed will prevail.

## **1.5 Restriction on exercise of rights**

The Department acknowledges and agrees that it will not exercise its rights under:

- (a) clause 6.1(b) (Department's Cure Rights) or clause 7 (Department's Step-in rights) of the D&C Direct Deed (without prejudice to, and other than in circumstances described in, clause 67 of the Project Agreement) or clause 8 (Department's novation rights) of the D&C Direct Deed;
- (b) clause 6.1(b) (Department's Cure Rights) or clause 7 (Department's Step-in rights) of the O&M Direct Deed (without prejudice to, and other than in circumstances described in, clause 67 of the Project Agreement) or clause 8 (Department's novation rights) of the O&M Direct Deed; or
- (c) clause 6.1(b) (Department's Cure Rights) or clause 7 (Department's Step-in rights) of the FM Direct Deed (without prejudice to, and other than in circumstances described in, clause 67 of the Project Agreement) or clause 8 (Department's novation rights) of the FM Direct Deed,

during any Required Period, any Step-in Period and/or at any time during any notice period referred to in clause 4.2.

## **1.6 Commencement**

The rights and obligations of the parties under this Deed commence on Financial Close.

# **2. Consent to security**

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## **2.1 Security Interest**

The Department acknowledges notice of, and consents to, the Security Interests granted by the Contractor in favour of the Security Trustee under the Security Documents.

## **2.2 Other security interest**

The Department confirms that, as at the date of this Deed, it has not received notice of any other Security Interest granted over the Contractor's rights under the Project Agreement.

## **2.3 Turnover obligations**

If the Department receives any payment in cash or in kind or recovers any amount (including by way of set off) in excess of its entitlement under any Project Document following enforcement by the Security Trustee of any Security Document, the Department shall, on demand, pay the amount of the receipt to the Security Trustee for distribution in accordance with the Security Documents.

## **2.4 No obligations**

Except as specifically provided for in this Deed, the Department has no obligations (whether express, implied, collateral or otherwise) to the Security Trustee or a Senior Lender in connection with the Project Agreement or the Services.

## **3. Notice of termination and existing liabilities**

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### **3.1 Termination of Project Agreement**

Subject only to clause 3.2 and clause 5.1, the Department may give a notice terminating the Project Agreement at any time if it is entitled to do so under the terms of the Project Agreement.

### **3.2 Termination Notice**

Subject to clause 5.1, the Department may only terminate the Project Agreement on the grounds of a Contractor Default, if the Department has given to the Security Trustee:

- (a) in the case of a Remediable Contractor Default:
  - (i) a copy of the Warning Notice that was served on the Contractor in accordance with clause 79.4 (Warning Notice) of the Project Agreement; and
  - (ii) a copy of the Termination Notice that was served on the Contractor in accordance with clause 79.5(b) (Termination Notice) of the Project Agreement, provided that such Termination Notice specifies a Termination Date which is no less than 30 Business Days after the date on which the Security Trustee receives the Termination Notice; or
- (b) in the case of an Immediate Termination Event, a copy of the Termination Notice that was served on the Contractor under clause 79.5(a) (Termination Notice) of the Project Agreement, provided that such Termination Notice specifies a Termination Date which is no less than 30 Business Days after the date on which the Security Trustee receives the Termination Notice,

together with, in either case, details of any other existing liabilities or unperformed obligations of which the Department is aware at the time of the Termination Notice.

## **4. Representative**

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### **4.1 Step-in Notice**

Subject to clause 4.2 and clause 4.3 and without prejudice to the Security Trustee's rights under the Senior Financing Agreements, the Security Trustee may give the Department a Step-in Notice at any time or times:

- (a) during which an Event of Default is subsisting (whether or not a Termination Notice has been served); or
- (b) during any Required Period.

## **4.2 Details of Step-in Notice**

The Security Trustee shall give the Department not less than 3 days' (or, if the Contractor has appointed a voluntary administrator, 24 hours) prior written notice of:

- (a) its intention to issue a Step-in Notice;
- (b) the identity of the proposed Appointed Representative; and
- (c) reasonable detail of any Event of Default leading to the intention to issue a Step-in Notice,

provided that where the proposed Appointed Representative is a Representative within paragraph (d) of that definition, the Security Trustee must give the Department not less than 10 Business Days' prior written notice in accordance with this clause.

## **4.3 Appointed Representatives**

- (a) If the Security Trustee has issued a Step-in Notice in accordance with clauses 4.1 and 4.2, the appointment of a Representative within paragraphs (a) to (c) of that definition will be effective for all purposes under this Deed, and the Department will not be entitled to challenge or dispute the effectiveness of any such appointment.
- (b) Subject to paragraph (c) the Security Trustee shall not appoint a Representative within paragraph (d) of that definition unless it has obtained the prior written approval of the Department, which approval may only be withheld if the Department considers that the proposed Representative is an Unsuitable Third Party.
- (c) If, where paragraph (b) above applies:
  - (i) the Department notifies the Security Trustee within 5 Business Days after its receipt of a notice under clause 4.2 that the proposed Appointed Representative is an Unsuitable Third Party, the notice under clause 4.2 proposing that Authorised Representative will be deemed to be withdrawn; and
  - (ii) If the Department does not notify the Security Trustee within 5 Business Days after its receipt of a notice under clause 4.2 that the proposed Appointed Representative is an Unsuitable Third Party, the proposed Authorised Representative will be deemed not to be an Unsuitable Third Party for the purpose of clause 4.3(a).

## **4.4 Assumption of rights**

On and from the issue of the Step-in Notice:

- (a) the Appointed Representative shall assume, jointly and severally with the Contractor, the rights (but not the obligations) of the Contractor under all Project Documents until the end of the Step-in Period; and
- (b) the Contractor shall remain solely responsible for the performance of its obligations under the Project Documents until the end of the Step-in Period.
- (c) For the avoidance of doubt, the Step-in Notice must relate to all rights of the Contractor under all Project Documents and cannot apply only to some of those rights.



- (d) The Department acknowledges that without limiting the liability of the Contractor (which continues to be responsible for the performance of its obligations under the Project Documents), no Representative is or will be, solely by reason of:
  - (i) the creation of the Security Interests under the Senior Financing Agreements;
  - (ii) the entry into this Deed or any other Senior Financing Agreement; or
  - (iii) the taking of enforcement action or the exercise of any powers under the Security Documents or this Deed,

liable for any obligation or liability of the Contractor under the Project Documents (or for any greater such obligation or liability) than it would have been liable for but for the relevant thing described in (A) to (C) above (inclusive), but nothing in this sub-paragraph (i) affects the liability of the Security Trustee under this Deed.

## **4.5 Dealings with Appointed Representative**

During the Step-in Period, the Department shall deal with the Appointed Representative and not the Contractor (provided nothing in this clause shall preclude the Department from continuing to communicate with Contractor Personnel to the extent it considers necessary in connection with the Services).

## **5. Step-in Period**

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### **5.1 Restrictions on termination**

Subject to clause 5.2, the Department shall not terminate the Project Agreement during any Step-in Period on the grounds:

- (a) that the Security Trustee has taken any action referred to in clause 4 or enforced any Security Document(s); or
- (b) arising or occurring prior to the Step-in Date in respect of that Step-in Period (whether or not continuing at the Step-in Date), unless:
  - (i) the grounds arose during the Works Provisioning phase (including, for the avoidance of doubt, any failure to achieve Service Commencement on or prior to the Last Date for Service Commencement), and Service Commencement is not achieved by the end of the LDSC Cure Period; or
  - (ii) the grounds arose during the Operating Term, and neither the Appointed Representative nor the Contractor is using all reasonable endeavours (including implementation of any rectification or prevention programme) to remedy any breach of the Project Agreement, or put in place measures satisfactory to the Department (acting reasonably) to prevent the recurrence of the Contractor Default, or where the breach cannot be remedied, to address the circumstances which led to, or the event giving rise to or resulting from the breach that:
    - (A) arose prior to the Step-in Date;
    - (B) is continuing; and
    - (C) would have entitled the Department to terminate the Project Agreement.

## 5.2 Grounds for termination

Notwithstanding clause 5.1, the Department may terminate the Project Agreement in accordance with its terms and this Deed:

- (a) if no Step-in Notice is given by the Security Trustee during the relevant Required Period; or
- (b) after service of a Step-out Notice, so long as the grounds constituting a Contractor Default to which such termination relates continue to subsist (provided that to the extent that a Contractor Default is not itself capable of cure then provided that the circumstances which led to, or the event giving rise to or resulting from the Contractor Default no longer subsist, then that Contractor Default will be considered to be waived and the grounds constituting the Contractor Default will be deemed not to subsist) or measures satisfactory to the Department (acting reasonably) have not been put in place to prevent the recurrence of the Contractor Default (as applicable); or
- (c) if amounts, of which the Department was not aware (having made reasonable enquiry) at the time of the Termination Notice or the Event of Default, subsequently become payable and are not discharged on or before the later of:
  - (i) the end of the Required Period; and
  - (ii) the date 20 Business Days after such amounts have been notified to the Security Trustee; and
  - (iii) the end of any longer period set out in a payment plan which the Security Trustee may request the Department to consent to having regard to the quantum of the amount payable (such consent not to be unreasonably withheld); or
- (d) on grounds arising or occurring during a Step-in Period in accordance with the terms of the Project Agreement provided that where a Remediable Contractor Default arises or occurs during a Step-in Period, the Appointed Representative (jointly and severally with the Contractor) shall be entitled to the rights to seek to remedy or prevent recurrence of that Remediable Contractor Default in accordance with clause 79.4 (Warning Notice) of the Project Agreement, and for the duration of any Step-in Period the following modifications to the Project Agreement shall be deemed to apply;
  - (i) the Department shall not be entitled to terminate the Project Agreement on the grounds of any Immediate Termination Event set out in clauses 79.2(a)(i), 79.2(a)(ii) or 79.2(a)(vii) of the Project Agreement;
  - (ii) the Department shall not be entitled to terminate the Project Agreement on the grounds of any Remediable Contractor Default set out in clause 79.2(b)(v) of the Project Agreement;
  - (iii) for the purposes of determining whether a Remediable Contractor Default arises or occurs under clause 79.2(b)(iii) of the Project Agreement after the Step-in Date, General Breaches and General Delivery Breaches that arose or occurred prior to the Step-in Date shall not be taken into account during the Step-in Period but, subject to clause 7.4, shall be taken into account at the Step-out Date;
  - (iv) for the purposes of determining whether a Remediable Contractor Default arises or occurs under clause 79.2(b)(iv), clause 79.2(b)(xii) or clause 79.2(b)(xiv) of the Project Agreement during the Step-in Period or whether an Immediate Termination Event arises or occurs under clause 79.2(a)(viii) of the Project Agreement, no representation or warranty made (or deemed to have

been made or repeated) prior to the Step-in Date shall be taken into account during the Step-in Period; and

- (v) the Department shall not be entitled to terminate the Project Agreement on the grounds of a Remediable Contractor Default set out in clause 79.2(b)(xiii) unless the Security Trustee or an Authorised Representative procures or effects a transfer in breach of clause 7 of this Deed (provided that, for the duration of the Step-in Period and without prejudice to the Department's rights following the Step-out Date, paragraph (a) of the definition of Unsuitable Third Party and paragraphs (a) and (b) of the definition of Reputable will not apply in determining whether a Shareholder Breach has occurred);
- (vi) for the purposes of all applicable Immediate Termination Events and Remediable Contractor Defaults (and for the purposes of clause 79.6(b) of the Project Agreement as it relates to the Immediate Termination Events and Remediable Contractor Defaults), the references to 'not acting independently of the Contractor' shall be read as 'not acting independently of the Appointed Representative',

provided that sub-paragraph (i) above shall cease to apply from (but excluding) the last day of the LDSC Cure Period (as may be extended from time to time) and sub-paragraphs (ii) to (vi) above shall cease to apply from (but excluding) the Step-out Date; or

- (e) if the grounds for termination arising prior to the Step-in Date was a failure to achieve Service Commencement on or prior to the Last Date for Service Commencement, during the period commencing on the date which is 3 months after the Step-in Date until the end of the LDSC Cure Period the Security Trustee or the Authorised Representative has not diligently pursued the achievement of Service Commencement on or prior to the end of the LDSC Cure Period.

### **5.3 Extension of LDSC Cure Period**

- (a) Where a Step-in Period commences prior to the Service Commencement Date:
  - (i) clause 39 of the Project Agreement shall be read, for the duration of that Step-in Period, as though references to 'the Last Date for Service Commencement' were references to 'the last day of the then current LDSC Cure Period (as defined in the Financier Direct Deed)';
  - (ii) clauses 39.3(c), 39.3(d), 42.5(b)(i) and 42.11 of the Project Agreement shall not apply for the duration of that Step-in Period; and
  - (iii) the LDSC Cure Period shall be extended by one day for each day of relief determined to be available (by the Independent Reviewer or the Department, as applicable) as a result of any Extension Event that:
    - (A) occurs prior to the Step-In Date, but continues to have consequences for which relief is available under the Project Agreement following the Step-in Date; or
    - (B) occurs during the Step-in Period;
  - (iv) if during the LDSC Cure Period an Event occurs in respect of which relief has yet to be finally determined in accordance with the Project Agreement prior to the end of the then current LDSC Cure Period:
    - (A) the LDSC Cure Period shall be extended until such time as such relief is finally determined; and

- (B) if relief is determined to be available for such Event, paragraph (iii) shall apply in respect of such relief (with the number of days of relief to be reduced by the number of days of extension under (A) above).
- (b) The Department acknowledges and agrees that, if during any Step-in Period, the Department exercises its step-in rights under Part 18 of the Project Agreement:
  - (i) the LDSC Cure Period will be extended by the number of days of the Step-in Period (as defined in the Project Agreement); and
  - (ii) any requirement to diligently pursue Service Commencement, or to take the actions referred to in clause 5.1(b)(ii) of this Deed, shall be suspended for the period during which the Department exercises its rights under Part 18 of the Project Agreement.
- (c) Without limiting the other provisions of this clause, the Security Trustee or the Authorised Representative may request the Department to consent to an extension to the LDSC Cure Period for a reasonable period, and such consent may not be unreasonably withheld or delayed if the Security Trustee or Authorised Representative demonstrates to the reasonable satisfaction of the Department that the Security Trustee or Authorised Representative:
  - (i) has complied with the requirement to diligently pursue in accordance with clause 5.2(e) of this Deed;
  - (ii) has provided the Department with a plan (including reasonable particulars) setting out the steps that the Security Trustee or Authorised Representative will take during the extended LDSC Cure Period to remedy the relevant Contractor Default; and
  - (iii) Service Commencement is expected to occur during that reasonable period.

## 5.4 Diligent Pursuit

For the purposes of this Deed, in assessing what can be achieved by diligent pursuit and in assessing whether there has been a failure to diligently pursue or assessing compliance with clause 5.1(b)(ii), regard is required to be had to the effect of any Event as well as to any time reasonably necessary to enforce any Major sub-contract, or to engage a substitute Major Sub-contractor in accordance with the terms of this Deed.

## 5.5 Interaction with Dispute Resolution

- (a) The parties acknowledge that the Department is entitled to give a Termination Notice under the Project Agreement regardless of whether a Dispute has been referred to dispute resolution in accordance with Part 22 (Dispute Resolution) of the Project Agreement.
- (b) Where, following the issue of a Termination Notice:
  - (i) the Department seeks to exercise its rights to terminate the Project Agreement; and
  - (ii) the Security Trustee refers any such action to dispute resolution in accordance with clause 15.9 of this Deed,

the parties agree that the Project Agreement shall not be terminated unless and until the dispute resolution procedures have been finally resolved and the outcome of the

dispute resolution procedure is that the Department is permitted to terminate the Project Agreement in accordance with its terms and this Deed.

## **6. Step-out**

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### **6.1 Step-out Notice**

The Appointed Representative may at any time during the Step-in Period, serve a Step-out Notice on the Department, specifying the Step-out Date.

### **6.2 Step-out Date**

On the Step-out Date:

- (a) rights of the Appointed Representative against the Department will be cancelled;
- (b) the Department will no longer deal with the Appointed Representative, and will instead deal with the Contractor in connection with the Project Documents; and
- (c) without prejudice to the Department's rights against the Contractor, the Appointed Representative will be released from any obligations and liabilities to the Department in connection with that Step-in Period from that date on.

### **6.3 Continuing obligations**

The Contractor shall continue to be bound by the terms of the Project Documents, notwithstanding the issue of a Step-in Notice, the occurrence of a Step-in Period, the passing of a Step-out Date, any action by the Security Trustee or the Appointed Representative or any Senior Lender and/or any provision of this Deed.

## **7. Novation**

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### **7.1 Transfer to Suitable Substitute Contractor**

Subject to clause 7.2, at any time:

- (a) during which an Event of Default is subsisting; or
- (b) during the Step-in Period,

the Security Trustee may, on 20 Business Days' prior written notice to the Department and the Appointed Representative, procure the transfer of the Contractor's rights and liabilities under the Project Agreement and the Facility Lease to a Suitable Substitute Contractor. For the avoidance of doubt, the transfer must relate to all rights and liabilities of the Contractor under those documents and cannot apply only to some of those rights and liabilities.

### **7.2 Suitable Substitute Contractor**

At the time the Security Trustee notifies the Department of a proposed transfer pursuant to clause 7.1, the Security Trustee must provide the Department with details of the identity of the proposed transferee, a copy of the proposed contract pursuant to which such transfer will occur and any further information about the proposed transferee that the Department may reasonably require to determine whether the proposed transferee is a Suitable Substitute Contractor. The Department shall notify the Security Trustee whether any person to whom the Security Trustee proposes to transfer the Contractor's rights and liabilities under the

Project Documents is a Suitable Substitute Contractor, on or before the date falling 20 Business Days after the date of receipt of all information reasonably required by the Department to decide whether the proposed transferee is a Suitable Substitute Contractor.

### **7.3 No unreasonable delay**

The Department shall not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Contractor. It shall, without limitation, be reasonable for the Department to withhold its consent if there are unremedied breaches under the Project Agreement and no rectification programme required under the Project Agreement or this Deed has been proposed to the Department's reasonable satisfaction in respect of the breaches. No consent provided by the Department constitutes a waiver of any unremedied breach.

### **7.4 Effect of transfer**

- (a) On any transfer to a Suitable Substitute Contractor becoming effective:
  - (i) the Contractor and the Appointed Representative shall be released from any obligations arising on and from that date under or in connection with this Deed and the Project Documents, and the Suitable Substitute Contractor shall become liable for obligations arising on or after that date;
  - (ii) any accrued Service Failure Points under the Project Agreement shall be cancelled;
  - (iii) any then-subsisting ground for termination of the Project Agreement by the Department shall be deemed to have no effect and any subsisting Warning Notice or Termination Notice shall be automatically revoked; and
  - (iv) the Department shall enter into a financier direct deed with the Suitable Substitute Contractor and the lenders (or agent or trustee acting on their behalf) to that Suitable Substitute Contractor, on substantially the same terms as this Deed.
- (b) The Department acknowledges and agrees that a novation in accordance with this clause 7 shall not constitute a breach of clause 94.3 of the Project Agreement or an Immediate Termination Event under clause 79.2(a)(iv) of the Project Agreement.

### **7.5 Transfer of ownership of Contractor**

- (a) If:
    - (i) clause 7.1 applies; and
    - (ii) the Security Trustee wishes to procure the transfer of ownership or Control of the Contractor rather than procuring the transfer of the Contractor's rights and liabilities under the Project Agreement and the Facility Lease,
- then:
- (iii) subject to paragraphs (iv) and (v) below, this clause 7 shall apply (*mutatis mutandis*);
  - (iv) without prejudice to the Department's rights under clause 7.3, it will be reasonable for the Department to withhold its consent to any Change of Ownership on the same grounds on which it could withhold its consent under, or in circumstances that would otherwise breach, the Project Agreement. For the

purposes of this provision and clause 95.3 of the Project Agreement, during any Step-in Period, paragraph (a) of Unsuitable Third Party will not apply and the reference to 'reputable' in clause 95.3 of the Project Agreement shall be read as a reference to paragraphs (c) and (d) of the definition of Reputable;

- (v) if consent is given to the Change of Control, the Contractor shall be deemed to be a Suitable Substitute Contractor for the purposes of this Deed.
- (b) The Department acknowledges and agrees that a transfer in accordance with this clause 7.5 shall not constitute a Shareholder Breach or a breach of clause 79.2(b)(xiii) of the Project Agreement.

## 8. Replacement of Major Sub-contractors

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### 8.1 Application

This clause 8 will apply if, during a Step-in Period, the Security Trustee or an Authorised Representative intends to replace a Major Sub-contractor, and any replacement of a Major Sub-contractor under this clause shall be deemed to be approved by the Department for the purposes of clause 16 of the Project Agreement. Any replacement of a Major Subcontractor in accordance with this clause 8 shall not constitute an Immediate Termination Event under clause 79.2(a)(iii) of the Project Agreement.

### 8.2 Commencement of Replacement Process

- (a) If the Security Trustee or an Authorised Representative intends to replace a specified Major Sub-contractor during a Step-in Period (**Replacement Process**), it must provide the Department with written notice of such intention, with such notice including a list of persons that it considers, acting reasonably, to be potential replacement Major Sub-contractors (**Potential Replacements**).
- (b) Within 5 Business Days after receipt of a notice under paragraph (a), the Department must provide the Security Trustee or Authorised Representative (as applicable) with written notice either:
  - (i) confirming that all Potential Replacements are able to continue in the Replacement Process;
  - (ii) rejecting one or more (but not all) of the Potential Replacements; or
  - (iii) rejecting all of the Potential Replacements (in which case clause 8.8 shall apply),

provided that the Department may only reject a Potential Replacement under this clause 8.2(b) if, in its reasonable opinion, that person is not a Suitable Substitute Sub-contractor. The Department shall not be entitled to reject a Potential Replacement, for the purposes of this clause 8.2 only, if that person is, as at the date of the notice provided under paragraph (a) above, on the Suitable Substitute Sub-Contractor List.

- (c) If, at the time at the Department gives its written notice under paragraph (b) above, there are less than 3 persons, in aggregate:
  - (i) on the Suitable Substitute Sub-Contractor List; and
  - (ii) confirmed by the Department under paragraph (b)(i),

the Security Trustee or an Authorised Representative may give a notice to the Department electing for clause 8.8 to apply.

### **8.3 Procurement – consultation**

The Security Trustee must, and must procure that the Authorised Representative must, consult with the Department in respect of the procurement structure and process to be followed, and the documentation to be used, for the Replacement Process, and provide the Department with reasonable information as to progress during the course of the Replacement Process. The consultation obligations under this clause 8.3 are without prejudice to the Security Trustee's or Authorised Representative's rights to undertake such form of commercially reasonable procurement process as it sees fits.

### **8.4 Agreement on form of Briefing Paper**

Prior to receipt of final bids or tenders from Potential Replacements in respect of the Replacement Process, the Security Trustee or the Authorised Representative (as applicable) and the Department must, acting reasonably, agree on the form and substance of a briefing paper to be provided to the Department following receipt and preliminary evaluation of bid or tender responses for the purposes of enabling it to assess the bid or tender and the suitability of the Potential Replacements (**Briefing Paper**).

### **8.5 Submission of Briefing Paper**

Following receipt and preliminary evaluation of the tender or bid responses, the Security Trustee or Authorised Representative (as applicable) will complete the agreed form Briefing Paper and submit it to the Department for review.

### **8.6 Response to Briefing Paper**

Within 20 Business Days after receipt of the Briefing Paper (in respect of the proposed replacement of any Major Sub-contractor other than the O&M Sub-contractor) or within 30 Business Days after receipt of the Briefing Paper (in respect of the proposed replacement of the O&M Sub-contractor), with each such period to be extended by the time taken by the Security Trustee or the Authorised Representative, as applicable, to respond to any reasonable request for further information made by the Department, the Department must provide notice to the Security Trustee or the Authorised Representative (as applicable) approving or rejecting each of the tenderers. The Department may only reject tenderers as follows:

- (a) in respect of the replacement of any Major Sub-contractor other than the O+M Sub-contractor, on the grounds that a tenderer is not a Suitable Substitute Sub-contractor; or
- (b) in respect of the replacement of the O&M Sub-contractor, on the grounds that a tenderer is not a Suitable Substitute Sub-contractor or that any statutory consent required under the Corrections Act or Corrections Regulations, to permit the replacement to undertake the relevant services, has not been provided.

### **8.7 Process where Potential Replacements approved**

Where the Department has approved one or more Potential Replacements under clause 8.6:

- (a) the Security Trustee or the Authorised Representative (as applicable) may elect which approved Potential Replacement to enter into a replacement Major Sub-contract with (where there is more than one); and



- (b) the Department may impose such conditions on the appointment of the Major Sub-contractor as it is entitled to under clause 16.1(k) of the Project Agreement (and must provide notice of those conditions to the Security Trustee or the Authorised Representative (as applicable) at the time it provides its notice under clause 8.6), provided that the conditions may not include any conditions relating to matters the subject of paragraph (a) of the definition of Unsuitable Third Party or paragraphs (a) and (b) of Reputable.

## **8.8 Process where Potential Replacements not approved**

- (a) This clause will only apply where:
  - (i) the Security Trustee or Authorised Representative has elected for this clause to apply pursuant to clause 8.2(c);
  - (ii) the Department has rejected all Potential Replacements under clause 8.2(b)(iii); or
  - (iii) the Department has rejected each of the tenderers under clause 8.6.
- (b) The Security Trustee must, within 10 Business Days after the date of the notice from the Department that triggers the application of this clause, or in a notice given under clause 8.2(c), elect (in writing) one of the following:
  - (i) that the Department immediately terminates the Project Agreement for the underlying Contractor Default, in which case:
    - (A) the Appointed Representative will serve a Step-Out Notice on the Department at the time of the election, along with a waiver of any further step-in rights under this Deed, and the Department will serve a notice under clause 77.5(c)(ii) of the Project Agreement; and
    - (B) Schedule 23 (Calculation of Compensation on Termination) will apply, provided that the Compensation Sum must be determined in accordance with paragraph (10) (No retendering) thereof; or
  - (ii) that the Department remove the Corrections Services from the scope of the Project Agreement, in which case clause 50.2 (Department's Rights and Obligations) of the Project Agreement will apply and the Department must issue a Consequential Change Notice (relating to a Significant Consequential Change) in accordance with that clause.
- (c) If the Security Trustee gives a notice electing that paragraph (b)(ii) applies, then:
  - (i) any accrued Service Failure Points under the Project Agreement shall be cancelled from the date on which the Consequential Change becomes a Confirmed Change; and
  - (ii) the then-subsisting ground for termination of the Project Agreement by the Department shall be deemed to have no effect and any subsisting Warning Notice or Termination Notice shall automatically be revoked.

## **8.9 Suitable Substitute Sub-contractor List**

- (a) The Suitable Substitute Sub-contractor List may be amended by agreement between the Department and the Security Trustee (each acting reasonably) from time to time.

- (b) The Department may, on written notice to the Security Trustee, remove a person from the Suitable Substitute Sub-contractor List if that person:
  - (i) becomes an Unsuitable Third Party (within paragraph (b) of the definition of that term);
  - (ii) ceases to meet, in the Department's reasonable opinion, the criteria set out in paragraphs (b) and (c) of the definition of Suitable Substitute Sub-contractor; and/or
  - (iii) becomes a person to whom paragraphs (c) and/or (d) of the definition of Reputable applies.

## 9. Amendment of Project Documents

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### 9.1 No Alteration without consent

The Department undertakes for the benefit of the Senior Lenders that:

- (a) until the Senior Debt is repaid in full; or
- (b) until termination of the Project Agreement,

(whichever is the first to occur) it will not make any modification, variation or amendment (each an **Alteration**) to the terms of any Project Document without the consent of the Security Trustee as set out in clause 9.2. For the purposes of this clause 9 **Project Documents** includes the Project Agreement and all schedules to the Project Agreement, but excludes any Operative Documents.

### 9.2 Consent regime

- (a) The Security Trustee undertakes for the benefit of the Department that it will not unreasonably withhold its consent to any proposed Alteration to any Project Document.
- (b) The Department:
  - (i) shall be entitled to rely for all purposes on any copy of the Security Trustee's written consent to any Alteration, where provided by the Contractor to the Department; and
  - (ii) shall have no obligation to verify the substance or form of any such consent with the Security Trustee or to otherwise make any request directly to the Security Trustee for its consent to an Approval.
- (c) Where the Security Trustee does not respond to a written request for its consent to an Alteration within 15 Business Days after receipt of the same, it will be deemed to have given its consent and paragraph (d) will apply.
- (d) For the purposes of paragraph (c), the Department shall be entitled to rely for all purposes on:
  - (i) a copy of the written request for an Alteration as provided by the Contractor to the Security Trustee; and

- (ii) written confirmation from the Contractor, provided at any time after the end of the 15 Business Day period referred to in paragraph (c), that the Security Trustee did not respond to the request for Alteration within this period,

and will be entitled to proceed with any Alteration on the basis of the Security Trustee's deemed consent.

## **10. Insurance proceeds**

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Notwithstanding the other provisions of this Deed and the terms and conditions of the Senior Financing Agreements, the Security Trustee shall only permit amounts to be released from the Joint Insurance Account in accordance with the requirements of clause 76.3 (Reinstatement processes) or 76.4 (Consequences of not rebuilding or repairing) of the Project Agreement and shall not exercise any rights under the Senior Financing Agreements or take any other steps to prevent amounts being released from the Joint Insurance Account other than in accordance with clause 76.3 or 76.4 of the Project Agreement.

## **11. Tender process**

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The Department shall, in undertaking the Tender Process and establishing the Highest Compliant Tender Price under Part 3 of Schedule 23 of the Project Agreement, owe a duty of reasonable care to the Security Trustee to obtain the best price reasonably obtainable at the time the Tender Process is undertaken.

## **12. Miscellaneous**

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### **12.1 Perfecting transfer or release**

The Department shall, at the Contractor's expense, take whatever action the Security Trustee, the Appointed Representative or a Suitable Substitute Contractor taking a transfer in accordance with clause 7.1 may reasonably require to perfect any transfer or release under clauses 4, 6 and 7, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Security Trustee, Appointed Representative or Suitable Substitute Contractor reasonably requires.

### **12.2 No action to wind up Contractor**

The Department shall not take any action during the term of this Deed to wind up, appoint a receiver, a receiver and manager, an administrative receiver, a liquidator or an administrator or sanction a compromise (or similar arrangement) in relation to the Contractor.

### **12.3 Term**

This Deed shall remain in effect until the earlier of:

- (a) the date on which all amounts that may be or become owing by the Contractor to the Senior Lenders under the Senior Financing Agreements have been irrevocably paid in full and the Security Interests created under the Security Documents have been released by the Security Trustee, except where such repayment or release occurs in connection with a Refinancing permitted under the terms of the Project Agreement in circumstances where the benefit of this Deed continues to be held by the Security Trustee (or a replacement Security Trustee) under the security trust constituted under the existing Security Trust and Intercreditor Deed for the benefit of the new Senior Lenders and other finance parties providing the new Senior Debt; or

- (b) the date of termination or expiry of the Project Agreement; or
- (c) the date of transfer of the Contractor's rights and liabilities under the Project Documents to a Suitable Substitute Contractor pursuant to clause 7.1, so long as the requirements of clause 7.4(a) have then been observed and performed.

## **12.4 Security Trustee to notify Department**

The Security Trustee shall promptly notify the Department of:

- (a) any decisions to accelerate the maturity of any amounts owing by the Contractor to a Senior Lender under the Senior Financing Agreements and/or any decisions to demand repayment; and
- (b) the date referred to in clause 12.3(a) on or before the date falling two Business Days after its occurrence.

## **12.5 Contractor acknowledgment**

The Contractor joins in this Deed to acknowledge and consent to the arrangements set out and agrees not knowingly to do or omit to do anything that may prevent any party from enforcing its rights under this Deed and shall do all such acts, matters and things as may be required of it to give effect to the provisions of this Deed, including clause 7.

## **13. Notices**

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### **13.1 Method of giving notices**

A notice, consent, approval or other communication (each a **Notice**) under this Deed must:

- (a) be in writing addressed to the address of the recipient from time to time designated for the purpose by the addressee to the other parties. The initial address of each party is set out under its name on the execution pages of this Deed; and
- (b) be signed by an authorised representative of the sender.

### **13.2 Notice effective**

- (a) No notice or other communication is to be effective until it is received.
- (b) A communication will be deemed to be received:
  - (i) in the case of a letter, on the second Business Day after posting (with all postage paid);
  - (ii) in the case of a facsimile, on the Business Day on which it is dispatched or, if dispatched after 5.00pm (in the place of receipt) on the next Business Day after the date of dispatch;
  - (iii) in the case of an email, on the Business Day on which it arrives in the recipient's information system (provided that if it is received in that system after 5.00pm on a Business Day, then it will be deemed to be received on the next Business Day), provided that if there is any dispute as to whether an email has been received, the email shall only be deemed to have been received at that time where the party giving notice produces a printed copy of the email which

evidences that the email was sent to the email address of the party given notice; and

- (iv) in the case of personal delivery, when delivered.

## 14. Capacity

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- (a) The Security Trustee enters into this Deed only in its capacity as trustee of the trust constituted under the Security Trust and Intercreditor Deed (the Security Trust).
- (b) Each party other than the Security Trustee acknowledges that the Security Trustee holds the benefit of this Deed for the benefit of the Beneficiaries (as defined in the Security Trust and Intercreditor Deed) and:
  - (i) is bound to act on the instructions of those Beneficiaries pursuant to the terms of the Security Trust and Intercreditor Deed; and
  - (ii) in the absence of such instructions from those Beneficiaries, the Security Trustee is not bound to act.
- (c) The Security Trustee's obligations, duties and responsibilities under this Deed are limited to those expressly set out in the Security Trust and Intercreditor Deed and this Deed.
- (d) It is acknowledged that the Security Trustee is entitled to be indemnified for its actions under this Deed:
  - (i) out of the assets of the Security Trust; and
  - (ii) by those Beneficiaries,except where the Security Trustee is not so entitled as a result of fraud, wilful misconduct or gross negligence.
- (e) Notwithstanding any other provision of any Senior Financing Agreement, any liability incurred by the Security Trustee pursuant to this Deed can be enforced against the Security Trustee only to the extent to which it can be satisfied out of the assets of the Security Trust. This limitation of the Security Trustee's liability applies notwithstanding any other provision of any Senior Financing Agreement (other than paragraph (g) below) and extends to:
  - (i) all liabilities and obligations of the Security Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction relating to any Senior Financing Agreement; and
  - (ii) every receiver, receiver and manager, liquidator, delegate, attorney, agent or other similar person appointed by the Security Trustee.
- (f) Subject to paragraph (g) below, the parties may not sue the Security Trustee personally or seek the appointment of a liquidator, administrator, receiver, manager or similar person to the Security Trustee or prove in any liquidation, winding up, dissolution, receivership, administration, statutory management, deed of arrangement or similar process of or affecting the Security Trustee.
- (g) The limitation of liability set out in paragraphs (e) and (f) will not apply to any liability of the Security Trustee directly caused by the fraud, wilful misconduct or gross negligence of the Security Trustee.

- (h) In addition to the rights and trusts conferred on the Security Trustee by the Finance Documents, the Security Trustee shall have all the rights, privileges and immunities which gratuitous trustees have or may have in New Zealand, even though it is entitled to remuneration.

## **15. General**

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### **15.1 Counterparts**

This Deed may be signed in any number of counterparts all of which, when taken together, constitute one and the same instrument. A party may enter into this Deed by executing any counterpart.

### **15.2 Severability**

If any provision of this Deed is or becomes unenforceable, illegal or invalid for any reason, the relevant provision shall be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity. If such modification is not possible, then such provision shall be severed from this Deed without affecting the enforceability, legality or validity of any other provision of this Deed.

### **15.3 Waiver**

Any delay, failure or forbearance by a party to exercise (in whole or in part) any right, power or remedy under, or in connection with, this Deed shall not operate as a waiver of such right, power or remedy. A waiver of any breach of any provisions of this Deed shall not be effective unless that waiver is in writing and is signed by the party against whom that waiver is claimed. A waiver of any breach shall not be, or be deemed to be, a waiver of any other or subsequent breach.

### **15.4 Legal fees**

If any legal action or other proceeding is brought for the enforcement of an obligation under this Deed, the prevailing party shall be entitled to legal fees and other costs incurred in that action or proceeding on a solicitor / client basis (subject to review under the Lawyers and Conveyancers Act 2006) in addition to any other relief to which it may be entitled.

### **15.5 Public disclosure**

All public disclosure by the Contractor or the Security Trustee relating to this Deed, including promotional or marketing material (but not including any announcement intended solely for internal distribution or any disclosure required by legal, accounting or regulatory requirements), shall be co-ordinated with and must first be approved in writing by the Department prior to its release.

### **15.6 Entire agreement**

This Deed and the other Project Documents (to which two or more parties are a party) constitute the entire agreement between the parties and together supersede and extinguish all prior agreements and understandings between the parties about their respective subject matters.

### **15.7 Amendments in writing**

No amendment to this Deed will be effective unless it is in writing and signed by duly authorised signatories of all the parties.

## **15.8 Assignment and related matters**

- (a) No party to this Deed may assign or transfer any part of its rights or obligations under this Deed, unless permitted to do so pursuant to clause 15.8(b), clause 15.8(c) or clause 15.8(d).
- (b) The Security Trustee may assign or transfer its rights and obligations under this Deed to a successor Security Trustee in accordance with the Senior Financing Agreements without the consent of the Department.
- (c) Any Senior Lender may assign or transfer its rights under the Senior Financing Agreements in accordance with the terms of the Senior Financing Agreements.
- (d) The Department must assign, novate or otherwise transfer its rights and/or obligations under this Deed to any person that the Department assigns, novates or otherwise transfer its rights and/or obligations under the Project Agreement in accordance with clause 94.2 (Assignment by Department) of the Project Agreement and must procure that the transferee enters into a deed in favour of the Security Trustee, in a form acceptable to the Security Trustee (acting reasonably) binding itself to the terms of this Deed.
- (e) If clause 15.8(b) applies, then the Department shall enter into a direct agreement with the new Security Trustee on substantially the same terms as this Deed.
- (f) If the Security Trustee resigns or is replaced pursuant to the terms of the Senior Financing Agreements, then such resignation or replacement shall not be effective until a new agent has acceded to and has agreed to become bound to the terms of this Deed.
- (g) Notwithstanding the terms of this clause 15.8, the Contractor shall be permitted to assign its rights under this Deed by way of security as part of the Security Interests referred to in clause 2.1.

## **15.9 Dispute resolution**

- (a) If there is a dispute arising in relation to any aspect of this Deed or the subject matter of this Deed, then any party may refer the dispute to be determined in accordance with Part 22 (Dispute Resolution) of the Project Agreement applied *mutatis mutandis*.
- (b) Despite the existence of a Dispute or the referral of the Dispute for resolution under this clause 15.9:
  - (i) the Contractor must continue Works Provisioning, performing the Operational Services and performing its other obligations under the Project Agreement; and
  - (ii) the Department will continue to perform its obligations under this Deed and the Project Agreement and may exercise its rights under this Deed and the Project Agreement without regard to the existence of the Dispute, while that Dispute has not been resolved pursuant to this clause 15.9.

## **15.10 Governing Law and jurisdiction**

This Deed is governed by, and is to be construed in accordance with, the Laws of New Zealand. Each party irrevocably submits to the non-exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining all disputes under or in connection with this Deed.

## Execution

**Executed** as a Deed.

**Executed** as a Deed.

**SIGNED** by Her Majesty The Queen in  
Right of New Zealand acting by and  
through the Chief Executive of the  
Department of Corrections by: \_\_\_\_\_ )

Raymond Stanley Smith, Chief Executive,  
Department of Corrections  
in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness Occupation

\_\_\_\_\_  
Place of residence

**Address of Her Majesty The Queen in Right of New Zealand acting by and  
through the Chief Executive of the Department of Corrections**

<b>Address</b>	<b>Department's Representative</b>	<b>Email address</b>	<b>Prior to the Service Commencement Date:</b>
	PPP at Wiri Project Private Bag 1206 Mayfair House 44-52 The Terrace Wellington 6140		<a href="mailto:Natasha.Possenniskie@corrections.govt.nz">Natasha.Possenniskie@corrections.govt.nz</a> , copied to <a href="mailto:pppatwiriproject@corrections.govt.nz">pppatwiriproject@corrections.govt.nz</a>
			Following the Service Commencement Date: <a href="mailto:pppatwiriproject@corrections.govt.nz">pppatwiriproject@corrections.govt.nz</a>

**Facsimile** +64 (4) 460 3208

*[Counterparty execution blocks to be added.]*



## **Appendix: Suitable Substitute Sub-contractor List**

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1. Corrections Corporation of America;
2. G4S plc;
3. The GEO Group, Inc;
4. Management and Training Corporation;
5. Sodexo (incorporating Kalyx); or
6. South African Custodial Management,

or, in each case, their respective wholly-owned subsidiaries.

## Annexure B: Form of Quarterly Finance Summary

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### (Clause 57.2(a))

**TO:** The Her Majesty, the Queen in Right of New Zealand acting by and through the Chief Executive of the Department of Corrections (the **Department**)

We refer to the project agreement relating to the PPP at Wiri Men's Prison Project between the Department and SecureFuture Wiri Limited (the **Contractor**) dated [ ] September 2012 (**Project Agreement**). Terms defined in the Project Agreement have the same meaning when used in this document.

This document is provided to the Department pursuant to clause 57.2(a) of the Project Agreement in relation to the three month period ending on [ ] ("**Quarter**").

### Exempt Refinancings

1. [Detail any changes to taxation or accounting treatment comprising an Exempt Refinancing during the Quarter, or confirm nil return.]
2. Provide reasonable particulars of each of the following that occurred during the Quarter:
  - (a) The exercise of rights, the giving of waivers and consents, and similar actions, in each case by the Senior Agent and/or the Security Trustee under the Senior Financing Agreements and of which written notice is given by the Senior Agent or the Security Trustee to the Contractor, that are in respect of:
    - (i) a breach of representations and warranties or undertakings (including those relating to the provision of information, consents or licences), or a default or review event triggered by a breach of representations, warranties or undertakings (or **to cure, prevent, avoid, remedy or mitigate the effects of any such thing**);
    - (ii) any change to any cash sweep or lock-up provisions (other than, following a Scheduled Refinancing or a Rollover Refinancing, the Lock-up DSCR);
    - (iii) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Senior Financing Agreements);
    - (iv) restrictions imposed by the Senior Lenders on the dates on which the Senior Debt can be advanced to the Contractor under the Senior Financing Agreements which are imposed as a result of any failure by the Contractor to ensure that the construction work is performed in accordance with the agreed construction programme;
    - (v) changes to milestones for drawdown set out in the Senior Financing Agreements and which are imposed as a result of any failure by the Contractor to ensure that construction work and Mobilisation Works are performed in accordance with the agreed programme and budget; or
    - (vi) failure by the Contractor to obtain any consent from statutory bodies required by the Senior Financing Agreements;
  - (b) any sale of shares in HoldCo by the Shareholders or securitisation of the existing rights and/or interests attaching to shares in HoldCo during the Quarter;

- (c) any sale or transfer of a Subordinated Lender's existing rights and/or interests under the Subordinated Financing Agreements or securitisation of a Subordinated Lender's existing rights and/or interests under the Subordinated Financing Agreements during the Quarter; and
- (d) any Qualifying Bank Transaction during the Quarter.

Without prejudice to the Department's rights to request information under clause 57.2(b) or otherwise under the Project Agreement, the Contractor is not obliged to report, in any Quarterly Finance Summary, on Exempt Refinancings to the extent not referred to above.

Where the Contractor or any other person has separately provided the Department with information required under this Quarterly Finance Summary, a cross-reference to any such information will be sufficient.

## Schedule 5: Operative Documents

### Part 1 – Works Provisioning Documentation

Operative Document	Mandatory content	Time for delivery of first draft	Required time of finalisation
Works Project Management Plan	<p>The Works Project Management Plan must include:</p> <ul style="list-style-type: none"> <li>• details of the methodology, procedures and processes for Works Provisioning up to Works Completion, including procedures relating to issue and risk management and procedures for co-ordination with relevant Sub-contractors;</li> <li>• details of the reporting systems, proposed format and content of reports, together with its documentation and communication controls;</li> <li>• contingency measures to action in the event of delays to Works Provisioning prior to Works Completion being experienced; and</li> <li>• the following sub-plans: <ul style="list-style-type: none"> <li>○ Site Access and Interface Protocols;</li> <li>○ Works Occupational Health and Safety Plan;</li> <li>○ Works Fire Management Plan;</li> <li>○ Works Traffic Management Plan; and</li> <li>○ Works Quality Assurance Plan.</li> </ul> </li> </ul>	Provided prior to Execution Date.	<p>The Execution Date.</p> <p><b>Updates</b></p> <p>To be updated in accordance with clause 26.2(b) (Updates) of the Base Agreement, with each update to be submitted for review under the Review Procedures.</p>
Works Provisioning Programme	<p>The Works Provisioning Programme must be provided in a Gantt critical path format incorporating all key elements of design and construction from Preferred Bidder Stage (as that term is defined in the Tendering Information) through to Works Completion and must outline:</p> <ul style="list-style-type: none"> <li>• the full Design Development Plan including key design deliverables, Department review periods and decision Milestones and any staged consent submissions;</li> <li>• identifiable design packages and their duration for the purposes of determining final design deliverable dates, particularly prior to the Execution Date;</li> <li>• the dates on which plans required to ensure compliance with the Designation conditions relating to the construction of the Prison are to be provided to Auckland Council;</li> </ul>	Provided prior to the Execution Date.	<p>The Execution Date.</p> <p><b>Updates</b></p> <p>To be updated:</p> <ul style="list-style-type: none"> <li>• at least fortnightly to reflect any delays which have or may have occurred in respect of the progress of the Works;</li> <li>• immediately on any extension being granted for any Milestone; and</li> <li>• to reflect the progress of Works</li> </ul>

Operative Document	Mandatory content	Time for delivery of first draft	Required time of finalisation
	<ul style="list-style-type: none"> <li>the date on which Works Provisioning is to commence, as a Milestone;</li> <li>the full Construction Sub-Programme including any enabling and/or temporary works, earthworks and construction staging;</li> <li>the full Works Completion Sub-Programme including milestones for commissioning and for Works Completion Tests, certifications and Independent Reviewer sign-offs; and</li> <li>the date on which Works Completion will be achieved and the expected date of issue of the Works Completion Certificate as Milestones.</li> </ul>		Provisioning, with each update to be submitted for review under the Review Procedures.
Communication Plan	<p>The Communication Plan must be prepared in accordance with Schedule 11 (Communication Protocols) and must include:</p> <ul style="list-style-type: none"> <li>the Wiri Prisons Communication Protocols;</li> <li>the Stakeholder Engagement Plan (as further described below); and</li> <li>the following information: <ul style="list-style-type: none"> <li>Department points of contact required in accordance with Schedule 11 (Communication Protocols);</li> <li>communications avenues, including social media;</li> <li>the target (stakeholder) audience (external and internal), and the selected message for each audience;</li> <li>the selected communications medium;</li> <li>materials to be produced and distributed, including the Stakeholder Engagement Plan;</li> <li>interest groups, detailing their interests and agendas;</li> <li>a media contact list;</li> <li>a calendar of media events and opportunities;</li> <li>frequently asked questions and responses; and</li> <li>risks and issues analysis (to be updated regularly).</li> </ul> </li> </ul>	Provided prior to the Execution Date.	<p>The Execution Date.</p> <p><b>Updates</b></p> <p>To be updated:</p> <ul style="list-style-type: none"> <li>three months prior to the planned date of Works Completion, to set out any changes to the Communications Plan to apply with effect from the planned date of Works Completion and for the balance of the Operating Term; and</li> <li>within five Business Days following any material change to the document,</li> </ul> <p>with each update to be submitted for review under the Review Procedures.</p>

Operative Document	Mandatory content	Time for delivery of first draft	Required time of finalisation
Stakeholder Engagement Plan	<p>The Stakeholder Engagement Plan will be appended to the Communication Plan and must:</p> <ul style="list-style-type: none"> <li>• identify key stakeholders;</li> <li>• identify their needs; and</li> <li>• identify the most appropriate channels and methodologies to communicate with them effectively,</li> </ul> <p>in accordance with paragraph 3 (Communications between Contractor and stakeholders) of Schedule 11 (Communication Protocols).</p>	Provided prior to the Execution Date.	<p>The Execution Date.</p> <p><b>Updates</b></p> <p>To be updated:</p> <ul style="list-style-type: none"> <li>• three months prior to the planned date of Works Completion, to include detail for the Operating Term; and</li> <li>• within five Business Days following any material change to the document,</li> </ul> <p>with each update to be submitted for review under the Review Procedures.</p> <p>Final approved document to be incorporated into the Communications Plan.</p>
Earthworks and Contamination Management Plan	<p>Details of onsite materials to be used including any special requirements of reused materials, any contaminated material disposal / relocation / reuse, how water discharges from the Department Site are dealt with, any required ground improvements, performance criteria of finished earthworks and the quality assurance criteria and testing regime to be adopted during construction and to cover all land modification requirements set out in the Designation.</p> <p>Also to include, to the extent it requires amendment due to the impact of the Works Provisioning, an updated Stormwater Quality Pond Management Operation and Maintenance Plan (as required pursuant to condition 71 of the Designation), which shall be based on the current ARWCF Stormwater Quality Pond Management Operation and Maintenance Plan, which is appended to Schedule 26 (Related Documents).</p>	Provided prior to the Execution Date.	<p>The Execution Date.</p> <p><b>Updates</b></p> <p>To be updated within five Business Days of any material change to the document, with each update to be submitted for review under the Review Procedures.</p>

Operative Document	Mandatory content	Time for delivery of first draft	Required time of finalisation
Works Completion Plan	<p>The Works Completion Plan must include the following:</p> <ul style="list-style-type: none"> <li>• a master plan covering all the activities to be undertaken for the purposes of Works Completion;</li> <li>• the Acceptance Criteria for the achievement of each Milestone and for Works Completion;</li> <li>• a plan for the Completion of the Facility;</li> <li>• a plan for the Works Completion of the Works Infrastructure;</li> <li>• a plan for the undertaking of integration of all the elements of the Works and the interfaces between the Works and the External Infrastructure;</li> <li>• details of the proposed formats of the Works Completion reports and certificates;</li> <li>• a description of the approach to be adopted, and the methodologies to be utilised, for the conduct of Works Completion; and</li> <li>• details of post-Works Completion deliverables.</li> </ul>	Provided prior to the Execution Date.	<p>The Execution Date.</p> <p><b>Updates</b></p> <p>To be updated within five Business Days of any material change to the document, with each update to be submitted for review under the Review Procedures.</p>
Disengagement Plan	<p>The Disengagement Plan must:</p> <ul style="list-style-type: none"> <li>• specify the tasks, the resources and the personnel to be used to effect Disengagement and ensure the making safe and handover of responsibility for Works Provisioning during the Disengagement Period;</li> <li>• specify the assets, Fitout, records, information, data and other tangible or intangible deliverables deliverable to the Department on or prior to the last day of the Disengagement Period; and</li> <li>• include a detailed description of the following: <ul style="list-style-type: none"> <li>○ key dependencies and risks;</li> <li>○ demobilisation and handover of the Department Site;</li> <li>○ interim safety and access measures and restrictions pending completion of the Disengagement Services;</li> <li>○ the process and approach for handover of all draft and completed documentation in its then-current state;</li> <li>○ the roles and contractual</li> </ul> </li> </ul>	Within 10 Business Days of the Department requesting the Contractor to prepare the plan if a Termination Notice has been given.	Within 30 days of the Department requesting the Contractor to prepare the plan while a Contractor Default is subsisting or if a Termination Notice has been given (after proceeding through the Review Procedures).

Operative Document	Mandatory content	Time for delivery of first draft	Required time of finalisation
	<p>arrangements relating to all sub-contractors of any tier then-involved in performing Works; and</p> <ul style="list-style-type: none"> <li>the rights of access to, and use of, any premises owned or leased by the Contractor and used in the performance of the Works Provisioning by the Department or a New Contractor (together with the charges payable (if any)).</li> </ul>		

## Part 2 – Facility Management Services Documentation

Operative Document	Mandatory content	Time for delivery of first draft	Required time of finalisation
Communication Plan	(as set out in Part 1 for Communication Plan)	(as set out in Part 1 for Communication Plan)	(as set out in Part 1 for Communication Plan)
Asset Management Plan	<p>The Asset Management Plan is the asset replacement, maintenance and refurbishment plan for the Works and must include:</p> <ul style="list-style-type: none"> <li>the asset management framework including purpose, management responsibilities, process details, systems and change management;</li> <li>detailed information on the assets that support service delivery including key issues and strategies, condition, performance, criticality, capacity and value in accordance with IFRS16;</li> <li>a whole of life asset management approach to assets, including: <ul style="list-style-type: none"> <li>details of current and predicted future asset condition; and</li> <li>an analysis of asset life cycles, including details of any changes from the previous plan (extended or reduced life) and the reasons for those changes;</li> </ul> </li> <li>risk management and business continuity for the Facility and the Works Infrastructure;</li> <li>the Lifecycle Maintenance Plan;</li> <li>the Valuation Schedules;</li> <li>the master maintenance plan;</li> <li>the service delivery matrix, including: <ul style="list-style-type: none"> <li>service areas and service levels;</li> </ul> </li> </ul>	Six months prior to the First Service Commencement Date, based on the Contractor's Outline Asset Management Plan, which is appended to Schedule 26 (Related Documents).	<p>Three months prior to the First Service Commencement Date (after proceeding through Review Procedures).</p> <p><b>Updates</b></p> <p>To be updated: annually (at least 30 Business Days before the end of each Contract Year), with each update to be submitted for review under the Review Procedures.</p>



Operative Document	Mandatory content	Time for delivery of first draft	Required time of finalisation
	<ul style="list-style-type: none"> <li>○ quality standards;</li> <li>○ performance measures;</li> <li>○ management and maintenance strategies;</li> <li>○ building names; and</li> <li>○ list of reports;</li> <li>• the quality management plan;</li> <li>• asset condition assessment regime;</li> <li>• the Hand Back Requirements; and</li> <li>• a Semi-Annual Work Plan together with an analysis of historical and predicted future breakdown maintenance (as relevant).</li> </ul>		
Asset Register	<p>The Asset Register must:</p> <ul style="list-style-type: none"> <li>• list all plant and equipment that is being used in connection with or as part of the Works including details of all warranties and operations and maintenance requirements; and</li> <li>• for all plant and equipment, record the following information in relation to all listed plant and equipment: <ul style="list-style-type: none"> <li>○ condition grade;</li> <li>○ estimated base life;</li> <li>○ estimated remaining life;</li> <li>○ construction year;</li> <li>○ confidence grades;</li> <li>○ criticality criteria; and</li> <li>○ replacement costs.</li> </ul> </li> </ul>	Two months prior to the First Service Commencement Date.	<p>Two weeks prior to the First Service Commencement Date (after proceeding through Review Procedures).</p> <p><b>Updates</b></p> <p>To be updated:</p> <ul style="list-style-type: none"> <li>• annually (at least 30 Business Days before the end of each Contract Year) at the same time as the Asset Management Plan is updated; and</li> <li>• promptly upon disposal, acquisition or upgrade of any part of the Works (including any disposal, acquisition or upgrade of the plant or equipment forming part of the Works Infrastructure, with each</li> </ul>

Operative Document	Mandatory content	Time for delivery of first draft	Required time of finalisation
			update to be submitted for review under the Review Procedures.
Facility Management Procedures	<p>The Facility Management Procedures must include:</p> <ul style="list-style-type: none"> <li>• details of the methodology, procedures and processes for the replacement, maintenance and refurbishment of the Works, including procedures relating to issue and risk management and procedures for co-ordination with relevant Sub-contractors;</li> <li>• descriptions of the procedures used for minimising disruption to the Corrections Services during servicing, repair and maintenance work;</li> <li>• a programme for preventative maintenance, reactive maintenance and refurbishment;</li> <li>• a programme for building management services, including temperature controls, caretaker works, security management (and lifts maintenance, if applicable);</li> <li>• procedures for the use, storage and disposal of equipment, materials and consumables;</li> <li>• procedures for information management;</li> <li>• instructions for operating and maintaining all aspects of the Works;</li> <li>• identification of buildings (or parts of buildings) that are to be used by any Sub-contractor performing a material part of the Facility Management Services (each, a <b>Facility Management Sub-contractor</b>);</li> <li>• procedures for the use of Prisoner labour for maintenance tasks including supervision protocols;</li> <li>• procedures for the induction of staff, visitors and relevant Sub-contractors on to Site;</li> <li>• protocols for relevant Sub-contractors whilst working on the site (covering entry, the permit system and protocols for the use of tools, onsite behaviour, prisoner contact, etc.);</li> <li>• communication and contraband policy</li> </ul>	Six months prior to the First Service Commencement Date.	<p>Three months prior to the First Service Commencement Date (after proceeding through Review Procedures).</p> <p>Final approved document to be incorporated into the Policy and Procedures Manual.</p> <p><b>Updates</b></p> <p>To be updated within five Business Days following any material change to the document, with each update to be submitted for review under the Review Procedures.</p>

Operative Document	Mandatory content	Time for delivery of first draft	Required time of finalisation
	<p>as it applies to relevant Sub-contractors;</p> <ul style="list-style-type: none"> <li>relevant Sub-contractors and Facility Management Sub-contractor staff health and safety procedures including identification of requirements for SiteSafe passports, regular site inductions and permit to work records;</li> <li>procedures to cover any regular Facility-specific safety and security training;</li> <li>key management protocols and procedures; and</li> <li>emergency/major event procedures for all relevant Sub-contractors.</li> </ul>		
Stakeholder Engagement Plan	(as set out in Part 1 for Stakeholder Engagement Plan)	(as set out in Part 1 for Stakeholder Engagement Plan)	(as set out in Part 1 for Stakeholder Engagement Plan)
Semi-Annual Work Plans	<p>Each Semi-Annual Work Plan must contain details of:</p> <ul style="list-style-type: none"> <li>the proposed start and end dates for each period of planned maintenance for different parts of the Works;</li> <li>the planned maintenance to be carried out and the proposed hours in which such planned maintenance is to be carried out, together with particulars of its nature, scope and location;</li> <li>the planned replacement programme for the Works;</li> <li>all scheduling for the planned maintenance and planned replacement programme; and</li> <li>any anticipated effect of the planned maintenance or planned replacement programme on the delivery of any of the Corrections Services.</li> </ul>	Six months prior to the First Service Commencement Date.	<p>Two months prior to the First Service Commencement Date (after proceeding through Review Procedures).</p> <p><b>Updates</b></p> <p>To be updated every six months, with each update to be submitted for review under the Review Procedures.</p>
Disengagement Plan	(as set out in Part 3 for Disengagement Plan)	(as set out in Part 3 for Disengagement Plan)	(as set out in Part 3 for Disengagement Plan)

## Part 3 – Corrections Services Documentation

Operative Document	Mandatory content	Time for delivery of first draft	Required time of finalisation
Preliminary Operational	The Preliminary Operational Completion Plan is a plan that describes at a high level	Provided prior to Execution Date.	The Execution Date.

Operative Document	Mandatory content	Time for delivery of first draft	Required time of finalisation
Completion Plan	<p>the steps to be taken to plan and prepare for the delivery of the Operational Services from Financial Close until the Full Service Date and covers in detail all necessary preparation and planning for the activities that are to be conducted during the period between Works Completion and Operational Completion. It will be superseded by the Operational Completion Plan.</p> <p>The Preliminary Operational Completion Plan must include:</p> <ul style="list-style-type: none"> <li>• an overview of resourcing from Financial Close through to Operational Completion;</li> <li>• a plan for establishing relationships with the Department and wider justice sector;</li> <li>• a plan for ensuring any required third party supply agreements are in place;</li> <li>• a plan for having a sufficient number of trained staff to operate the Prison by Operational Completion;</li> <li>• a plan for ensuring all preparatory work is completed to enable production of Services Documentation in accordance with the requirements of this Schedule 5;</li> <li>• a plan for ascertaining and implementing ICT Requirements as well as the ICT Interface with Department Applications as required by Schedule 13 (ICT Requirements) and Schedule 14 (Corrections Services Requirements);</li> <li>• a plan for ensuring the required fixed furniture and equipment to operate the Prison is in place; and</li> <li>• a high level programme Gantt chart setting out the phases of work and key milestones relating to the Operational Services between Financial Close and Operational Completion.</li> </ul>		<p><b>Updates</b></p> <p>To be updated within five Business Days following any material change to the document, with each update to be submitted for review under the Review Procedures.</p>
Operational Completion Plan	<p>The Operational Completion Plan is the plan that covers in detail all necessary preparation and planning for the activities that are to be conducted during the period between Works Completion and Operational Completion for the Operational Completion of the Facility, which will be based on the then-current version of the Preliminary Operational Completion Plan.</p> <p>In addition, the Operational Completion</p>	Nine months prior to the First Service Commencement Date.	Six months prior to the First Service Commencement Date (after proceeding through the Review Procedures).

Operative Document	Mandatory content	Time for delivery of first draft	Required time of finalisation
	<p>Plan must include:</p> <ul style="list-style-type: none"> <li>• a detailed plan for completing all Services Documentation in accordance with the requirements of this Schedule 5, including allowing suitable time for completing the Review Procedures, where applicable;</li> <li>• more detailed information in relation to recruitment of staff and engagement of contractors and providers;</li> <li>• a plan for ensuring compliance with conditions of Designation relevant prior to Service Commencement;</li> <li>• details of the interaction and integration between Works Completion and Operational Completion including dependencies and timing requirements; and</li> <li>• a detailed plan for the completion of the Operational Completion Tests.</li> </ul>		<p><b>Updates</b></p> <p>To be updated immediately upon any material change to the document, with each update to be submitted for review under the Review Procedures.</p>
Operational Completion Programme	<p>The Operational Completion Programme must be provided in a Gantt critical path format incorporating all key elements of Operational Completion from Works Completion through to Operational Completion and must outline:</p> <ul style="list-style-type: none"> <li>• key deliverables, Department review periods and decision milestones;</li> <li>• a description of each sub-programme with key milestones for each such sub-programme;</li> <li>• criticalities and dependencies;</li> <li>• the full Operational Completion programme including milestones for commissioning and for Operational Completion Tests, certifications and Department sign-offs; and</li> <li>• the date on which Operational Completion will be achieved and the expected date of issue of the Operational Completion Notice as milestones.</li> </ul>	Three months prior to Works Completion.	<p>One month prior to Works Completion (after proceeding through the Review Procedures).</p> <p><b>Updates</b></p> <p>To be updated:</p> <ul style="list-style-type: none"> <li>• prior to Works Completion, on reasonable request by the Department; and</li> <li>• at least weekly from Works Completion to Operational Completion, to reflect any delays that have or may have occurred in respect of the progress of the Operational Completion activities and to reflect the progress of all Operational Completion</li> </ul>

Operative Document	Mandatory content	Time for delivery of first draft	Required time of finalisation
			activities.
Integration Plan	<p>The Integration Plan must detail the strategy from Operational Completion for effectively integrating the Prison with:</p> <ul style="list-style-type: none"> <li>the Department;</li> <li>the wider prison network (including neighbouring prisons, the regional prison network and the national prison network);</li> <li>the wider justice sector; and</li> <li>other Governmental Entities involved in the management of offenders, prisons and prisoners,</li> </ul> <p>and must include:</p> <ul style="list-style-type: none"> <li>a set of goals that integration of the Prison is intended to achieve, which has been agreed with the Department;</li> <li>details of how relationships will be established and maintained;</li> <li>details of meetings the Contractor will attend;</li> <li>details of other means of communication, and the objectives of that communication; and</li> <li>details of how any issues will be escalated.</li> </ul>	Nine months prior to the First Service Commencement Date.	<p>Six months prior to the First Service Commencement Date (after proceeding through Review Procedures).</p> <p><b>Updates</b></p> <p>To be updated annually, with each update to be submitted for review under the Review Procedures.</p>
Ramp-Up Plan	<p>The Ramp-Up Plan must include:</p> <ul style="list-style-type: none"> <li>numbers and security classifications of Prisoners to be received onsite and timeframes (receipt to start from Service Commencement Date);</li> <li>minimum numbers of staff required on site to manage numbers of Prisoners;</li> <li>what Interventions will be provided to Prisoners during the Ramp-Up Period; and</li> <li>a protocol for working with the Department in relation to muster management in the lead up to Service Commencement through to the Full Service Date in the event that the Department cannot provide the population stipulated in the Ramp-up Plan.</li> </ul>	Nine months prior to the First Service Commencement Date based on the Ramp-Up Plan set out in the Preliminary Operational Completion Plan.	<p>Six months prior to the First Service Commencement Date (after proceeding through Review Procedures).</p> <p><b>Updates</b></p> <p>Changes are not expected to be made to this document. However, the Department is to be immediately notified of any proposed change to the document, which must be submitted for review under the</p>

Operative Document	Mandatory content	Time for delivery of first draft	Required time of finalisation
			Review Procedures.
Communication Plan	(as set out in Part 1 for Communication Plan)	(as set out in Part 1 for Communication Plan)	(as set out in Part 1 for Communication Plan)
Stakeholder Engagement Plan	(as set out in Part 1 for Stakeholder Engagement Plan)	(as set out in Part 1 for Stakeholder Engagement Plan)	(as set out in Part 1 for Stakeholder Engagement Plan)
Policy and Procedures Manual	<p>The Policy and Procedures Manual must include:</p> <ul style="list-style-type: none"> <li>a description of the policies, procedures, work practices, liaison procedures and other operational matters in respect of the delivery of the Operational Services;</li> <li>procedures for information management;</li> <li>a programme that sets out the manner in which the Contractor will monitor its own performance in its delivery of the Operational Services;</li> <li>the following sub-programmes: <ul style="list-style-type: none"> <li>Emergency Procedures and Business Continuity Manual (as further described below);</li> <li>Security Management Plan (as further described below);</li> <li>Risk Management Plan (as further described below);</li> <li>Operational Quality Assurance Plan (including the Annual Audit Plan);</li> <li>Operational Health and Safety Plan;</li> <li>Environmental Plan;</li> <li>Facility Management Procedures (as further described above);</li> <li>Operational Fire Management Plan;</li> <li>the Site Access and Interface Protocols;</li> <li>the Emergency Management Plan required pursuant to condition 68 of the Designation;</li> <li>the plan relating to the traffic assessment surveys (as required pursuant to condition 89 of the Designation);</li> <li>the Travel Demand Management Plan effectiveness review plan (as</li> </ul> </li> </ul>	Six months prior to the First Service Commencement Date, based on the Corrections Services Solution appended to this Schedule 5.	<p>Three months prior to the First Service Commencement Date (after proceeding through the Review Procedures).</p> <p><b>Updates</b></p> <p>To be updated within five Business Days following any material change to the document, with each update to be submitted for review under the Review Procedures.</p> <p>A schedule of the changes to the document is to be provided to the Department monthly.</p>

Operative Document	Mandatory content	Time for delivery of first draft	Required time of finalisation
	<p>required pursuant to condition 91 of the Designation); and</p> <ul style="list-style-type: none"> <li>the Community Safety Management Plan (as required pursuant to condition 104 of the Designation);</li> <li>the Facility Management Procedures (as further described above); and</li> <li>information relating to the monitoring of the Facility Management Services by the Contractor.</li> </ul>		
Rehabilitation and Reintegration Programme	<p>The Rehabilitation and Reintegration Programme must include:</p> <ul style="list-style-type: none"> <li>an overview of the approach to case management, including: <ul style="list-style-type: none"> <li>relationships formed with other service providers to support deliver of the case management model;</li> <li>roles and responsibilities within the case management model;</li> <li>competency requirements for key roles within the case management model, such as case managers;</li> <li>overview of the case management process;</li> <li>assessment tools to be used to assess risk of reoffending and the impact of Interventions; and</li> <li>ICT applications to support the delivery of the case management model;</li> </ul> </li> <li>findings from the analysis of service need as described in paragraph 32.2(a) (Rehabilitation and reintegration Interventions) of Schedule 14 (Corrections Services Requirements) that informed development of the Rehabilitation and Reintegration Programme;</li> <li>a detailed description of all rehabilitative and reintegration Interventions, including: <ul style="list-style-type: none"> <li>target group for the Intervention (including restrictions on participation where relevant);</li> <li>programme outline for the Intervention;</li> <li>duration and dosage of the Intervention in programme hours;</li> <li>provider for the Intervention;</li> </ul> </li> </ul>	Nine months prior to the First Service Commencement Date, based on the based on the Corrections Services Solution, appended to this Schedule 5.	<p>Six months prior to the First Service Commencement Date (after proceeding through the Review Procedures).</p> <p><b>Updates</b></p> <p>To be updated:</p> <ul style="list-style-type: none"> <li>annually; and</li> <li>within five Business Days after any material change to the document,</li> </ul> <p>with each update to be submitted for review under the Review Procedures.</p>



Operative Document	Mandatory content	Time for delivery of first draft	Required time of finalisation
	<ul style="list-style-type: none"> <li>○ training requirements for Staff Members delivering the Intervention (where relevant);</li> <li>○ approach to ensuring programme integrity; and</li> <li>○ methodology to assess programme efficacy (where relevant);</li> <li>• findings from the analysis of service need as described in 33.2(b) (Educational and employment opportunities) of Schedule 14 (Corrections Services Requirements) that informed development of the Education and Training Plan;</li> <li>• the Education and Training Plan as described in 33.2(c) (Educational and employment opportunities) of Schedule 14 (Corrections Services Requirements) and</li> <li>• details of the methodology to be used to measure the rehabilitation and reintegration KPIs (as set out in Band 4 - R&amp;R Performance Report of Table 1 of the Appendix to Schedule 16 (Performance Regime)), including: <ul style="list-style-type: none"> <li>○ procedures for establishing which Prisoners are eligible for individual Interventions;</li> <li>○ procedures for recording data, including counting rules and tools to be used;</li> <li>○ methodology for calculating performance; and</li> <li>○ procedures for reporting performance to the Department.</li> </ul> </li> </ul>		
Emergency Procedures and Business Continuity Manual	<p>The Emergency Procedures and Business Continuity Manual must, in relation to any emergency event, or identified threat or risk to the Prison, including:</p> <ul style="list-style-type: none"> <li>• escape and attempted escape;</li> <li>• death of a Prisoner;</li> <li>• death of a Staff Member or Visitor;</li> <li>• serious assault;</li> <li>• self-harm;</li> <li>• accident;</li> <li>• injury or illness requiring outside treatment;</li> <li>• evacuation;</li> </ul>	Six months prior to the First Service Commencement Date.	<p>Three months prior to the First Service Commencement Date (after proceeding through Review Procedures).</p> <p>Final approved document to be incorporated into the Policy and Procedures Manual.</p> <p><b>Updates</b></p> <p>To be updated within five</p>

Operative Document	Mandatory content	Time for delivery of first draft	Required time of finalisation
	<ul style="list-style-type: none"> <li>• bomb threat;</li> <li>• failure to main services;</li> <li>• failure to provide catering arrangements;</li> <li>• hostage;</li> <li>• fire;</li> <li>• food and fluid refusal;</li> <li>• riot, loss of control or major disruption;</li> <li>• natural disaster;</li> <li>• concerted indiscipline (both active and passive);</li> <li>• barricade;</li> <li>• public demonstration;</li> <li>• withdrawal of labour;</li> <li>• incorrect count and welfare check;</li> <li>• key/lock compromise;</li> <li>• chemical, biological or radiological incidents; and</li> <li>• incident command centre activation,</li> </ul> <p>include the following:</p> <ul style="list-style-type: none"> <li>• details of how any threat or risk will be mitigated and managed, including notification procedures for neighbours and the surrounding community;</li> <li>• details of the Prison evacuation strategy for any threat or risk;</li> <li>• details of how the safe separation of Prisoners by security classification, Staff Members and Visitors will be managed;</li> <li>• in relation to fire, details of the facilities for extinguishing fire for both Facility users and fire fighters throughout the Facility, and an outline of the fire alarm systems, alarm zones and zone triggers;</li> <li>• details of how business continuity will be managed; and</li> <li>• any other requirements as set out in paragraph 7.2 (Emergency and contingency planning) of Schedule 14 (Corrections Services Requirements).</li> </ul>		<p>Business Days following any material change to the document, with each update to be submitted for review under the Review Procedures.</p> <p>A schedule of the changes to the document is to be provided to the Department monthly.</p>
Security Management Plan	<p>The Security Management Plan must include procedures relating to:</p> <ul style="list-style-type: none"> <li>• the operation of the Security</li> </ul>	Six months prior to the First Service	Three months prior to the First Service

Operative Document	Mandatory content	Time for delivery of first draft	Required time of finalisation
	<p>Management System;</p> <ul style="list-style-type: none"> <li>• key management;</li> <li>• entry and exit control;</li> <li>• searching;</li> <li>• security checks;</li> <li>• tool control and management;</li> <li>• muster management;</li> <li>• escorts;</li> <li>• use of force;</li> <li>• prevention of escapes;</li> <li>• contraband; and</li> <li>• intelligence.</li> </ul> <p>The Security Management Plan must incorporate or annex the SMS usage plan referred to in paragraph 6 (Safety and security arrangements) of Schedule 14 (Corrections Services Requirements), which must include the following principles:</p> <ul style="list-style-type: none"> <li>• the Contractor will provide the Department with a “dumb” remote terminal as part of the SMS system as covered in paragraph 62 (Remote connectivity) of Schedule 10 (Works Requirements). This terminal will not be configured to control the MCR unless requested by the Contractor;</li> <li>• the remote terminal, whilst having the capability to control, will not have control functions programmed for such use unless the Contractor decides that such is necessary (it is intended that disaster recovery capability will be established within the Prison and not be reliant on a remote workstation); and</li> <li>• the Department will confirm that it will comply with all Laws when accessing the terminal and will be responsible for its own actions arising from information derived from that connection. This obligation will have binding effect and will trigger the regime in Part 12 (Events) of the Base Agreement if breached.</li> </ul>	<p>Commencement Date, based on the Corrections Services Solution appended to this Schedule 5 and consistent with the Security Design Report appended to Schedule 10 (Works Requirements).</p>	<p>Commencement Date (after proceeding through Review Procedures).</p> <p>Final approved document to be incorporated into the Policy and Procedures Manual.</p> <p><b>Updates</b></p> <p>To be updated within five Business Days following any material change to the document, with each update to be submitted for review under the Review Procedures.</p> <p>A schedule of the changes to the document is to be provided to the Department monthly.</p>
Risk Management Plan	<p>The Risk Management Plan must detail the Contractor's approach to the management of risk, and will include:</p> <ul style="list-style-type: none"> <li>• establishment and maintenance of a prison and systems threats and risks assessment and analysis of all risks</li> </ul>	<p>Six months prior to the First Service Commencement Date.</p>	<p>Three months prior to the First Service Commencement Date (after proceeding through Review</p>

Operative Document	Mandatory content	Time for delivery of first draft	Required time of finalisation
	<p>associated with the operation of the Prison;</p> <ul style="list-style-type: none"> <li>• response actions for all identified risks (informed by the prison and systems threats and risks assessment);</li> <li>• the Risk Register, which will contain details of all identified risks and the impact of such risks, proposed mitigation strategies, and details of the residual risk following implementation of mitigation strategies;</li> <li>• procedures for updating and reviewing the Risk Register; and</li> <li>• detail of the scope and frequency of risk reviews.</li> </ul>		<p>Procedures).</p> <p>Final approved document to be incorporated into the Policy and Procedures Manual.</p> <p><b>Updates</b></p> <p>To be updated:</p> <ul style="list-style-type: none"> <li>• annually; and</li> <li>• within five Business Days of any material change to the document,</li> </ul> <p>with each update to be submitted for review under the Review Procedures.</p>
ICT Solution	<p>The ICT Solution is a description of the ICT solution to be implemented by Operation Completion and to be utilised on an ongoing basis and will outline:</p> <ul style="list-style-type: none"> <li>• a list of the ICT components to be implemented at the Prison, including components for Custodial Management System (CMS), Security Management System (SMS) and Building Management System (BMS) and their functionalities to be utilised at the Prison;</li> <li>• a description of integration interfaces required between the CMS, SMS and BMS systems;</li> <li>• a description of integration interfaces required between CMS, SMS and BMS systems and external systems (including the Department's ICT System);</li> <li>• an overview of the approach taken to the provision of availability and redundancy in the CMS, SMS and BMS systems;</li> <li>• an overview of the security-related features of the CMS, SMS and BMS systems; and</li> <li>• solution architecture diagrams of the CMS, SMS and BMS systems, depicting the high-level system components and their interconnection.</li> </ul>	Nine months prior to First Service Commencement Date.	<p>Six months prior to First Service Commencement Date.</p> <p><b>Updates:</b></p> <p>To be updated:</p> <ul style="list-style-type: none"> <li>• annually (at least 30 Business Days before the end of each Contract Year); and</li> <li>• prior to any planned roll-out of any replacement of an ICT component,</li> </ul> <p>with each update to be submitted for review under the Review Procedures.</p>

Operative Document	Mandatory content	Time for delivery of first draft	Required time of finalisation
Disengagement Plan	<p>The Disengagement Plan must:</p> <ul style="list-style-type: none"> <li>specify the tasks, the resources and the personnel to be used to effect Disengagement and ensure the seamless migration of responsibility for the provision of the Operational Services (including, for the avoidance of doubt, rehabilitation and reintegration services) during the Disengagement Period;</li> <li>specify the assets, Fitout, records, information, data and other tangible or intangible deliverables deliverable to the Department on or prior to the last day of the Disengagement Period; and</li> <li>include a detailed description of the following: <ul style="list-style-type: none"> <li>the items that make up the Handover Package;</li> <li>the tasks to be performed to effect Disengagement;</li> <li>the Disengagement Deliverables to be delivered to the Department on or prior to the last day of the Disengagement Period;</li> <li>the timing and methodology for undertaking a final survey of the Facility to ensure compliance with the Hand Back Requirements;</li> <li>a timetable (based on the likely scenarios) incorporating staged handovers of different parts of the Operational Services;</li> <li>key dependencies and risks;</li> <li>risk mitigation planning including provision of the Services during the Disengagement Period; and</li> <li>the rights of access to, and use of, any premises owned or leased by the Contractor and used in the provision of the Operational Services by the Department or a New Contractor (together with the charges payable (if any)).</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Not less than 18 months prior to the Expiry Date; or</li> <li>within 10 Business Days of the Department requesting the Contractor to prepare the plan if a Termination Notice has been given.</li> </ul>	<ul style="list-style-type: none"> <li>Not less than 12 months prior to the Expiry Date (after proceeding through Review Procedures); or</li> <li>within 30 days of the Department requesting the Contractor to prepare the plan if a Termination Notice has been given.</li> </ul>
Handover Package	<p>The Handover Package must include:</p> <ul style="list-style-type: none"> <li>a list and copies of all agreements and documents material to delivery of the Operational Services;</li> <li>a list of systems and all other information key to the daily operation of the Operational Services;</li> </ul>	Six months prior to the First Service Commencement Date.	Three months prior to the First Service Commencement Date (after proceeding through Review Procedures).

Operative Document	Mandatory content	Time for delivery of first draft	Required time of finalisation
	<ul style="list-style-type: none"> <li>• details of the employees of the Contractor and the Major Sub-contractor that are responsible for the delivery of the Operational Services for the time being;</li> <li>• records relating to the Facility, the Works Infrastructure and the External Infrastructure;</li> <li>• up-to-date copies of all planning and building consent correspondence and documentation;</li> <li>• up-to-date copies of all the other Services Documentation; and</li> <li>• all records and correspondence relating to the management and maintenance of the Facility, the Works Infrastructure or any aspect of the Works.</li> </ul>		
Privacy Impact Assessment	<p>The Privacy Impact Assessment covering the use of the Contractor's ICT System and biometric systems must include:</p> <ul style="list-style-type: none"> <li>• details of consultation with the Office of the Privacy Commissioner;</li> <li>• details of the Contractor's privacy policy and information security policy, standards and guidelines;</li> <li>• details of privacy impact controls and compliance mechanisms;</li> <li>• plans for audits of information security controls;</li> <li>• procedures for reporting on privacy breaches and/or complaints;</li> <li>• details of staff training covering privacy risks, obligations and controls for the protection of prisoner information and biometric information; and</li> <li>• details of communications prepared to advise Prisoners, Staff Members, contractors, suppliers, and Visitors about privacy and information security controls.</li> </ul>	Six months prior to the First Service Commencement Date.	Three months prior to the First Service Commencement Date, after proceeding through the Review Procedures.
Prison Manager Position Description	Position description for the Prison Manager (referred to as the "Prison Director" by the Contractor).	Execution Date.	<p>Three months after the Execution Date, after proceeding through the Review Procedures.</p> <p><b>Updates</b></p> <p>To be updated within 10</p>

Operative Document	Mandatory content	Time for delivery of first draft	Required time of finalisation
			Business Days of any material change to the document, with each update to be submitted for review under the Review Procedures.

## Appendix: Corrections Services Solution

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# Corrections Services Solution

# Amendment Record

Version	Amendment	Editor	Date
Corrections Services Solution DRAFT	Initial draft to Dept after Preferred Bidder	Jane Francis	14 May 12
Corrections Services Solution DRAFT 1Jul12	Final draft submitted to the Dept, updated to reflect feedback received from the Dept and R&R KPI development methodology as agreed in workshops held on 20-22 June 12	Jane Francis	1 July 12
Corrections Services Solution 5Aug12	Final version submitted to the Dept, updated to reflect feedback received from the Dept: <ul style="list-style-type: none"> <li>- Removal of reference to SACRA</li> <li>- More detail on accommodation classification, segregation and at-risk management</li> <li>- Various drafting amendments</li> <li>- Addition of Appendix 6 detailing approach to R&amp;R KPIs</li> </ul>	Jane Francis	5 Aug 12

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## 1. PURPOSE OF THIS DOCUMENT

This document has been prepared by the Contractor and reviewed by the Department.

The purpose of this document is to provide guidance on the focus and outline content of the Policy and Procedures Manual and the Rehabilitation and Reintegration Programme and will form the basis for the development of these Operative Documents in accordance with the requirements of Part 3 of Schedule 5. The Parties acknowledge that the form and content of these Operative Documents will proceed through the Review Procedures.

## 2. SERVICE DELIVERY PHILOSOPHY

*‘SecureFuture’s vision is that the Prison will be a safe, secure and decent Prison. It will be a leader in innovative correctional practice and will establish benchmarks of Prisoner rehabilitation, reintegration and reduced offending. The Prison will be integrated into the New Zealand justice and correctional systems and will partner with Mana whenua Iwi in exercising katiakitanga over the site’.*

SecureFuture considers safety as paramount and maintenance of good order and security imperative and has invested significantly in developing a contemporary design and operational solution for the Prison that provides a safe, secure and supportive environment which encourages positive Prisoner experience and interaction, whilst achieving the Project Outcomes of sentence compliance, reduced re-offending and achieving effectiveness with Māori.

SecureFuture’s model for the Prison is to provide an environment of progressive change and SecureFuture is dedicated to ensuring that Prisoners have the opportunity to transform their lives through a combination of education and vocational training, rehabilitation and reintegration programmes, employment skills, healthcare, counselling and personal development programmes, as well as through the provision of a structured day.

SecureFuture will adopt an outward-facing, optimistic operating model that accompanies Prisoners on their journey towards independence, self-determination and a law-abiding lifestyle. The environment will reflect a busy and challenging Prisoner day, with plenty of meaningful activity which will provide the opportunity for Prisoners to excel. The management model will be one that rewards positive behaviours and encourages achievement.

Responsibility and mutual respect will be at the forefront of the processes to engage and manage Prisoners. SecureFuture’s approach to Prisoner management will be to actively involve Prisoners in their own rehabilitation journey. Prisoners will be given the opportunity to acknowledge their offending behaviour and, with the support and input of case management personnel and families, take the necessary steps toward addressing their needs and achieving successful reintegration back into the community.

Supported by Māori staff, whānau, hapū, Iwi, Māori service providers and other community members, SecureFuture will introduce programmes and services designed to address Māori specific needs and reconnect Māori Prisoners to their cultural heritage. SecureFuture will ensure that day-to-day interactions with Māori Prisoners are used as opportunities to have a positive influence and encourage pro-social behaviour.

SecureFuture believes that successful reintegration involves a range of stakeholders beyond correctional authorities and individual offenders and it will ensure that relevant services and support networks are established prior to a Prisoner’s release from the Prison.

SecureFuture’s reintegration approach will commence in the period leading up to, and following, release and reintegration and will build on the proven track record of its correctional services provider, Serco’s, existing establishments where they work with a wide range of agencies in the community to provide Prisoners with the support and skills they need for a purposeful and fulfilling life after release.

### 2.1 Integrated Approach to Prison Management

#### 2.1.1 The Responsible Prisoner Model

SecureFuture strongly believes that the experience of imprisonment can all too easily lead to Prisoners becoming passive recipients of Prison services. Founded on respect for the individual, the Responsible Prisoner is a key concept in SecureFuture’s Service Delivery Philosophy. The Responsible Prisoner is one who actively participates in their schedule of activities during their imprisonment. This includes playing a full part in the identification of their rehabilitation and reintegration needs, and the services

to be accessed in response, through managing their daily routines and progress to achieve targets, to the detail of preparing for their release.

SecureFuture recognises individual Prisoner rights, responsibilities and abilities. The Prison will act as a facilitator, providing the resources, structures and networks necessary for individual responsibility to be exercised. The level of responsibility to be exercised by each Prisoner is dependent on both their ability and attitude, with the Prison acting as a resource and a safety net for those incapable or unwilling to do so. SecureFuture's service delivery philosophy reinforces this commitment to managing Prisoners on an individual basis, with support from and engagement with whānau, Iwi and hapū, where appropriate. SecureFuture is determined that the Prisoners in its care will be managed as 960 individuals and not as members of the 53 gangs in New Zealand.

Critical to the concept of the Responsible Prisoner is SecureFuture's commitment to ensuring that Prisoners do not develop the mindset of, or absorb the culture of the long term convicted. SecureFuture recognises that a high proportion of the Prison population in New Zealand is drawn from the poor, the disadvantaged and the disconnected. For such people, and for Māori and Pasifika in particular, the Prison experience should not be permitted to become a rite of passage. SecureFuture's management of Prisoners will not provide any scope for gangs to develop relationships with, or influence, newly received Prisoners. This will include, for example, discrete accommodation for the high number of first time Prisoners.

### 2.1.2 Staff and Prisoner Relationships

SecureFuture believes that staff have an important role to play in Prisoner rehabilitation by providing role models who are able to demonstrate appropriate values and behaviours. SecureFuture stresses the role of staff in motivating Prisoners to address their offending behaviour while completing their sentences so as to contribute to and participate in the community on release.

The management model that SecureFuture will have in place will be one that rewards positive behaviours and encourages achievement and the addressing of offending behaviours.

SecureFuture will treat all Prisoners as individuals from the moment they arrive at the Prison and conduct checks and assessments that take into account each Prisoner's offence, risks, background, culture, mental and physical health, personal circumstances, education levels and employment skills. Initial checks will commence during the reception procedure and will then be followed by assessments during the ten day Prisoner induction programme.

During induction, Prisoners will be properly assessed and placed in appropriate accommodation. Each Prisoner will be assigned a personal officer; this will usually be an officer from the accommodation unit where the Prisoner will be housed after completion of the induction programme. The role of the personal officer is broadly as follows:

- To act as a single point of contact for the Prisoner if he has any concerns, questions or requests
- To have input into the development and monitoring of the Prisoner's plan, and encourage him to take responsibility for the plan, providing motivation and support
- To proactively engage with the Prisoner, both formally at regular intervals, and informally in the course of his/her daily duties
- To have a supporting role in Prisoner's case management – for example, a personal officer may attend case management reviews, providing the link between daily life and the specialist services staff, who may only see the Prisoner infrequently and may not know him as well.

Prisoners will be required to actively participate in the development of their Individual Management Plan (IMP)<sup>1</sup>, with the support of an integrated case management team and their assigned personal officer, and, where appropriate, SecureFuture will engage the Prisoner's family to participate in this process also.

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<sup>1</sup> IMP is the term used to deliver the Department's requirement of a Prisoner Management Plan



SecureFuture will develop a collaborative and respectful setting for staff and Prisoners by promoting a busy, forward-looking and positive environment at the Prison which is based on strong interactions.

In addition to actively engaging Prisoners through the management of their own Individual Management Plans, SecureFuture will also encourage them to become stakeholders in the Prison. SecureFuture will establish a Prisoner representative forum so that Prisoners are given a voice to which it will listen and actively demonstrate that SecureFuture is open and honest in its dealings with them. The forum will offer Prisoners the opportunity for raising, discussing and resolving concerns amongst the Prisoner population.

### 2.1.3 Pathways needs assessments

At the centre of SecureFuture's vision to contribute to a better future for Prisoners and the wider community through helping the Department achieve sentence compliance and a reduction in re-offending, SecureFuture will address each Prisoner's risks and management needs using a pathways approach framework by which to guide its efforts.

Prisoner case management will produce a pathway needs assessment which will summarise the Prisoner's needs and risks from the perspective of the following pathways:

- accommodation
- education, training and employment (ETE)
- mental and physical health
- drugs and alcohol
- finance, benefits and debt
- children and families of prisoners
- attitudes, thinking and behaviour
- social support.

Data will be collected via a suite of assessments; these will inform the Prisoner's IMP which will provide the 'road-map' that governs the Prisoner's actions to achieve a successful and law-abiding return to the community.

The pathway needs assessment will summarise the Prisoner's individual risks, needs, and mitigation actions in a simple, concise and accessible document; one which demonstrates a clear linkage with tangible benefits for the individual and the Prison's service delivery philosophy.

SecureFuture believes that it is imperative that the Prisoner has a high degree of ownership of his IMP and the regime he is working to. The pathway needs assessment achieves the responsible Prisoner approach in simple and effective way.

Assessments, interviews and reviews will be carried out in such a way as to maintain confidentiality and privacy.

The accommodation plan will be consistent with this pathway model, enabling suitable Prisoners to be accommodated together. This will also enable services to be delivered to similar groups of Prisoners.

### 2.1.4 Alliance Offender Management

SecureFuture's systems are founded on a proven Prisoner management approach, the alliance offender management model. The features of the alliance offender management model that will be deployed at the Prison include:

- a partnership with established voluntary sector providers, such as NZ PARS
- an engagement and full integration of SecureFuture's service delivery partners in the rehabilitation and reintegration process from reception and induction and through the Prisoner's sentence to his release
- partnerships with external academic institutes, such as:

- Victoria and Deakin Universities (for example on assessments and interventions)
- Cambridge University (for example on the measuring the quality of Prison life)
- Canterbury University (for example on gangs)
- Auckland University (for example on music therapy and education).
- integrated case management between the Prison and service providers
- knowledge and innovation transfer between Serco business units (such as the adoption of the very successful Responsible Prisoner Model from Serco UK, Australia and Mt Eden operations)
- support from Serco's repository of research and its research capabilities
- recognition that Māori are over-represented in the New Zealand correctional settings, particularly among short sentenced and young offenders
- close and more effective engagement with Prisoners' families and whānau via:
  - ensuring that the Visitor Centre is not simply a visits processing area, but rather a gateway for family support
  - the establishment of the Prison Community office in the local area, ideally co-located with one of the contracted community-based service providers, enabling Prisoners' families to access support and advice outside the Prison walls.
  - support for Māori whenua through extensive engagement with Mana Whenua Iwi.

### 2.1.5 Throughcare

Case management will facilitate through the gate, or throughcare, between the Prison and the community. Together with its community-based service provider partners, SecureFuture will deliver assessments and interventions from the reception and induction stage and will continue that engagement (including regular assessment and review) through Prison to reintegration. This will reduce the risk of gaps in service delivery at the traditional transition points highlighted by research literature by integrating rehabilitation and reintegration efforts.

Reintegration plans will be created for Prisoners, including summaries of reintegrative needs compiled throughout the sentence and identifying post-release needs, the available services to support those needs and the support networks, including the Prison community office-based mentoring scheme. Three months out from discharge most of those Prisoners not already housed in a residence, will be moved to a discrete reintegration housing unit, supported by the reintegration unit staff.

## 2.2 Full and Purposeful Day

SecureFuture recognises that to realise its vision for the Prison, the Prisoners must have sufficient periods out of their cells in order to achieve their individual goals and targets. SecureFuture believes that providing Prisoners with a meaningful and structured day is not only critical to enabling Prisoner rehabilitation, but also to operating a safe and secure Prison.

SecureFuture's structured day provides a suitable balance between periods in which the Prisoners are confined to their cell and periods in which they are out of cell in purposeful activity. It is designed to provide a balance of purposeful activities, recreational activities and free time to create both a busy Prison and a learning environment. The structured day is designed to reflect as normalised an environment as possible within the limitations imposed by custody, and provides a suitable setting in which SecureFuture's staff can engage pro-socially with the Prisoners.

An outline, indicative structured day for the Prison is provided in Appendix 1. The structured day and the programmes compendium will provide each Prisoner with approximately 28-29 hours of purposeful, directed activity each week. This is composed of the following elements:

- 5 hours per week formal programmes (complemented by 10-20 hrs via in-cell virtual learning)
- 2 hours per week activities
- 20 hours per week work
- 2 hours per week structured visits.

SecureFuture will operate a varied range of appropriate and accessible activities that meet the Prisoner's identified needs. These will contribute to a pro-social environment where staff have ample time to interact with Prisoners in guiding and supporting roles that demonstrate by example desirable behavioural models.

The structured day for the Prison is supported by:

- a 'busy' and therapeutic Prison environment of integrated programmes, work and recreation, linked to the Kaitiaki Plan (2011)
- programmes and activities
- a recognition that the Prison is a high security facility which accommodates low (and some minimum) security, segregation Prisoners and those in discrete units, such as the induction, and a first offence unit (with a focus of young Prisoners)
- activities times are spread throughout the day to meet Prisoners' needs, motivation and readiness
- the Custodial Management System (CMS) and its in-cell component, the Prisoner In-Cell System (and Virtual Learning Environment) will make the Prisoner's structured day visible and subject, through appointment making and course enrolment ability, to a degree of control by the Prisoner. This will enhance ownership and give the Prisoner some autonomy and control over his daily life.
- dynamic and effective staff/Prisoner relationships, including face-to-face contact with teachers/clinicians in class/programmes
- five programmes sessions each day; supported by seven activities sessions. Core programmes are generally delivered in the morning; complementary programmes generally in the afternoon
- programming reflecting, for Māori, the substance and spirit of the Kaitiaki Plan and engagement with Mana whenua Iwi.
- programme focus based on:
  - Psychological/AOD and literacy and numeracy programmes
  - Offence prevalence data (e.g. violence and sexual offending).

SecureFuture will ensure that, wherever possible, Prisoners have equitable access to all Prison services including industries, education, health and rehabilitation programmes.

SecureFuture has undertaken considerable research into what would be the most appropriate activities to include in the Prisoners' day. This work was to identify suitable activities and programmes and then to establish levels necessary to keep Prisoners busy and active. This work then informed the necessary resource requirements to enable what was planned to occur.

SecureFuture's planning included the establishment of the following activity profiles for the Prisoners' day:

- education
- programmes
- domestic employment
- industrial employment
- recreational sports
- vocational training
- unavailable for work

SecureFuture has conducted detailed modelling of the activity profile for Prisoners, and Appendix 2 provides an overview of the indicative numbers of Prisoners engaged in each category of activity at any one time during the core day. The profile is not intended to be definitive, since the SecureFuture solution is primarily focussed on tailoring programmes and activities to meet each Prisoner's individual needs. The profile is summarised in the table below:

Category of Activity	Number employed
Domestic Employment	166
Industrial Employment	230
Education	90
Vocational Training	95
Programmes	200
Recreational Sports	80
Unavailable for on-site Activities	99
<b>TOTAL</b>	<b>960</b>

As can be seen, there is a substantial amount of planned activity for Prisoners. This model provides for 30% of Prisoners to be involved in vocational education, education and programmes.

### 2.3 Custodial Management System

SecureFuture will implement the CMS system at the Prison. Prisoners will use biometric technology to access unit kiosks and personal PIN logons to access the in-cell system, which will then enable them to manage and view a range of activities within their daily routine.

This system encourages Prisoners to exercise greater financial control and independence, in keeping with SecureFuture's Responsible Prisoner model. Prisoners will be instructed in the use of the CMS system during induction.

The system will provide Prisoners with access to their trust accounts, allowing them to transfer funds electronically and place orders for approved purchase items. It will also provide access to general information that may be of use or interest to the Prisoner, such as policies, procedures, rules and regulations that affect them while in custody. Some documents will be available in several languages, and picture icons will be used where possible to assist those Prisoners who have reading difficulties.

Each Prisoner will be assigned an individual log in. An important aspect of this system is the restricted items logic. Thus, for example, Prisoners identified to be at risk of self-harm will not be able to purchase razor blades and those with diabetes will be restricted in the number of sugary food items they are able to buy. In this way, the purchasing system will feed into SecureFuture's broader Prisoner management objectives and initiatives, including the preventative health plan and the Responsible Prisoner model.

Cells will access the system via thin-client terminals. The entire application is supported with graphics, reducing the impact of language and literacy barriers.

The CMS will deliver the following specific functionality:

Functionality	Available in Kiosks	Available in-cell
Trust account balance	Yes	No
PIN phone top up – allows Prisoners to add funds to their PIN phone accounts in real time	Yes	No
Canteen Shopping – facilitates shopping by: <ul style="list-style-type: none"> <li>– Pictorial based canteen shopping system allows Prisoners to purchase goods</li> <li>– Providing real-time balance information and ensuring purchases comply with spend limits</li> <li>– Prisoners can add frequently purchased items to 'Favourite' list to reduce the time taken to purchase items</li> </ul>	Yes	No
Menus – enables Prisoner to select their meals by: <ul style="list-style-type: none"> <li>– Pre-ordering food choices using a touch screen interface</li> <li>– Ensuring special diet and or religious restrictions are reflected in the Prisoners' menu options. The use of icons to provide quick dietary information e.g. vegetarian or healthy choice, to ensure Prisoners are aware of food content of menu choices and promote healthy eating choices</li> <li>– Main meal, staple and sweet selection limits ensure only 1 item in each category can be ordered</li> </ul>	Yes	Yes
Timetable – displays an individual Prisoner's scheduled activities for the current and following week and includes the option to print out this schedule	Yes	Yes
Visits Booking – enables Prisoners to book social visits	Yes	Yes
Prisoner Information – delivers general information related to Prisoners' frequently asked questions (FAQ) and general applications. This function dramatically reduces in the time taken to deal with queries and reduces Prisoner complaints. General applications received from Prisoners are made directly and sent electronically to the relevant departments, considerably reducing response times and providing a greener solution for dealing with enquiries	Yes	Yes
Medical services module – gives Prisoners direct access to request medical services and obtain health related information	Yes	Yes
Cell fault reporting - allows Prisoners to report cell faults (blocked toilet, faulty light bulb etc.) to onsite facility services resulting in a decreased fix time for cell faults	No	Yes
In-cell Virtual Learning Environment (VLE)	No	Yes

Note: the above allocation of functionality to kiosks and cells is reflective of SecureFuture's proposals for implementation by the Service Commencement Date. The CMS system is configurable so that the allocation can change over time if there is an operational benefit in doing so. Moreover, the system allows for restrictions to be placed on groups within the overall configuration; an example of this may be the addition of trust account functionality to single cells, or to cells within the residences. Future enhancements such as 'Job Shop', 'Register for Employment' and 'Request Services' modules may also be implemented to further improve service delivery to Prisoners.

### 3. A SAFE AND SECURE PRISON

#### 3.1 Approach

SecureFuture is committed to the safe, effective and humane management of Prisoners and to meeting the duty of care it has to Prisoners, staff and visitors. SecureFuture's processes for the Prison will have at their genesis, the provision of safety, security and preservation of life. The very core of SecureFuture's approach is the provision of safety and duty of care to all within its area of control.

The Prison will be safe and secure in the broadest sense, recognising that security cannot be attained simply by fences, alarms and cameras. Procedural security will be combined with a zero-tolerance approach to bullying, violence, gangs, drugs, alcohol, mobile phones and other contraband, to create a highly secure Prison. This will be reinforced by a high rate of purposeful activity within the Prison to keep Prisoners busy and supervision by well-trained staff who are alert and responsive to the environment.

SecureFuture believes that in order for there to be a safe environment, firstly there must be an environment in which safety and respect can exist and flourish. With this in mind SecureFuture will focus heavily on building and developing a positive, therapeutic environment as a foundation and support base for the required elements of safety, respect and provision of a duty of care to all. This is at the core of service delivery at all of the correctional contracts operated by its correctional service provider, Serco.

The culture at the Prison, the daily experience and the feel of the Prison will reflect SecureFuture's aspirations and its vision. SecureFuture views these matters through a whole environment approach where all aspects of the operation will contribute to the greater whole. Even in areas which exist to manage those who propose challenges to normal progress, such as in segregation, there will be no divergence from SecureFuture's shared ethos and values.

The Prison will act as a supportive responsible community in which all the social norms are practised. It will be a meritocracy where the environment is fair and equitable, and all members are equally valued. It will be a listening Prison, encouraging full and proper engagement of Prisoners and it will communicate clearly to all.

SecureFuture will maintain active pro-social modelling through its actions and attitudes. Pro-social behaviours will be recognised and rewarded, whilst anti-social behaviours will be challenged and rejected. SecureFuture's environment will therefore be values-based rather than welfare-based.

SecureFuture will create a Prison that:

- Will remain in a constant state of development as the demands on it change over time
- Will discharge its core responsibility of being safe and secure, allowing work to be undertaken, without distraction, to help the rehabilitation and reintegration of Prisoners
- Will be focused on measurable outcomes
- Is optimistic, forward and outward looking
- Will operate in a Prisoner-centred manner recognising each as an individual
- Will have an operating philosophy that does not and will not compromise safety or the inherent duty of care to all within it
- Will minimise the negative effects of imprisonment
- Will be operated by staff who are knowledgeable and clear about their role, their function and who exploit to the full their energies, abilities and aspirations.

The visible manifestation of this safe and secure environment will include:

Table 1: Prison environment

Facet	Description
<b>A culture of involvement</b>	SecureFuture believes that good things happen when you make them happen and bad things happen when you let them happen. SecureFuture's environment will not default to inactivity through the passage of time. SecureFuture will ensure a full, varied and active day with ample opportunity for personal development for Prisoners.
<b>Leadership</b>	<p>At the hub of safe, secure and positive environments are leaders who support and drive those who follow by the most powerful lesson of all, their own conduct.</p> <p>SecureFuture's staff will demonstrate social skills such as equity, tolerance, consideration, consistency, trust and respect. Staff will themselves be led and supported through supervisory, managerial and senior managerial grades. SecureFuture expects relevant operational staff to spend part of every day with the Prisoners.</p> <p>SecureFuture believes that there are few more powerful messages to the Prisoner population than daily interaction with the Prison Director<sup>2</sup> and their senior team, whose approach and values are the same as front-line staff.</p>
<b>The self-contained town</b>	<p>The Prison will operate like a small town, and contain all the functions which a small town needs. The environment will provide opportunities for Prisoners to assist in the operation of this town and through their involvement, gain marketable and transferable skills and qualifications to assist potential avenues of employment upon release.</p> <p>SecureFuture expects to see Prisoners working in catering, maintenance, horticulture, sports leadership, education and training, industrial work, library and cleaning, leading to recognised qualifications where possible.</p>
<b>Meritocracy</b>	Those who are seen to achieve at the Prison and gain the rewards from it must do so purely on merit, ensuring equality of opportunity.
<b>Differentiated services</b>	The environment of a Prison does not, in SecureFuture's view, lend itself to a one-size-fits-all approach, and the blanket imposition of interventions. Such an approach is likely to be ineffective, inefficient and indeed for some Prisoners, counter-productive. In terms of offence, ethnicity and demographics, services and approaches will be modified in such a way as to ensure applicability to all.
<b>'Felt fair'</b>	The meritocracy of the Prison allows the concept of 'felt fair' to be achieved where Prisoners can clearly see that their treatment is just and equitable, and founded on a shared underpinning philosophy. SecureFuture will ensure, in all its dealings with Prisoners, that fairness and equity are maintained.
<b>Barriers to progress and stress triggers</b>	The environment will recognise that, although needs will be identified, Prisoners will experience stress that may impact on their behaviour and performance. Staff will remain sensitive to any behavioural changes and attempt to determine the cause and offer support. Within the Prison, the environment will ensure that bullies are identified, isolated and challenged and victims supported.
<b>Normalised</b>	The Prison environment is by definition abnormal. However, SecureFuture's environment will aim to minimise this by a daily regime that as closely as possible reflects life in the community, with periods of work, rest, recreation,

<sup>2</sup> Prison Director is the term SecureFuture uses to denote 'prison manager' as defined in the Corrections Act

Facet	Description
	domestic routines, and meal times.
	Normalised interactions between Prisoners and staff will be central to positive modelling. SecureFuture does not subscribe to overt displays of authority by staff under any but the most extreme circumstances, instead requiring its staff to use their developed interpersonal skills and verbal interactions to be the first line in ensuring security and safety.

## 3.2 Safety and Security Arrangements

Ensuring the physical safety of Prisoners is central to enabling Prisoners to focus their attention on addressing their offending behaviour and assessed learning needs and to encouraging them to develop their education and employability skills with the objective of reducing their likelihood of re-offending.

SecureFuture believes that if a Prisoner feels at risk or threatened, his concentration is focused on achieving safety and not on the longer term or future. Whilst a typical person's orientation may focus on a future of up to 3-6 months, a person who is feeling threatened may only have an orientation of a week or even a couple of days due to their focus on purely escaping threat.

SecureFuture's approach to security will be developed on a base of established, prudent and proven security processes. These processes will include:

- Risk Management
- Static Security
- Dynamic Security
- Process Security

### 3.2.1 Risk management

SecureFuture will have in place robust and comprehensive risk assessment processes and procedures. SecureFuture recognises that the correctional setting presents unique risks, both in their range and severity and should therefore be carefully approached.

SecureFuture will provide an accessible and applicable risk management system which encompasses compliance, community safety, staff safety and Prisoner safety and security.

SecureFuture's risk management systems will provide functionality in planning, prevention, operations and assessment. In terms of ensuring and demonstrating safety within all areas and the functions of the Prison, SecureFuture's risk management plan will be reviewed throughout the life of the contract through the monitoring of operations.

SecureFuture will implement the following strategies in its approach to risk management:

- The provision of a Threat Risk Assessment as part of the preparation of the Prison for operations
- A full risk assessment of the commissioning and ramp up phases
- A risk assessment of the commencement of operations
- Ongoing annual reassessments of the risks pertaining to the Prison
- Completion of a Security Management Plan for the Prison.

SecureFuture's approach includes a model that prefers to remove or avoid risks, acknowledging that mitigation leaves aspects of the risk to impact on operations. Where a risk cannot be avoided or removed, then mitigation will be carried out.

SecureFuture confirms that its assessment and management of risk practices are governed by the AS/NZS 4360:2004: Risk Management Standard and that each Prison function will be risk assessed as



an initial task, and any appropriate mitigation strategies identified to ensure the appropriate levels of safety.

A fundamental component of SecureFuture's model for risk management is the requirement to identify and manage risks rather than letting risk impact on the safety and security of the Prison. SecureFuture also accepts that risk management is best handled by the operators, as they bring the best qualification to the assessment and management of risk through their experience. Risk management specialists will support where appropriate.

SecureFuture will develop a site specific Risk Management Plan (RMP) for the Prison. To a large extent, the RMP will provide a self-auditing tool, with its periodic responsive updates, removal, avoidance or mitigation strategies and plans, quarterly reports and annual review.

SecureFuture's monitoring and reporting systems will allow SecureFuture to monitor and track risks at the Prison. This will ensure that the Prison's overall risk profile, after implementation of appropriate risk mitigations and management plans, remains acceptable.

SecureFuture will review specific risk assessments at least quarterly, in response to the following:

- Real-time incident reports
- Outcomes, feedback and findings of staff meetings
- Outcomes, feedback and findings of Prisoner meetings
- Feedback from key stakeholders.

If a risk appears to be significantly increasing or safety or security is noted as deteriorating, SecureFuture will amend the RMP as appropriate and respond accordingly.

### 3.2.2 Static security

SecureFuture's static security will comprise a barrier management approach to the Prison. It will also include support systems such as closed circuit television (CCTV) and detection systems. The central component in the static security will be that of the perimeter and its associated systems.

#### 3.2.2.1 Perimeter security

SecureFuture will provide and maintain a secure perimeter. SecureFuture's approach to perimeter security and management will be as follows:

**Table 2: Perimeter Security and Management**

Process	Overview
<b>Barrier management</b>	<p>The perimeter will be managed as a series of barriers. There will be:</p> <ul style="list-style-type: none"> <li>— a restricted access area/zone external to the perimeter</li> <li>— the two perimeter fences with restricted access between or near these barriers</li> <li>— a no-go area for Prisoners immediately internal of the inner perimeter barrier</li> <li>— management processes for passing through the perimeter.</li> </ul> <p>SecureFuture will have a response capacity to enable staff to respond to intrusions or attacks to the perimeter.</p> <p>The outer zone will be identified by signage and markings.</p> <p>SecureFuture will have a no-go area identified and marked immediately inside of the perimeter wall. This security requirement for Prisoners not to enter this area will be an item delivered during the induction programme.</p>

Process	Overview
<b>Perimeter management practices</b>	<p>The management of the secure perimeter will not affect normal operations. SecureFuture's approach will be to conduct this function in isolation to the rest of the Prison. This is to enable normalised operations to occur within the secure perimeter.</p> <p>SecureFuture will assign appropriate resources to provide all patrols and testing regimes, and as the perimeter, from the point of view of the occupants of the Prison, plays no part in daily life, its management will have no impact on the Prison's operations.</p> <p>The Associate Director Security and Operations will have responsibility for overseeing the management of the perimeter systems.</p> <p>The primary resource for the day to day perimeter management will be the Operations Manager.</p> <p>Security infrastructure related to the secure perimeter will be maintained through regular testing of all required elements and systems, and immediate notification to the maintenance personnel of defects. This will include checks of:</p> <ul style="list-style-type: none"> <li>— lighting</li> <li>— cameras</li> <li>— physical barriers</li> <li>— perimeter alarm systems.</li> </ul> <p>The perimeter security system testing regime will be strictly in accordance with the Security Management Plan. All necessary records will be completed and retained.</p> <p>The perimeter will be under constant observation by the Master Control Room, with all perimeter sections designated a particular code which identifies the section. These sections will be clearly marked and their designation noted during initial officer training.</p>
<b>Perimeter management practices (continued)</b>	<p>SecureFuture will have procedures in place for emergency responses to perimeter alarms, with a priority on the prevention of the escape second only to the preservation of life.</p> <p>The master control room officers will direct the response to perimeter alarms.</p> <p>Master control will have primary control over the gate complex and barrier management. SecureFuture confirms that all access/egress events, be they of vehicle and/or individuals, will be supervised by an officer using all required physical and procedural elements for all events, without exception.</p> <p>All full fence alarms of any type will be interrogated and recorded in the master control room.</p>

Process	Overview
<b>Gatehouse</b>	<p>Entry through the perimeter's main gate building will require the following security checks:</p> <ul style="list-style-type: none"> <li>– pass through a comprehensive vetting procedure</li> <li>– pass through a comprehensive identification procedure</li> <li>– pass through metal-detecting equipment</li> <li>– pass property through X-Ray equipment</li> <li>– pass through continual CCTV observation</li> <li>– pass through trained officers' observation</li> <li>– strict control of items permitted into the Prison</li> <li>– thorough searching of all vehicles.</li> </ul> <p>All of SecureFuture's safety and security measures will be brought together under a Security Management Plan, and appropriate procedures, to form a cohesive whole Prison management response to safety and security, where the gate and the perimeter elements have an obviously critical role.</p>
<b>Deterrent</b>	<p>The collective aforementioned systems will provide effective physical and process based security. These systems will also be subject to rigorous and regular testing.</p> <p>The end product of these mechanisms will be to deter any attempt to interfere with or cross these barriers.</p> <p>A significant outcome sought from the perimeter systems in a high security Prison is to engender a deterrent factor. The fact that Prisoners are not challenging these systems shows that the systems are working and deterring such attempts.</p> <p>SecureFuture recognises the value of the deterrent component and will maximise the use of this factor.</p>

### 3.2.2.2 Other static security systems

Within the Prison, additional static security systems and controls will provide additional internal controls. Examples of such internal systems are:

Process	Overview
<b>Layer management</b>	<p>Within the Prison SecureFuture will have in place a series of security layers. SecureFuture has already covered the management of the most prominent and outer barrier or layer, that of the perimeter.</p> <p>Within the perimeter will be the space between the perimeter and the secure envelope of the secure accommodation building. Then there is the space and areas within the accommodation buildings.</p> <p>Each of these layers will be subject to a specific management strategy. The purpose sought is to be reducing the levels of control particularly in relation to Prisoner accommodation and association areas.</p> <p>SecureFuture's preferred model is to have its layer management in place and effective. This then enables a relaxing and normalising of the environment in which the Prisoners spend their day within the innermost layers.</p>

Process	Overview
<b>Movement control</b>	<p>SecureFuture recognises the requirement for persons, particularly the Prisoners, to be able to move around within the Prison. SecureFuture also knows that such movement should minimise stress, with a preference for covert rather than overt means of control. The movement should also occur at the time it is required.</p> <p>This movement will involve Prisoners moving across the varying layers of the Prison's security, hence the requirement for a controlled approach to this movement.</p>

### 3.2.3 Dynamic Security

SecureFuture regards dynamic security as the main stay of the security processes. The dynamic security is the method that provides advice of potential threats or risks and enables a timely proactive response to these matters.

SecureFuture recognises from research and experience that most significant finds of contraband or interventions to stop escapes were as a result of intelligence based information coming from dynamic security.

Central in SecureFuture's dynamic security model will be the following associated strategies and actions:

Strategy	Description
<b>Interactions with Prisoners</b>	<p>SecureFuture will have a strong emphasis on establishing respectful two-way communication between Prisoners and staff.</p> <p>This will be supported and enhanced by SecureFuture's Responsible Prisoner model and its personal officer scheme for each Prisoner.</p> <p>Engagement with Prisoners will be progressed from their reception and induction into the Prison, and will include regular contact between unit staff and their Prisoners.</p>
<b>Interactions with visitors</b>	<p>SecureFuture's staff will engage with visitors when they attend the Prison. SecureFuture recognises that Prisoners with issues may not tell staff immediately but will likely tell their visitors.</p> <p>SecureFuture sees positive and effective engagement with visitors as essential in picking up on any unknown issues with Prisoners.</p>
<b>Intelligence gathering</b>	<p>SecureFuture will have a dynamic and effective intelligence function in place.</p> <p>This function will seek out and gather all of the relevant information pertaining to dynamic security within the Prison.</p> <p>SecureFuture sees an intelligence function as being pivotal in gathering and collating information and piecing it together into usable and informative intelligence.</p> <p>SecureFuture will have dissemination processes in place to make certain:</p> <ul style="list-style-type: none"> <li>— That all relevant staff are informed</li> <li>— That all relevant decisions are informed by intelligence to enhance the accuracy of decision making</li> <li>— That there is an effective sharing of information with Departmental personnel.</li> </ul>

Strategy	Description
<b>Monitoring of data and information</b>	There will be intelligence processes in place to monitor all relevant data and information.
<b>Interfacing with NZ Police and the Department</b>	SecureFuture will have strong interface and information sharing arrangements in place with: <ul style="list-style-type: none"> <li>— NZ Police</li> <li>— The Department's intelligence function</li> <li>— Neighbouring prisons and correctional facilities.</li> </ul>

### **3.2.3.1 Intelligence Function**

SecureFuture will provide an intelligence function as part of the security framework for the Prison. The intelligence unit will form part of an integrated security service and as such will be under the management control of the Associate Director Security and Operations.

SecureFuture confirms its view of intelligence is to reduce risk in the Prison, and prevent Prison related incidents in the wider community by:

- Identifying indicators of negative activity
- Providing early warning of criminal activity
- Allowing for management and informed control of issues
- Enabling minor issues which may have major outcomes to be managed or prevented.

Information gathered will be treated as confidential. SecureFuture will be mindful of the sometimes complex and not obvious linkages that effective intelligence throws up and can later become critical; SecureFuture will err on the side of caution and ensure that all information of relevance is communicated.

SecureFuture believes that an effective intelligence function provides timely and accurate information of any trends and developments within the Prison, enabling members of management to proactively counter potential risks or negative developments.

In relation to a safer and more secure environment, SecureFuture sees the intelligence function assisting by:

- Informing on the presence of weapons
- Identifying those involved in standovers
- Identifying those involved in threats to the security of the Prison
- Identifying those involved in threats to other Prisoners of the Prison
- Contributing significantly to the effective dynamic security.

### **3.2.3.2 Intelligence enhancing Prisoner management**

SecureFuture's proposed intelligence function will provide a central accessible resource through which intelligence inputs are collated, evaluated, analysed and disseminated for the benefit of the Prison and the Department. The intelligence unit will pro-actively, either on an individual basis or through the management team, ensure decision-makers are apprised of appropriate information to allow them to make risk-assessed informed decisions.

Key users of the intelligence provided will be the sentence management team who will use the processed intelligence data to inform Prisoner management decisions, with obvious value to the Prisoner needs and risk assessment processes. The intelligence data will also be used by the sentence management team to develop and amend, where appropriate, the Prisoner's Individual Management Plans and case management.

SecureFuture's intelligence analysts will work closely with the sentence management team to review and update all high-risk Prisoner profiles to assist the sentence management team with risk analysis and subsequent placement recommendations.

SecureFuture is firm in its belief that Prisoner management decisions should have a full security and intelligence review, and SecureFuture will ensure this occurs by developing a close operational linkage between the intelligence function and the sentence management team.

This gathering of information about the Prisoners in SecureFuture's control will see staff better informed and more accurately able to make decisions and identify triggers or issues that could affect the safety of Prisoners. This could be issues such as past differences, conflict in the community before coming to the Prison, conflict or personality differences between Prisoners currently in an area.

### **3.2.3.3 Prisoner classification and supervision**

SecureFuture will have all Prisoners classified in strict accordance with the Department's Prisoner classification system and case management procedures. Where a significant event or incident occurs, SecureFuture will re-evaluate the classification of applicable Prisoners.

SecureFuture will ensure that Prisoners are adequately supervised in accordance with relevant procedures. SecureFuture regards supervision as crucial in the provision of a safe Prisoner community within the Prison and one where good order is maintained. First and foremost, SecureFuture's motivations in regard to the supervision of Prisoners will be to protect the safety of other Prisoners and staff. Therefore, SecureFuture's model of supervision will include the requirements to:

- provide for Prisoner safety
- provide for the operational needs of the Prison
- take account of a Prisoner's behaviour in the Prison
- facilitate progression towards release
- be fair and transparent
- allow the appropriate allocation of resources
- maintain good order.

SecureFuture realises that a challenge with some new Prisoners is often the lack of available or historic information. SecureFuture will always err in the side of caution where there is an unknown or any doubt.

### **3.2.4 Process security**

SecureFuture puts a significant emphasis on ensuring that what is required to occur does in fact occur and will ensure that the Prison has robust systems and procedures in place to maintain the integrity of operations. The Policy and Procedures Manual will form the foundation of the operations of the Prison.

Procedures will be living and dynamic documents, which in order to be an applicable guide to staff, particularly in relation to safety, security and good order, and will be developed to reflect current Prison operational information, New Zealand legislation and Department requirements.

The Policy and Procedures Manual and the Emergency Procedures and Business Continuity Manual will contain contingency plans and procedures for security, Prisoner services, health and safety, HR and administration. They will be developed in an easy to read format so that the message does not get lost through being overly wordy or complicated.

As a standard, SecureFuture's procedures will tell the reader:

- what is required to be done
- specific requirements of the actions to be carried out
- the position or persons required to conduct this action
- the timing or the frequency of the action

- requirements for recording the action
- requirements for checking that the required actions have occurred
- any further compliance requirements.

SecureFuture will utilise the components of process security to enable its staff to be organised in their response to security issues. It is through process security that SecureFuture will be able to plan the responses and actions SecureFuture wants of its staff in response to the threats and risks that could arise. The basis of SecureFuture's process security will be:

- Risk Management Plans
- Policy and Procedures Manual
- Emergency Procedures and Business Continuity Manual
- Trained staff
- Regular audits to ensure what is committed to is occurring.

The following is an overview of these mechanisms:

**Table 3: Safety and Security Strategies**

Process	Overview
<b>Risk Management Plan</b>	<ul style="list-style-type: none"> <li>– There will be annual risk assessments of the Prison and its operations</li> <li>– The outcomes will be captured in a current Risk Management Plan</li> <li>– The Plan will contain strategies to remove, avoid or mitigate the identified risks</li> <li>– The Security Management Plan will be informed by and based around the Risk Management Plan</li> </ul>
<b>Policy and Procedures Manual</b>	<ul style="list-style-type: none"> <li>– There will be an approved Policy and Procedures Manual developed prior to Service Commencement. All procedures contained in the manual will be reviewed and updated annually</li> <li>– SecureFuture's continuous improvement processes will form part of the review of operational policies and procedures</li> </ul>
<b>Contingency plans</b>	<ul style="list-style-type: none"> <li>– There will be a full set of approved contingency plans as part of the Emergency Procedures and Business Continuity Manual</li> <li>– Relevant staff will be trained in the required responses to emergencies</li> <li>– SecureFuture will have an annual regime of live contingency plan tests and desk top reviews of contingency plans</li> <li>– These tests and reviews will ensure that the Prison has the capacity to respond to emergencies and to ensure that the good order and security of the Prison can be maintained</li> <li>– All relevant emergency services will be involved in the planning for contingency plans and contingency exercises</li> </ul>
<b>Staff training</b>	<ul style="list-style-type: none"> <li>– All staff will be trained in the following, as relevant to their role: <ul style="list-style-type: none"> <li>– The Policy and Procedures Manual requirements relevant to their role</li> <li>– contingency plans and responses</li> <li>– Prison security</li> <li>– safety and security requirements of the Prison</li> </ul> </li> </ul>

Process	Overview
<b>Regular audits</b>	<ul style="list-style-type: none"> <li>There will be annual audits to establish compliance with the required processes</li> <li>The findings of these audits will assist with the continuous improvement processes</li> <li>The findings of the audits will inform decisions to improve policies and procedures</li> </ul>
<b>Searching</b>	<ul style="list-style-type: none"> <li>Searching will play a pivotal role in SecureFuture's process security</li> <li>This is one of the key security processes that contributes significantly to a safe and secure Prison</li> <li>SecureFuture acknowledges that contraband and weapons etc. within a correctional environment detract greatly to the level of safety within a Prison. Left unchecked, such items contribute to a culture of threats and fear. SecureFuture is aware of this and will have in place a comprehensive searching regime to find and seize such items</li> <li>SecureFuture's efforts will be focussed towards deterring the presence of contraband and items such as weapons</li> <li>Wherever possible, searches will be directed by intelligence</li> </ul>
<b>Control systems</b>	<ul style="list-style-type: none"> <li>In pursuit of a safer more normalised environment through process security, SecureFuture will have in place a number of control systems, examples of such systems being: <ul style="list-style-type: none"> <li>Prohibition of the entry of items of risk into the Prison</li> <li>Prisoner management procedures to manage negative or unacceptable behaviour</li> <li>Controls for tools and other items of risk</li> <li>Head counting processes</li> <li>Performing health checks on Prisoners when cells are unlocked to ensure they are in good health</li> <li>Key control</li> </ul> </li> </ul>
<b>Structured day</b>	<ul style="list-style-type: none"> <li>A key component of SecureFuture's process security will be the structured day</li> <li>The structured day will be a comprehensive plan that captures all of the key times and activities during the 24 hour cycle of operations</li> </ul>

### 3.2.5 Staff training and security awareness training

SecureFuture accepts the protection of the safety of staff and visitors is critical. A central component of SecureFuture's strategies will be to educate visitors and staff regarding risks and the required actions to ensure that they remain safe.

Officers will undergo initial and then recurring training, part of which will cover safety issues. SecureFuture's non correctional personnel will be afforded training as well. Safety and security will be covered in this training. In addition, service personnel and subcontractors will be provided with security awareness and safety training.

SecureFuture will assess staff from a perspective of Prison safety and security in order that it can establish their current skill levels and their subsequent future training and development needs. These considerations will include how their actions affect the safety of others and how their actions affect their own safety.



Training needs will not only be informed by an annual training needs analysis and training plan, but by the outcomes of the testing of the safety of the environment. Training will be evaluated to ensure it has delivered the required benefits.

SecureFuture's training needs analysis approach will be to:

- identify a gap in knowledge or competence
- look for ways to close that gap
- undertake the training activity
- evaluate learning outcome to ensure closure of the gap.

Much of training is repeated on an annual basis so that staff remain qualified for all aspects of their work in the Prison, not just their specialist response needs.

SecureFuture will continue to review its training to make certain that the outcomes, including safety, are being achieved to the standard required and where necessary, will make changes to assure this is achieved.

### 3.2.6 Occupational health and safety

At the Prison, SecureFuture will ensure occupational health and safety is maintained through:

- the implementation of robust health and safety management systems, including workplace procedures to safeguard the health and safety of staff and Prisoners
- ensuring health and safety risks have been identified, are periodically reviewed and assessed, with prioritised action plans and work instructions in place for risk and impact elimination and reduction
- making certain that incidents are investigated, causes identified and actions implemented to prevent the incident happening again
- the provision of occupational health and safety programmes which support the wellbeing of staff and Prisoners and measure and report on health and safety in the workplace
- maintaining close oversight of its health and safety performance where the workplace activities or work planning are shared with another employer, occupier or relevant person. Each functional area will be required to monitor its safety performance, review it at prescribed meetings and report it through to the governance processes.

SecureFuture will have a health and safety function for the Prison. This position will, in part, be responsible for the provision and maintenance of a safe environment at the Prison. This is provided as evidence of the strength with which SecureFuture approaches safety, and that SecureFuture intends to deliver what has been committed.

The Health and Safety Manager will conduct monthly health and safety meetings. These meetings will, in part, assess and check the health and safety of the environment of the Prison. The Prison Director will be kept briefed on the outcomes of such meetings and where issues are identified regarding the safety of the environment, response strategies will be implemented.

Meetings will be minuted. Copies of these minutes will be disseminated throughout members of management.

## 3.3 Emergency and Contingency Planning

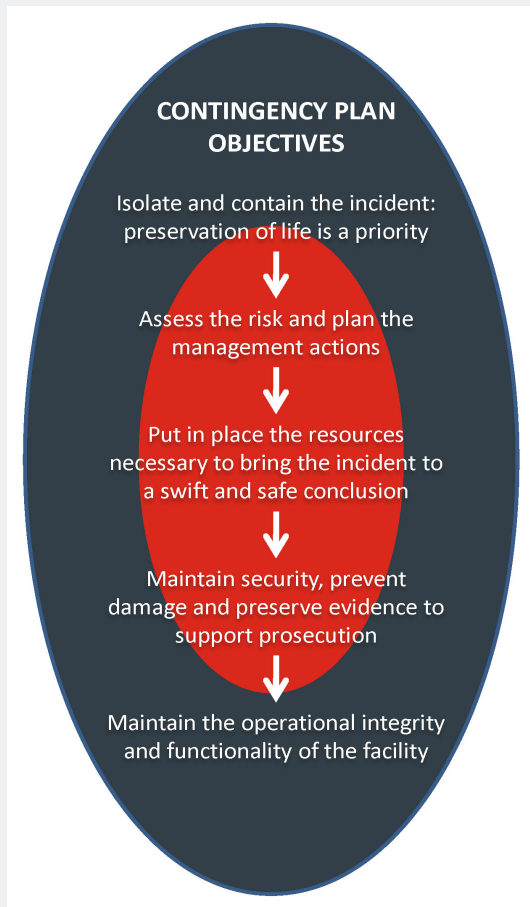
SecureFuture's emergency and incident management approach will be designed, implemented and developed in accordance with established emergency life-cycle processes.

Initiated through threat assessments via the Risk Management Plan (RMP), the emergency life cycle is as follows:

- The RMP quantifies risk through the standard risk assessment methodology of likelihood and impact metrics

- This then leads to the mitigation strategies and the contingency plans
- This then leads to the planning element where, in addition to staff training, the critical documents are subject to rigorous testing cycle and a resulting process of review ⇒ revision ⇒ re-issue
- This then leads to response element which involves the activation of the planned elements in response to actual events with the aim of control/control and resolution
- This then leads on to the final element of recovery. Whilst not all incidents require detailed recovery actions, as incident resolution will bring about a return to normal operations, some incidents may do so and thus require an additional element. In these events, a recovery plan specific to the incident will be developed as a response.

A diagrammatic overview of the SecureFuture model for contingency planning is as follows:



**Figure 1: Contingency planning model**

In brief, SecureFuture’s model will provide the following components and focuses on two distinct strategies, these strategies and their associated components being:

### 3.3.1 Prevention Actions

- educate staff on potential unrest warning signs
- train staff in response requirements to ensure they are prepared and to provide a deterrent factor to incidents
- collect intelligence
- interact with Prisoners and read their words and warning signs
- understand what constitutes a warning sign of a risk
- identify the warning signs of incidents prior to a likely event
- respond in a proactive manner to negate any issues and concerns
- debrief so that any such event becomes a learning occasion.

### 3.3.2 Response Actions

- contain the event
- control the event
- safety of staff and Prisoners should be paramount and not compromised
- respond in a timely manner
- have an escalating capacity or trained staff available on site
- any response should be commensurate with the risk and should not apply excessive force
- report in a timely and accurate manner
- debrief so any such occasion becomes a learning occasion
- investigate to establish, as a minimum:
  - the triggers for the event
  - how they were missed
  - what needs to change to prevent a repeat event
  - what worked
  - what did not work.

### 3.3.3 Incident reporting and investigations

When an incident does occur, SecureFuture's approach will be open and transparent regarding the matter. SecureFuture will internally investigate all such occurrences to enable the capture of lessons from what has transpired. By investigating, learning and improving the processes that were around the incident, SecureFuture feels that it will be best able to negate a repeat of the event. Ultimately these learnings will contribute to a safer and more secure Prison.

### 3.3.4 Assessing response capability

SecureFuture will have in place a test regime for responding to emergency events. This will enable staff to test their actions and will increase staff knowledge and confidence. Such tests will also provide a deterrent to Prisoners because of the knowledge that trained and planned responses are in place.

After any test, a full debrief will be held to assess both the plan and the Prison's implementation of it. If deficient in its application, staff and external agencies will put into place such further training, awareness, management and/or resources to ensure that short-comings are rectified. If deficient in its content, the Assistant Director Security and Operations will order a 'review – revision – replacement' within the shortest possible time.

## 3.4 Reception and Induction

Arriving at a new Prison can prove daunting and destabilising. It also highlights an area of risk when self-harm, escape and friction between Prisoners may become an issue. In addition, staff may not know the Prisoner and therefore certain precautions must be taken in his management.

Significant additional care will be taken with all new Prisoners in the first 24 hours to ensure their safety, and that of other facility users.

The objectives of SecureFuture's reception procedure and induction programme are to:

- ensure the correct identity of each Prisoner
- ensure that there is lawful authority to receive each Prisoner into the Prison
- ensure a Prisoner's health, safety and welfare by gathering relevant information and assessing potential risks upon entry into the Prison, and initiating action to address these
- gain knowledge of the Prisoner
- reduce a Prisoner's anxiety and agitation through the provision of appropriate support, particularly in relation to Māori Prisoners and young Prisoners
- provide information about the correctional system to assist the Prisoner to adjust to imprisonment

- develop a profile of a Prisoner's social, educational, and employment needs and potential, alcohol and other drug use, physical and mental health background and status to facilitate initial case management planning
- provide a process which meets Prisoners' needs and which will be recognised by informed stakeholders as being consistent with best practice in this area.

The focus of reception, induction, placement and assessment can be characterised by two vital considerations: opportunity and threat, which must be taken fully into account.

Opportunities arise from a Prisoner being unfamiliar with the Prison and SecureFuture recognises that the period over which reception, induction, placement and assessment take place provides an opportunity to set a culture of expectation and involvement in the Prisoner, and for him to experience the variety of opportunities on offer. It is an opportunity to work with the Prisoner to take stock of his current situation and agree on a productive way forward. It provides opportunities to impress SecureFuture's rights and responsibilities and those of the Prisoner, and it is an opportunity to clarify that the Prison offers the prospect of being a defining period for the Prisoner in setting an agenda for positive change with the activities and resources available to help him make that change.

Conversely, threats arise from the Prisoner being unfamiliar with the Prison if he has needs and risks that are unidentified or insufficiently identified. The Prisoner may be at risk from himself, from others, or he may be a threat to others. SecureFuture recognises the prevalence of self-harm during the initial periods of custody. Research shows that the risk is greatest on the first day of imprisonment, that the first 30 days continues to be a period of high risk, and that risk only reduces towards the end of the 30 day period.

SecureFuture notes that the Prisoners being admitted into the Prison may fall into any one or a combination of the following populations (not exhaustive):

- sentenced
- sentenced and further remands
- particular ethnic group
- special needs
- health issues
- first time Prisoner
- involved in providing evidence against other serving Prisoners
- requiring protection
- under a specific order
- under separate confinement
- at risk (from others, himself, to others)
- other orders for detention.

SecureFuture will manage the admitted Prisoner on a wholly individual basis and staff will not make assumptions but will instead work closely with colleagues to facilitate a comprehensive, safe and secure reception procedure and induction programme.

The SecureFuture's approach to the reception and induction of Prisoners at the Prison is characterised by a two stage process:

- **Stage 1 – reception procedure:** To meet the Department's service requirements, SecureFuture will mandate that the reception, initial assessments and initial induction will be completed within 24 hours of admission. Within this period, healthcare, 'at risk' (including self-harm) and special needs assessments will be completed on the day of arrival. This may require bringing in specialist personnel
- **Stage 2 – induction programme:** A comprehensive, 10 day induction programme.

At the conclusion of the reception procedure and induction programme the outcome will be a Prisoner who is orientated and well informed as to the next steps. His position in the justice system

(classification, appeals, bail) will have been made clear, and his immediate welfare needs will have been met. He will be calm, reassured and confident in those who hold him in custody and secure in the knowledge that he can ask questions. He will have full knowledge of the Prison and be aware that it operates in a respectful manner, with rights and responsibilities on both sides having being acknowledged and promoted.

These 2 stages are described in detail in the sections below.

### 3.4.1 Reception

SecureFuture will operate a planned provision for the reception of Prisoners between the hours of 7:00 and 19:00 Monday to Friday at the Prison and as consistent with the Department's muster management requirements and arrangements. Prisoners received after 19:00 will undergo an assessment to identify any immediate needs or risks, and then undertake the full reception procedures as early as possible the following day.

SecureFuture recognises that the reception and induction process is a time of first impressions and that these impressions often impact on the entire sentence and beyond. It is also recognised in research as one of the periods of highest risk. The strategies SecureFuture will have in place will safely address these two situations.

SecureFuture expects its staff to behave in an exemplary manner. Those involved in reception and induction will know that the seeds they sow will be reaped by their colleagues and will contribute to the start of a successful rehabilitation and reintegration journey. SecureFuture reception staff will be carefully chosen so that they have the necessary skills and manners, exceptional communication skills and perceptiveness for those in need.

In the delivery of the reception procedure, the maintenance of confidentiality and dignity will be a fundamental and SecureFuture will use one-to-one environments where activities involve personal information, offences, medical issues and all other appropriate elements.

In order to create a sustainable pro-social environment within the Prison based on strong relationships between Prisoners and staff, SecureFuture believes it is imperative to make intentions clear from the very outset. SecureFuture will start the process of building trust and respect between staff and the Prisoners in its care during the initial reception procedure.

To achieve this, the reception area will comprise an informal and casual waiting area which is welcoming, reassuring and informative. The first contact any Prisoner has with officers will be a positive experience that clearly demonstrates staff calmness and competence. It will allow staff to begin the process of developing sustainable and meaningful relationships within the Prison setting.

The initial reception procedure will not only be the starting point for building relationships, it will effectively be the start of each Prisoner's induction and, as articulated in the concept of the Responsible Prisoner, his work towards rehabilitation and reintegration will start from day one.

SecureFuture will have dedicated reception staff and dedicated induction staff augmented, by staff from many other areas and functions. There will be Māori and Pasifika staff included in these teams.

In recognition of the trauma that imprisonment causes some Prisoners, SecureFuture places considerable value in demonstrating that incarceration does not have to be without sensitivity. SecureFuture will provide an efficient reception procedure for all Prisoners and ensure that any immediate risks and needs, referrals, intervention strategies and medical concerns are actioned swiftly and effectively.

All Prisoners on entry to the Prison will be subject to a conclusive identity check. This will include the use of photos, documentation details and fingerprints, as required. Where there are doubts regarding the identification of a Prisoner, action will be taken to ascertain his true identity.

Warrants or court orders will be subject to a full check to ascertain that the authority exists to hold the Prisoner. The necessary dates and sentence length will be inputted into IOMS or checked against what

is current in the system. Where there is any doubt as to the identity or lawful detention of a Prisoner, the process will not progress until that is confirmed.

Once a Prisoner's identity and committal order details have been verified and entered into IOMS, he will undergo the following:

- briefing as to what the next steps are
- asked if he has any issues regarding children/car/work, that need urgently attending to
- photographed and fingerprinted for IOMS
- strip searched and issued Prisoner clothing
- property and monies checked and recorded into IOMS
- issued an identity card
- initial health and risk checks
- offered a free phone call
- staff will establish that the Prisoner has a good understanding of what is happening and his rights.

The reception staff will check if the Prisoner has any immediate safety concerns. This will include personal concerns or concerns about any other person in the Prison. Staff will brief the Prisoner on what is happening and what will happen next.

An intake screening form will be completed which specifically responds to welfare issues by compiling information such as:

- ethnicity, thus flagging potential communication and support needs
- specialist cultural needs consistent with the cultural practices of the Prisoner
- requirements for contact with specialist agencies, such as government agencies or consulates
- Next of kin details and contact
- Issues concerning children, family, property, pets, house, car or finance
- pre-imprisonment housing arrangements
- emotional state, disabilities and any signs of distress.

In addition, SecureFuture Māori or Pasifika staff will assess an individual's cultural and spiritual strengths, where applicable, and their key values in life, asking such questions as:

- do you speak English, Māori, Samoan, Tongan or another Pasifika language?
- are your whānau connections as strong as you would like them to be?
- does traditional music or dance/haka play a role in your life?
- do you engage in regular prayer?
- do you partake in any cultural or religious traditions?
- do you have any immediate prevailing health issues?

Information provided to a Prisoner during the reception procedure will be in an understandable format, using translations, easy-read documents, staff assistance (including Māori and Pasifika staff) and interpreter assistance where required. Staff will be sensitive to any Prisoner disabilities such as visual or hearing difficulty and manage these appropriately.

SecureFuture staff will ensure that Prisoners have the opportunity to inform their families of their arrival at the Prison as soon as practicable after admission. Where relevant, they will be given the opportunity to make arrangements for the welfare of their children, next of kin or any other dependents.

The reception procedure will be structured and linear to ensure that once a Prisoner has been searched they will be held in an area which is designated as 'clean'. There will be no contact between Prisoners who have undergone the search procedure and those who have still to be searched. Rooms and areas occupied by new admissions or Prisoners awaiting discharge will be thoroughly searched before Prisoner cleaners are allowed inside them.

Prisoners will be asked when they last ate and if necessary will be provided with a snack. Any Prisoner who is held in reception over a normal meal period will be provided with a meal.

New Prisoners will be accommodated in the first night accommodation within the induction unit and will undergo an initial health check with a nurse to further determine his 'at risk' status.

#### **3.4.1.1 Prisoner property**

On reception into the Prison, the Prisoner's property will be checked. This will occur while the Prisoner is in reception. If the Prisoner is received outside of normal hours the property may be sealed for checking by reception staff when next on duty.

All property and valuables will be recorded on a property inventory and recorded in IOMS.

The Prisoner's property will be sorted into 'items for storage' and 'items for issue'. Only approved items will be issued. All valuables will be stored in a secure safe. At the completion of this process the Prisoner will be required to sign for the property to validate the check.

Property items for storage will be stored in the storage area of reception (upper level). Any excessive property or items that the Prisoner requests to have handed out will be packaged and arrangements made for the property to be distributed.

Where a Prisoner is received from another Prison and there is a discrepancy in property items, this will be reported to the person in charge of that Prison.

#### **3.4.1.2 Clothing**

SecureFuture will provide a full range of clean Prison clothing to every Prisoner. Clothing will be fit for purpose and be appropriate for the local climate and the range of activities in which Prisoners will become engaged, including work, programmes, activities and sport.

Clothing will be standardised and SecureFuture will not support any form of differentiation within the Prison. Prisoners will be notified of the clothing policy on arrival at the Prison.

The Prisoner's private clothing, if handed in at reception, will be laundered if soiled and then stored safely until transfer or release.

SecureFuture will ensure that arrangements for managing stored property allow for the Prisoner to collect his personal clothing on leaving the Prison. SecureFuture will ensure Prisoners attending court wear their own clean and ironed private clothing where it is a requirement of the Court. This presumes that Prisoners will arrive with personal clothing in good condition which is suitable for these activities. If this is not the case, SecureFuture will issue the Prisoner with basic stock to meet his immediate needs.

#### **3.4.1.3 Reception administration**

SecureFuture acknowledges that there are strict administrative requirements to be conducted at the reception of every person into the Prison. An overview of the reception administration processes that SecureFuture staff will conduct is detailed below:

**Table 4: Overview reception administration processes**

REQUIREMENT	APPROACH
Identity check	<ul style="list-style-type: none"> <li>At this time, it is critical to establish the true identity of the person being received. SecureFuture will have processes in place to establish beyond doubt the identity of each received person</li> <li>The identity will be checked by photographic records and other relevant and credible documents. Where there is any doubt as to the identity, the checks will continue until a satisfactory outcome is achieved</li> <li>The identity of the person will then be reconciled against the documentation to make certain that the person is indeed the one mentioned in the warrants or documents of detention</li> <li>Once the identity has been clearly established, the outcome will be checked by another staff member to ascertain that the findings of this check are correct</li> </ul>
Warrants or documents of detention	<ul style="list-style-type: none"> <li>A thorough check will then be made of warrants or documents of detention. The purpose of this check will be about establishing that there is a legal basis for detaining the person identified in the documents</li> <li>Again, should doubt exist then these checks will continue. No person will be held at the Prison without a clear, established legal basis to conduct such detention</li> <li>This check in the reception procedure will be subject to a second check by another identified staff member for quality assurance purposes in this important aspect of the process</li> </ul>
Record keeping	<ul style="list-style-type: none"> <li>A record, both electronic (IOMS) and hard copy will be commenced for the Prisoner</li> <li>SecureFuture is aware of the administrative demands that can occur at this point in the reception procedure. SecureFuture will employ procedures to ensure accurate administration of these documents</li> <li>Documents will be captured and placed in a dedicated management file for the Prisoner</li> </ul>
Prisoner identification card	<ul style="list-style-type: none"> <li>SecureFuture will take the necessary photos of the Prisoner and establish the required identity mechanisms</li> <li>SecureFuture will create an identity card for the Prisoner</li> <li>SecureFuture regards the identity card as being of importance. This will be a verification mechanism necessary for many of the operational activities that will occur within the Prison</li> </ul>
Property	<ul style="list-style-type: none"> <li>The property and valuables belonging to the Prisoner will be checked and fully itemised. A record will be established and the Prisoner will be required to sign this property record</li> <li>Where there is an existing property record, a check will be made against it</li> <li>The property will be stored in Prisoner property. Valuables i.e. current passport, driving licence, motor vehicle registration documents, birth certificate, credit or bank cards, cheques/chequebook, jewellery will be stored in a dedicated safe</li> <li>Prisoner property will be treated with respect and care to ensure no loss or accidental damage occurs. The property will be stored in secured areas</li> </ul>



REQUIREMENT	APPROACH
	<p>that will only be accessible to an authorised member of staff. Access to Prisoner valuables will be restricted to authorised members of staff. Only one key to the valuables safe will be issued</p> <ul style="list-style-type: none"> <li>SecureFuture recognises that in many jurisdictions, property-related concerns are the most common source of complaint in a correctional environment</li> <li>Prisoners on reception, or at other times on application, may retain items of property in their possession in accordance with SecureFuture's Policy and Procedures Manual. Items retained in possession by the Prisoner will be searched and/or x-rayed before being signed for and placed in the Prisoner's possession. The Prisoner will also sign a disclaimer absolving SecureFuture and the Department from liability for any loss or damage to property retained by him</li> <li>Upon reception, all prescribed medication arriving with the Prisoner will be removed and placed in a sealed bag with the Prisoner's identification clearly marked on the outside. The medication will then be placed in a secured safe. The medication will be forwarded to the healthcare centre where health staff will manage its security and distribution</li> <li>All of the checks and actions in this section will be conducted within the reception area of the Prison</li> <li>SecureFuture will not move a Prisoner from reception until these activities have been successfully carried out</li> </ul>

#### **3.4.1.4 Initial Prisoner assessments**

SecureFuture will work closely with the Department to ensure the assessments SecureFuture conducts are consistent with the Department's requirements, and with current practice in other prisons in New Zealand. SecureFuture will use the following initial assessments in the reception procedure:

##### ***Initial risk assessments***

SecureFuture will conduct initial risk assessments during reception to determine how a Prisoner is feeling physically, as well as determining his emotions and stress levels. The Prisoner will be asked a series of questions and offered the opportunity to see a nurse.

##### ***Immediate needs***

SecureFuture will conduct an immediate needs assessment with each Prisoner to determine if there are any immediate risks or issues that the Prisoner still needs to deal with, such as making arrangements for children, family, car and work.

##### ***Cell sharing risk assessment***

SecureFuture will conduct an assessment to ascertain if someone is able to share a cell, if there are restrictions on whom they could share with, and the risks inherent in both sharing and not sharing a cell when balanced against each other.

On a case by case basis, cultural factors such as religious practice, ethnicity, shared experiences, personal habits and stated beliefs will be fed into the cell sharing risk assessment to ensure their import is fully considered.

##### ***Health assessments***

Health checks and at risk assessments will be carried by the healthcare team.

#### **3.4.1.5 Security classification**

SecureFuture notes the specified requirements of security classifications in the Corrections Act 2004 and Corrections Regulations 2005 and commits to ensuring that all Prisoners arriving at the Prison with a sentence period of over three months have a security classification. Where a Prisoner is received into the Prison and the Prisoner is sentenced and is unclassified, a security classification will be assigned within fourteen (14) days of reception.

The security classifications that SecureFuture applies will be based on:

- the level of risk posed by the Prisoner while inside or outside of the Prison
- the risk of escape
- the risk that an escape would pose to the public.

As a principle, the security classification that SecureFuture applies will be the lowest level of classification that the Prisoner can be safely and securely managed within given the level of risk posed.

The assessment will comply with the current prescribed New Zealand security classification point system of risk and will be based on:

- the severity of the offence the Prisoner is sentenced for (in the case of multiple offences SecureFuture will consider the most serious)
- the duration of the sentence being served
- any history of escape or attempted escape
- any history of violent behaviour
- any history of mental health
- whether the Prisoner is awaiting trial or sentencing for any further charges.

SecureFuture regards a Prisoner's security classification as a good indication of their risk level. SecureFuture also acknowledges that risk levels can change at any time given internal circumstances (e.g. bullying) and external circumstances (e.g. a change in family situation). SecureFuture's staff will be trained to be aware of any change in risk level due to such changes in circumstances. Any changes or considerations in relation to a Prisoner's classification will be recorded in Prisoner files and on IOMS.

Security classifications will be reviewed at least six monthly or whenever there is a significant change in the Prisoner's circumstances.

#### **3.4.1.6 Sentence calculation**

As soon as a Prisoner arrives at the Prison SecureFuture will have trained staff commence or check and confirm the sentence calculation processes for the Prisoner.

SecureFuture recognises that there are many instances where there may be provisions for bail or future court appearances noted in the initial warrants and documents. SecureFuture staff will thoroughly check for such requirements or conditions.

Where there is a provision for bail or other conditional release, SecureFuture will, within the legal parameters, facilitate the Prisoner to access such options.

All noted future appearances will be diarised so that the presentation of Prisoners to courts and tribunals occur as required.

Each time a Prisoner enters the Prison, a check of the returning documentation will be made by SecureFuture sentence calculation personnel to establish if there have been any changes to the imprisonment circumstances.

All changes or further appearances will be factored into the Prisoner's management plans.

### 3.4.1.7 *First night accommodation*

As part of SecureFuture's overall risk mitigation strategy, SecureFuture will operate first night accommodation within the induction unit of the Prison. Within the unit, it is envisaged that approximately 10 cells providing accommodation for 20 Prisoners will be classified as higher security. The remaining cells will be classified lower security.

All new arrivals will be assessed for placement in first night accommodation within the induction unit. There will be a presumption that Prisoners will be placed in first night accommodation within the induction unit, unless that placement would present a risk to the safety of the Prisoner or others and/or present a risk to security. Those Prisoners assessed as being suitable for placement in first night accommodation within the induction unit will be accommodated for at least their first night in custody and will be under a 30 minute interval observation regime by staff. Prisoners whom staff judge will benefit from more than one night in this accommodation (before being moved to the main induction unit) will remain there until staff are confident they are stable and no longer at risk.

Prisoners who are assessed as not being suitable for accommodation within the induction unit will be placed in other accommodation within the Prison, and any risks to their safety will be effectively managed.

SecureFuture sees first night accommodation as being both innovative and advantageous given the vulnerability of newly received Prisoners and the statistically proven increase in self-harm ideation and action during this period. The first night accommodation will be an area where Prisoners enter cells that are softened in the décor, and a heightened staff presence. SecureFuture will develop a complete set of first night procedures during the transition process that will apply to both Prisoners accommodated in first night accommodation within the induction unit and those placed within other accommodation in the Prison.

### 3.4.1.8 *'At Risk' Prisoners*

SecureFuture is fully aware of the increased vulnerability of Prisoners in the early stages of their imprisonment. This is a time of increased risk of self-harm and the statistics globally confirm this in the starkest terms.

At risk Prisoners will be subject to review on a daily (Monday to Friday) basis by a select, multi-disciplinary team. This team will develop a management plan for each Prisoner. Officers who are tasked with providing the supervision of the at risk Prisoners will be fully briefed on the requirements of each individual management plan.

Once a Prisoner is deemed to be at risk, the at risk regime will be maintained until the status is removed by the approved multi-disciplinary team, which typically will comprise the Prisoner's personal officer, with additional relevant members of staff from the accommodation unit, the medical centre, and a psychologist.

Access to approved, controlled activities will be considered for at-risk Prisoners. Contact with the immediate family will be encouraged as a means of additional support for the Prisoner. Employment will not normally be a consideration, given the access to hazardous items.

To manage this period of risk for Prisoners, SecureFuture will operate the following risk mitigation strategies:

**Table 5: Risk mitigation strategies**

1	Close observation of Prisoners in holding areas with doors unlocked if prudent and does not create a risk
2	Self-harm assessment during reception
3	Presence of peer support
4	Presence of the personal officer or unit officer

5	First night procedures
6	Telephone communications to family
7	Immediate welfare needs met
8	Identification of special needs

Staff training is key in the success of these strategies. SecureFuture's approach includes self-harm management and correctional staff will undergo a self-harm management module in their initial training.

A Prisoner's 'at risk' status will be confirmed by health staff. The level of risk will determine where a Prisoner is accommodated, his 'at risk' management plan including the scheduled frequency of observations. For example, a Prisoner who is deemed to be at extreme risk would be accommodated in the healthcare centre.

Two 'at risk' cells will be located in the healthcare centre and an additional eight cells will be located in house block three. All Prisoners placed in an 'at risk' cell will all be under frequent observations until a determined regime of observations is established. An 'at risk' file will be created for the Prisoner and the IOMS database updated to reflect the Prisoner's status as 'at risk.'

#### **3.4.1.9 Segregation Prisoners**

For Prisoners requiring segregation for protection, either at their own request or in the judgement of staff, the following procedure will be followed:

- the relevant entry in IOMS will be completed
- an immediate referral will be made to the Associate Director, Accommodation
- the Prisoner will be held apart from other Prisoners in the reception area until the Associate Director has delegated a suitable staff member to interview the Prisoner and decide on an appropriate course of action
- any segregation at this time will be in a low key and discreet manner
- every effort will be made to accommodate the Prisoner in a mainstream location and to take necessary action against those who may pose a threat. If this is not possible, the Prisoner will be located elsewhere under an appropriate order until a more comprehensive review is completed
- SecureFuture regards the placement of Prisoners on protection as a last resort and one to be avoided wherever possible. Where a perpetrator/victim situation exists, SecureFuture will act on the perpetrator and not on the victim.

#### **3.4.2 Induction**

SecureFuture strongly believes that the focus of the induction and reception procedure should not only be on providing information about the Prison. It is also about establishing effective communication channels with the Prisoners in order to receive information and build up a picture of his circumstances, needs, vulnerabilities and any immediate risks he may present.

In order to create a sustainable pro-social environment which is based on a strong relationship model between Prisoners and staff, SecureFuture believes it is imperative to make its intentions clear from the outset. SecureFuture will start the process of building trust and respect between staff and the Prisoners during the initial reception procedure and first night induction programme.

When a Prisoner arrives at the Prison, he will undergo the reception procedure described earlier in this response. To assist in adjusting to a new environment, he will be provided with information including:

- prison rules
- responsible prisoner model
- personal officer scheme
- behaviour standards

- visits
- activities
- support services
- intervention services
- cultural services.

If the Prisoner is unable to read, or does not understand English, then a member of staff, peer support or translator will explain the process to the Prisoner and check his understanding before proceeding. Information will be presented in a concise manner and wherever possible, pictorially.

Following their stay in the first night accommodation, Prisoners will be transferred to the main induction unit before being allocated appropriate longer term accommodation. The induction unit will consist of 60 cells on two floors. A Prisoner will generally stay in this area for at least 10 days or until the Induction programme is completed. If staff are satisfied that a Prisoner is not 'at risk', he will be moved to more permanent and appropriate accommodation following induction. Those deemed to be 'at risk' will be accommodated in 'at risk' cells.

Those Prisoners assessed as being unable to be accommodated on the Induction Unit will receive the Induction Programme through an alternative means of delivery tailored to meet individual needs.

Whilst the reception procedure and initial first night induction programme will ensure Prisoner safety, welfare and wellbeing through the collection of comprehensive information, a far deeper and more detailed assessment of Prisoner needs will take place from day two during the formal induction of the Prisoner into the Prison.

SecureFuture has developed a comprehensive 10 day induction programme during which time Prisoners will undergo further assessment, including a risk assessment, a full health check with a doctor and cell sharing assessment, as well as a full introduction to Prison regimes, services, programmes, industries and activities. This will be a rolling programme to enable Prisoners to join in immediately rather than wait for up to two weeks to start.

Each Prisoner's journey towards rehabilitation and reintegration will start from day one. During the induction, an IMP and discharge plan will be commenced and the post-induction accommodation of the Prisoner will be established. This will enable a personal officer to be assigned and introduced to the Prisoner during the programme.

Should a Prisoner be able to demonstrate appropriate prior learning (e.g. evidence of health and safety qualification) induction unit staff will consider if the entire induction programme needs to be delivered, or if some can be signed off. This will be recorded and the reasons given in the Prisoner's record although some elements will be mandatory irrespective of previous exposure.

SecureFuture will ensure that the physical environment within both the reception and induction areas is welcoming, reassuring and informative. The first contact any Prisoner has with SecureFuture's officers will be a positive experience. It will clearly demonstrate staff competence and will begin the process of developing sustainable and meaningful relationships within the Prison setting. SecureFuture will operate a dedicated induction staff group augmented by staff from many other areas and disciplines.

There will be dedicated Māori staff included in these teams. SecureFuture's induction staff will be carefully chosen to ensure they have the necessary skills to carry out effective inductions. SecureFuture will prioritise quiet confidence, exceptional communication skills and a keen attention for detail to assist with identifying Prisoner needs and risks.

A classroom on the upper level of house block 3 will be used for the delivery of many of the induction sessions, with others delivered in the external recreation area, library or other appropriate venue. Peer support Prisoners will be involved in the induction programme wherever possible.

The 10 day formal induction programme will involve liaison with other prisons, external agencies, and a series of assessments. The outcome of this input and any conducted assessments will be fed into each Prisoner's IMP.

The induction team will deliver some modules in-house and have a dedicated staff team to manage this; Māori staff will be integral in this team. The interview format of any substantial elements of the induction programme will allow staff to maintain confidentiality and privacy. An overview of SecureFuture's proposed induction programme, is as follows:

**Table 6: Proposed Prison formal induction programme**

DAY 1	TOPIC	RATIONALE
Opening	Māori mihi	
Session 1	Welcome, introduction, coffee, programme timetable and Prison contact details, management structure and staff responsibilities – risk assessments	Settling Prisoners into induction, establishing two-way communications, discussing who staff are and how SecureFuture operates
Session 2	Prisoner information handbook and video (including other sources of information, smoking policy and HIV/AIDS and sexual health video)	Detailed information about the Prison, services and an opportunity to establish which Prisoners can read and write
Session 3	Disciplinary rules (major and minor breaches of discipline, safety orders, correctional centre offences, and prohibited areas) and Kappa	To provide an understanding requirements of behaviour and responsible Prisoner model
Session 4	Food, visits, mail and telephone communications, and property systems. This session to include procedural requirements	To provide knowledge of basic services at the Prison, what to do, where to go
DAY 2	TOPIC	RATIONALE
Session 1	Meeting/interview with personal officer (role and Prisoner regimes, activities/hobbies and employment)	Establishing relationship between Prisoner and personal officer in preparation for post-induction period
Session 2	Meeting/interview with Māori liaison officer and community liaison officer	Ensuring any cultural needs are met
Session 3	Service delivery philosophy, vision and the Responsible Prisoner, legislation and policies and procedures	Who SecureFuture is and how it operates
Session 4	Prison routines (the busy day SecureFuture has in place) and local procedures	To provide adequate information about the Prison which will enable Prisoners to function
DAY 3	TOPIC	RATIONALE
Session 1	Assessments including health to occupational health and safety training	To gain an understanding of Prisoner needs and risks
Session 2	Information gathering from Prisoners	
Session 3	Taster session in an industrial workshop	
Session 4	Workplace health and safety, a pre-requisite for activity involvement	Introduction to work available in the Prison and learn about Prisoner interests
DAY 4	TOPIC	RATIONALE
Session 1	Wiri Community College, library, enrolment, first loan	Provides information on accessing these facilities

Session 2	Meeting/interview with education manager	To establish and progress interests, discuss courses available, and assess Prisoner skill levels
Session 3	Educational and vocational needs assessment or review and literacy and numeracy needs assessment or review	Provides information on education available and ascertain each Prisoner's level of education
Session 4	Meetings with the rehabilitation and reintegration managers, chaplain (including religious, ethnic and spiritual support available)	First step in preparing for discharge and creating an exit plan. Lets Prisoners know what support is available including religious support
<b>DAY 5</b>	<b>TOPIC</b>	<b>RATIONALE</b>
Session 1	Taster session in education and vocational education	Information on education available and gauging Prisoner interest
Session 2	Taster session in rehabilitation and reintegration	What is available and what it offers Prisoners
Session 3	Physical fitness assessment and safety briefing	Fitness assessment and briefing before Prisoners can use gym equipment
Session 4	Physical education taster session	What is available and what it offers Prisoners
<b>DAY 6</b>	<b>TOPIC</b>	<b>RATIONALE</b>
Session 1	Accommodation Manager describes the accommodation flows, progression and entitlements including remuneration, property and exchange, in-possession allowances, Prisoner trust accounts, canteen and sales/purchases  This will include an overview of the Custodial Management System (CMS)	Providing information on how accommodation works, regimes and procedures
Session 2	Healthy lifestyle information	How to stay fit and healthy whilst in Prison
Session 3	First on the scene training	Helping each other
Session 4	Applications, grievances and complaints and notice boards	Prisoner information, rights, entitlements
<b>DAY 7</b>	<b>TOPIC</b>	<b>RATIONALE</b>
Session 1	Taster session in visits and processes	
Session 2	Taster session in a vocational training workshop	
Session 3	Double ups, proposed accommodation	
Session 4	Bullying awareness – gang approach	
<b>DAY 8</b>	<b>TOPIC</b>	<b>RATIONALE</b>
Session 1	Substance misuse (impact and help, including drug strategy. Will include the Department's no smoking policy)	Explaining SecureFuture's zero tolerance approach, impact of substance misuse on Prison operations, alcohol and drug programmes available at the Prison
Session 2	Programmes and intervention programmes	Provides information on what is available to Prisoners
Session 3		To assist and prepare the Prisoner to get the most from their time and the available rehabilitative processes while in Prison

Session 4		To ensure Prisoners are best able to use the CMS system and are prepared to access all of the relevant services the system provides
DAY 9	TOPIC	RATIONALE
Session 1	Reintegration, outside agencies, community support services, meeting/interview with the Prison reintegration personnel and initial assessment of pathway needs (pathway needs assessment)	Provides information on reintegration models, how it works, and the impact on Prisoners. Development of IMP and Discharge Plan
Session 2	Reintegration, outside agencies, community support services, meeting/interview with the Prison reintegration personnel and initial assessment of pathway needs (pathway needs assessment)	
Session 3	Parole, early discharge entitlements described including the processes for applications	Provides information on options available to Prisoners regarding parole, appeals and how to access further information
Session 4	Agreement of IMP	Develop and agree to IMP, actions and intervention to establish a commitment from the Prisoner and promote future-focused outlook
DAY 10	TOPIC	RATIONALE
Session 1	Agreement of individual timetable	Develop and agree to IMP to establish a commitment from the Prisoner and ensure a forward-looking outlook
Session 2	Needs assessments, legal issues (legal services, bail, appeals, request to call in outstanding warrants, freedom of information process, judicial review process and sexual harassment)	Presented by a professional organisation such as legal aid/Prisoner legal service to ensure Prisoners are fully aware of their rights
Session 3	Round table with relevant staff	Familiarises Prisoners with staff and the daily routine they will be moving into post-induction
Session 4	Questionnaire, tick-list check and farewell – to placement	Ensures Prisoners are assessed and inducted properly and have a good understanding of the Prison

SecureFuture places considerable value in demonstrating sensitivity during the induction programme, and will pay attention to ensuring the induction programme is delivered in a respectful and culturally sensitive manner, particularly in regards to the individual requirements of Māori, Pasifika, culturally and linguistically diverse Prisoners and Prisoners with special needs.

This will be achieved through ensuring differentiation in programme delivery where necessary, providing culturally specific resources, translation and interpretation services and peer support. SecureFuture will keep a register of staff and Prisoners who are willing to act as translators. SecureFuture will further develop its induction strategies for specific culture Prisoners with the support of SecureFuture's Prisoner representative forum, its own Māori staff and in consultation with the Prisoners themselves.

The maintenance of confidentiality and dignity will be fundamental and SecureFuture will use one-on-one environments where its activities involve personal information, offences, medical issues and all other appropriate elements.

SecureFuture sees the maintenance of family relationships as paramount to a Prisoner's wellbeing and chances of successful rehabilitation and will therefore involve families in the Prisoner induction



programme wherever possible. SecureFuture will do this by inviting families to participate in case management and the development of an IMP and discharge plan which will address the behaviours and actions that resulted in imprisonment.

This interaction will occur during a meeting held with the Prisoner and induction unit staff in the upper level of the education block, and will involve determining what programmes and activities will support the Prisoner on his journey to successful rehabilitation. Induction unit staff will schedule individual Prisoners with one-to-one meetings, assessments and interviews. Group activities will be delivered en masse or by division of the induction group into smaller groups (i.e. for education taster sessions).

To ensure that Prisoners have gained a good understanding of information provided during induction, the personal officer will conduct a review with Prisoners one week after, and within two weeks, of induction.

The completion of the induction programme will be marked with a graduation ceremony to mark the successful completion. Members of the senior management team will attend this function. Prisoners will then be handed over into the care of the supervisor from the relevant accommodation block and moved to that area.

#### **3.4.2.1 Outcomes**

SecureFuture's induction programme will meet the outcomes listed below. SecureFuture will regularly challenge and test these processes to ensure the effectiveness of the induction in meeting Prisoner requirements and needs.

**Table 7: Induction programme outcomes**

1	The Prisoner will feel and be safe
2	The Prisoner will be familiar with the philosophy of the Prison
3	The security status and risk assessment of the Prisoner will have been confirmed
4	The Prisoner's support network will be aware of his location
5	The Prisoner will have been fully assessed as to his immediate and criminogenic needs and risks
6	The Prisoner will have an agreed plan to address those needs and risks, and a timetable through which to do it
7	The Prisoner will be clear on what is expected of him in terms of behaviour and attitude, and have agreed it
8	The Prisoner will be clear on what is expected of him in terms of effort, application and outcome, and have agreed it
9	The Prisoner will understand the routine of the Prison
10	The Prisoner will have experienced a range of activities
11	The Prisoner will have started the rehabilitation process
12	The Prisoner will have started to be outward looking and optimistic
13	The culturally specific needs of the Prisoner will be met
14	Cultural and needs based support services will be in place

#### **3.4.2.2 Privacy and confidentiality**

A Prisoner's privacy will be safeguarded throughout the induction programme; SecureFuture staff will ensure that information relating to a Prisoner is treated with strict regard to proper confidentiality.

### **3.4.2.3 Resources**

As induction and reception activities will require input from staff members across the Prison, the workload of dedicated induction unit staff will be manageable, and will allow them to act to a great extent in a coordination role.

The key staff and resources contributing to the induction programme at the Prison will be:

- Prison management which provides oversight of the process
- induction unit officers who deliver the programme
- staff from relevant areas such as: accommodation, education, fitness, industries
- reintegration personnel who conduct initial assessment of pathway needs (pathway needs assessment)
- Māori liaison officer for Māori-specific modules and support
- healthcare staff who carry out health screening
- peer support and Prisoner representative forum who provide assistance and information as necessary
- Chaplain to provide religious, ethnic and spiritual support.

### **3.4.2.4 Placement within the Prison**

As described earlier, on completion of the initial reception and assessment processes, Prisoners will be placed in the first night accommodation and then within the general induction unit until completion of induction. A Prisoner will stay in this area for at least 10 days or until the induction programme is completed. If staff are satisfied that a Prisoner is not 'at risk', the Prisoner will be moved to more permanent and appropriate accommodation following induction.

Prisoner accommodation placements will be based on established risk and demonstrated behaviours which will be determined through assessments during the induction period. SecureFuture will consider compatibility of age, behaviour, background and the extent of offences when making placement determinations.

The SecureFuture placement model will reward positive behaviours and encourage Prisoners to extend themselves in addressing their offending issues.

When a Prisoner is allocated to a cell, the personal officer or an officer from the unit will take the Prisoner to the cell. The condition and cleanliness of the cell will be noted with the Prisoner, including ensuring the fittings are serviceable.

When it is a shared cell, the personal officer or an officer from the unit will take both Prisoners to the cell and discuss the sharing arrangements and procedures to be followed should any issues arise.

Accommodation supervisors will check regularly with unit officers on the dynamics of Prisoners in the unit to ascertain if there are any placement issues. These checks will verify if there are any maintenance needs or defects in any accommodation cell or the unit. Rectifications will be actioned if required.

Critical fittings in the accommodation cells such as night lights, intercoms and day locks will be tested on a regular basis.

### **First offence unit**

First time offence Prisoners will be accommodated away from other sentenced Prisoners to enable staff to provide individual case management and intervention programmes.

SecureFuture believes much can be done to reduce the number of Prisoners in the system and that a first offence unit provides the opportunity to limit the influence of Prisoners who are already entrenched in offending attitudes and lifestyles can have on new Prisoners. Preventing association with those who engage in regular offending behaviours will ensure that new Prisoners do not get

inducted into a negative Prison culture. This will significantly impact the successful rehabilitation and reintegration of a Prisoner and reduce the likelihood of re-offending.

### ***Prisoners under 18 years of age***

As with first time offenders, Prisoners under the age of 18 years of age will be accommodated separately from the general Prison population.

### ***Segregation***

Where necessary, SecureFuture will segregate Prisoners as required in accordance with legislation and SecureFuture's Policy and Procedures Manual. SecureFuture will ensure segregated Prisoners are accommodated in suitable accommodation and continue to provide interventions and activities that meet the objectives of a Prisoner's individual Prisoner Management Plan as is possible and practical during the period of segregation. SecureFuture will utilise procedures and Interventions to ensure that the period of time spent on segregation is the minimum necessary, and Prisoners are helped to return to mainstream accommodation at the earliest appropriate opportunity. SecureFuture will carefully select and train all staff working with segregated Prisoners.

### ***Cell sharing***

SecureFuture acknowledges that there will be a requirement for a percentage of Prisoners in the secure accommodation to be doubled up (two Prisoners in one cell). It is planned that 50% of cells will be doubled up in order to achieve the required state of 960 Prisoners.

SecureFuture recognises the importance of ensuring compatibility of Prisoners who are accommodated in the same cell and will use a cell-sharing assessment to test this. Where a Prisoner is found to be unsuitable for placement in a shared cell, they will be accommodated in a single cell.

SecureFuture recognises that circumstances can change frequently regarding the suitability of cell sharing arrangements and will review accommodation sharing arrangements when one of the following events occurs to any Prisoner in a shared cell arrangement:

- a change of cell mate
- deterioration in behaviour of one or both of the Prisoners in the shared cell arrangement
- deterioration of the relationship between the two Prisoners who are required to share a cell
- legitimate complaint from one Prisoner regarding their cell mate
- being the perpetrator of an assault
- being the victim of an assault
- intelligence received that increases the level of cell sharing risk.

SecureFuture notes that the following applicable Prisoners are not to be accommodated in a shared cell arrangement and commit to this:

- high security Prisoners with minimum security Prisoners
- Prisoners identified as at risk who must be accommodated in a single cell unless it is established that the Prisoner would benefit from cell sharing. This will only occur after consultation with healthcare centre staff
- Prisoners under 18 years of age must be in a single cell unless with another Prisoner of the same age
- transgender Prisoners are entitled to a single cell if they choose or in a shared cell arrangement with other transgender Prisoners if suitable to do so.

Secure Future also acknowledges that the prospect of sharing CMS in-cell learning technology creates the potential for conflict between cell mates. As such, SecureFuture will consider the educational needs of Prisoners when determining cell sharing arrangements.

### 3.4.3 Achieving Effectiveness with Maori Prisoners

SecureFuture acknowledges the Department's vision to achieve effectiveness with Māori Prisoners and will meet this requirement.

In its operation of the Prison, SecureFuture will ensure that Māori who are motivated are exposed to the Māori world view supported by staff, whānau, hapū, Iwi, Māori service providers and other community members.

To achieve this, SecureFuture will introduce programmes and services designed to reconnect Māori to their cultural heritage. SecureFuture will ensure day-to-day interactions with Māori Prisoners are used as opportunities to have a positive influence and build their abilities to stop offending. SecureFuture will also provide these skills in structured ways through services and programmes delivered by Māori service providers.

## 3.5 Minimising Victimisation and Harm

SecureFuture understands that Prisoners in custody are more at risk of victimisation and harm, particularly self-harm and suicide, than the general population. In addition, SecureFuture recognises that many individual Prisoners exhibit the impact of accumulated adverse life experiences and that these groups include young people, Māori, those with alcohol or other drug problems and those with a mental illness or disorder, or co-morbidity.

SecureFuture regards the preservation of life as paramount. SecureFuture's management approach will be to identify risks that pose a threat to wellbeing or safety and manage those risks in order to maintain life and without harm to the individual. SecureFuture will create a safe and purposeful environment which acknowledges the situation the Prisoners find themselves in and works with them to change it into a positive and purposeful experience.

### ***Active Prisoner day***

Purposeful and productive days are vital in ensuring a constructive and positive Prison experience which assists in the reduction of risk, the development of a harmonious environment, and the addressing of Prisoners' identified needs. SecureFuture is aware that negative behaviour and self-harm seldom occur in group settings and so will configure its management of these Prisoners accordingly.

### ***Responsible Prisoner***

A key feature of SecureFuture's approach to the minimisation of victimisation and harm is its Responsible Prisoner concept. The Responsible Prisoner is one who actively participates, in the widest sense, in his IMP during his imprisonment. Possibly for the first time in his life, he will be encouraged to take responsibility for his situation, and not to expect to be led through his period in the Prison. This embraces a continuum of activity from playing a full and honest part in the identification of his vulnerabilities, risks and needs, and the services to be accessed in response to these, through to his active involvement in the development and execution of his daily routine, to the achievement of mutually agreed programme and intervention targets and milestones in preparation for eventual release.

SecureFuture will ensure that its processes engage the Prisoner in active problem solving. For minimising victimisation and harm at the Prison, this means that every Prisoner will have a personal responsibility but also every opportunity to address the issues, difficulties and concerns which may cause him to exhibit such behaviour either towards himself or others. SecureFuture strongly believes that it is this approach, and not strict punitive measures, which have the greatest effect in minimising victimisation and harm.

### ***Use of pro-social modelling and restorative justice principles***

The Prison will have a strong emphasis on pro-social behaviour. SecureFuture will encourage responsible behaviour by supporting Prisoners to address risk factors and work towards meeting their individual targets. This supports the Responsible Prisoner ethos and contributes to a disciplined, controlled and safe environment for Prisoners, visitors and staff.

SecureFuture will enable staff to reward Prisoners who contribute and progress and to challenge those who do not comply. This approach reinforces the need for Prisoners to take responsibility for their progression rather than remaining dependent on others.

A key feature of this approach is that any changes to a Prisoner's management plan and status should not come as a surprise. Changes will be the logical outcome of individual efforts and conduct. Staff with whom the Prisoner is in daily contact will ensure that judgements about his efforts and conduct are made known to him. It is important that Prisoners are given positive feedback and encouraged to maintain good standards, or to improve in areas of weakness.

If a move down the incentive levels is a possibility, Prisoners will be advised, in clear and formal terms, what is required of them to prevent a loss of freedom and privileges. This information will be recorded and will be taken into account at formal review meetings.

### **3.5.1 Self-harm and Suicide Prevention**

Prisons are a difficult environment where individuals are isolated from their families and homes/lands for extended periods, exacerbated sometimes by uncertainty and external pressures. This can create significant stress, anxiety and depression, which in turn can lead to risky behaviours or incidents of self harm, including attempted suicide.

In providing a well managed and ordered Prison SecureFuture will reduce many of the stresses often associated with at risk behaviour and consequently lower the size of the at risk population. This will contribute to the safety of the Prisoners and the provision of SecureFuture's recognised duty of care.

SecureFuture accepts that risks change and therefore Prisoners will be regularly monitored. Staff will be vigilant in terms of changes, particularly behaviour, mood and social interactions, as these can indicate an increased level of risk.

Self harm is a complex issue and the reasons for this type of behaviour can be varied, therefore SecureFuture's staff will receive specialised training and develop skills to manage Prisoners at risk with confidence and empathy. SecureFuture staff will be aware that some Prisoners need additional support whilst others are manipulative and abuse the system, causing the diversion of valuable staff resources away from others in real need.

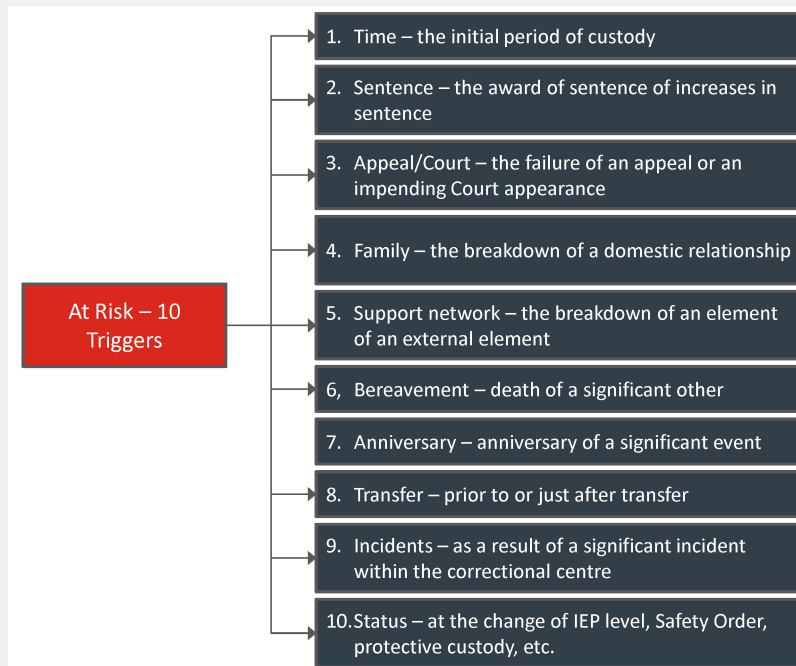
SecureFuture will approach the management of at risk Prisoners through a whole Prison approach, one that will involve all relevant staff. The case management of Prisoners identified as at risk will be multi-disciplinary and SecureFuture will operate strategies, policies and procedures that identify those at risk, assess the degree of risk, and intervene to minimise the risk.

In regards to cell sharing, it will be vital to assess Prisoners sharing cells prior to the placement. Cell sharing risk assessments will be in accordance with the Department's requirements and prescribed assessment tool.

SecureFuture is also aware that most suicides and attempts at suicide occur between the hours of 2am and 5am. During the night shift, Prisoners will be monitored by officers who will be trained to be alert to Prisoners who are awake in the middle of the night. All relevant staff will be trained to recognise signs of depression such as:

- a Prisoner who doesn't eat
- a Prisoner who doesn't talk or who sits alone

- a Prisoner who goes to bed early
- a Prisoner who asks for sleeping medication.



**Figure 2: 'At risk' triggers**

Whilst Figure 2 above describes the Top 10 'At risk' triggers, SecureFuture understands that there are various other critical 'at risk periods' for a Prisoner. Such periods may include but are not limited to:

- when family/partner/friends decide they do not want to visit him in Prison
- when the court finds them guilty
- when an employer informs him he no longer has a job
- when the Prisoner is told he is to be transferred to another Prison.

SecureFuture will assess the Prisoner carefully after such trigger events have occurred. In response to these circumstances, SecureFuture will:

- ensure new arrivals to the Prison are accommodated in the first night accommodation
- ensure robust and effective procedures for identifying 'at risk' Prisoners exist and are used
- ensure robust, effective and individualised management of each 'at risk' Prisoner is provided with the primacy of SecureFuture's duty of care and risk assessment and management being recognised
- ensure 'at risk' Prisoner details are recorded on IOMS
- ensure that the location of each 'at risk' Prisoner is known at all times
- provide sufficient staff to supervise the safety of Prisoners
- provide a process to ensure that bullying does not occur
- provide an immediate and effective incident response
- prohibit Prisoners being under the control of other Prisoners
- enable Prisoners to alert staff to threats to Prisoner safety
- ensure the provision of accommodation for 'at risk' Prisoners in appropriate locations
- ensure all 'at risk' accommodation is appropriate
- identify Prisoners who present a risk to Prison staff, visitors or other Prisoners
- place 'at risk' Prisoners in situations which minimise their opportunities to be harmed or to harm others
- establish an 'at risk' file for the Prisoner which contains the Prisoner's risk assessment form, a copy of the Prisoner's 'at risk' management plan, copy of all incident reports during the 'at risk'

period, reports from all relevant support personnel, including any medical and psychiatric notes completed during the 'at risk' period

- use a structured day concept for each Prisoner's activities congruent with the requirements in Prisoner's IMP
- incorporate issues of makutu, and other cultural effects on the health and well being of Māori for all relevant staff. Responses to Māori may also include seeking advice and guidance from Kaumatua, Kuia or Tohunga are influencing Māori, this can work in bringing about change for the better
- most important is the need to inform the appropriate personnel of any observed concerns. No amount of reporting will ever be regarded as over reporting.

SecureFuture will approach the management of 'at risk' Prisoners through a multidisciplinary whole-of-centre approach. SecureFuture will operate strategies, policies and procedures that will identify those 'at risk', assess the degree of risk, and intervene to minimise it.

The notion of care and safety will be embedded throughout the regime to ensure Prisoners feel confident and comfortable in their daily lives and so can address and confront the issues behind their offending behaviour, which may prove challenging, traumatic and difficult for some. In providing a healthy Prison SecureFuture will reduce many of the stresses often associated with 'at risk' behaviour and consequently lower the size of the 'at risk' population.

#### **3.5.1.1 New arrivals**

SecureFuture recognises that the first 72 hours of being placed in custody is a critical time for most Prisoners. Research has shown that a Prisoner's first night in custody presents the highest risk for potential self-harm but that this risk significantly decreases over their first 30 day period in custody. The reception procedure and induction programme, described previously, provide detail of the measures SecureFuture will take during this critical period.

#### **3.5.1.2 Identification, assessment and management of Prisoners**

SecureFuture will develop and implement a procedure for the identification, assessment and management of 'at risk' Prisoners.

This procedure will be based on similar procedures which SecureFuture's correctional service provider, Serco, has developed for the use at Acacia Prison in Western Australia and South Queensland Correctional Centre in Queensland. This protocol will be consistent with the provisions of the Department's PS Operations Manual M.01.02.

The objectives of the protocol will be to:

- provide comprehensive directions to staff in the management of 'at risk' Prisoners
- provide comprehensive directions which will meet statutory and policy requirements and which will withstand official and public scrutiny
- set out the procedures to be followed in the event of a Prisoner presenting as 'at risk', expressing an intent to harm themselves, or actually harming themselves
- detail the mandatory notification requirements
- detail the IOMS alerts and data input requirements
- set out the requirements the documentation, communication and alert requirements associated with Prisoner movements or transfers
- identify resources and positions to whom staff may refer when confronted with the above situations
- clearly identify staff positions and their responsibilities with respect the management of 'at risk' Prisoners
- detail the content of the 'at risk' management plan for an Prisoner assessed as 'at risk' and the relevant responsibilities for that Plan



- details the content of the case management and IMP
- identify the communication and collaboration requirements with the Department and Ministry of Health
- identify the staff training, refresher training and developmental requirements in recognition that staff have a duty of care to Prisoners and the management of staff performance to deal with 'at risk' behaviour.

### **3.5.1.3 Procedures**

SecureFuture is aware that it is vital that the care and management of 'at risk' Prisoners are executed in accordance with the regulations, Contract requirements and supporting policies and manuals and, in doing so, that risk is appropriately addressed.

SecureFuture takes considerable care in the management of these functions and understands the social, political and personal impact that may come to pass if due caution is not exercised and risk not addressed comprehensively. SecureFuture understands that risk management needs to be based on clearly defined parameters, using proven instruments in order that assessments can be evaluated and justified, both internally and externally.

The key aspects of the detailed procedures will be to:

- support staff training in the management of 'at risk' Prisoners
- stress that whenever a member of staff, either through initial reception, screening, assessment of induction, or subsequent engagement with a Prisoner becomes aware or is concerned that a Prisoner is presenting an 'at risk' indicator, he or she will immediately alert the officer in charge of the area
- detail the processes and instruments to be used in the reception, screening, assessment and induction programme to identify 'at risk' Prisoners
- define the content of responsibilities for the 'at risk' management plan which is to be developed for each Prisoner identified as at risk
- document the process of, authority for and departmental procedural requirements with respect to the use of a safe cell
- provide access by and support from Whānau, family, chaplains, psychologists, counsellors, elders and listeners
- identify accommodation issues and options, including the procedures for the use of double up, safe cells, first night accommodation and induction units
- define the communication requirements to ensure relevant staff are aware of a Prisoner's 'at risk' status
- document procedures to be taken where incidents of threat of self-harm arise to avoid transfers
- ensure that the transport of 'at risk' Prisoners conforms to the Department's procedures
- ensure appropriate SecureFuture staff are briefed on the role and procedures of the sentence management team.

### **3.5.1.4 Reporting requirements**

SecureFuture notes the need to ensure that all relevant staff are aware of cases where 'due care' has to be taken to prevent self-inflicted death or self-harm and to ensure that proper care is provided for the Prisoner's health and safety.

SecureFuture will ensure that the requirements of the Department are incorporated into its procedure. The procedure will include the following specific requirements:

- recording serious incidents and completing the necessary IOMS Incident Reporting Module
- placement of reports of interviews on the IMP file
- recording 'at risk' status on IOMS and in the Prisoner's IMP file
- removal of 'at risk' status from IOMS and case management file when determined appropriate.



### 3.5.2 Assaults, Bullying and Intimidation

SecureFuture will have in place an anti bullying and violence reduction strategy that encompasses all relevant aspects of related undesirable behaviours.

SecureFuture's objective is to eliminate all occurrences of violence, bullying, threatening or anti-social behaviours and to protect the victim and challenge the perpetrator. SecureFuture will not tolerate such anti-social behaviours as they threaten the positive environment of the Prison.

SecureFuture will maintain a zero tolerance approach to anti-social behaviour, bullying and intimidation at the Prison. SecureFuture does not condone such behaviour and will be very active in the pursuit of an environment that is pro-social, respectful and considerate of others. SecureFuture's zero tolerance campaign will consist of leaflets given during the induction phase, and posters and signage which convey a strong message to ensure that everyone knows the consequences of such behaviour.

SecureFuture will have robust management process in place for Prisoners who either willingly engage in anti-social behaviours in an effort to victimise other Prisoners, or who through an existing deficiency in interpersonal skills, bully or intimidate others, in a belief that such actions reflect acceptable behaviour.

SecureFuture regards it as incumbent on its staff to ensure that Prisoners are provided with a culture that is positive and an environment which is safe and free from all forms of intimidation. SecureFuture will tackle and counter anti-social behaviour by maintaining a culture at the Prison where Prisoners feel safe from threat or harm, and where victims feel safe and supported enough to report bullying and intimidating behaviour to any member of staff.

Staff will be provided with information regarding SecureFuture's anti-bullying strategy during induction training as well as during refresher training. SecureFuture will adopt a holistic approach, in which the entire population at the Prison will share a responsibility to protect the vulnerable and support those in distress. SecureFuture will have a comprehensive range of relevant strategies and associated procedures to achieve the elimination of anti-social behaviour and encourage those who work, live or visit the Prison to have a clear and active role in this process. SecureFuture believes that by promoting healthy relationships, it will create a well managed environment that minimises fear and promotes good order.

Central to minimising victimisation and harm at the SecureFuture-operated Prison will be its clear position regarding bullying and intimidation. SecureFuture does not condone such behaviour and will be very active in the pursuit of an environment that is pro-social, respectful and considerate of others within the Prison. The entire population at the Prison will share a responsibility to protect and support the vulnerable and those in distress.

SecureFuture's approach will be one of working to eliminate all occurrences of violence, bullying, threatening or anti-social behaviours. SecureFuture regards it as incumbent on its staff to ensure that Prisoners are provided with a culture that is positive and an environment which is safe and free from all forms of intimidation. SecureFuture will encourage Prisoners at the Prison to take personal responsibility and to inform staff of any anti-social behaviour that they witness or encounter.

SecureFuture is committed to maintaining discipline and control and to ensuring Prisoners leave the Prison having had a positive experience. SecureFuture will have a comprehensive range of relevant strategies and associated procedures to minimise anti-social behaviour and encourage those who work, live at or visit the Prison to have a clear and active role in this process. SecureFuture believes that by promoting healthy relationships, it will create an environment that minimises bullying and fear.

SecureFuture regards anti-social behaviour as any conduct motivated to hurt, threaten or frighten someone. Anti-social behaviour takes many forms including:

- verbal abuse, name-calling, teasing, threats of violence and racist language

- assaults, including sexual assault
- sexual harassment
- pushing to the front of a queue
- bullying and intimidation
- any other form of intimidation
- lending to other Prisoners and claiming repayment with interest
- standing over other Prisoners for their possessions including items purchased from the canteen or externally
- damage to property belonging to SecureFuture, the Department or other Prisoners.

SecureFuture will maintain a zero tolerance approach to anti-social behaviour within the Prison. SecureFuture's zero tolerance campaign will be explained to Prisoners during their induction programme, and supplemented by leaflets and posters and signs which convey a strong message to ensure that everyone is aware of the consequences of such behaviour.

SecureFuture staff will encourage a pro-social environment and develop good relationships with Prisoners. Staff at the Prison will be provided with information regarding SecureFuture's anti-bullying strategy during their induction training as well as during refresher training. Staff will act as role models, be approachable, be vigilant to signs of bullying and will challenge any unacceptable behaviour. Practical measures to combat anti-social behaviour will include:

- close observation of vulnerable Prisoners
- supporting victims of bullying and intimidation
- anti-bullying committee meetings
- poster campaigns
- Prisoner representative forum meetings
- taking action against perpetrators.

#### **3.5.2.1 Anti-bullying policy**

SecureFuture will develop procedures for bullying and anti-social behaviour. The anti-bullying policy for the Prison will be developed around the five main elements of:

- measuring the problem
- changing the climate
- improving detection
- supporting the victim
- challenging the bully.

All relevant staff will be required to manage the potential for escalating conflict by:

- maintaining professional relationships through the use of pro-social modelling and the effective use of interpersonal skills to reduce the likelihood of escalation to intimidation or physical violence
- managing fairly and consistently and adopting a proactive stance to the management of anti-social and violent behaviour by reporting incidents and initiating sanctions and rewards where appropriate
- supervising Prisoners where appropriate, identifying unexplained injuries and ensuring they are reported
- the referral of serious assaults to the New Zealand Police
- early identification of behaviour that is causing concern
- including appropriate objectives in the reintegration planning process
- where necessary, using the powers provided in the legislation to counter unacceptable behaviours.

### **3.5.2.2 Supporting the victim**

SecureFuture's management approach will be to protect the victim and challenge the perpetrator. The safety and wellbeing of the victim will be of paramount importance.

Prisoners will be able to report bullying or intimidation to any member of staff. They will also be able to report issues to external organisations, including the Department, using the Prison complaints procedure. Prisoners will have access to call free phone numbers, such as Lifeline, for support.

All reports of bullying will be confidential and Prisoners will be encouraged to talk to staff regarding any bullying or intimidating behaviour they have been subject or witness to.

All reports will be taken seriously and acted upon promptly. The Prisoner will be kept up to date with the progress of their complaint.

Staff will understand that intervention with a suspected bully may place the victim at risk.

SecureFuture's in-cell intercom system will enable Prisoners to report any bullying behaviour at their convenience and in privacy, negating the need to physically approach a member of Prison staff. This is important because in SecureFuture's experience, in traditional Prison environments, the risk of being witnessed acts as a significant deterrent for Prisoners in reporting bullying behaviour to staff.

Once an incident has been reported, staff will monitor the victim whilst collating and recording evidence. Victims of bullying or intimidation will be provided with appropriate support to assist in developing coping mechanisms. Medical or psychological support will be provided, in addition to support from the peer support team. Where a medical or psychological professional suggests additional coping mechanisms are required, referral to programmes that address assertion and coping skills will be facilitated.

The victims will be kept informed of the situation. The identity of a Prisoner making an allegation of bullying will not be disclosed to the alleged bully, but staff will monitor the situation and every effort will be made to protect the confidentiality of a victim.

Notes will be made on the Prisoner's IMP and any required modifications, such as changes to programmes or employment will be recorded. Staff will monitor and support all victims of bullying and intimidation and review their care plan regularly. Victims of bullying will be encouraged to stay at their normal location.

SecureFuture notes that Section 58 of the Corrections Act 2004 gives the Prison Manager the authority to segregate or separate Prisoners for the purpose of security, good order and safety, particularly if the safety of a Prisoner is threatened. Each incident of bullying will be judged on individual basis and SecureFuture will segregate Prisoners whenever necessary.

All necessary reports regarding incidents, bullying and anti-social behaviour will be entered into IOMS.

### **3.5.2.3 Challenging the bully**

Following a suspected incident of bullying, staff with responsibility for the area or activity concerned will report the incident on IOMS and inform accommodation staff to ensure that those who have contact with the suspect are aware and can closely observe him. The incident will be investigated and the suspected bully interviewed. The suspect will be informed that he is suspected of being a bully. He will be advised that staff will be monitoring his future behaviour closely. The bullying incident report form will be annotated with the action taken.

Every Prisoner at the Prison will have a personal officer who will play a significant role in constructing and delivering an IMP which meets their emotional, behavioural, learning and offence related needs. Any bullying behaviour will be case managed by the personal officer by working closely with the perpetrator. The consequences of his actions will be carefully explained to him as will any punitive measures taken. The progress of the bully will be closely monitored by the personal officer for as long as it is deemed necessary.

Where there is evidence to support a case for the bully to be removed from normal accommodation, the evidence will be collated and submitted to the Accommodation Manager for approval. If approved, the Prisoner will be removed from normal location and visited by his personal officer who will work with him through a personal action plan to ultimately restore him to normal accommodation, giving due regard to the victim's location.

### 3.5.3 Gang-neutral Prison

SecureFuture does not accept the presence of gangs in a Prison. This presence is a direct threat to the safety and good order of the Prison. With this in mind SecureFuture will be active in developing management strategies to neutralise the influence of gangs.

SecureFuture has entered into research with the Nottingham and Saskatchewan Universities for the development and delivery of programmes to counter the presence and influence of gangs. This will provide input into SecureFuture's violence reduction programme.

SecureFuture will manage the Prison in a manner that focuses on the behaviour and risks of the 960 individual Prisoners rather than gang membership. Central in this model is the utilisation of intelligence to identify risks and ensure that risks are managed and mitigated.

SecureFuture will not permit visible signs of gang presence such as paraphernalia or colours and will actively engage with those who wish to align themselves as gang members, or create problems for the Prison or other Prisoners, with a view to managing them out of the gang culture and into a normal situation.

Those desirous of trouble will be managed accordingly and consideration will be given to isolating troublesome Prisoners, leaving the remainder of the Prison free to operate as a normalised environment. Central to the SecureFuture approach to operate a gang neutral Prison will be the overt awareness that SecureFuture is in charge of the Prison.

SecureFuture strongly believes that effective minimisation of bullying and victimisation and harm requires successful management of gang-related activity. SecureFuture recognises that the New Zealand correctional system has one of the highest rates of Prisoner gang affiliation or membership in the world. It is clear that gang membership can drive violence and disorder in prisons, creating a sub-culture of secrecy and a system of allegiances and conflicts within the Prison.

SecureFuture will create a culture of challenging gang and anti-social group related behaviour. SecureFuture's staff will be central to creating this culture. They will be vigilant to Prisoners engaging in gang activity, be that congregating with individuals belonging to anti-social groups or gangs, writing or drawing gang related imagery (including graffiti), wearing gang symbols or engaging in related bullying, intimidation, abuse and violence. These individuals will be challenged as soon as any of the above is detected.

SecureFuture will have a policy approach of not accepting predatory behaviours and will act to stamp out such activities. SecureFuture's staff will be trained in the methods to be adopted when managing any emerging presence of gang related activities. This training will also include inappropriate approaches from gang aligned persons, whether inside or outside of the Prison.

Where Prisoners identified as active or passive gang members are engaged in bullying and it is suspected that this is linked directly to their membership of a gang or anti-social group SecureFuture will ensure that resources are made available to monitor the individual's behaviour.

SecureFuture believes that critical to mitigating the influence and power of gangs at the Prison, is not overstating their importance. It is undeniable that among many Prisoners, there exists considerable kudos and prestige in gang membership. In the absence of more powerful diversions and deterrents, gang membership gives Prisoners something to belong to by providing both a sense of protection and of self esteem. It is a sad reality that within New Zealand Prisons, the label 'gang' has connotations of glamour and power: this is not a notion SecureFuture would like to reinforce.

SecureFuture will develop and implement an anti-gang policy. SecureFuture has commissioned a study of this topic by Dr. Jarrod Gilbert of Canterbury University. His work and that of other international correctional experts will closely guide the development of SecureFuture's policy.

### 3.6 Managing Prisoners on Segregation

SecureFuture is committed to having a busy Prison day. This is an integral component in our strategies to reduce re-offending and to ensure a positive and engaging environment conducive to behavioural change. It is also central in our strategies to negate unrest in the Prison. Access to this busy day will be equitable and available to all Prisoners.

The SecureFuture model will see lack of access being only by exception. The only Prisoners who might have restricted access to the busy day would be those Prisoners:

- who are segregated pursuant to sections 57 to 61 of the Corrections Act 2004
- who are segregated pursuant to Subpart 5 – Offences, Offences against discipline, sections 128 to 150, Corrections Act 2004.

Where a Prisoner is segregated under the above sections, SecureFuture will utilise the case management process to minimise the segregation period and ensure a normalised return to the normal activities.

Prisoners who are segregated pursuant to sections 57 to 61 of the Corrections Act 2004 will have their accommodation placement reviewed. Some Prisoners will be placed in specialist accommodation for the duration of their segregation, such as At-Risk cells or the management unit. Staff working on the management unit will be specially selected based on their skills in de-escalation and conflict resolution, and be trained and supported to work with the Prisoners that display disruptive and challenging behaviours. Prisoners accommodated on the management unit will be able to access a range of Interventions intended to address the underlying issue(s) that resulted in their placement on segregation, such as anger management courses.

All Prisoners on segregation will have a specific management plan developed to assist their management back into normal accommodation. The intent is to minimise the amount of time spent on segregation, recognising that the difficulty increases the longer a Prisoner is removed from normal accommodation. Each management plan will stipulate the frequency of reviews of the plan. In intense cases reviews might occur weekly or even more frequently.

## 4. PRISONER CARE AND ENTITLEMENTS

### 4.1 Approach

Key to SecureFuture's vision is its commitment to operating a safe, secure and humane Prison. Ensuring that Prisoner wellbeing is maintained and improved is central to realising not only this aspect of SecureFuture's service delivery vision, but the Department's key ambitions of reducing re-offending and improving public safety.

The Prisoner wellbeing services provided at the Prison will be contemporary, best practice services and more than adequate to meet the needs of the Prison population. While achieving the outcomes related to care and wellbeing, SecureFuture will develop policies and procedures complying with the following overriding principles:

#### ***Equity***

SecureFuture will provide care and wellbeing services which Prisoners can access fairly and equitably and which meet the specific physical and mental health needs of all, including Māori and Pasifika Prisoners, persons with disabilities and minority groups.

SecureFuture will ensure that the size of the Prison does not detract from, impact or overshadow the level of service offered to the minority group Prisoners.

#### ***Normalisation***

SecureFuture recognises that the loss of liberty is the punishment and, as corrections administrators SecureFuture does not impose the penalty as this is done by the courts. SecureFuture merely carries out the orders of the court and therefore, life in the Prison should be as normal as possible.

SecureFuture will provide care and wellbeing services which are comparable to those provided within the broader community with similar access. Access to services will follow the community model which will develop Prisoner skills and knowledge required to access similar services upon release, with the outcome that Prisoners will continue to responsibly manage their health and wellbeing and have the knowledge and ability to access services when in the community.

#### ***Responsible Prisoner***

Under the SecureFuture model, Prisoners will be encouraged to take responsibility for their physical, mental and social wellbeing and understand the benefits of a healthy lifestyle.

Education and information will be provided to allow the Responsible Prisoner to make informed decisions when choosing to access services.

Policies and procedures will be developed to benefit the responsible Prisoner while being mindful of the risks associated with irresponsible Prisoner behaviour. A safety net process will be implemented to ensure SecureFuture meets its duty of care to all Prisoners.

#### ***Healthy Prisoner***

Prisoners who have good health and a sense of wellbeing are more likely to engage in constructive activities and have greater ownership of their behaviour and the way they relate to others.

SecureFuture acknowledges that the period of imprisonment is often the first time some Prisoners attend health services and have their general health assessed. SecureFuture will identify health needs, whether minor or major, at entry through assessment and during their imprisonment. This will reduce the stress and feelings of mistrust and isolation that are proven to occur when Prisoners' health needs are not met in a timely manner.

SecureFuture understands that health education and treatment programmes are required to address those diseases with a high prevalence in Prisons and commits to developing strategies to contain and minimise these.

A very small number of Prisoners will have diseases with no cure, or which are age specific with a worsening prognosis. SecureFuture will ensure that these groups of Prisoners receive care in a supportive environment which will encourage independence and their ability to manage their daily living activities for as long as possible.

### ***Best practice***

SecureFuture will meet or exceed minimum standards with regard to all aspects of Prisoner care and wellbeing; its practices will be evidence-based and reflect best practice within budgetary parameters.

Policies and procedures will be developed to ensure best therapeutic benefit, rather than for institutional routine.

Risk minimisation will be considered when developing medical policies and procedures.

### ***Ethical behaviour***

Ethical behaviour is part of SecureFuture's core values. It generates a culture where employees are expected to do the right thing for the right reasons to achieve the right outcome.

SecureFuture is aware of the conditions placed on individuals by legislation and how this translates into an ethical code for professional staff; SecureFuture will ensure staff comply with their codes.

SecureFuture will dictate staff behaviour through the inclusion of ethical practice issues in line management, supervision, communication and protocols.

SecureFuture will have in place advice and support to professional staff on a range of issues, including ethics, from a range of sources including line management, written and electronic material and through access to professional bodies.

### ***Achieving community standards***

At a minimum, SecureFuture will work to the standards and procedures set out by the Department. Additionally SecureFuture will ensure its policies and procedures comply with all relevant New Zealand legislation.

SecureFuture will ensure that its staff work within the standards and codes of practice of their respective professional bodies, and in particular, comply with the requirements for continuing professional development. SecureFuture not only trains its staff in the practical aspects of their role but also in their ethical and moral duties. SecureFuture will conduct annual checks of their registration status to ensure that staff are fully qualified for their role.

### ***Māori and Pasifika focus***

SecureFuture's approach will embrace the 'Hua Oranga' measure of individual wellbeing to determine the most effective approach for any necessary treatment or care. This will be complemented by assessments of:

- mental health (taha hinengaro)
- spiritual health (taha wairua)
- physical health (taha tinana)
- relationships with family and community (taha whānau).

In the provision of healthcare to Māori and Pasifika Prisoners, SecureFuture will have a strong focus on the inclusion of the whānau ora in the delivery of health services. SecureFuture will regularly measure



the healthcare and well being of Māori and Pasifika Prisoners to make certain that what is being delivered is addressing their health needs.

SecureFuture will also have a strong link between the healthcare and wellbeing of the Māori and Pasifika and physical exercise and education. SecureFuture sees definite synergies between the good health outcomes and exercise.

SecureFuture notes the excellent Māori and Pasifika health care units that exist in New Zealand's public hospitals. SecureFuture will create and maintain dialogue with these units to access their advice and make certain that the healthcare service SecureFuture offers is in line with industry standards.

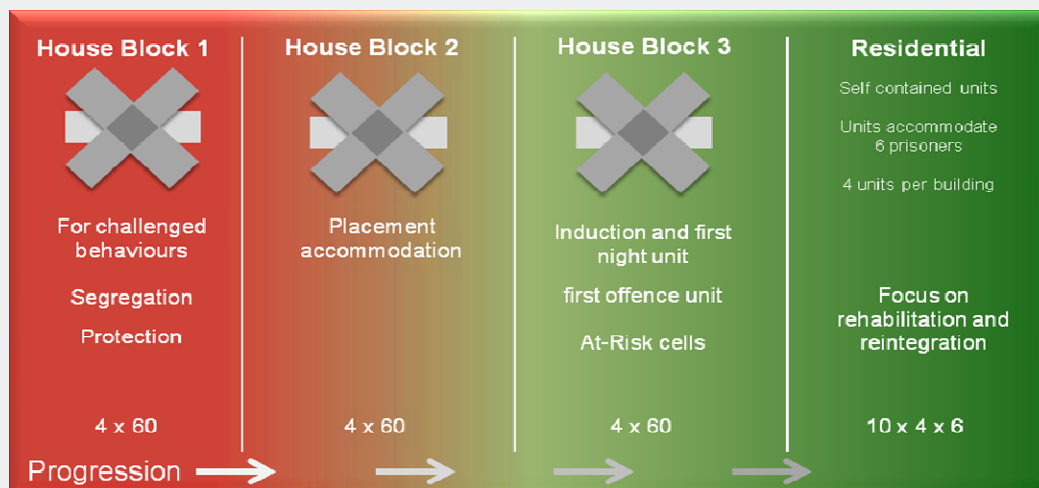
## 4.2 Accommodation

SecureFuture's Prisoner placement model will ensure that Prisoners are suitably accommodated to reflect the individual Prisoner according to their security classification, demonstrated behaviours and assessed risks.

SecureFuture's preference is to maintain good order among Prisoners and its model for progression between/across the accommodation settings will be one of achievement and rewarding positive behaviours.

This will contribute to a positive and respectful environment that is conducive to addressing offending behaviours, whilst providing a 'pull effect' that rewards and draws the Prisoner through the system, ultimately reducing re-offending.

As illustrated in the below diagram, SecureFuture's proposed accommodation layout for the Prison consists of three house blocks which accommodate 240 Prisoners each within four separate units. In addition to the house blocks, SecureFuture has proposed a residences to accommodate a further 240 low security/low risk Prisoners:



**Figure 3: Prisoner Accommodation at the Prison**

House block 1 will accommodate:

- high security/high risk Prisoners
- Behaviourally challenged Prisoner
- Prisoners requiring segregation
- Prisoners requiring protection.

House block 2 will consist of normal mainstream accommodation, likely accommodating assessed and inducted Prisoners.



House block 3 will consist of:

- induction unit and first night accommodation
- first offence unit
- ‘at risk’ cells
- young or vulnerable Prisoners
- assessed and inducted Prisoners who have short sentences or have little criminal history will likely commence their accommodation here.

Residences will accommodate:

- low/medium security/low risk Prisoners
- minimum security Prisoners
- Prisoners who are engaged in the rehabilitative processes towards end of sentence.

SecureFuture’s approach to accommodation is based on an assessment of the Prisoner’s behaviours and internal risk levels. All accommodation in the Prison will be classified as high or low security. Prisoners will be placed in accommodation and managed on a regime that is consistent with their security classification. High security Prisoners will only be placed in high security accommodation. Prisoners classified as low/medium, low or minimum will generally only be placed in low security accommodation, except where it is agreed with the Prison Director that they will be placed in high security accommodation. . Where this occurs, the regime provided to the Prisoner, such as their access to activities and freedom of movement across the site, will reflect their security classification.

One of SecureFuture’s design elements for the Prison is that as a Prisoner succeeds and progresses, they move slowly towards the gate building and inevitably to freedom. By the time Prisoners graduate to the residences, they will be aware that through their own efforts they have placed themselves adjacent to the cultural heart of the Prison and to the gate through which they will walk toward their reintegration back into the community.

SecureFuture strongly believes that the outcomes of rehabilitation efforts cannot be achieved without first ensuring that Prisoners feel safe and secure. For this reason, in designing the accommodation units, SecureFuture has placed a strong focus on creating secure environments within which the Prisoners can feel at ease. SecureFuture believes that the size of the units – housing groups of 60 to 70 Prisoners – is conducive to creating an atmosphere in which both staff and Prisoners can get to know each other easily and by name. SecureFuture has also ensured equity in access and accommodation for Prisoners.

Importantly, SecureFuture’s design allows for the division of the Prisoner population into small compatible groups, co-located with dedicated teams of staff. The advantages of this approach are:

- greater flexibility (since all accommodation units do not need to be run in the same way)
- regimes and activities can be varied between the accommodation units to suit particular needs
- the ability to segregate groups of the Prisoner population within a building.

Individual cells have been designed consistently with best industry standards. SecureFuture has produced a cell model and configuration that is modern and comforting in appearance. SecureFuture’s design permits the doubling up of the cell without leading to conflicts commonly associated with such correctional accommodation settings.

An important feature of SecureFuture’s design, and one which crucially complements SecureFuture’s interventions to rehabilitate Prisoners, is the manner in which Prison cells will enable and facilitate the Prisoners’ capacity to communicate with family members and external service providers as well as to utilise their spare time more productively. This is delivered through the provision of the in-cell telephone, which will allow Prisoners to make calls to a small number of pre-approved contacts from their families, friends and whānau in relative privacy and in their own time, improving Prisoner morale and assisting in their rehabilitation endeavours. SecureFuture’s correctional service provider, Serco,

has successfully implemented in-cell telephones in many of the prisons it operates in the UK, and has gathered compelling evidence of their effectiveness:

- the ability to contact family members at mutually convenient times, in relative privacy and without time pressure, has increased dramatically the positive impact of family contact on prisoners' motivation and engagement
- they make a significant contribution to the safety and security of the Prison as a whole; incidents of violence and self-harm have reduced in all prisons with in-cell phones since their introduction.

In addition, the provision of the Custodial Management System (CMS) will enable Prisoners to carry out a number of functions which promote personal initiative and responsibility. These will include:

- order purchases
- check trust account balances
- transfer monies to accounts such as telephone accounts
- make appointments, including medical and dental
- book visits
- carry out self-directed education and courses through using the in-cell CMS virtual learning environment (VLE)
- check their activities timetable.

SecureFuture's design model also allows Prisoners to achieve increased levels of comfort as they progress through the accommodation regime. Whilst basic cell design features remain the same across each of the three secure accommodation blocks, the interiors and furniture will be more comfortable and homely as Prisoners transition across the accommodation regime, with the ultimate goal for Prisoners to achieve placement within the residences.

Comprising ten buildings, each containing four units of six beds, the residences will allow Prisoners to manage their life with much greater flexibility and independence than in the secure blocks, with longer recreational periods, comfortable single room accommodation and self catering arrangements. SecureFuture believes that this design will provide incentives and rewards for positive efforts on the part of the Prisoner. Anti-social behaviour and failure to comply with the Prison regime will be met with a return back to less comfortable surroundings.

The secure accommodation buildings will be built adjacent to the education and programmes and the healthcare centre building as well as the visits centre. To emphasise the centrality of these buildings' functions to SecureFuture's rehabilitation and reintegration goals and to facilitate equitable access to the building by a diverse Prisoner population from all relevant points of the Prison, SecureFuture has purposefully situated the education and programmes and the healthcare centre building near the centre of the Prison.

The combination of health, education and programmes in one building is not coincidental: SecureFuture sees it as imperative to enable a concentration of services and a sharing of abilities and knowledge. Likewise, the healthcare centre will house a classroom, to ensure that SecureFuture delivers not only effective clinical services but has the capacity to educate Prisoners about good health and wellbeing. SecureFuture believes that this emphasis on equipping Prisoners to gain new knowledge and skills during their time at the Prison is intrinsic to ensuring their care and wellbeing long after they are released.

Another important feature of the Prison design is the industries area, which will allow Prisoners to pursue the combination of meaningful education and work. The SecureFuture design provides capacity to deliver industries employment for up to 150 Prisoners. It also allows for the inclusion of vocational education components in each industry area, with the capacity to provide for up to 85 Prisoners in vocational training in industries. While it is not possible to fully plan for the industry base so far from the service delivery time, SecureFuture believes that its approach provides a substantial and flexible industry base to meet the needs of the Prison for the duration of the contract.

SecureFuture understands the importance of providing spaces which enable, facilitate and encourage religious and cultural customs and practices. SecureFuture will provide a multi-denominational, configurable world faith space within the education centre to serve as a meeting place, a worship centre and for other such purposes.

SecureFuture is fully committed to the concept that positive participation of Māori prisoners in Te Ao Māori (the Māori world) within a corrections environment will help to reconnect willing prisoners back to their culture. In its operation of the Prison, SecureFuture will ensure that Māori who are motivated are exposed to Tikanga and Kawa supported by the provision of a traditional marae and whare kura.

SecureFuture will set high standards for hygiene and cleanliness at the Prison and maintain this, in part, through the provision of clean accommodation, clothing and bedding.

SecureFuture will provide a full range of clean bedding to every Prisoner. All bedding will be fit-for-purpose and appropriate for the local climate.

Cells will be equipped with a bed and flame retardant mattress (or cover) for each Prisoner. On arrival at the Prison, Prisoners will be issued with the following laundered items:

- 1 x Pillow
- 1 x Pillow case
- 2 x Sheets
- 2 x blankets
- additional blankets as requested.

Prisoners will have access to laundry facilities in each unit, including a washing machine and dryer, to clean their underclothes. SecureFuture staff will encourage Prisoners to launder such items regularly, and will monitor this to ensure hygiene standards are being met.

In addition, SecureFuture will make provision for on-site laundry services to clean other clothes and bedding items.

The extensive experience of SecureFuture's correctional service provider, Serco, has shown that main laundries are a challenge in the Prison environment because they can help facilitate contraband movement. The laundry at the Prison is designed to enable laundry to be stockpiled. Dirty laundry will come in, will be washed and dried and then placed on shelves.

Generic bags of laundry will be prepared from the existing stock and sent back to the units. These bags will be sent back at random, making it unlikely for anyone to know which bag is going to which unit. SecureFuture believes that this will make the movement of contraband much more difficult and will reduce the need to search.

### 4.3 Equality, Diversity, Faith and Religion

SecureFuture confirms its understanding of the requirement to manage a diverse Prison population. SecureFuture will ensure that the distinct needs of each protected characteristic are recognised and addressed, including race, nationality, religion, disability, transgender issues, sexual orientation and age. SecureFuture will ensure that staff are trained in promoting and modelling awareness of equality, enabling them to anticipate and address the needs of a diverse population. Staff will be expected to lead by example, promoting equality and diversity by active engagement with all prisoners.

SecureFuture will address the diverse cultural, ethnic and spiritual needs of Prisoners and allow them to maintain cultural, ethnic, and spiritual beliefs. This will be done in a manner that is non-discriminatory and reduces risk to Prisoners.

SecureFuture's approach will ensure:

- cultural diversity is valued, promoted and celebrated
- diversity within cultural groups is recognised and respected
- social justice values of access, equity, equality and participation are administered

- an environment where staff and prisoners do not experience harassment, discrimination or disadvantage due to their cultural or linguistic differences
- diversity is continually cultivated
- a culturally-sensitive workforce is enhanced by equipping staff with theoretical and practical knowledge in respect of cultural diversity
- collaboration with government departments and community agencies is conducted in meeting the needs of prisoners from diverse cultures
- racism, in any form, is not tolerated

SecureFuture will ensure that older Prisoners are treated equitably and according to their individual needs. Staff working with older Prisoners will be trained how to recognise the signs of mental health problems and the onset of dementia. Older Prisoners who are retired or unfit to work will be provided with access to appropriate activities.

SecureFuture will ensure that Prisoners with disabilities are identified on arrival, given (where appropriate) a multidisciplinary care plan which is kept up to date and, where necessary, have access to social care. SecureFuture will ensure that Prisoners with disabilities (both physical and mental impairments and learning disabilities and difficulties) have equitable access to the Prison regime activities and facilities wherever possible. SecureFuture will make reasonable adjustments to ensure this access. Each accommodation block, and the residences, have cells that are suitable for Prisoners with physical disabilities. Prisoners who are unable to work due to their disability will be provided with access to appropriate activities.

SecureFuture will develop and implement procedures for working with Prisoners from different cultures and backgrounds as part of its Policy and Procedures Manual. SecureFuture's Associate Director Māori and Cultural Affairs and Reintegration will be responsible for working with both staff and Prisoners to develop, implement and monitor appropriate strategies for working with Prisoners from a variety of ethnic and cultural backgrounds. SecureFuture will also provide modules on cultural awareness and working with vulnerable people in all relevant staff training.

All relevant staff at the Prison will be understanding and sensitive to the cultural, ethnic and linguistic issues and needs of Prisoners, and will provide assistance to such individuals whenever needed. This may include access to interpreters to assist them in situations such as:

- reception, assessment and initial induction
- reintegration and rehabilitation planning
- consultations with New Zealand Police, government officials or medical practitioners
- contacting family, friends and government and community support services.

SecureFuture will ensure that Prison information, such as the Prison information booklet, is written simply. Copies of the booklet will be provided in Te Reo Māori and in a selection of other languages. It will be written in a manner that can be easily translated to other languages as required. Wherever possible, SecureFuture will make use of pictorial illustrations.

Culturally appropriate activities and education programmes will be facilitated; such programmes may include English as a Second Language courses. Where available and practical, additional modes of communication will be provided for Prisoners with specific language and/cultural needs. Legal material in community languages will be sourced from the New Zealand Government and from community legal agencies. Specific needs will be addressed by SecureFuture's officers and the community liaison officers.

Community language newspapers, magazines and texts will be sourced in consultation with community groups and in consultation with the Department to access its existing multilingual book loans system. Adequate copies of newspapers and magazines will be provided, based on demographic data, and distributed to meet the identified demand.

#### 4.3.1 Tailoring Interventions to respond to Diversity

SecureFuture understands and appreciates that Prisoners may experience intervention programmes differently due to cultural, spiritual or linguistic factors. To optimise the effectiveness of its rehabilitative programmes, SecureFuture will put in place measures to respond to the diversity of Prisoner population at the Prison.

SecureFuture's approach will ensure:

- cultural diversity is valued, promoted and celebrated
- diversity within cultural groups is recognised and respected
- an environment where Prisoners do not experience harassment, discrimination or disadvantage due to their cultural or linguistic differences
- a culturally-sensitive workforce is enhanced by equipping staff with theoretical and practical knowledge in respect of cultural diversity
- collaboration with government departments and community agencies is conducted in meeting the needs of Prisoners from diverse cultures.

SecureFuture will develop and implement procedures for working with Prisoners from different cultures and backgrounds as part of its Policy and Procedures Manual. SecureFuture will appoint an Associate Director Māori and Cultural Affairs and Reintegration to be responsible for working with both staff and Prisoners to develop, implement and monitor appropriate strategies for working with Prisoners from a variety of ethnic and cultural backgrounds. SecureFuture will also provide modules on cultural awareness and working with vulnerable people in all relevant staff training.

SecureFuture will provide a range of assessments of the treatment needs of Prisoners. Drawing on the extensive body of academic research on the significance of culture and identity in therapeutic and learning settings, SecureFuture will include cultural wellbeing assessments. These will be conducted together with the mandatory health, special needs and at risk assessments.

During the induction period, spiritual and cultural representatives will attend the Prison and engage with Prisoners and with their families. For Māori Prisoners, during the reception and induction period, Māori staff will assess an individual's cultural and spiritual strengths and vulnerabilities and their key values in life.

The staff undertaking the assessments will have a thorough understanding of the concepts of whakapapa, mythology, kawa, tikanga and Te Reo because this is the context within which cultural assessments take place. The assessment process also validates Māori healing methodologies, such as karakia, rongoa, spiritual assistance, tohunga, whanungatanga, te waitea, awhi, manaatikanga, whakapapa, whaka whānau ngatanga, moemoea, matauranga Māori and taha wairua. A key aspect of the process is the endorsement of the outcome by Māori.

Assessments will complement other information, such as pre-sentence reports or sentencing remarks. Together, they will be brought together through the case management process to craft the Prisoner's IMP. The IMP will contain all relevant programmes and interventions to address the treatment needs identified through the assessment process. These needs will be matched to the 8 pathways.

Programmes offered by SecureFuture which reflect consideration of diversity and the Department's bi-cultural therapy model may include:

- Whānau Support – Cultural support for Māori will be provided by Ngati Whatua o Orakei, Kaiwhakamana and Mana Whenua
- Mental Health – Located within the context of the Māori Health Model which will see referrals made to Mason Clinic staff during the weekday visits to the Prison
- Physical Recreation – SecureFuture will have a comprehensive programme of physical activity managed by PE Trainers, to complement the health and nutritional programmes to address health and well being issues identified in a Prisoner's assessment

- Literacy and Numeracy – The application of Māori and Pasifika pedagogies; service providers will include Literacy Aotearoa
- Psychological/Drug programmes, where appropriate. To deliver these programmes, SecureFuture will work with community based service providers, such as Auckland City Mission, and the Salvation Army
- Men's Health and Wellbeing – Service providers may include Ngati Whatua o Orakei
- Tikanga Māori – Formal elements will include short, intensive tikanga Māori programmes, including New Life Akoranga, delivered by agencies such as Ngati Whatua o Orakei or Unitec
- Family Programmes – Fathers Inside, Story Book Dads. There will be a tikanga Māori version of these, the Matua Tanga (Fatherhood) programme
- Domestic Abuse Programme
- Arts and Art Therapy – With the assistance of the Art Therapy Association of New Zealand and the Australia and New Zealand Art Therapy Association, an Art Therapy programme will be included in the menu of programmes available at the Prison. This will also include Kapa haka
- Music Therapy – SecureFuture will work with New Zealand experts of Music Therapy New Zealand on the design and delivery of a Music Therapy programme in the Prison
- Finance, Debt and Gambling:
  - SecureFuture will work with the Problem Gambling Foundation of New Zealand (PGF) to establish a gambling counselling service for Māori and Pasifika (and others) with hotline access to be established at the Prison
  - Personal Finance and Debt
- Spiritual and Religions Services – There will be several partners in the delivery of spiritual and religious services at the Prison. This will include the Prison Chaplaincy Service New Zealand, the Samoan Methodist Church, Prison Fellowship and the Ratana Church. Other service providers may include the Salvation Army, Auckland City Mission and Kaiwhakamana
- Saili Matangi – for Pasifika
- Restorative Justice – Sycamore Tree
- Specific Rehabilitation Programmes:
  - Short Rehabilitation Programme for Men
  - Medium Intensity Rehabilitation for Men.
- In addition, a violence reduction programme is under negotiation with Prof S. Wong of the Universities of Nottingham and Saskachewan to address gang membership.

#### 4.3.2 Ethnic and spiritual needs

The special cultural, spiritual and religious needs of Prisoners will be catered for in the Prison. This will include the provision of suitable food, and observance of special religious and cultural festivals and events. SecureFuture will ensure that:

- Prisoners have the right to practise the religion of their choice, where appropriate
- Prisoners are able to join with other persons in practising their religion, where appropriate
- Prisoners are able to possess such approved articles as are necessary to practise their religion subject to security and good order considerations
- Prisoners are able to access spiritual leaders from their chosen faith for services, pastoral visits, religious instruction and private pastoral counselling
- Māori and Pasifika Prisoners are given access to recognised spiritual leaders or elders and that spirituality is encouraged and strengthened through observance of customs related to family, hapū, iwi, language, mana, food, tangi, healing, art, rites of passage and traditions.

SecureFuture will partner with external organisations in the delivery of spiritual and religious services at the Prison. This may include the Prison Chaplaincy Service New Zealand under an agreement to provide pastoral and spiritual ministry including faith courses, such as Alpha and pastoral services and to exercise the role of Kaitiaki of spiritual values in the Prison. SecureFuture has commenced

negotiations with the Samoan Methodist Church which is interested in providing spiritual services and faith based programmes with and for members of their community who are in the Prison. This has been identified by the Fautua Pasifika group as a need. Prison Fellowship will also provide services. Other service providers under *Memoranda of Understanding* with SecureFuture's correctional service provider, Serco, include the Salvation Army, Auckland City Mission, leaders of the Ratana faith and Kaiwhakamana.

SecureFuture anticipates a typical weekly provision of ethnic and spiritual activities to encompass:

- an act of Christian collective worship – Protestant
- an act of Christian collective worship – Catholic
- an act of Muslim collective worship e.g. Friday prayers
- acts of worship for other faiths on an ad-hoc basis
- a visit by religious leaders (for one-to-one and group activities):
  - Christian
  - Muslim
  - Buddhist and/or
  - others as required (including Jewish, Tao, Hindu, Scientologist)
- availability of the Chaplain for general advice, guidance and support
- a visit by at least one of the main religions' community group.

SecureFuture will develop an annual timetable of events, which will include significant religious festivals to increase staff and Prisoner awareness of these events, and where appropriate use these events as vehicles to promote inter-faith and cross-cultural awareness, tolerance and understanding.

The observance of a religious or spiritual event will take precedence over other activities within operational and security constraints, but careful and sensitive timing will focus these activities towards the weekend to minimise any timetabling clashes.

Collective worship will be timetabled primarily on the weekends to integrate with other Prison activities. On an individual basis, Prisoners may be authorised to attend events that occur at the same time as other mandated activities, with a balance being struck between the Prisoner's IMP progress and his ethnic, spiritual or cultural needs. To ensure integrity of these important faith events, the Prisoner's IMP and accompanying timetable will detail attendance arrangements. The Prisoner's stated religious or spiritual status will be recorded at reception and noted on IOMS.

SecureFuture will promote inter-faith understanding and tolerance. SecureFuture will work with any religious or spiritual group or sect that is planning to observe a festival or celebration that does not have restrictions on attendance to members of other faiths/holders of no faith, to explain how they will make their activity accessible to others and invite lay persons i.e. other Prisoners and staff to attend.

SecureFuture will support the plans of any group to run celebratory festivals for worshippers in its care and others via the provision of appropriate foods and logistical support.

SecureFuture will support these events also by providing displays and resources within the education centre, and the facilitation and proper authorisation of visits by external community representatives.

The Prisoner's IMP may involve religious and spiritual targets if justified and appropriate, and the chaplaincy will be a deliverer of support in these regards. SecureFuture will be sure to confirm the faith of Prisoners wishing to attend faith-related activities and ensure frivolous claims of faith are managed accordingly.

The chaplaincy team will have appropriate access to Prisoner accessible areas and may move freely about the Prison. No restriction will be enforced except in rare and temporary occasions when operational necessity (safety and security) so dictate. If, in such a scenario, the Chaplain feels that the restriction is unjustified, he/she may inform the Prison Director who will promptly investigate.



Religious and spiritual visitors and groups may also have defined freedoms as they will be accredited and have received appropriate security training, but these will depend on the time and frequency of their visits as a reasonably high level of familiarity with the Prison is needed when freedom of movement is authorised.

On a case by case basis, cultural factors such as religious practice, ethnicity, shared experiences, personal habits and stated beliefs will be fed into the cell sharing risk assessment to ensure their import is fully considered.

The delivery of spiritual and cultural services at the Prison will be facilitated by purpose-built facilities, such as the marae, fale and multi-faith spiritual place.

#### 4.4 Health Services

SecureFuture notes and acknowledges the issues that health and wellbeing present in a Prison environment. A combination of lifestyle choices prior to incarceration, including substance misuse and poor diet, contribute to the fact that Prisoners often present with a myriad health problems. If these issues are not addressed, there is every chance that the cycle will continue post the imprisonment period. Informed by the outcomes of related research SecureFuture's custodial services provider, Serco, has developed industry best practice healthcare processes and practices for the Prison.

SecureFuture strongly believes that Prisoners in good health and with a positive sense of wellbeing are more likely to engage in constructive activity and have greater ownership of both their behaviour and the way they relate to others. SecureFuture also believes that by investing in an individual's health and creating ownership on their part, SecureFuture can encourage Prisoners to develop positive habits which will see them become less of a burden on the health system upon release.

It is SecureFuture's intention that the service to be delivered will be more than the provision of a basic medical service. SecureFuture's healthcare service will be strongly focused on rehabilitation, and will encourage Prisoners to take ownership of their health and wellbeing, make positive decisions, and based on this foundation, begin to take responsibility for other aspects of their lives. SecureFuture will achieve this through:

- providing access to the same level of care as in the community
- using imprisonment as an opportunity to restore health and wellbeing
- adopting a 'whole of life' approach to healthcare
- thorough assessment and care planning
- a focus on mental health and substance misuse issues
- access to secondary and tertiary care
- lifestyle and risk assessments
- providing for Prisoners' spiritual and cultural needs
- moderation of habits and lifestyles that contribute to poor health
- health and healthy lifestyle promotion
- acknowledging that the individual is an expert in his own health.

In short, SecureFuture will enable Prisoners to take advantage of their imprisonment to improve their health and reduce the potential subsequent drain on health services in the community.

SecureFuture's philosophy of reducing re-offending through better health is built on the following principles:

- access to care of a quality equal to that provided to the rest of the population
- the early identification and moderation of lifestyles likely to cause ill health
- the provision of prompt care following assessment
- health and healthy lifestyle promotion
- the management of resettlement back to the community to maintain health benefits gained in Prison, thus reducing the load on local health services.



#### 4.4.1 Health service overview

SecureFuture's solution for the health needs of the Prison is structured to ensure that appropriate measures are taken to make certain that both the physical and mental wellbeing of the Prisoners are provided through the deployment of qualified and competent medical professionals supported by robust and proven processes and systems. The model SecureFuture proposes applies specialist services directly to the predominant issues that are found amongst Prisoners on admission. The services offered include:

- Infection prevention and control programmes i.e. communicable diseases including blood borne viruses, sexually transmitted diseases and immunisation programmes
- Hepatitis C treatment programmes
- Men's health programmes
- Parenting skills programmes
- Sexual health/care programmes
- Allied community health services
- mental health services
- Māori and Pasifika health programmes
- Pathology services
- Access to medical imaging radiology services
- Drug and alcohol programmes, including opioid
- Substitution treatment programmes, counselling and support programmes for Prisoners on detoxification and withdrawal programmes for drug and alcohol misuse
- Quit smoking programmes
- Health promotion and improved lifestyle education programmes
- Nutrition programmes
- Emergency health management
- Dental care
- Chronic disease self management programmes including use of medications, dietary information
- Access to outpatient and specialist care as required.

SecureFuture will achieve the above through a range of diagnostic techniques, processes and procedures, genuine personal care, and effective liaison with the Department and New Zealand's Department of Health. This will include:

- assessing Prisoners on reception and during induction
- referring them to the appropriate nursing and other specialists
- providing treatment which is informed by evidence-based interventions and national guidelines
- involving external agencies in wellbeing/health expo days where Prisoners can be evaluated and assessed as well as provided with practical straight forward and comprehensible information
- offering scheduled appointments with medical staff, providing triage with a nurse, and allowing open access by Prisoners to SecureFuture's healthcare managers through drop-in clinics
- providing information at induction on how to access and benefit from the healthcare facilities
- providing health promotion literature and education sessions
- connecting health with sport, exercise and diet
- liaising with SecureFuture's colleagues in catering to ensure healthy and nutritionally balanced diets
- providing substance misuse and smoking cessation support.

SecureFuture acknowledges the specific health needs of Māori and Pasifika Prisoners (Maynard et al., 1999) and recognises that some of their medical conditions are related to cultural and lifestyle issues. The policies and procedures developed by SecureFuture will be broad enough to ensure the needs of these groups are met.

SecureFuture's primary health care services will provide for the assessment, diagnosis, treatment and prevention of physical and mental disorder. Wherever possible, care will be provided in a holistic manner that deals with the 'whole person' rather than just focusing on one disease state.

#### 4.4.2 Primary healthcare

SecureFuture will provide a robust primary healthcare service for the Prisoners in its care. This service will be an integral part of the overall Prison regime and will tie in closely with other elements of SecureFuture's service provision. SecureFuture will develop a holistic service for Prisoners which will not only identify and treat their medical conditions, but will focus on staying healthy by promoting good health practices and lifestyles. SecureFuture will also develop and provide health education programmes that will provide the Prisoner with information to assist them to make good decisions about lifestyle, risk taking behaviour and general health.

#### 4.4.3 Pathway healthcare model

SecureFuture's correction services provider, Serco, will use a clinical pathways model of healthcare to ensure continuity, co-ordination and consistency of care as Prisoners move through the Prison system.

Clinical pathways are structured, multidisciplinary plans of care designed to support the targeted implementation of clinical guidelines and protocols. They provide guidance on coordinating care for each stage in the management of a Prisoner with a specific condition over a given time period, and include progress and outcomes details.

This model will have four main components:

- a timeline
- the categories of care or activities and their interventions
- intermediate and long term outcome criteria
- the variance record (to allow deviations to be documented and analysed).

Prisoners with chronic care needs will have a clinical pathway or individual plan of care developed by a SecureFuture professional. This plan will consider the full complexity of the condition and will encourage a multidisciplinary approach. It will involve thorough assessment, treatment planning, regular reviews and patient education for self management of symptoms. For a Prisoner with a number of conditions which require complex care, an individualised plan of care will be developed by combining relevant clinical pathways. SecureFuture's recording processes will capture findings and actions in regards to the clinical pathways. SecureFuture will use the MedTech electronic record system. This system will be updated accordingly.

The typical types of conditions that will require a clinical pathway include:

- diabetes
- asthma
- heart disease
- epilepsy
- cancer
- terminal illness
- neurological disorders
- mental illness
- arthritis, rheumatism.

A key component of the SecureFuture clinical pathways approach will be regular analysis and profiling of the existing health needs of its Prisoners. Against this health profile, appropriate clinical pathways will be established for the entire Prison. This will ensure that the pathways model in place at the Prison remains reflective of the immediate and prevailing needs and is structured and proportioned to provide for the health needs and wellbeing of the Prisoners in the most cost effective manner. Given that the Prison population will comprise many short sentence Prisoners, it is likely that the health

needs of the Prison will change regularly. Thus, SecureFuture will conduct this health profile on at least an annual basis.

Prisoners serving sentences greater than twelve months will be provided with the opportunity for an annual health review around the anniversary of their reception.

The benefits of the clinical pathways approach will be evidenced through:

- supporting the introduction of evidence-based medicine and use of clinical guidelines
- supporting clinical effectiveness, risk management and clinical audit
- improving multidisciplinary communication, teamwork and care planning
- providing explicit and well-defined standards for care
- helping reduce variations in patient care by promoting standardisation
- helping improve clinical outcomes
- supporting training
- optimising the management of resources
- identifying when specialist referral is required
- providing continuous quality improvement
- helping empower Prisoners
- helping manage clinical risk.

Clinical pathways will also provide a benchmark against which SecureFuture will measure its performance.

SecureFuture envisages operating the healthcare centre between 7:00 and 19:00 daily, Monday to Friday and 8.00 to 17.00pm, Saturday and Sunday, with a registered general medical practitioner (GP) available between 8:50am and 11:20 and 13:45 to 15:45, Monday to Friday. Outside of that time SecureFuture will deliver urgent general practitioner services through a local hospital.

The GP will also contribute to and manage requests or complaints from Prisoners regarding their treatment and provide close liaison with SecureFuture's management team to inform on healthcare matters.

The mental health services will be provided by the Mason Clinic.

Prisoners will also be able to access nursing care at triage and consultations. These will involve consultations with both general nurses and mental health nurses. These consultations will occur seven days per week during the following indicative times:

- 8.50 to 11.20
- 13.45 to 15.45

Where a nurse has concerns about a Prisoner, they will refer him to a GP.

#### 4.4.4 Receptions

SecureFuture will provide a suite of medical checks and assessments to new receptions into the Prison. This is vital in developing and implementing individual clinical pathways and critical to identifying any special needs of the incoming Prisoners. In many cases this will be the first time that the Prisoner has been medically assessed, or it may be some time since they contacted their own doctor. This assessment is therefore critical in steering the Prisoner towards good health. It is also the cornerstone of SecureFuture's self-harm prevention strategy as it seeks to identify those at risk when they are at their most vulnerable i.e. on first admission to the Prison. From this assessment the healthcare team will be able to identify the most appropriate care for each Prisoner's condition.

Prisoners with special needs will be identified at this point, although it is also recognised that a Prisoner's needs change and may fall into the category of 'special needs' at a later date.

Prisoners will be examined by a nurse on reception into the Prison and assessed for their healthcare needs. They will be further seen for a full examination during the induction programme. This will cover the areas of physical and mental wellbeing, risk of self-harm and addictions. The Prisoner will

also be seen by the General Practitioner, who may make further referrals to specialist nurse providers or external agencies. More specifically:

- Departmental electronic clinical records will be completed by qualified healthcare services staff
- an appropriate referral or timely treatment will be provided as required on the basis of information obtained from this examination
- review of the transferred Prisoner or any existing medical records and creation of required new medical records will take place within 24 hours of reception.

Documentation will be maintained in relation to any referrals following formal assessment of:

- a requirement for detoxification from alcohol or other drugs
- any risk of self-harm
- current medical and mental health needs.

Upon arrival, Prisoners will be accommodated in the first night accommodation in the induction unit in close proximity to the healthcare centre to ensure easy access to the full raft of healthcare services and interventions.

#### **4.4.5 Medicine distribution and first aid**

Each secure block will be equipped with a medicine dispensary from which prescription and some non-prescription medication will be administered to Prisoners.

#### **4.4.6 First aid capacity**

SecureFuture recognises that the correctional environment can present a heightened likelihood of Prisoners being injured or hurt. As such, SecureFuture will have in place a capacity for an emergency and first aid service for Prisoners.

SecureFuture's approach to first aid will be in two models determined by the assessed needs of the Prisoner. As a result of this assessment SecureFuture's response will be one of the following:

- Where minor injuries can be dealt with on site with no other assistance or further intervention required
- Where SecureFuture will provide basic care to an injured patient before further medical assistance can be obtained.

SecureFuture acknowledges that most first aid situations will involve no more than minor cuts and bruises, but relevant staff will be trained to deal with major accidents or emergencies.

SecureFuture will ensure that custodial staff and all other staff members who regularly interface with Prisoners receive first aid training.

A well-stocked, easily accessible first aid box will be available in each house block and the residential officers' station, as well as in the healthcare centre.

In addition, within SecureFuture's healthcare centre there will be an area where immediate first aid or emergency treatment can be provided to the Prisoners.

#### **4.4.7 Healthcare centre**

SecureFuture will provide a healthcare centre within the Prison. Its layout and decor have been carefully configured in accordance with best practice and to create a positive health delivery environment. Key areas it will comprise include:

- three consultation rooms
- two Prisoner waiting rooms
- a secure pharmacy dispense room
- a treatment room
- a classroom, to facilitate the delivery of preventative health education to Prisoners

- two at risk cells
- medical store
- a dental consultation suite
- a staff training room
- methadone room.

#### 4.4.8 Segregation

SecureFuture recognises that some of the Prisoner population will be protected in some form of voluntary or involuntary segregation and that these Prisoners will require management which is kept discreet from the normal mainstream Prisoner population.

The healthcare centre is specifically designed to support the identified segregation needs of the Prison. There will be two Prisoner waiting areas and three consultation rooms to assist in separating Prisoners with relative ease. These design features will be complemented by SecureFuture's careful appointments schedule which will ensure that segregated Prisoners do not come in contact with each other. SecureFuture will allocate blocks of time for segregation appointments and safe access to these services. This will occur either at the start or end of the nominated sessions.

#### 4.4.9 Healthcare services – working day

SecureFuture has prepared an indicative working day for the healthcare functions. SecureFuture provides this draft plan as an indicative overview of the type of operations SecureFuture will have in place.

**Table 8: Doctors and specialist services working day**

Service	Timing	Days	Comments
General Practitioner	8:50 to 11:20 13:45 to 15:45	Monday to Friday	Sessions will be by appointment Six Prisoners per hour to see the doctor The appointments will be pre-booked with openings available for priority needs and/or emergencies Receptions seen between 8:00 and 10:00 Bookings will be spread to cater for the voluntarily segregated, involuntary segregation and mainstream Prisoners
Dentist		As required	Appointments – Four Prisoners per hour in the afternoon (proposed)
Specialist doctors		As required	Appointments – booked as a result of referrals by the GP

**Table 9: Nursing services working day**

Service	Timing	Days	Comments
General nursing	There will be a general nurse available 7:00 to 19:00 Monday to Friday and 8.00 to 17.00 Saturday and Sunday	Monday to Sunday	This service will provide first aid and other emergency response capacity
Pharmacology	Medication rounds – 8:15 - 11:30am, 16:00 or other times as required by prescription	Monday to Sunday	
Clinic	A scheduled clinical service will be available: <ul style="list-style-type: none"> <li>— 8.50 to 11.20</li> <li>— 13.45 to 15.45</li> </ul>	Monday to Sunday	

Specialist sessions	Education sessions on a variety of health issues will be scheduled between 9:30 to 10:30 and 13.30 to 14:30pm This will be on days when the specialist nurse or nurse educator is on duty	Sessions will be on a broad suite of topics including: <ul style="list-style-type: none"> <li>— healthy lifestyle</li> <li>— health education</li> <li>— substance misuse</li> <li>— alcohol misuse</li> </ul>
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#### 4.4.10 Medical appointments

SecureFuture is cognisant of the challenges in making medical appointments within a Prison environment where the demands on time of medical staff are often high. For this reason, SecureFuture's custodial services provider, Serco, has developed a contemporary medical appointment process which currently successfully operates at a number of Serco-operated prisons and correctional centres.

The appointment scheduling system is a part of SecureFuture's CMS and will enable Prisoners to make medical appointments. These appointments will be coordinated by the administration staff in the healthcare centre. Appointments for the General Practitioner will be set at the rate of six per hour, or one every 10 minutes. SecureFuture understands that longer sessions may be sometimes required and will make allowances for such instances.

The appointments for nurses' consultations will occur at the times specified in the above table.

The nurses' consultations will be set at 10 minute intervals. These consultations will be as a result of:

- reception assessments
- requests from Prisoners
- requests for Prisoners via the accommodation unit officers
- referrals from the doctors.

SecureFuture believes that this system mirrors the community norm and ensures that valuable resources such as General Practitioners are fully utilised. A noted positive of this system is that it familiarises Prisoners with the process of seeking medical assistance in the community and encourages personal responsibility and initiative.

#### 4.4.11 Emergency medical assistance

Medical assistance will be available after hours from arrangements SecureFuture will have in place with local hospitals. SecureFuture will ensure the preparedness of the healthcare centre to manage medical emergencies as they occur by:

- ensuring staff are trained and practice-drilled in emergency response
- training officers in first aid to provide immediate assistance
- having in place contingency plans for medical emergencies that cover the times during:
  - the working day
  - after hours, when there is a nurse on duty
  - after hours, when there is no nurse on duty
- having in place essential emergency equipment, consumables and drugs and having equipment maintained in working order and strategically placed to provide immediate access
- implementing procedures and standing orders for the emergency treatment of identified common medical emergencies in the absence of a GP on site
- having procedures in place to facilitate the swift evacuation to hospital when required
- training nursing staff in life support and in the use of the equipment listed below:
  - Portable ECG machine
  - Portable oxygen cylinder
  - Portable defibrillator

- Portable emergency bag that will accompany first responders.

A treatment room will be available in the healthcare centre to provide a 'casualty' station for any injuries. Where it is deemed appropriate by the senior clinician on duty, the patient may be transferred by an ambulance to the local hospital.

#### 4.4.12 Special needs

SecureFuture is cognisant of the needs to make certain that the healthcare centre is able to service all Prisoners equitably. The planning of the operations of this service has considered all groupings of Prisoners so as to be sure that there are no groups that will be missed or marginalised through poor planning.

#### 4.4.13 Mental health

SecureFuture will work in partnership with the New Zealand Department of Health, the Mason Clinic and the Department to ensure that optimum psychiatric care is provided to Prisoners with mental health problems.

SecureFuture is fully aware of, and will comply with, the relevant legislation, guidelines and requirements for the treatment of Prisoners with mental health problems.

SecureFuture will endeavour to identify triggers to psychiatric illness, whether lifestyle, environmental, hereditary or cultural, which predispose individuals to acute or enduring mental health problems, and implement care plans to mitigate such triggers. Consistent with the Ministry of Health/New Zealand Guidelines Group's 2008 publication, *Identification of Common Mental Disorders and the Management of Depression in Primary Care*, the assessment of mental illness will commence with assessments at reception and will continue throughout the period in custody. A suitably qualified mental health nurse, employed as part of the reception/induction team, will be responsible for:

- the screening and preliminary medical and mental health assessment of Prisoners
- the suicide screening of Prisoners on first arrival or any subsequent arrival following a change in status.

SecureFuture's health staff will make initial assessments based on a framework such as the Mental Status Examination, a structured mechanism for observing and describing a Prisoner's current state of mind under the domains of appearance, attitude, behaviour, mood and affect, speech, thought process, thought content, perception, cognition, insight and judgement. More detailed assessments, where necessary, of common mental disorders will be undertaken by clinicians using the clinically recommended assessment tools.

SecureFuture will be responsible for delivering primary mental health care. This comprises assessment, treatment and ongoing maintenance and referral to secondary Mental Health services as required.

Prisoners with identified mental health issues will be subject to regular assessment and review throughout their period of incarceration.

Relationships will be established with mental health providers outside the Prison so that suitable alternative locations and interventions can be identified and used.

#### 4.4.14 Māori mental health

SecureFuture recognises that Māori and Pasifika Prisoners experience higher rates of mental illness than do their counterparts. SecureFuture also understands that the treatment of these Prisoners must be specifically tailored to ensure effectiveness. When developing services for Maori and Pasifika, SecureFuture will be guided by the Department and Ministry of Health Memorandum of Understanding and the policies and plans listed below:

- Whānau Ora Health Impact Assessment

- Whakatataka: Māori Health Action Plan 2006 – 2011: Discussion Document
- Kia puawai te ararau national Māori mental health workforce development strategic plan
- Raranga Tupuake Māori Health Workforce Development Plan. Wellington: Ministry of Health
- Delivery of cultural assessment for Māori
- Māori Mental Health National Strategy Framework
- He Korowai Orangi: Māori Health Strategy
- Whakatataka: Māori Health Action Plan 2002 – 2005
- Te Puawaitanga Māori Mental Health National Strategic Framework
- Priorities for Māori and Pacific Health: evidence from epidemiology (Public Health Intelligence, Occasional Bulletin No 3)
- A Framework for Measuring Māori Mental Health Outcomes: A Report prepared for the Ministry of Health.

In assessing mental health outcomes for Māori and Pasifika, SecureFuture will utilise Hua Oranga measure. The model, which is generally consistent with the SecureFuture approach to case management, employs clinical end points to give greater specificity to outcome assessments. SecureFuture will also apply the tool at any point where an outcome is expected or anticipated. Five clinical end points are appropriate:

- assessment
- inpatient treatment
- outpatient treatment
- community care
- community support.

While this tool is primarily a cultural measure of outcome, it is designed to complement more clinically focused, targeted measures. SecureFuture will work with Mason Clinic and the Department to determine the suitability and take-up of the Hua Oranga as a recommended appropriate outcome measure for determining responses of Māori clients to care and treatment in mental health settings.

#### 4.4.15 Dental services

SecureFuture will provide urgent and routine functional dental care to the Prison population and to a standard that would be the norm in the community. This will be achieved by establishing a service arrangement with local dental surgery providers.

#### 4.4.16 Pharmacotherapy

SecureFuture will:

- provide pharmacotherapy at the Prison in strict accordance with Government policies and Departmental guidelines
- ensure that new reception Prisoners who claim a history of opioid replacement are suitably checked and this use verified in accordance with Departmental guidelines prior to any consideration for inclusion on the pharmacotherapy programme.

Medications will be properly controlled and stored in accordance with appropriate legislation. SecureFuture will integrate substance misuse information across a range of subjects and into a number of courses where appropriate. SecureFuture will link information and advice into the regular health checks to promote healthy lifestyles.

The delivery of SecureFuture's pharmacotherapy services will be supported by the secure methadone room within the healthcare centre, which will enable Prisoners to undertake their treatment in a safe and calm environment.



#### 4.4.17 Safe secure storage and administration of pharmaceuticals

There will be a dedicated pharmaceutical administration function in the healthcare centre. This function will provide a service to the entire site.

SecureFuture will develop and implement a complete and comprehensive set of operating procedures for the function. At a minimum, this set of procedures will cover:

- receiving of scheduled pharmaceuticals
- storage of medication
- use of medication
- distribution of medication
- management of needles and syringes
- maintenance of an up to date pharmaceutical register
- maintenance of registers in line with the legislative requirements to capture dangerous and restrictive drugs in a format that complies with Departmental requirements and allows appropriate audit
- stock rotation and control
- expiry date management
- physical counting of medications on receipt and issue
- periodic spot-checks, stock take and records of reconciliations for consumables, pharmaceuticals and equipment
- development of an equipment maintenance plan so that equipment is calibrated and serviced on time
- regular cleaning of the pharmacy to hospital cleaning standards
- adoption of modern sharps and waste disposal protocols
- secure storage of medical implements when not in use
- maintenance of a register of the receipt, use and disposal of needles, syringes and other ‘sharps’
- incident reporting
- quality control
- compliance with all relevant legislative requirements.

SecureFuture will engage a quality, accredited pharmaceutical supplier to buy in medical supplies and pharmaceuticals.

#### 4.4.18 Communicable diseases and infection control

SecureFuture recognises the increased prevalence of communicable disease in prisons and will control and minimise the risk of illness and the spread of infection within the Prison by implementing adequate procedures and staff training.

Additionally, SecureFuture will develop procedures for control of infection and outbreaks, including contingencies for pandemic flu, to ensure continued operation of the Prison. Staff will be trained in the safe disposal of bio hazard waste and in the procedures for the treatment of needle-stick injuries.

In controlling infection SecureFuture will use the following techniques:

- prevention by health education and promotion, proper cleaning schedules and regimes and via appropriate policies and procedures to minimise spread of infection
- detection of communicable diseases by assessment and monitoring
- personal hygiene and use of suitable personal protective equipment (e.g. gloves, hand washing methods).

SecureFuture will share all relevant information regarding communicable diseases with other facilities to ensure continuity of care for the Prisoners with infectious diseases and report any incidents to the authorities in the Department of Health as required.

#### 4.4.19 Razor blade policy

SecureFuture understands the Department's razor blade policy and will fully comply with this requirement.

When Prisoners want to shave, they will be issued with a single-use safety razor for 90 minutes. Within the hour, an officer will collect, check and dispose of the razor.

Prisoners in 'at risk' units will also be issued a razor when they wish to shave, but will be closely monitored by an officer who will stand beside them to ensure they do not harm themselves.

#### 4.4.20 Secondary and tertiary healthcare

SecureFuture is acutely aware of, and takes seriously, its responsibilities to the health and safety of the Prisoners in its care. As such, SecureFuture is pleased to confirm its compliance to facilitate timely and effective access to secondary and tertiary healthcare at the Prison.

In accordance with the New Zealand Department regulations and practice, SecureFuture will refer Prisoners requiring specialist care and treatment to these services under the same eligibility criteria as any other member of the public.

#### 4.4.21 Ambulance support services

SecureFuture will meet and establish working protocols with the emergency services. This will include building a dynamic working arrangement with the local Ambulance Service.

Where there is a need to move a Prisoner out of the Prison for further or urgent treatment, SecureFuture will have agreed processes in place with the Ambulance Service to enable this to occur within acceptable timeframes.

#### 4.4.22 Escorting

Prisoners accessing specialist care and treatment by secondary healthcare providers located outside the Prison will be escorted in full compliance with all relevant New Zealand Regulations and Requirements.

SecureFuture will facilitate escorts, as specified in Schedule 14.

#### 4.4.23 Continuity of care

SecureFuture views the provision of accurate and up to date health information as essential to ensuring ongoing and consistent care. SecureFuture will provide written discharge plans, but will also be available for telephone handover, if required by the community provider. SecureFuture will ensure medical information and necessary data is appropriately documented and communication processes implemented for the effective delivery of healthcare within the Prison and across the rest of the New Zealand Correctional Network. The processes will provide the continuation of a Prisoner's healthcare or treatment by integrating with Departmental processes.

With regard to the care of Prisoners post-release, and their continuity of care, the following approaches will be undertaken:

- where possible in-reach arrangements will be made with local health professionals to facilitate handover prior to discharge
- written discharge summaries will be given to each Prisoner to take to their medical provider or doctor
- in many cases of 'at risk' Prisoners, addictions and mental health staff will make appointments on their behalf with community practitioners.

#### 4.4.24 Discharge planning

To ensure continuity of care beyond the Prison, SecureFuture's healthcare services team will assist Prisoners to access medical care post-release. SecureFuture will provide Prisoners with information to prepare them for release, for example, how to access medical treatment from mainstream sources and also from special agencies.

Building on the healthcare plans and regularly assessing future treatment needs, SecureFuture will provide a discharge plan for all relevant Prisoners with their ongoing health needs. These discharge plans will document any illnesses or conditions, diagnostic results, treatments provided, treatment successes or failures, current medications and recommendations. SecureFuture will ensure that Prisoners are discharged with at least three days worth of any medication that is prescribed to them.

The SecureFuture team will work closely with external support agencies to alert them to 'at risk' Prisoners who are due to be released, and arrange appointments for them with these agencies. Where possible, SecureFuture will build in-reach arrangements where local healthcare providers can access Prisoners prior to their release and establish good relationships. This assists in bridging the gap between custody and community, and demonstrates a higher success rate than simply making appointments on a Prisoner's behalf or giving them the relevant address or information.

SecureFuture will have a brief discharge planning meeting at the end of each day. This meeting will review the discharge list for the coming days and ensure that a discharge summary and referral information is prepared for Prisoners released the next day.

### 4.5 Promoting a Healthy Living

SecureFuture strongly believes that the period of incarceration represents an important opportunity to improve a Prisoner's health and should not be squandered. SecureFuture's healthcare service will encourage a holistic approach, including the promotion of healthy eating, no smoking, increased exercise and harm minimisation in the areas of sexual behaviour and substance misuse.

SecureFuture's custodial service provider, Serco, will deliver a comprehensive range of illness prevention and health promotion activities through:

- providing health promotion literature in a range of formats including written, pictorial, oral and multi-media which are sensitive to the overall educational abilities of the target groups and take into account cultural considerations. Literature will also be sensitive to hidden disabilities such as dyslexia through the inclusion of colour coded notices
- provision of dietary advice and identification of healthy options and special dietary requirements
- provision of advice on physical wellbeing through the physiotherapy services as well as access to educational materials and literature
- staging health expos and promotional activities during the life of the contract which promote healthy living and enable increased awareness of health issues
- pursuing timely health promotion campaigns, for example staging a flu vaccination campaign prior to the winter period, or a skin cancer campaign prior to the summer period
- encouraging Prisoners to make positive choices about their health. This will include looking beyond the term of imprisonment and developing solutions which look to longer term outcomes and describe their lifestyles post-release.
- working through the sports hall, gymnasium and sports field to deliver a range of physical activities, including sports and culture specific games, as well activities accessible to less able-bodied Prisoners. SecureFuture's programme of activities will be sensitive to Prisoners' ability to engage, medical and fitness levels. SecureFuture will use qualified Prisoners to assist with such activities to provide valuable experience in leadership activity and responsibility.
- using education facilities and aids to improve individuals' ability to understand and accept concepts of health.

#### 4.5.1 Health promotion and education

SecureFuture will provide a nurse with specialist skills in health promotion and education. This nurse will coordinate the healthcare education and promotion within the Prison. This role will also be responsible for coordinating the access by third party health promotion services, such as addiction services. Examples of topics SecureFuture will focus on for health education and promotion are:

- quit smoking
- alcohol and drug use harm minimisation
- looking after your liver
- healthy eating and nutrition
- benefits of exercise
- sexual health and STDs
- stress management and relaxation
- hygiene and cleanliness
- good sleeping skills
- men's health
- diabetes
- managing mental health issues
- injury prevention
- healthy hearts.

#### 4.5.2 Substance Misuse

Secure Future's approach to substance misuse will focus on developing an individually tailored treatment plan for Prisoners affected by substance misuse. SecureFuture will ensure Prisoners with substance misuse problems are identified through the assessment processes undertaken during the induction programme and that their needs and actions to address them are recorded on their individual Prisoner Management Plans. SecureFuture will provide a range of Interventions from brief interventions to intensive interventions utilising different modes of delivery, including group and one-to-one support, which reflect the needs of the Prisoner population. In managing each Prisoner's substance misuse problems, SecureFuture will consider that needs identified upon arrival at the Prison can and will change over time. SecureFuture will have in place robust reviewing, monitoring and recording systems and processes and will update the treatment plan as appropriate.

#### 4.5.3 A non-smoking Prison

SecureFuture will operate a non-smoking Prison.

### 4.6 Catering

SecureFuture understands that catering services will be a major factor in maintaining morale, health and ultimately, the safety and security of the Prisoners.

SecureFuture accepts that the service will be scrutinised three times a day, 365 days per year by the receivers of SecureFuture's meals. The provision of an acceptable and nutritious diet will garner respect with regards to each individual's basic needs and allow them to fulfil their daily routine and in turn, to develop their potential. Exhibiting care and attention in the production and service of meals will be in keeping with the high level of care and attention SecureFuture will provide to Prisoners in the services SecureFuture deliver.

SecureFuture wholeheartedly supports healthy eating by providing low-fat nutritional meals; however SecureFuture also understands that this will not always be compatible with the wishes of the Prisoners. The introduction of SecureFuture's healthy eating plan will be supported by education to encourage acceptance.

SecureFuture's food services are outlined in the following table:

**Table 10: Food services overview**

1	Provide three meals for Prisoners each day (breakfast, lunch and evening meal)
2	Ensure at least one hot meal each day – normally the evening meal
3	Ensure that meals are presented in an appealing manner
4	Ensure that the meals are nutritionally adequate by quality assessment in accordance with the FSANZ and HACCP standards
5	Ensure that the menus and portions are assessed and approved annually by a qualified dietician
6	Ensure seasonally adjusted menus (summer and winter)
7	Ensure meals are provided at the correct temperature
9	Ensure that meals contain the necessary amount and variety of foods items
10	Ensure that the hygiene of the food preparation area is maintained to legislative requirements including the relevant food industry and operating standards

#### 4.6.1 Food preparation

SecureFuture will employ the cook/chill approach to food preparation at the Prison. Food will typically be prepared one day ahead of time and then blast chilled. After chilling, food will be portioned out and placed into fully recyclable pressed paper meal trays.

In the mid afternoon of the day the food is to be served, meals will be rethermalised in ovens, a process which will take around 40-50 minutes. The rethermalisation temperature will not exceed 110 degrees Celsius to avoid damage to trays and cellophane covers.

Meals will be moved to the units for consumption. SecureFuture will involve only specially trained and trusted Prisoners in plating of meals and SecureFuture will ensure that they are supervised by a member of staff.

There are several advantages to the cook/chill preparation method: it will enable greater quality control, allow SecureFuture staff to ensure portions are correct and check that presentation of food is appealing. By cooking food ahead of time, SecureFuture will be able to eliminate cooking meals over the weekend, creating substantial cost savings for the Department.

Central to the proposed SecureFuture catering solution is portioning and plating each meal in the main kitchen prior to the distribution of the meals. SecureFuture believes that there are significant advantages to this model over traditional Prison methods whereby food is transported in bulk and then plated, often by Prisoners, in the individual accommodation units. These are outlined in the table below:

**Table 11: Comparative analysis bulk food delivery vs. Individual plated delivery model**

Bulk food delivery model for meals	Individual plated meal` model
Contraband is moved in bulk food	SecureFuture's individual serve meals will be difficult to interfere with
Inequity exists in portioning food at accommodation sites with the bigger and	Each individual meal will be precisely portioned

Bulk food delivery model for meals	Individual plated meal` model
stronger Prisoners getting the most food	
This inequity in portioning affects dietary provision to Prisoners. The balanced diet is lost with some overfed and others underfed	Prisoners will receive the required dietary levels
Meal presentation is often poor	The presentation of the individual meals SecureFuture serves will be high and the presentation monitored at the point of portioning
There is limited, to no capacity, to intervene in poor appearing meals when the meal is plated in an accommodation unit	By plating meals in the kitchen, poorly presented meals can be addressed prior to their leaving the kitchen

By using the individual meal trays SecureFuture will be able to prevent some Prisoners taking more food than is their entitlement and leaving other Prisoners without their prescribed food ration. It will also afford greater control over the standard of presentation.

Meal trays will be fully recyclable. Cutlery will be made out of semi-disposable plastic which can be hand washed, with a life cycle of around three months. Cutlery will be stored in each block and will not be returned to the kitchen.

Prior to the end of each shift in the kitchen, the catering staff on duty will ensure that the meals for the next day are available for delivery in time for distribution. At the start of the next shift the catering staff on duty will confirm that the correct complement of Prisoners is ready for work and will then coordinate the distribution of food in the correct quantities to the correct areas of the Prison at the times required.

#### 4.6.2 Menu development

The menu and presentation of food is central to creating a safe and secure Prison environment. A shortcoming in food service delivery is likely to act as a precursor to unrest if left unaddressed. SecureFuture will ensure that meals served at the Prison are nutritious and appealing and portioned in sufficient quantities to ensure good health. Specialised diets and medically specified meals will be catered for. The diverse population at the Prison will enjoy culturally, ethnically and religiously appropriate foods. In particular, Māori and Pasifika Prisoners will be able to access an additional range of appropriately sourced items.

SecureFuture will use its considerable experience to create well-balanced menus, incorporating three meals per day. For their main meal, Prisoners will typically have a choice of 3 meal options. As broad principles the meals will contain:

- plenty of vegetables, legumes and fruits
- plenty of wholegrain cereals (bread, rice, pasta and noodles)
- lean meat, fish, poultry or alternatives
- milks, yoghurts, cheeses including reduced fat varieties
- limited amounts of saturated fats
- low salt content
- food with limited added sugar.

SecureFuture will ensure that portions will be of a quantity to guarantee good health and will be generous enough to satisfy most appetites in order to mitigate a common source of Prisoner unrest.

The catering staff will compile a complete four-week cyclical menu. The menu will be reviewed against the FSANZ Standards. The catering staff will develop a menu for each month incorporating seasonal variations. This will be provided to the Associate Director, Business and Finance no later than two weeks prior to the start of the month. SecureFuture will contract the services of a dietician to give advice on SecureFuture's service delivery via an annual assessment.

In developing menus SecureFuture will consider:

- the need for a variety of food flavours including vegetarian options
- the need for an interesting and varied diet
- the appearance and palatability of food
- the seasonal availability of fresh produce
- Prisoners' religious beliefs
- approved medical or special dietary needs of Prisoners.

SecureFuture will ensure that the design of daily and cyclical menus will comply with all mandatory requirements. Prior to introduction, menu items will be reviewed and tested for compliance and to ensure that in each week there will be an appropriate mix of food types and choices, for example:

- a maximum of four red meat meals
- two white meats
- only one fried meal
- only one pastry meal
- seasonal, fresh vegetables.

Fried foods are an acknowledged contributor to obesity, heart disease and other non-communicable chronic diseases. As such they will be kept to a minimum. Pastry items also have a high fat content and regular consumption will have an adverse effect. The likelihood is that the Prisoner's diet prior to incarceration was higher in fats and energy than will be the dietary regime within the Prison. The reduction of fatty foods in the diet and the introduction of healthier eating habits will have long-term benefits to the Prisoner's health.

SecureFuture's meal plan for the secure accommodation units will be as follows:

**Table 12: Daily meal plan for breakfast**

**BREAKFAST**

SecureFuture will employ a Prisoner in each unit to assist in the meal processes.

This Prisoner will be supervised by the unit officers and indirectly from the duty catering staff.

This Prisoner will be specifically selected for the appropriate skills and then trained in the functions they are required to deliver throughout the day.

SecureFuture will provide breakfast supplies to the accommodation unit kitchenettes to allow Prisoners to self-serve a continental breakfast. These will be stocked the previous day. The breakfast meal will be eaten in the common unit areas.

If not provided the previous day, this will be provided prior to by 7:00am every day 365(6) days of the year.

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A sample breakfast will consist of:

- assorted cereals
  - assorted breads
  - assorted spreads
  - tea or coffee
  - milk.
- 

**Table 13: Daily meal plan for lunch**

**LUNCH**

The lunch meal will be delivered to the units in the late morning, and placed into the refrigerators (cold meals) or left in the insulated storage areas.

Lunch meals will be delivered to the industries areas for Prisoners employed within those areas.

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An example of what a cold lunch meal will consist of is:

- salad, sandwiches or roll
  - fresh fruit
  - tea or coffee.
- 

Most Prisoners will eat their lunch in their cells.

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Some Prisoners employed in industries may be fed their lunch meal in those areas.

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**Table 14: Daily meal plan for the evening meal**

**DINNER**

The evening meal will be delivered to the units in the late afternoon. Meal time will be between 4.15pm to 4.45pm

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The meals that will be delivered to the unit will comprise a selection that meets the selections made by Prisoners via CMS. There will be a hard copy list showing the numbers of each meal diet, the Prisoners' names and their allocated evening meal

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A sample meal could consist of:

- sweet and sour pork
  - vegetable medley
  - steamed rice.
- 

Each meal will be complemented by tea and coffee. This provision will be by the supply of the ingredients so Prisoners can make their drinks in the accommodation units. If Prisoners would like to have something between meals, they will have the opportunity to purchase snack items from the CMS.

Any Prisoner that misses a designated mealtime due to an outside appointment, court or any other reason will have a meal set aside. This will be stored in the accommodation unit or the reception store and re-heated in accordance with food safety standards. Alternatively a packed meal may be provided. Prisoners who arrive at the Prison as receptions at a meal time, or are delayed in the reception



process, will be provided with a meal. Where a Prisoner is required to be away from the Prison for an escort or special leave, a packed lunch will be provided.

SecureFuture menus will be developed taking into consideration the popularity of each dish from production and wastage records and, where practicable, from Prisoner feedback obtained informally, or formally through the Prisoner representative forum, on areas such as:

- attractiveness
- perceived nutritional merit
- flavour
- variety
- quantity.

If a dish appears unpopular it may be removed and replaced with a new dish. In this way there will be a constant updating and development of the menus in response to consumer tastes.

SecureFuture acknowledges the Department's list of items which are restricted within a Prison or are specified for particular control. SecureFuture will comply with all applicable requirements.

A member of the catering team will perform plated meal audits on a regular basis. Audits will be conducted in a random location at regular intervals. The meal audit will take place at the kitchen and will review:

- presentation
- adherence to portion size
- meal quality.

Prisoners who are accommodated in the residences will be responsible for planning and preparing their own meals based on a budget provided for each unit. This will provide them with invaluable learning and practising opportunities prior to their release from Prison.

With appropriate training and guidance from accommodation staff, Prisoners within each residence will be responsible for collectively planning each week's menu, from which they will generate a shopping list. The menus and shopping list will be reviewed to ensure that menu choices and quantities are appropriate for the Prisoners. The food supply will be delivered to each unit weekly.

Catering staff will make regular visits to the residences to make sure that Prisoners are confident and comfortable with their cooking and food preparation plans. During these visits, catering staff will check that food is being stored safely, and that supply levels are not excessively high or low.

#### 4.6.3 Prisoner employment

SecureFuture strongly believes that engaging Prisoners in the catering services will increase the Prisoners' skills and therefore, assist in their rehabilitation. SecureFuture will employ approximately 25 Prisoners in the kitchen per shift. There will be approximately a further 20 prisoners employed in the training kitchen. In addition there will be Prisoners employed in each accommodation unit to support the food service at that end. Hospitality is key to the tourism sector, which is a vital and rapidly growing industry of the New Zealand economy. Skills gained by working in the Prison catering services offer significant employment opportunities to a suitably qualified individual.

Prisoners will be assessed for suitability and whether they have the appropriate skills to carry out the duties. The pre-existing skill base of Prisoners is likely to vary considerably and basic skills tests will be given to Prisoners to confirm their statements. Sentence management personnel will be responsible for allocating employment to Prisoners and ensuring it is in line with their IMPs. The catering staff will provide an empty roster that will identify the number of the kitchen workers required and the skills necessary. This roster will be filled to ensure adequate Prisoners are available. Prisoners will be made aware of their work duties and responsibilities.

Shifts will be based around two broad functions, namely:

- Preparing and distributing the lunch meal and the initial preparation for the evening meal.
- Finalising the evening meal, plating and then distribution of the evening meal. The following day's breakfast may be distributed at the same time as the evening meals. The breakfast for the following day will be kept in secured storage and refrigerators in the individual units.

Prisoners on kitchen duty will need to have access to kitchen equipment, some including knives. Prisoners will be selected to ensure a very low risk of misusing kitchen equipment within the kitchen. Portable equipment, especially knives, will be checked before any food items leave the kitchen. Aids such as shadow boards and safety chains will be used to make this process as simple and quick as possible.

SecureFuture will ensure that Prisoners employed within the kitchen have every opportunity to succeed in this employment and grow from the experience. Where a Prisoner is not performing, SecureFuture will ensure that performance requirements are thoroughly discussed and explained.

#### 4.6.4 Food preparation standards

The SecureFuture services will be fully compliant with the requirements of the FSANZ and HACCP certification. SecureFuture's food safety management systems will reflect and follow the broad HACCP principles of:

- conducting a comprehensive analysis of all hazards
- determining what are the critical control points in the food management processes
- establishing the critical limits to be noted and managed within
- establishing a monitoring system for management within the critical control points
- developing and establishing corrective actions and contingency processes
- establishing verification procedures
- establishing documentation/record keeping.

SecureFuture will achieve these standards and process requirements through the following intervention strategies:

- HACCP team – SecureFuture will establish a functional HACCP team to monitor compliance with the required standards.
- Procedures – SecureFuture will have fully documented procedures covering the catering services. These procedures will enshrine the requirements for the management of the catering processes.
- Flow diagrams – SecureFuture's food preparation and management processes will be captured in flow diagrams. These diagrams will be part of the above mentioned procedures.

As stated, SecureFuture is committed to having compliant HACCP food preparation and serving processes. In addition SecureFuture's processes will meet all of the relevant FSANZ standards. This will be achieved by developing and implementing a food safety programme in accordance with Standard 3.2.1.

#### 4.6.5 Food safety

SecureFuture will ensure strict adherence to the highest standards of cleanliness and work practices to ensure a sound environment for the production of safe food.

All persons working with food will undergo food handling training which will include personal hygiene, safe temperatures and the 'danger zone', correct food storage, how to prevent cross-contamination and the awareness of physical, chemical and biological contamination.

They will be provided with the necessary protective clothing and any other Personal Protection Equipment (PPE) that may be necessary to perform the task. SecureFuture will complete a comprehensive hazard and risk analysis assessment for all kitchen equipment and kitchen activities. The kitchen and food services processes will then be subject to an on-going programme of workplace hazard control initiatives/activities.

A risk assessment will examine and evaluate the likelihood and severity (or consequence) of the potential outcomes of hazards including potential changes to systems, procedures or equipment in order to prioritise risks for control purposes.

**Table 15: Risk assessment process**

- |   |   |
|---|---|
| 1 | Locate and identify the nature of the hazard(s) in the workplace.             |
| 2 | Assess the potential effects of exposure to the hazard(s).                    |
| 3 | Eliminate the risk posed by the hazard where possible.                        |
| 4 | Identify strategies to control or eliminate the hazard or hazards.            |
| 5 | Recommend the use of appropriate controls if the hazard cannot be eliminated. |

In accordance with the relevant New Zealand legislation and guidance, SecureFuture will assess risks according to whether they relate to manual handling, food safety, plant and equipment or dangerous goods.

SecureFuture will create a site-specific cleaning schedule as necessary and scheduled cleaning functions. Adherence to this schedule will guarantee that food preparation areas comply with all relevant New Zealand hygiene standards.

A fully documented FSANZ and HACCP compliant system will be developed for the food supply, storage, production and delivery processes. This will ensure that food is procured, stored, prepared and distributed in an approved, hygienic manner. Temperature testing will be conducted throughout the production process, from receipt from the supplier to departure from the kitchen. Food leaving the kitchen prior to consumption will be temperature tested to ensure the meals are above the required temperature for hot meals and below the required temperature for cold foods. Similarly, checks will occur at the accommodation units to make certain that the food has been maintained at the required temperature whilst being transported.

Samples of each recipe will be retained in the central kitchen refrigerators for subsequent bacteriological testing if necessary.

SecureFuture will arrange annual health inspections of the catering service. In addition, SecureFuture's internal auditing arrangements will be fully aligned with the Food Standards of Australia and New Zealand and related standards, to facilitate external inspection.

Prisoners suffering from Hepatitis A, Gastroenteritis and Weeping Dermatitis will be excluded from working in catering services.

SecureFuture will use quality assured suppliers and providers to ensure continuing food quality, value and safety.

Food safety will be enshrined in a food safety plan which will describe and govern acceptable safe food practices from entry of foodstuffs into the Prison, right through to consumption.

#### **4.6.6 Quality assurance and performance monitoring procedures**

SecureFuture is committed to assuring the quality of the services it delivers. SecureFuture will have in place a quality assurance system to AS/NZS ISO 9001:2000 standards and FSANZ Standards. This system and the processes to be used for the quality assurances processes will be captured in formal procedures for the Prison. These procedures will be subject to an annual review for relevance and effectiveness. The processes will also be subject to an annual audit.

SecureFuture's approach to quality service management will be through:

- understanding the service requirements
- delivering food services at the highest practicable quality level in a consistent and reliable manner
- Implement quality management in a planned and controlled way that supports food service delivery
- educate and train SecureFuture's staff in the delivery of quality food services
- establish and measure the quality of SecureFuture's service against objectives and targets
- regularly review and improve SecureFuture's processes.

## 4.7 Communication and Visits

### 4.7.1 Visits

SecureFuture will encourage Prisoners to engage and interact with family and friends on a regular basis.

SecureFuture will pay particular attention to the number of visits received by at-risk Prisoners, special needs Prisoners, Māori Prisoners and Prisoners from remote areas or culturally and linguistically diverse backgrounds. Where it appears that these Prisoners would benefit from receiving visits from religious, cultural or other community support services, SecureFuture will facilitate this. Where possible and permitted, SecureFuture will also facilitate remote visits via video link where visits are not physically possible.

SecureFuture is fully aware of the importance of Prisoners maintaining contact with their families and of the key contribution of visits to this process. It is important that both Prisoners and their visitors understand visiting entitlements in accordance with legislation and the Department's policies and procedures, approved visiting hours, and how visitors access to the Prison will be managed.

Prisoners will be provided with this information during the induction programme and SecureFuture will maintain an up to date visitors handbook which will be provided for Prisoner visitors on the first visit. This will be supported by information on the Prison's section of the Department's internet site. In addition to more general information about the Prison, the handbook (in appropriate languages) will provide details on the location of the Prison, contact details, travel directions, visiting hours, how to arrange a visit, visits facilities (including for children) and the range of procedures that visitors will be required to pass through.

Visitors will be provided with information and advice on the subject of attempting to bring illicit, restricted and prohibited items into the Prison. SecureFuture will ensure that visitors are advised that they may notify a member of staff, either directly or through a telephone number, if either they or the Prisoner they are visiting is under duress to introduce contraband. This approach of enlisting the assistance of families and friends to prevent the introduction of contraband helps maintain both the security and safety of the Prison. Visitors will also be informed that they may approach a member of staff for assistance at any time. This also will be supported by multi-lingual signage at the Prison.

Critical to the visiting experience is the 'front of house' customer service provided by Prison staff. SecureFuture will ensure that its staff in the visits centre treat visitors with dignity and respect as they guide them through the Prison. The visits reception area will present a welcoming environment in which prominently displayed signs and notices will provide further information to visitors, again, in appropriate languages. These will include reference to visiting hours, prohibited items, penalties for attempting to introduce contraband and advice to visitors about how to make a complaint.

SecureFuture will ensure that its staff in the visits centre treat visitors appropriately and maintain a safe and ordered environment which supports the objective of assisting Prisoners to maintain contact with family and friends.

#### 4.7.1.1 Visits sessions

SecureFuture will reconceptualise the visits centre as not simply a visits processing area, but rather a gateway for family support. This initiative recognises that a Prisoner is unlikely to focus on his rehabilitation if his family are in distress. SecureFuture will provide interviewing facilities (with data ports and telephones) and will invite government agencies, such as WINZ and the Ministry of Health, and community services providers, such as Prison Fellowship or the Citizens Advice Bureau, to attend the visits centre to provide support and advice to the families of Prisoners. Services provided may include advice by nurses to mothers and wives of Prisoners on linkages to GP and other health services, including children's vaccinations.

SecureFuture will ensure that the Prison complex visits regime will include weekends, with the length of visits to be determined by the Director. This initiative recognises that many family members have employment commitments which make mid-week visits difficult. The structured day, and supporting staff resource profile, provides for the visits centre to operate five sessions daily which will cater for all classes of Prisoners. In addition, Prisoners may have access to additional visits as part of SecureFuture's special visits processes.

Visits for segregation Prisoners will take place in separate dedicated sessions, but they will be subject to the same procedures as the other categories of Prisoner.

#### 4.7.1.2 Child visits

Prisoner visits are essential in assisting children retain positive contact with significant adults, especially where there is a parental or carer relationship. Hence it is even more critical that visits take place in a positive and welcoming environment. SecureFuture staff will ensure that every element in the treatment of visiting children conforms to best practice guidelines, including satisfying the provisions of the Department's *Prison Service Operations Manual* sections V.02.R10.07, Safeguarding Children and Young Persons, and V.02.R.10.08, Reporting of Child Abuse and Protection of persons Reporting Ill-Treatment or Neglect of a Child or Young Person. Children's interests will also be promoted by facilitating contact visits for children when the accompanying adult is restricted to non-contact visiting conditions.

SecureFuture's staff will be trained to be tolerant of children's behaviour during visits, within the over-riding qualification that this cannot be allowed to disturb other visits. They will also be made aware that there is to be no physical discipline of any child during visits and they will know that, should such a situation arise, it is the duty of staff to intervene.

Staff will be monitoring visits, both directly and through CCTV observation, and they will understand their obligation to notify the New Zealand Police and the Child Protection agency of any concerns of child abuse or neglect.

#### 4.7.1.3 Crèche

To support an adult visitor with child care responsibilities who does not wish to take the child into the Prison, SecureFuture will work with the community sector and volunteers to establish if a crèche service can be set up for visitors.

#### 4.7.1.4 Non-contact visits

Any visitor suspected through searching, screening or intelligence of introducing, or attempting to introduce, contraband will be managed on a case-by-case basis. This will reflect the level of the threat presented and could result in one or more of the following responses:

- a temporary restriction on visits
- non-contact visits
- refused visits
- notification to New Zealand Police.

Details of visitors banned from visiting the Prison will be provided to the Department and will be entered on IOMS.

Non-contact visits will be for a prescribed period and in addition to the circumstances set out above, the following categories of visitors will only be permitted non-contact visits:

- those who are on probation, parole or bonds
- those serving a term of periodic detention
- those who have been sentenced to a community service order or home detention order.

However, in accordance with the Department's advice, and subject to the Director's discretion, these visitors may be granted a contact visit if they are members of the Prisoner's immediate family.

#### **4.7.1.5 Statutory and authorised visitors**

SecureFuture understands its obligation to facilitate visits to Prisoners by legal practitioners and other professionals, and that these visits are in addition to the Prisoner's domestic visits entitlements.

Legal and professional visits will be facilitated by visits and where possible, by mail and telephone. SecureFuture will accommodate legal visits in operating hours throughout the working week, with the objective of ensuring legal representatives have timely access to their clients, that Prisoners concerns are assuaged (as far as is possible) by meeting with their legal representatives and that no court proceedings are adjourned because a legal representative has not been able to meet with their clients or has inadequate time with them.

The provision of these services will be enabled by SecureFuture's CMS system, which will allow Prisoners to request legal and professional visits quickly and with ease.

#### **4.7.2 Telephone calls**

SecureFuture recognises that in prisons where telephones are located only in public areas, there is a risk that access to the telephone can become a currency and the subject of standover behaviour. For this reason, SecureFuture will equip mainstream cells in the house blocks and residences with a secure telephone headset.

The telephone system is operated via a Personal Identity Number (PIN), with Prisoners able only to call pre-approved telephone numbers. Prisoners will also be able to access the Department's pre-approved free phone numbers, which include gambling and counselling services. There will be no restriction on the language in which telephones calls may be made. Internal phone calls to other Prisoners will not be enabled.

In-cell telephone technology has demonstrated benefits for improved communication with Prisoners' family and friends, helping Prisoners cope with loneliness as well as reducing self harm.

By allowing Prisoners greater privacy in enabling them to make calls during periods of isolation from the Prison community, this technology not only helps minimise bullying and conflict within the Prison, but it also enables Prisoners to more effectively maintain meaningful relationships with their family, community and friends. This is especially true for Prisoners with teenage children who are typically rarely available during the day or before the lockdown time.

The Prisoners will use personal, monitored funds as credit to make in-cell calls, which helps develop and improve money management skills as well as encourage a sense of personal responsibility.

The PIN phone system will include a comprehensive voice recording system that records and retains all Prisoner voice calls other than those protected by legal privilege. The monitoring of Prisoner calls complies with legislation.

SecureFuture also recognises the benefits of ensuring Prisoners have access to the Department's pre-approved free phone numbers, and SecureFuture is pleased to confirm its compliance to this service requirement. This will allow Prisoners to access important community, counselling religious or

cultural services as well as their legal representatives in their own time. SecureFuture believes that this is crucial in empowering Prisoners to maintain links with the wider community and to take ownership of some aspects of their rehabilitation, reintegration and education development.

SecureFuture recognises the need for consistency of correctional practice in Prisoners' access to the telephone system and to 0800 and 0508 numbers. To the end, SecureFuture will apply the provisions of the Department's policy at the Prison.

SecureFuture also notes the Department's policy that while there are no restrictions on the number of calls a Prisoner may make to any approved or Global Telecom 0800 number and Telstra Clear 0508 number, if it becomes evident that a Prisoner is overusing a telephone (by duration and frequency of calls) and thus preventing equitable access by others, the Prisoner's number of allowable calls may be limited. Before taking such action, SecureFuture staff will caution the Prisoner on the consequences of his actions. This, and subsequent action, will be documented in the Prisoner's file.

#### 4.7.3 Mail

In accordance with the Department's procedures, Prisoners will be able to send letters or parcels to, and receive letters and parcels from members of the community and Prisoners at other prisons. There is no limit to the amount of mail a Prisoner can send or receive.

In this context, a letter refers to any letter, card, telegram, document or other similar form of written communication, whether or not contained in a parcel, and included in an envelope containing any of those things. Parcel refers to any parcel, package or other similar article, and includes any parcel or package containing a book, newspaper, magazine or other similar printed material.

However, musical greeting cards or any other card which has a closed or sealed double cardboard construction will not be permitted into the Prison. These will be returned to the sender or, in the absence of a return address, placed in the Prisoners' private property and marked 'not for issue'.

All letters and parcels (except privileged communication) delivered to the Prison addressed to Prisoners will be opened and sight-inspected by authorised officers appointed by the Director to undertake that role, in the company of a second authorised officer. Where they are considered to contain non-approved items, they may be read. Letters and parcels not containing non-approved items will be delivered promptly to Prisoners each working day.

Letters and parcels (except privileged communication) sent by Prisoners may be opened and inspected by authorised officers and, where considered necessary, read. Access to information contained in Prisoners' letters will not be provided to law enforcement agencies without the approval of the Department.

SecureFuture's staff will ensure that the front of envelopes containing Prisoners' mail sent from the Prison will be clear of markings, other than the prospective recipient's name and address. The back of the envelope will have the sender's name and the post office box number of the Prison. The Prisoner will be free to choose whether to add his PRN to this information to allow returned letters to be identified promptly.

Staff will also help Prisoners who are unable to read or write in preparing and reading correspondence. The Prisoner's personal officer will provide this assistance in the first instance or, alternatively, will facilitate arrangements with another designated officer.

When letters or parcels contain postal remittances, they will be recorded in the Remittance by Post Book, and a receipt will be issued, with the receipt number being recorded against the entry in the Book. Prisoners will be advised that the remittance has been received and credited to their private trust/cash account.

Prisoners wishing to correspond with a Prisoner at another prison will be able to do so, provided they provide prior advice to the Director which will enable that officer to communicate with the recipient's Prison Director. They will not be required to pay for the stamps for privileged correspondence to



exempt bodies or exempt persons. They will, however, be required to meet the cost of all other correspondence by purchasing stamped envelopes through the CMS. Prisoners without funds in their private trust/cash amounts will be permitted to send three letters per week at the expense of SecureFuture.

When correspondence is received for a Prisoner who is not in custody, IOMS will be accessed to attempt to determine the Prisoner's current location. If he is in custody at another prison, the correspondence will be readdressed and forwarded to that location. If he has been released from custody, the correspondence will be returned to the sender.

Prisoners' mail will only be withheld on the ground as detailed in the *Corrections Act 2004* s.108 (1) and in accordance with the procedure laid out in the Department's *Prison Services Operations Manual* section C.01.04 Reading/Withholding Prisoner mail.

## 4.8 Prisoner Purchases

SecureFuture recognises that Prisoners can make regular purchases of basic goods for personal use or consumption and have access to a range of items not provided by the Prison, in accordance with the prisoner's plan and are able to purchase, within reason, goods of a cultural or religious nature.

Prisoners will be able to order goods via the CMS. Responding to the low literacy rates among the Prisoner population, this ordering system will be pictorially-based and will allow Prisoners to purchase goods in their own time and with ease. The system will interface with stock levels, displaying only those items which are available for purchase, avoiding disappointment and Prisoner discontent often caused in conventional purchasing regimes when ordered items fail to arrive on time. The CMS purchasing system will also allow Prisoners to add frequently purchased items to a 'Favourites' list to reduce time taken to purchase items.

Each Prisoner will be assigned an individual log in. An important aspect of this system is the restricted items logic. Thus, for example, Prisoners identified to be at risk of self-harm will not be able to purchase razor blades and those with diabetes will be restricted to the number of sugary food items they are able to buy. In this way, the purchasing system will feed into SecureFuture's broader Prisoner management objectives and initiatives, including the preventative health plan and the Responsible Prisoner model.

Items purchased will be delivered to the Prisoners using a regular 'bag and tag' service which, in conjunction with the use of the CMS, will reduce the number of staff required for operating Prisoner shopping services and increase the service availability offered to Prisoners.

Managing Prisoner purchasing in this secure and highly controlled manner promotes pro-social behaviour among the Prisoner population by significantly reducing stand-over behaviour and bullying. It will of course be complemented by regular and thorough in-cell monitoring by staff to ensure that goods purchased by Prisoners are not being stolen or otherwise illegally obtained by other Prisoners.

The purchasing system proposed by SecureFuture will enable Prisoners to take responsibility for handling their own affairs within the Prison with greater autonomy, removing the need to get approval from the unit officer for each purchase or account transaction made. It closely ties in with the SecureFuture's concept of the Responsible Prisoner and, by promoting personal responsibility and self awareness, represents an invaluable channel directly linking the Department's ambition to reduce re-offending with Prisoners' everyday life and activities.

### 4.8.1 Prisoner trust accounts

To afford Prisoners a level of control over their day-to-day existence, personal trust accounts will be established during reception for the deposit of any cash the Prisoner arrives with. Funds in this account may then be used to allow individuals to purchase incidentals and personal items using the CMS system.



Prisoners will be instructed in the use of the CMS system during induction. Prisoners will also be informed of the rules, restrictions and regulations for the use of their trust account and will be advised that accounts will be monitored by staff if there are grounds to suspect any unlawful use.

SecureFuture recognises that some Prisoners, especially those who are in Prison for the first time, will have little knowledge of the risks involved with trust accounts. During the induction programme, staff will explain these risks, including the importance of keeping trust account balances private.

SecureFuture acknowledges that Prisoners will only be permitted to spend a maximum of \$70 per week.

SecureFuture acknowledges that Prisoners may not purchase mail order goods or services, rentals or hire purchases. Any purchases that exceed the weekly expenditure limit of \$70 must be approved by a supervisor.

#### **4.8.2 Account balance limits**

SecureFuture acknowledges the Department's policy that a Prisoner may have a maximum balance of \$200 in their trust account at any one time. SecureFuture understands that this limit cannot be exceeded, regardless of whether the balance is reached due to cash received from family/friends or from the automatic Welfare Allowance allocation.

Once the \$200 balance is reached, SecureFuture will ensure that the Prisoner's account is not credited any further funds until the balance is reduced. The CMS will automatically notify the Prisoner when their trust account balance is approaching the limit whenever they access the account and remind them that no more funds will be allocated to the account until the balance is reduced.

Should a Prisoner arrive at the Prison with more than \$200 he will be encouraged by staff to give the additional funds to his next of kin. If there is no such appropriate person, the money will be deposited into the trust account, but no further funds may be deposited into the account until the balance is below \$200.

#### **4.8.3 Recording trust account transactions**

Prisoners will be able to access their trust account balances as often as they like via the CMS system. SecureFuture staff will encourage Prisoners to keep their account balances confidential.

The management of Prisoner trust accounts will be subject to audit. The Associate Director Business and Finance will have systems in place to ensure Prisoner monies and accounts are managed in accordance with all relevant financial management systems in New Zealand.

Money checks will be conducted by independent persons. During the reception procedure and handling of Prisoner cash a SecureFuture officer will be designated as receiving officer and another officer will be checking to ensure all amounts received are recorded correctly.

The trust account clerk will be responsible for reconciling trust accounts and for the processing of any cash or cheques received from visitors via reception or post. The finance manager will be responsible for checking reconciliations. Both the trust account clerk and finance manager will be responsible for written reports.

SecureFuture will establish an account to deposit all Prisoner monies. This will be banked in strict accordance with New Zealand financial management controls.

#### **4.8.4 Reports**

SecureFuture will provide the Department with trust account balance and transaction reports as required in Schedule 15.

#### 4.8.5 Payment to Prisoners on release and/or transfer

Upon the release of the Prisoner from the Prison, the balance remaining in the account will be returned to the Prisoner in the form of cash, a cheque, or both. Normally, cash will be provided up to \$100.00 with the remainder in the form of a cheque. Should the Prisoner prefer to receive his funds totally in cash, he may do so following approval by the Operations Manager.

Prisoners who are transferred to another prison within the network will retain the balance of their trust account. Accounts will be reconciled and balance receipts included in a Prisoner's IMP before being transferred to the new prison.

## 5. REHABILITATION AND REINTEGRATION

### 5.1 Approach

SecureFuture will implement an innovative rehabilitation and reintegration operating model at the Prison. A Prisoner's rehabilitation and reintegration journey will commence during the reception and induction programme and continue throughout his sentence and after his release.

SecureFuture's operating model for this Prison will be fundamentally outward-facing and optimistic and SecureFuture will work with the Department and expert service providers from the community to achieve successful reintegration and transition back into society. SecureFuture will treat Prisoners with dignity and respect, and provide them with the advice, training, education and support most beneficial to their individual circumstances, interests and requirements.

By utilising processes which rely upon engaging Prisoners in the development of their individual management plans; conducting realistic assessments; clearly identifying risks, criminogenic factors and opportunities; and setting appropriate objectives, SecureFuture believes that it will achieve the required impact on a Prisoner's rehabilitation and reintegration needs.

#### 5.1.1 Integrated, multi-disciplinary approach

SecureFuture recognises that it cannot address the issue of re-offending in isolation and requires the support and commitment of other government agencies, as well as non-government organisations, and importantly, the engagement of Māori specific agencies. In addition to government agencies, relevant and appropriate providers of rehabilitation and social services may include the following third party providers:

- Prisoners Aid and Rehabilitation Society (PARS)
- Matua Raki
- Prison Fellowship New Zealand
- The Mason Clinic
- Literacy Aotearoa
- Unitec
- Workbase
- Mahi Mahi
- Auckland City Mission
- The Salvation Army
- Relationships Services
- Rape Prevention Education
- Citizens Advice Bureau
- Volunteering Auckland
- Māori and Pasifika groups whose capacity to provide the required services may be developed over the life of the contract.

Drawing on the expertise of these external agencies and organisations, SecureFuture will develop an Individual Management Plan (IMP) for each Prisoner which considers the culture, interests, needs and wishes of the Prisoner and his whānau/family. This plan will be developed collectively with the Prisoner, and his whānau/family if possible, and will provide an end-to-end programme which supports his journey to release, and beyond.

Staff at the Prison will be required to engage with Prisoners, linking them to appropriate agencies, programmes, services and coordinated activities and monitoring their progress by regularly reviewing, reassessing and adjusting a Prisoner's planned rehabilitation and reintegration interventions.

SecureFuture's key focus will be to make a positive difference in the lives of Prisoners through a combination of education and vocational training, rehabilitation and re-integration programmes,

employment skills, healthcare, counselling and personal development programmes, as well as through the provision of a structured day. This will be supported by:

- Physical facilities e.g. class and computer rooms in the education centre and house (cell) blocks; Sports Hall, field and cardio rooms; reintegration unit attached to education; vocational education and industries spaces, spiritual space, fale and whare nui and Kura. Prisoners in the last three months of their sentences will be moved to discrete units in the residences (where their security classification permits) to support each other and to prepare for their re-entry to the community.
- Custodial Management System's in-cell Virtual Learning Environment (VLE) which will promote Prisoners' engagement with e-learning in their cells after lockdown. Blended learning will be achieved when this e-learning is complemented by face-to-face teaching in the education centre and vocational training area in industries.
- There will also be significant overlap between SecureFuture's education courses, fitness activities, health care clinics, and induction programme content. This is consistent with the whānau ora approach and the World Health Organisation emphasis on the holistic nature of health and wellbeing.

The pathways model of SecureFuture's correctional services provider, Serco, supports this process for transitioning offenders. The pathways adopted by Serco as key aspects of its offender management at most of the Prisons it operates, including the Mt Eden Prison, and will be the foundation of rehabilitation efforts at the Prison are:

- accommodation
- education, training and employment (ete)
- mental and physical health
- drugs and alcohol
- finance, benefits and debt
- children and families
- attitudes, thinking and behaviour.

Additionally, SecureFuture notes the Department's inclusion of social support, as the eighth pathway with its focus on Māori-specific engagement and support of the Kaitiaki Plan. The SecureFuture solution has been closely informed by this additional pathway.

Prisoners will be properly selected, assessed and grouped into appropriate programmes. SecureFuture will undertake the assessments and case conferences and will, where appropriate, engage the Prisoner's family in this process – an aspect of its programmes SecureFuture believe to have a positive impact on resettlement. The assessment process, and the development of the IMP, will be based on meeting the Prisoner's criminogenic needs and risks, and will be sequenced in a manner that encourages maximum benefit in the time the Prisoner will be in the Prison.

SecureFuture will ensure that Prisoners are in no way excluded from any of these valuable interventions due to educational or other deficiencies, and will work with appropriate practitioners to remove barriers to progression and therefore increasing access.

SecureFuture recognises that patterns of offending change over time. Therefore, it is vitally important to both audit the available programmes and to assist in the development of new ones as the need may arise. SecureFuture will work with the Department of Corrections to examine alternative options for delivery, particularly where SecureFuture's operator<sup>3</sup> has experience in delivering alternative programmes. In addition, SecureFuture will work with the Department, if requested, to review new programmes piloted within the Prison and then roll them out to the rest of the prison network, in accordance with the provisions of Schedule 18.

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<sup>3</sup> 'Operator' is the term used to denote the Contractor's Major Sub-Contractor providing the Corrections Services.

SecureFuture's operator is well experienced in and cognisant of, the political sensitivities surrounding corrections and is committed to assisting the Department in mitigating these by educating the wider community about the positive rehabilitation outcomes achievable at the Prison.

SecureFuture will ensure that programmes at the Prison are delivered in accordance with specified programme and session duration and number of sessions, as outlined in the Rehabilitation and Reintegration Programme.

### 5.1.2 Pre- and post-release support

SecureFuture will ensure that reintegrative needs are identified and addressed throughout a Prisoner's sentence and that prior to the end of a sentence, information on relevant services is provided and support networks are created. SecureFuture believes that effective reintegration management addresses not just the moment of re-entry, but also the period leading up to, and following, release and reintegration.

Case management will facilitate through the gate or throughcare between the Prison and the community. SecureFuture's community-based service provider partners will be engaged in the delivery of assessments and interventions from the reception and induction stage and will continue that engagement through Prison to reintegration. This will reduce the risk of gaps in service delivery at the traditional transition points.

SecureFuture will work closely with the Parole Board, Community Probation Services, contracted community-based service providers and volunteers (including Kaiwhakamana and Fatua Pasifika) to manage the transition of Prisoners from the Prison to the community, regardless of whether the Prisoner will be supervised by Community Probation Services or not.

To complement these services, a unique feature of the SecureFuture reintegration solution is the establishment of a Prison community office, which will likely be co-located with a contracted community-based service provider. The community office will provide a venue for advice and support to the ex-Prisoner and his family. A limited range of support interventions will also be provided, on an as-required basis. These may include:

- domestic violence
- parenting
- family support
- job search
- living skills – basic needs, including accommodation search assistance
- foundation skills e.g. literacy and numeracy
- AOD Relapse Prevention
- spiritual support.

SecureFuture recognises that ex-Prisoners have clear psychosocial and social difficulties in leaving Prison and that these rise from 9% during the first days to 21% at the 1st-month mark. To respond to this, SecureFuture will establish a volunteer-based mentoring scheme at the community office which will be supported by a hotline. This will provide an alternative source of advice, support and practical assistance.

SecureFuture's primary objectives to assist Prisoners for effective community reintegration are:

- to provide a comprehensive and integrated service that does not rely on life skills type programmes alone
- to support Prisoners' re-integration into the community, leading to reduced re-offending and encouraging the adoption of law-abiding lifestyles
- to reduce the damage done to communities by Prisoners with poor social capital churning through these communities and the criminal justice system

- to establish effective partnerships with Government agencies, hapū, Iwi and other Māori community groups and volunteers and community organisations to provide community and whānau-focused services and continuity of care and support from the Prison to the community
- to increase active personal involvement in justice proceedings of the victim, Prisoners and others who may be affected in accordance with the Ministry of Justice Restorative Justice initiative
- to focus on the needs of and provide support to, the families of Prisoners
- SecureFuture’s holistic programme and activity approach in the structured day cycle and modular in format will facilitate continuity of delivery. Not only will this contribute to a Prisoner’s seamless transition into the community, but it will also improve outcomes for Prisoners’ whānau, the Department, and the wider community.

Reintegration plans will include summaries of reintegrative needs compiled throughout the sentence and identify post-release needs, the available services to support those needs and the support networks, including the Prison community office-based mentoring scheme. Three months out from discharge most of those Prisoners not already housed in a residence, will be moved to a discrete reintegration housing unit, supported by the reintegration unit staff. This will:

- facilitate combined case management, programme delivery and group work
- practice independent living skills
- promote mutual support amongst Prisoners who are moving to release
- ensure physical proximity to the gatehouse, which will motivate and assist Prisoners to focus on their future
- facilitate ready access to specific services in the reintegration unit, including the employment and real estate offices.

### 5.1.3 Prison population

SecureFuture has paid particular attention to the potential Prisoner profile at the Prison, whose receptions are likely, in the main, to come from Mt Eden. SecureFuture recognises the resulting need for the Prison programme of interventions to respond to this aspect of the wider Prison system, and to provide a logical sequence of interventions from the remand to the sentenced environment.

SecureFuture has noted the extremely high turnover (with attendant costs to both the Prison and the community) of Prisoners within the New Zealand Corrections System, with 80% serving sentences of under 12 months and 30% under 13 weeks. SecureFuture has also noted the youth of the Prisoner population and the fact that in both these categories Māori are over-represented.

SecureFuture notes the overwhelming evidence of:

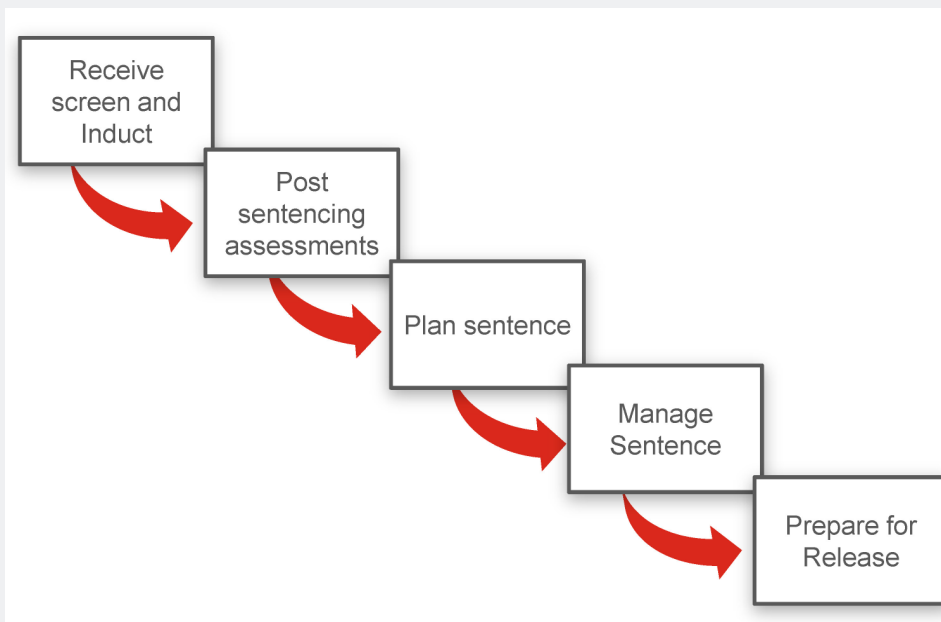
- the potential for desistance among young Prisoners
- the need to intercept young Prisoners’ offending trajectories at an early stage for the maximum payback
- the fact that criminal cognition and identity are formed in the first six months of the first sentence
- the absence of efficacy of short sentences and that re-offending by short sentence Prisoners represents 75% of the cost to the community of re-offending.

SecureFuture is of the view that its intervention suite should prioritise these two cohorts. This will be complemented by attention directed at violent Prisoners and adult sex offenders given the rate at which these offences appear in the Prisoner profile. Similarly, alcohol and other drugs treatment, with a focus on methamphetamine and alcohol misuse, and literacy and numeracy will be afforded a high priority with intensity and duration tailored to the two cohorts described above. The latter will support the priority given by the Department to Foundation Skills.

## 5.2 Assessment

SecureFuture strongly believes that crucial to the effective operation of a safe and secure Prison and delivery of successful rehabilitation outcomes is the ability to determine an individual's rehabilitative needs and therefore, the interventions and activities required to meet them.

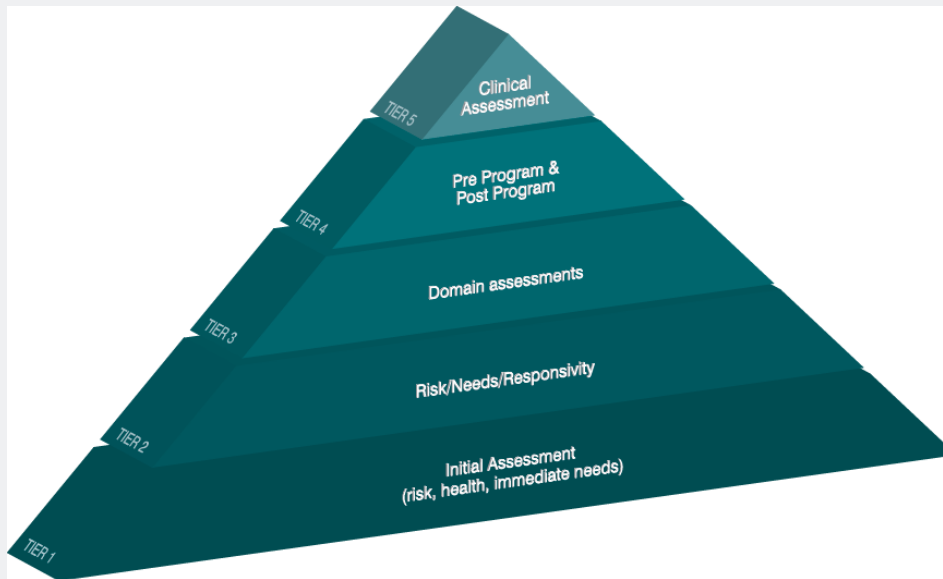
Assessments sit within the wider context of the case/sentence management model, as shown below. They take place at both reception and induction and flow on to inform sentence planning. The assessments will inform the Prisoner's IMP which will provide the roadmap which governs the Prisoner's trajectory to achieve a successful and law-abiding return to the community. To this end, assessments will be a process, not a single event, and continue from sentencing to reintegration back into the community. SecureFuture will work with the Department to ensure seamless integration with the wider correctional system and continuity of care when the Prisoner moves within the network.



**Figure 4: Assessments within the Case/Sentence Management Model**

SecureFuture strongly believes that a one-size-fits-all approach to assessment is not only inappropriate, but may be expensive and wasteful of scarce resources. SecureFuture will adopt an integrated assessment hierarchy assessment model, which reflects the fact that whilst some Prisoners will arrive at the Prison having already completed a range of assessments and related programmes and interventions, others may arrive having completed only limited assessments. SecureFuture believes that this approach will assist in preventing Prisoners being asked for the same information by multiple staff or service providers and from conducting unnecessary and counter-productive assessments.

The integrated assessment hierarchy model (at Figure 5) is a form of triage. It recognises that the assessments undertaken must respond to triggers and processes. On reception, Prisoners will receive an immediate brief assessment to ensure their safety and well being. All Prisoners will undertake a Tier 1 assessment, which will in some cases, trigger a need for a comprehensive Risk/Needs/Responsivity (Tier 2) assessment. The findings of this assessment may show cause for a (Tier 3) domain or offence-specific (or pathways) assessment. These assessments will be complemented by those (Tier 4) which will assess programme impact and at Tier 5, intellectual functioning, mental health and neuro-psychological issues triggered by domain assessments.



**Figure 5: Assessment hierarchy**

SecureFuture will place particular attention to the needs of short term Prisoners because, as research literature suggests, the experience of first time imprisonment is associated with criminal activity in the three years following release (Nieuwbeerta, Nagin and Blockland 2009). SecureFuture also notes the research that reports that the majority of the cost of crime to Western economies is caused by re-offending of short sentence Prisoners and that criminal cognition and identity is formed in the first six months of the first sentence. In SecureFuture’s view, this heightens the importance for interventions for this cohort.

SecureFuture’s research and experience have demonstrated that readiness instruments, such as the *Corrections Victoria Treatment Readiness Questionnaire*, can assist correctional operators to determine whether and when a Prisoner is ready for placement in a rehabilitative intervention programme, the programme length to which a Prisoner is best suited, and whether there is a need for motivational interventions. Readiness instruments are therefore highly useful in ensuring effective allocation and management of resources and in ensuring that each Prisoner is placed in a programme most appropriate to his needs at the most appropriate time. Equally, assessment of readiness may permit staff to better target motivational programmes as precursor activities to criminogenic interventions participation. SecureFuture strongly believes it will.

SecureFuture understands that cultural factors are an important consideration in the design and delivery of rehabilitation programmes. This is especially important in the context of the Department’s ambition to achieve effectiveness with Māori.

In order to enhance the prospects for success for relevant Prisoners about to embark on programmes, SecureFuture will conduct cultural and spiritual wellbeing assessments. SecureFuture’s rationale behind, and goals for, these assessments are:

- to enhance the cultural perspective on the needs of the person and their whānau through appropriate assessment, care and rehabilitation
- to ensure that people who are assessed are cared for in the least restrictive environment
- to ensure that assessors undertaking the cultural assessment are culturally competent from a tikanga perspective
- it is the inherent right of an individual to receive culturally appropriate assessment, care and service
- the individual is heard and considered throughout their assessment, care and rehabilitation (Ministry of Health 2004).

The scope of cultural assessments will include:



- cultural identity
- cultural tension
- Whānau
- Whakawhānaunga (formation of whānau-like relationships).
- limited or lack of whānau contact
- Whānau-related stress
- Whānau social influence to crime.

Upon reception and through induction, SecureFuture Māori or Pasifika staff will assess an individual's cultural and spiritual strengths, and their key values in life.

Staff undertaking the assessments will have a thorough understanding of the concepts of whakapapa, mythology, kawa, tikanga and Te Reo. The assessment process validates Māori healing methodologies, such as karakia, rongoa, spiritual assistance, tohunga, whanungatanga, te waitea, awhi, manaatikanga, whakapapa, whakawhānaungatanga, moemoea, matauranga Māori taha wairua and muiuitanga.

The centre point of this effort will be the first offence unit, which will house first time, short-term Māori and non-Māori Prisoners. The objective of the unit is to separate these Prisoners from the mainstream criminal, and especially gang, culture and prevent them from being absorbed into that culture. In this endeavour staff, including family liaison officers, will be supported by Māori service providers, including Kaiwhakamana.

While SecureFuture recognises the particular importance of this to Māori because of the cultural emphasis on ties to whānau, hapū and Iwi, family and cultural liaison officers will execute similar functions for non-Māori Prisoners and their families.

Cultural and spiritual wellbeing assessment will complement assessments of:

- mental health (taha hinengaro)
- spiritual health (taha wairua)
- physical health (taha tinana)
- relationships with family and community (taha whānau).

### 5.2.1 Suite of Assessments

Note: the assessment tools identified in this section are subject to further review and may change during the development of the Policy and Procedures Manual and the Rehabilitation and Reintegration Programme.

#### 5.2.1.1 Tier 1: Initial Assessment

All Prisoners arriving at the Prison will receive this brief needs assessment which will cover:

- basic criminal history
- violence issues
- education and vocational education
- family and other relationships
- cultural issues
- drug and alcohol issues
- physical and mental health.

Where a Prisoner is already in the correctional system and this information is available on IOMS, its collection will not be repeated.

Given that 480 beds in the Prison will be in shared cells, Tier 1 assessments will also include a Shared Accommodation Risk Assessment to establish compatibility when shared cell accommodation is contemplated for an individual.

### **5.2.1.2 Tier 2: Risk/Needs/Responsivity**

The Tier 2 assessment will address a comprehensive range of domains linked to the pathways described earlier in this section. The pathways approach to assessment assists in focussing attention on the priorities to be assigned to and resources to be directed to Prisoners. The pathways are not immutable and may change in response to variations in policy settings, demand and priorities. The pathways will reflect each Prisoner's individual risks, needs, and mitigation actions in a simple, concise and accessible document.

SecureFuture will adopt/develop a tier 2 risk assessment tool to assess and score dynamic risk across a range of domains aligned with the eight pathways. The assessment tool will have been externally validated by an independent academic body in order to assess its ability to predict the likelihood of an offender being reconvicted. Staff using the tool will have the qualifications and/or experience necessary to exercise the professional judgement needed to use the risk assessment tool. The risk assessment tool will be integrated within the case management system to create a fully integrated assessment and case management tool.

The results from the dynamic risk assessment will be considered alongside an assessment of static risk of reoffending (i.e. RoC/RoI) in order to develop the Prisoner's IMP and prioritise interventions.

SecureFuture acknowledges that Tier 2 assessments may not be required for all of the estimated 30% of Prisoners who serve sentences of less than 13 weeks at the Prison. However, where Tier 1 assessments indicate that further assessments are required in order to develop the IMP for a Prisoner serving less than 13 weeks, these assessments will be conducted. SecureFuture believes that this cohort (in which Māori are over represented) frequently attracts limited resources, notwithstanding that the needs of short sentenced Prisoners are consistently highlighted in research and government reports.

### **5.2.1.3 Tier 3: Domain Assessments to identify pathways**

The Tier 3 assessments will be conducted where the tier 2 assessment indicates there is a need for further assessment in a particular pathway, and typically involve more comprehensive domain assessments, such as:

- criminal history
- education/employment
- financial
- family/marital
- accommodation
- leisure/recreation
- companions
- alcohol/drug problems
- emotional/personal
- attitude/orientation.

### **Addiction Testing**

SecureFuture recognises that drug and alcohol misuse accounts for a significant volume of crime and is a destructive agent, both in terms of family relationships and community functioning. Upon admission to the Prison, staff will screen Prisoners for drug and alcohol problems. Where screening or self-reports are positive, SecureFuture will apply instruments such as the following industry-standard assessments:

- AUDIT (Alcohol Use Disorders Identification Test)
- DAST (Drug Abuse Screening Test)
- SDS (Severity of Dependence Scale).

Gambling addiction assessments, where required, will be undertaken by SecureFuture's planned service provider, the Problem Gambling Foundation (PGF) of New Zealand, using assessments such as the South Oaks Gambling Assessment.

Staff will use a Prisoner's results to assess their rehabilitation and reintegration needs. Appropriate detoxification and care, linked to short programmes which are feasible within sentence length and which can continue through programmes conducted in the community upon release, will be identified. This will then be documented in their IMP. This will play a key role in helping Prisoners address their drug and alcohol addictions, addictive behaviours and related offending patterns.

SecureFuture notes that the implementation of the Department's non-smoking policy will add to the scope of addiction assessment (and treatment) which SecureFuture has included in its suite of programmes.

### ***Literacy and Numeracy Assessment***

SecureFuture believes that education and Prisoner learning provide one of the bedrocks of Prison rehabilitation and reduced recidivism. The identification of basic skill deficits will be based on the *Literacy and Numeracy for Adults Assessment Tool*. SecureFuture may also test and compare this with the Corrections Victoria *LLN Assessment Toolkit*. This will be complemented with assessments for Māori and Pasifika Prisoners conducted by external service providers, such as Work base and Literacy Aotearoa under the *Memoranda of Understanding*.

SecureFuture will:

- assess the Prisoner to determine start point
- consider the entirety of the IMP requirements and time constraints
- focus resources on those with the lowest level of literacy
- set a target achievable within 75% of the time available based on a standard progression rate applicable to all start points
- review and, if possible, re-set the target upwards when achieved.

The SecureFuture approach to education for Māori will reflect its commitment to the *Māori Education Strategy 2008-2012*.

### ***Mental Health Assessment***

The *National Study of Forensic Mental Health Services 2005* demonstrated that, as in other Western correctional jurisdictions, in comparison with the general population, a disproportionately high proportion of Prisoners have mental illness and that a disproportionately high number of Māori are forensic services consumers.

The assessment of mental illness will commence with assessments at reception and will continue throughout the period in custody. Health staff will make initial assessments based on the Mental Status Examination, which is a structured way of observing and describing a Prisoner's current state of mind, under the domains of appearance, attitude, behaviour, mood and affect, speech, thought process, thought content, perception, cognition, insight and judgement. More detailed assessments of common mental disorders will be undertaken by clinicians using clinically recommended assessment tools.

Most Prisoners with mental health problems will be treated and stabilised within the Prison and subject to continuing assessment and review. Prisoners suffering from acute mental health problems who cannot be managed within the Prison will be referred to the Mason Clinic staff for examination. Whilst remaining at the Prison, they will be subject to ongoing support treatment and risk management so that they are safe and provide no risk to themselves or others. Mason Clinic clinical staff will provide cultural assessments.

To provide cultural assessments for Pasifika Prisoners, it is anticipated that SecureFuture will engage Vaka Tatua.

### ***Intellectual Functioning Assessment***

SecureFuture notes that research (Cockram 2005, Hayes 2005, Department of Justice Victoria 2007) has shown that levels of intellectual disability among Prisoners are considerably higher than those of the mainstream community. SecureFuture understands that intellectually disabled Prisoners are ill-equipped to manage the complexity of a high security environment (Glaser & Deane 1999) and SecureFuture feels it is imperative to identify these Prisoners quickly. SecureFuture also believes that it is vital to generate relationships with key external providers and work collaboratively with them to assist in the release of the Prisoner, ensuring that they are supported through complementary and, where possible, overlapping service provision and support.

Identification of Prisoners who have a disability, whether this be a cognitive impairment (both intellectual disability and acquired brain injury), mental illness, sensory or physical disability, is one of the challenges of any correctional system. This is because, generally, reliable information is available only about those Prisoners who are registered with the Ministry of Health. In addition, Prisoners may exhibit a range of behaviours and may have developed a series of coping mechanisms to hide their real problems.

To determine the intellectual functioning of Prisoners, where there is an indication that such an assessment would be beneficial, psychological staff will conduct a standard IQ Test upon their entry to the Prison. The instrument SecureFuture proposes to use will be the Wechsler Abbreviated Screen of Intelligence (WASI).

SecureFuture staff will work closely with the Ministry of Health's Disability Support Services, Needs Assessment and Service Coordination to ensure Prisoners are comprehensively assessed and able to access relevant services in accordance with the Ministry of Health's Eligibility for Publicly Funded Health and Disability Services.

### ***Violent Offending***

SecureFuture understands that 50% of offences committed in New Zealand involve violence (Nadusu 2009).

The characteristics of violent Prisoners are varied and many, as shown below:

- anger
- hostility
- impulsivity
- interpersonal and problem solving skill deficits
- negative/anti-social attitudes
- substance misuse
- active symptoms of major mental illness
- anti-social personality
- relationship instability.

In recognition of the fact that there are numerous dimensions to violent behaviours, SecureFuture will use a range of assessment instruments. Examples may include:

- The Violence Risk Scale
- Interpersonal Reactivity Index
- Navaco Anger Scale and Provocation Inventory.

Given the Department's investment in interventions in this area, SecureFuture intends to consult before a final decision on the preferred instruments. SecureFuture also intends to engage with Professor Polascheck of Victoria University, whose expertise in this field is widely acknowledged.

### **Adult Sex Offending**

SecureFuture will consult with RSS to ascertain how the Prison will integrate into the Department's strategy for the management of sex offenders. It is assumed child sex offenders will be treated through and in the Department's specialist units. SecureFuture will deliver an adult sex offender programme. The assessment process and hierarchy will identify Prisoners whose offences and assessments indicate adult sex offender intervention is appropriate. Relevant assessment instruments may include:

- STABLE
- ACUTE
- Rape Myth Scale
- STATIC 99
- ASRS.

#### **5.2.2 Activities not available in the Prison**

The Prisoner's needs are identified through the case management process, which commences at reception and induction. SecureFuture will also engage community-based service providers in the delivery of assessments and interventions from the reception and induction stage and will continue that engagement through the Prison experience to the community. The corpus of experience and expertise that resides with these providers will reduce the risk of gaps in service delivery arising from unidentified needs and also remove the gaps at the traditional transition points.

Where a need is identified, or raised by the Parole Board, which is not already covered in the IMP, the case management team will consult with the reintegration manager, clinical and other staff to:

- Confirm the need. This may involve consultation with New Zealand Rehabilitation and Reintegration Services (RRS) to ensure consistency with their policy and practice.
- Identify an appropriate response to that need.

Once this has occurred, the options available to deliver the response include:

- provide the programme of intervention from internal staff resources
- consult with RRS on the identified need and any available or proposed programmes or interventions
- consult with other Serco-run prisons internationally to identify a potential programme or intervention to match the identified reintegration need
- consult with tertiary education sector partners to identify research into the identified need and any documented responses
- commission tertiary education sector partners to develop an intervention to meet the need
- once identified, manage the identified programme through the Prison programme process
- use volunteers to deliver the programme or intervention
- use community based service providers to deliver the programme or intervention under contract
- evaluate the intervention
- review the case management process to identify why the need was not initially included in the IMP.

### **5.3 Case Management**

SecureFuture will adopt the alliance offender management model for case management, as described in section 2.1.4 of this document. Case management is the responsibility of a central case management team, but is delivered in a multi-disciplinary model that involves the engagement and input of a range of internal and external stakeholders, such as personal officers, programme managers, and external service providers.

### 5.3.1 Individual Management Plans

SecureFuture will develop an IMP for each Prisoner in its care, using information derived from its assessments, interviews with the Prisoner, advice from whānau/families and other relevant material, such as pre-sentence reports and sentencing authority comments. This vital document will provide the roadmap to a Prisoner's successful rehabilitation and re-integration back into his community. It is future-proof, flexible, subject to scheduled reviews and rapid and responsive updates as needs and circumstances change, and it is owned by the Prisoner.

The IMP will be developed by the case management staff headed by the Associate Director Rehabilitation, in consultation with the Prisoner and where appropriate and practicable, with family, whānau, hapū and Iwi, community service providers and volunteers and with appropriate areas of the Department and other government agencies.

In some cases, notably for Prisoners held in custody for less than two months, this will be a brief document subject to limited review before transfer or discharge, but will ensure referrals to the community-based providers who will provide consistency of support and programme delivery between the Prison and the community setting. SecureFuture recognises that short term Prisoners have traditionally been excluded from programme participation, with attendant adverse impacts of recidivism, and will ensure that short sentence Prisoners will be engaged on programmes. The draft Programmes Plan, provided at Appendix 3, includes a range of short interventions designed specifically for such Prisoners.

SecureFuture has tested its flexible, needs-based approach to planning for Prisoners' individual needs by creating a number of scenarios where SecureFuture developed a sample of theoretical Prisoner profiles, and mapped each Prisoner, based on his profile, to a series of management approaches, interventions and programmes that best meet his needs. This mapping exercise has considered the following areas:

- How will SecureFuture ensure the safety and security of the Prisoner?
- What will SecureFuture do to provide for his health, comfort and wellbeing?
- What rehabilitation needs does he have, and how can SecureFuture best meet these within the time available?
- What reintegration needs does he have, and what support can SecureFuture provide (or facilitate) that will help him achieve a successful re-entry into society?

The results of this scenario mapping exercise are provided in Appendix 4.

SecureFuture believes that Prisoners should be actively engaged in their IMP. SecureFuture believes that the effectiveness of this document – and any associated interventions – is greatly enhanced if a Prisoner feels like an active participant in, rather than a passive recipient of, SecureFuture's rehabilitation efforts. This is central to the Responsible Prisoner concept SecureFuture will promote in every aspect of its operations. To assist this engagement, SecureFuture will ensure that the IMPs developed for Prisoners in its care will have demonstrable relevance and advantage to the Prisoner and govern a suite of interventions that make sense to him.

Their IMP (and the path to progress it will capture) will underpin all aspects of every Prisoner's time at the Prison: from his accommodation location, to privileges and incentives to the structure of his day. This direct link between cause and effect, with the IMP as the communicator and record keeper, will ensure that the requirements of the IMP retain a high visibility for the Prisoner.

### 5.3.2 Throughcare

SecureFuture is committed to providing continuity of care, service provision and support for all Prisoners in the Prison and believes that achieving this is key to reducing re-offending. Throughcare is a concept which ensures that Prisoners are directed towards a planned outcome from the commencement of their detention at the Prison. The outcome remains consistent as they move across

prison sites and into the community as a clear demonstration of the application of Whānau Ora principles.

For example, SecureFuture believes that programmes must be structured in modules and offered cyclically, and must interface with those offered elsewhere in the prison system. This enables Prisoners who do not finish a programme or intervention in the Prison to do so in another prison, or if given a community-based sanction, to complete the module in the community.

For this reason, in planning for Prisoners' individual needs, SecureFuture will consider that needs identified upon arrival at the Prison can and will change over time. SecureFuture will have in place robust reviewing, monitoring and recording systems and processes and will update each IMP as required.

### 5.3.3 Prisoner Involvement

SecureFuture is strongly committed to ensuring that each Prisoner is engaged in the creation of his IMP. SecureFuture will encourage Prisoners to play a full part in the identification of their needs during the reception and induction period and beyond, and the services to be accessed in response. The level of responsibility to be exercised by each Prisoner is dependent on both their ability and motivation, with the Prison acting as a resource and also as a safety-net for those incapable or unwilling to do so.

SecureFuture will ensure that its reception procedure and induction programme are informative and reassuring, enabling each Prisoner to engage in a productive conversation about their needs and ambitions (which may not be the same) and interventions which match both.

If the Prisoner is unable to read, or does not understand English, then a member of staff, peer support or translator will explain the process to the Prisoner and check his understanding before proceeding. Information will be presented in a concise manner and wherever possible, pictorially.

### 5.3.4 Family Involvement

The SecureFuture approach to including family/whānau or other pro-social support networks in the creation and review of the prisoner IMP is to promote the climate in which such involvement is encouraged. SecureFuture will leverage the capacities and capabilities of each Prisoner's family, whānau, hapū, iwi and the wider community through the engagement of community based service providers to deliver services to Prisoners from reception/induction to discharge.

SecureFuture sees the maintenance of family and community relationships as paramount to a Prisoner's wellbeing and chances of successful rehabilitation and will therefore involve families in the Prisoner induction programme wherever possible. During induction, each Prisoner will complete an intake screening form which compiles information including:

- ethnicity
- specialist cultural needs consistent his cultural practices
- requirements for contact with specialist agencies, such as government agencies or consulates
- Next of kin details and contact
- issues concerning children, or family.

In addition, upon reception, SecureFuture's Māori or Pasifika staff will assess an individual's cultural and spiritual strengths.

The information compiled as part of this process will flag potential communication, social and support needs. SecureFuture will invite families and/or whānau to participate in case management and the development of an IMP and reintegration/discharge plan which will address the behaviours and actions that resulted in imprisonment. This interaction will occur during induction, in a meeting held with the Prisoner and induction staff in the upper level of the education block, and will involve determining what programmes and activities will support the Prisoner on a journey to successful rehabilitation.



SecureFuture is committed to assisting the Department's goal of ensuring effectiveness with Māori. Staff undertaking the assessments will have a thorough understanding of the concepts of whakapapa, mythology, kawa, tikanga and Te Reo. The assessment process validates Māori healing methodologies, such as karakia, rongoa, spiritual assistance, tohunga, whanungatanga, te waitea, awhi, manaatikanga, whakapapa, whakawhānaungatanga, moemoea, matauranga Māori taha wairua and muiuitanga.

### 5.3.5 Alliance Offender Management Model

Under the throughcare concept, the quality of the relationship between the Prison and other government agencies, whānau, hapū and Iwi, Māori community providers, Māori volunteers and community groups is very significant. For this reason, SecureFuture's systems are founded on a proven Prisoner/offender management approach, the alliance offender management model. The features of the alliance offender management model that will be deployed at the Prison include:

- a partnership with established voluntary sector providers, such as NZ PARS
- an engagement and full integration of SecureFuture's service delivery partners in the rehabilitation and reintegration process from reception and induction and through the Prisoner's sentence
- partnerships with academic institutions, such as:
  - Victoria and Deakin Universities on assessments interventions
  - Cambridge University on the MQPL/SQL
  - Canterbury University on gangs
  - Auckland University on music therapy and education.
- integrated case management between the Prison and service providers
- knowledge and innovation transfer between Serco business units (such as the adoption of the very successful Responsible Prisoner Model from Serco UK, Australia and Mt Eden operations)
- support from Serco Institute's repository of research and its research capabilities
- recognition that Māori are over-represented in the New Zealand correctional settings, particularly among short sentenced and young offenders
- close and more effective engagement with Prisoners' families and whānau via:
  - ensuring that the Visitor Centre is not simply a visits processing area, but rather a gateway for family support
  - the establishment of the Community office in the local area, ideally co-located with one of the contracted community-based service providers, enabling Prisoners' families to access support and advice outside the Prison walls.
  - support for Māori whenua through extensive engagement with Mana Whenua Iwi.

The focus of the case management process will change in the lead-up to release to a focus on risks associated with release, the services needed to manage those risks and what agencies are able to provide those services. As noted previously, the multiplicity of release conditions will demand a flexible response.

Three months out from discharge most Prisoners (who are not already so accommodated, or whose security classification prevents this) will be housed in a discrete reintegration housing unit, supported by the reintegration unit located adjacent to the education/healthcare centre. During this period Prisoners will be engaged in a preparatory programme (not unlike the Correctional Services NSW's Nexus programme, which is based on the Getting Out publication produced by the Victorian Association for the Care and Resettlement of Offenders and the New South Wales Community Restorative Centre). This will be supported by the use of checklist tools such as Working Towards Employment: Assessing Job Readiness. This will:

- enable Prisoners to practise living skills for life in the community
- facilitate combined case management, programme delivery and group work
- promote mutual support amongst Prisoners who are moving to release



- provide a motivational tool through the physical proximity to the gatehouse (and the community)
- facilitate easy access to specific reintegration services, including the employment and real estate offices.

### 5.3.6 Reviews

IMPs will be formally reviewed at least every six months and approximately two weeks prior to release. Reviews will also be triggered when specific events occur or when the case manager determines that it is necessary to ensure the effective delivery of the IMP.

SecureFuture considers the review process critical to the integrity of case management in general and to the currency of the IMP in particular. The case management staff will be required to ensure that appropriate processes are in place to liaise with all relevant persons who have contact with a Prisoner prior to their review and ensure contributions to the IMP are received. This may also often include external agencies and those communicating with victims for various reviews. Therefore, it is important to allow time for this work to take place and for the responses to be delivered and considered.

SecureFuture's approach to IMP reviews will exhibit the following features:

- clearly defined goals against which progress will be measured. These will reflect the original assessments and will include the identification of programmes and activities to address the needs identified by the assessments
- progress reviews conducted by using specific assessment tools prior to and after interventions
- progress reviews which consider any behavioural changes in the Prisoner evidenced by relevantly qualified and experienced staff
- progress reviews which reflect the extent to which a learning environment has been created in Prison
- reassessment of the Prisoner's risk of reoffending using the tier 2 dynamic risk assessment tool to assess distance travelled in addressing the Prisoner's criminogenic needs
- progress review outputs which are communicated and provide a basis for further activity, such as IMP adjustment or Prisoner counselling.

The results from the review and any follow-up documentation will be compiled for sign off and where appropriate, the reports stored with the Prisoner's core record. SecureFuture acknowledges that whilst many records are digital and appear on IOMS, signed hard copies need to be retained. SecureFuture will adhere to the statutory storage period required and will implement appropriate and robust processes to manage this.

### 5.3.7 Updating and Monitoring

SecureFuture confirms its understanding that the Department uses specific software to manage case notes known as the Integrated Offender Management System (IOMS) SecureFuture will continue the use of this software and facilitate its use by staff at the Prison. Staff will use IOMS to record clear, appropriate and detailed notes relating to a Prisoner's IMP and progress.

SecureFuture's assessment and case management tool, MegaNexus, will also be accessible to external, voluntary and third sector offender management providers who will not have access to the secure IOMS and OWR. This will link all parties involved in the 'through the gate' process and facilitate data interchange in a secure and efficient manner. Prisoners preparing for release will be given an option to agree to be monitored, both prior and after release. This system will help link much of the information gathered during the term of the Prisoner's incarceration (education level and needs, accommodation needs) and enable mentoring service providers to access it after the Prisoner's release into the community. This will allow for appropriate action to be taken prior to issues becoming critical (e.g. impending loss of job or accommodation, bullying). It will incorporate stringent security processes

that ensure that users are only allowed to see their relevant data and make changes where appropriate.

The scope of monitoring services delivered against the Prisoner's IMP has several dimensions:

- facilitating assessment of Prisoner's pathways progression
- contributing to the monitoring of prisoner health and wellbeing
- providing performance information to inform and report on the performance audit of programme and activity delivery
- identifying barriers to service delivery
- providing data and information to review a Prisoner's progress
- providing data and information on which to base changes to the Prisoner's IMP.

Monitoring will be accomplished by both formal and informal means.

Formal monitoring will take place through the case management process, in particular through the IMP review meetings and Prison audit programme. This will include the generation of material for the Parole Board.

Monitoring of services provided against IMPs will also be informed by indirect means, such as the request and complaints system, feedback from visitors, Ombudsman inquiries, Coronial Inquiry reports and Investigators' reports. SecureFuture expects that its community based service providers will provide valuable input into case management in general and to case reviews in particular, given that they will be perceived as being "outside the system" and not part of the coercive domain.

SecureFuture will also gather information gleaned from Prisoner surveys and from the meetings of the Prisoner representative forum.

These formal methods will be complemented by informal monitoring means, which will rely on relationships established between staff and Prisoners, and particularly between personal officers and Prisoners. Incidental, informal monitoring will also be undertaken by community service providers and volunteers working with Prisoners.

Informal monitoring of services delivered against IMPs will be an on-going activity.

Formal monitoring will be carried out as part of the IMP review process as detailed by the Department in its *Prison Services Offender Management Manual* Chapter 5-3.

## 5.4 Rehabilitation and Reintegration Interventions

An indicative list of interventions SecureFuture will deliver at the Prison to rehabilitate and reintegrate the Prisoners in SecureFuture's care are provided below, and is summarised in Appendix 3 Programmes Plan. This section will be the primary source of initial consideration when SecureFuture develops its detailed Rehabilitation and Reintegration Programme in accordance with Schedule 5. It should be noted that both the primary focus, and the detailed composition, of the Rehabilitation and Reintegration Programme will be subject to regular review to ensure it continues to reflect current best practice, and is tailored to the individual needs of the Prisoners.

Note: the specific tools, programmes and interventions identified in this section are subject to further review and may change during the development of the Policy and Procedures Manual and the Rehabilitation and Reintegration Programme.

### 5.4.1 Prisoner Programmes – Core

#### 5.4.1.1 Motivational programmes

SecureFuture will provide short motivational interviewing (MI) interventions to Prisoners who are assessed as not having a sufficient level of readiness to engage in a meaningful course of programmes.

#### **5.4.1.2 Literacy and numeracy programmes**

SecureFuture will prioritise addressing literacy and numeracy skill deficits among the Prisoner population. The identification of these deficits may be based on the Literacy and Numeracy for Adults Assessment Tool. This will be complemented with assessments for Māori and Pasifika Prisoners conducted by Literacy Aotearoa or another service provider.

These assessments will be followed by literacy and numeracy programmes which, where possible, will be embedded within vocational training opportunities or delivered as standalone programmes. Literacy and numeracy tutors will recognise and be responsive to learning with specific pedagogies, such as the concept of *lalaga le talanoa* (weaving of ideas) for Pasifika Prisoners.

Participation in literacy and numeracy will be offered through blended learning, which will integrate the CMS in-cell VLE with face to face classroom contact and teaching.

Literacy and numeracy will be linked to other programmes such as a drivers license theory course and story time dads.

#### **5.4.1.3 Psychological/drug programmes**

Recognising the high turnover and the high percentage of Prisoners with short sentences at the Prison, the SecureFuture approach will be to provide a menu of intensive programmes and a range of short programmes which can be continued beyond release through to community programmes.

These will be based on cognitive behaviour therapy, utilising motivational interviewing techniques to increase the Prisoner's awareness of his current lifestyle.

These will be tiered, for example as follows:

- Level 1 Orientation Programmes, such as Staying Safe Inside (which includes content on the risks and harms of substance misuse)
- Level 2 Adjustment Programmes, such as Stress Less, Thinking About Quitting, Staying Calm in Visits and Individual Counselling
- Level 3 Building Blocks for Change, which includes Drug and Alcohol Education, Life Choices, Consequential Thinking and Individual Counselling.
- Levels 4 and 5 – Criminogenic Residential AOD Treatment.

#### **5.4.1.4 Violence programmes**

A range of programmes of varying intensity and duration responding to violence will be set in place under the children and families or attitudes, thinking and behaviour pathways. SecureFuture will ensure these support the Department's special treatment units. These will include Saili Matagi and the Department's Short and Medium Intensity Rehabilitation Programmes. In addition, SecureFuture will deliver a domestic abuse programme, based on the Corrective Services NSW's accredited programme of the same name.

SecureFuture recognises the links between violent offending and sex offending and its programmes will be delivered to address this accordingly.

As part of its gang management strategy, SecureFuture has engaged with staff of the Universities of Nottingham and Saskatchewan on delivering the violence reduction programme in the Prison as part of a wider gang management strategy. The development of this will be done in consultation with the RRS and with SecureFuture's research partners at Victoria and Deakin Universities.

#### **5.4.1.5 Sex offender programmes**

SecureFuture intends to deliver an adult sex offender programme at the Prison. This may be developed around the Department's ASOTP or another accredited programme from a similar jurisdiction. SecureFuture recognises that this will require consultation with the Department to ensure

it fits with the system wide approach for sex offender treatment and access to the Department's well-regarded sex offender treatment programmes.

## **5.4.2 Prisoner Programmes – Complementary**

### **5.4.2.1 *Tikanga Māori (motivational)***

SecureFuture will develop and offer motivational programmes for Māori Prisoners. These will be directed at reintegrating traditional Māori cultural kaupapa (values) such as those derived from the body of knowledge, matauranga Māori and the teachings of Te Wananga o Raukawa. Tikanga will have formal and informal elements, the latter supporting reception procedure and induction programme and visits by Kaiwhakamana. Formal elements will include short, intensive tikanga Māori programmes and the New Life Akoranga programme. Other tikanga Māori programmes will be delivered as elements of the bi-cultural therapy model as applied to programmes such as the Matua Tanga programme described below. Service providers may include Ngati Whatua o Orakei and Unitec.

For Pasifika Prisoners, Pasifika knowledge and beliefs will be integrated into learning through the application of the concept of lalaga le talanoa.

### **5.4.2.2 *Work readiness audits and employment***

SecureFuture will undertake assessments, where appropriate to gain an insight into the work skills deficits of Prisoners with a view to documenting this detail in the IMP. This will form the basis for addressing them through participation in vocational education, to be conducted in the industries area and in the training kitchen. Other vocational training will be linked to work in support of the Kaitiaki Plan.

SecureFuture will provide extensive work opportunities (e.g. industries, horticulture, catering, cleaning, waste management and recycling/maintenance) which will be supported by vocational education at the appropriate New Zealand Qualification Authority (NZQA) level, where possible. These employment opportunities will also linked to the Kaitiaki Plan.

Activities will be linked to SecureFuture's preparation for work programme which is designed to assist Prisoners in gaining employment. It covers the process of creating a CV, searching for a job, writing an application, managing interviews and presenting evidence of skills, qualifications and experience and the law with respect to employment and criminal records. Service providers may include Workbase, Matua Raki and Prison Fellowship New Zealand. A key aspect of this will be undertaken in the final three months of a Prisoner's sentence when he may be accommodated in the residences adjacent to the reintegration unit. It will use instruments such as a Job Readiness Toolkit.

SecureFuture will operate a range of commercial industries and vocational and trade training bays. industries will be linked to vocational training and qualification. SecureFuture will ensure that vocational training, education and industries service delivery is integrated so Prisoners can transition between the areas to further develop and enhance their skill sets. This will be especially beneficial to the large number of short-term Prisoners who may not be serving long enough to complete a formal traineeship or even some modules within a traineeship. Vocational training will also be provided in the training kitchen serving the staff dining area. Other vocational training will be provided to support the implementation of wetlands recovery and horticulture under the Kaitiaki Plan.

### **5.4.2.3 *Physical education and recreation***

SecureFuture will have a comprehensive programme (typically seven activity sessions per day) of physical activity managed by PE trainers. This will be complemented by supervised physical activities in the accommodation units, and by preventative health courses conducted in the healthcare centre, by menu design by dieticians and by the scrutiny of the purchase of contraindicated foodstuffs and drinks, which the CMS purchasing module provides for.

#### **5.4.2.4 Men's health and wellbeing**

These will be short courses delivered regularly by nurses and doctors in the healthcare centre classroom. They will be linked to other health service provision and to related programmes such as drug and alcohol and physical education/recreation programmes. These programmes will be consistent with the Ministry of Health's Men's Health programme. The programmes will be delivered within a holistic health model that acknowledges health and wellbeing to be physical, social, emotional, psychological, spiritual and cultural. Delivery will also be consistent with the bi-cultural therapy model.

#### **5.4.2.5 Family programme**

SecureFuture will negotiate with relationships services for the delivery of this programme at the Prison. The programme is already Ministry of Justice approved and is suitable for all ethnicities. The Tiaki Tinana Programme will be delivered by rape prevention education in Auckland.

#### **5.4.2.6 Family Programmes – Visits Centre**

An important aspect of SecureFuture's approach to Prisoner rehabilitation and reintegration is the significance it assigns to families and children. SecureFuture will reconceptualise the visits centre as not just a place for visits administration, but rather as a gateway through which families of Prisoners can obtain support and assistance. This recognises that a Prisoner concerned with his family's circumstances is not likely to be motivated to embark upon rehabilitation initiatives. SecureFuture will negotiate with government agencies, such as WINZ, and the voluntary sector, to attend the visits centre on a scheduled basis to support families.

#### **5.4.2.7 Family Programmes – Fathers Inside**

SecureFuture will deliver a Fathers Inside programme. This initiative works through the issues of male parenting, child welfare, social responsibility and provides practical advice on child care. It also explains the impact and value of male role models. There will be a tikanga Māori version of this, the Matua Tanga (Fatherhood) programme.

#### **5.4.2.8 Family Programmes – Story Book Dads**

The aim of the programme is to assist Prisoners reconnect with their families, build the relationship between a father and a child and encourage literacy in the whole family. The programme will develop reading and articulation skills, story boarding skills, the development of relationship skills and writing skills. It also provides opportunities for Prisoners to talk about parenting, fatherhood, children's behaviour and role modelling. It fosters a reading culture in families where such a culture may not exist. It encourages Prisoners and their families to share a reading experience; to foster a continuing culture of reading in Prisoners and their families; and to encourage a positive relationship between the Prison, Prisoners and public libraries. The delivery will also reflect the application of the bi-cultural therapy model.

#### **5.4.2.9 Art**

SecureFuture recognises that art plays a significant role in Māori and Pasifika and in other indigenous cultures, which is reflected in the long tradition of art in New Zealand Prisons. With the assistance of the Art Therapy Association of New Zealand, the Australia and New Zealand Art Therapy Association, and Arts Therapy New Zealand Trust, an Art Therapy programme will be included in the menu of programmes available at the Prison.

#### **5.4.2.10 Music Therapy**

SecureFuture will work with the New Zealand experts of Music Therapy New Zealand on the design and delivery of a music therapy programme in the Prison. Kaupapa Māori aspects will be a feature of

the programme. It is planned that evaluation will be undertaken by the School of Music, Auckland University.

#### **5.4.2.11 Other Creative Arts**

SecureFuture will work with local and national agencies and service providers to develop a range of creative arts programmes for Prisoners. Examples of such programmes may include the Musica Viva outreach programme, Dance International's Intergenerational Multi-Arts Programme, kapa haka workshops, the Literatti performance poetry group activities, and wood and bone carving.

#### **5.4.2.12 Finance and Gambling**

SecureFuture will work with PGF to establish a gambling counselling service at the Prison. For Pasifika Prisoners, the Mapu Maia unit of the PGF will provide culturally appropriate services.

Prisoners will also be able to access a number of confidential gambling phone help services free of charge using the CMS in-cell phones. These will include the PGF number, the Māori Gambling Helpline, Pasifika Gambling Helpline and the Gambling Debt Helpline.

Personal debt and financial management interventions will be provided.

### **5.4.3 Intervention Development Process**

SecureFuture's intervention development process is linked to the research on re-offending. Currently this is focussed on the linkage between social exclusion and re-offending, which sees expression in the 8 pathways described in several of the previous sections of this document. The pathways are not immutable and are expected to change over the life of the Prison and also in response to changes in government policy settings.

Demographic and offence data will inform intervention development – the exemplar in this process is perhaps the rapid expansion of sex offender programmes in Prisons.

SecureFuture's approach to this issue is to work closely with the Department's RRS in the development of its interventions to ensure that they integrate with the work of RRS.

Where demographic, health or offence data suggests that an intervention is required, SecureFuture, utilising Serco's global capacity and its partnerships with the tertiary education sector, will be able to determine the nature of emerging treatment need and what the research literature is advocating. In these circumstances, SecureFuture, will where necessary, commission further research or programme development from one of its university partners or transfer innovations in place in other Serco custodial settings which have need established to respond to the treatment need. These will be shared with the Department. This research will be included in the SecureFuture research programme, which will be developed in consultation with the Department.

Once a programme or intervention is made available it will be subject to a comprehensive validation process, which will also embrace periodic reviews and updates. Again, the results of the validation process will be shared with the Department in recognition that the Prison will be part of the wider New Zealand Prison system, within which Prisoners will move and require continuity of programme provision.

SecureFuture will buttress its, and the Prison's, intervention development capacity through its partnerships with the tertiary education sector. This will occur in the following intervention areas:

- Education, Music and Arts Therapy – Auckland University
- Measuring the Quality of Prison Life (MQPL) – Cambridge University
- Gangs and the treatment of their members – Canterbury University
- Assessments and Interventions – Victoria and Deakin Universities.

This will be complemented by SecureFuture's collaboration with the Department and its intervention development capacity and based on its experience and research.

The intervention development capacity will not rely solely on formal research. There is a significant reservoir of experience in the community on which SecureFuture will draw. SecureFuture will establish partnerships with well-regarded community-based service providers to deliver services to Prisoners (and their families) from reception and induction through to release and reintegration. These service providers will have individual and collective intervention development experience, skills and knowledge capabilities which will contribute to the SecureFuture whole.

In addition SecureFuture recognises that there are other information sources where information can be exchanged and experiences shared to inform intervention capability development. A good example of this is the Te Puni Kokiri report of a wananga June 2010.

Finally, SecureFuture will develop its intervention capacity simply by listening to Mana Whenua, families, Prisoners and its staff.

#### 5.4.4 Evaluating Effectiveness

SecureFuture believes that there are several dimensions to effective programme evaluation. These are:

- **What?** Defining the precise nature of intervention, the social and/or psychological mechanisms that are to be affected, the nature of outcomes, and the programme settings
- **Why?** Ascertaining the reasons a review evaluation is conducted and the intended goals of the evaluation
- **Where?** Determining the location of the programme and the timing in relation to the chronology of the Prisoner's incarceration. Programme location can often be the deciding factor in whether a programme is successful or not. SecureFuture believes that efforts to reduce Prisoner re-offending are much more likely to be successful in a safe and secure Prison that encourages personal responsibility and initiative and in which staff are supportive and encouraging of programmes
- **Who?** Identifying programme participants and their characteristics. SecureFuture believes that this is as important as defining the nature of the programme. There are of course many other characteristics of the target population that could affect the inferences to be made, so this question is important in deciding what level of generalization is made after the evaluation is conducted
- **How?** In relation to programme evaluation this refers to both quantitative and qualitative methods of evaluation.

SecureFuture is of the view that every programme or intervention activity should be accounted for by evaluating its effectiveness. Where SecureFuture imports a programme from an external source, such as those from Correctional Services NSW, it will have to be both evaluated and accredited.

SecureFuture will set in place in consultation with RRS the development of an accreditation framework. The scope of the framework will include programmes developed by Serco and those developed by contracted community-based service providers. This will ensure that programmes delivered are evidence-based and are accredited – the objective is to set in place a compendium of accredited programmes.

This will require the establishment of a body, with external independent representation, to oversee the accreditation process and outcomes. SecureFuture intends that such a body will include representation from its partners in the tertiary education sector.

To facilitate the review and evaluation of the performance of its interventions, SecureFuture will ensure that its programmes:

- are linked to and support the 8 pathways



- are consistent with current research into what constitutes effective rehabilitative efforts (e.g. MacKenzie 2006, Department of Corrections 2009).

The hierarchy of assessments includes pre- and post-programme assessments. SecureFuture will employ effective instruments for this purpose, such as Crime Pics II, a structured questionnaire designed to measure an individual's attitude to offending on a number of distinct scales. It has been employed extensively across Serco's UK correctional operations as a tool to measure the impact of both accredited and non-accredited programmes of intervention. In 2003, the tool was adopted as one of eight measures to evaluate the impact of nationally accredited general offending behaviour programmes.

Other assessment instruments and tools will be used to evaluate specific interventions. These may include, for example, Tertiary Education Commission Literacy and Numeracy Assessment Tool Tertiary.

SecureFuture will engage with universities, such as Victoria University, Wellington and Deakin University in Victoria, in the process of review and evaluation of interventions. The Associate Director Rehabilitation will be responsible for the development of the accreditation framework, including a schedule for accreditation and review.

The outcomes of the assessment processes, further informed by clinical and professional judgment, will be documented in each Prisoner's IMP. The recommended programmes and interventions will be drawn from the compendium of programmes and will be discussed fully with the Prisoner to ensure he is motivated for programme engagement and has ownership of his IMP.

The continuing validity and relevance of programmes on which a Prisoner has embarked will be monitored through the case management process, to ensure progress against expectations. This will involve consultation with the Prisoner, family or whānau and Iwi.

#### **5.4.5 Measuring the Quality of Prison Life**

SecureFuture will implement a Measure of the Quality of Prison Life (MQPL) survey, based on the survey developed by Professor Alison Liebling of Cambridge University. The MQPL will measure complex aspects of Prison life quality, such as relationship, respect, safety and trust and compares performance among Prisons and over time. The MQPL gives an insight into the extent to which policies and procedures are being delivered from a Prisoner's point of view.

The MQPL is currently being developed for application in two Australian correctional jurisdictions with large Indigenous populations, and for Mt Eden. This will form the basis of the application of the MQPL as a tool for application in the Prison.

### **5.5 Education and Employment Opportunities**

#### **5.5.1 Education and Vocational Training**

SecureFuture recognises that deficiencies in a Prisoner's functional educational level may have subtle, far reaching, and chronically debilitating impact on his ability to operate effectively within the Prison and, subsequently, the community. As such, education and vocational training will be configured to address the following Prisoner needs as a priority:

- to develop a base functional level of literacy and numeracy in those Prisoners who are deficient
- where competency exists in an area, to progress the Prisoner through a clearly defined route to increase his skills
- to increase the employability of the Prisoner
- to increase the independent living skills of the Prisoner
- to support equality of opportunity throughout the Prison and the community through differentiated delivery
- to aid successful reintegration



- to engender a culture of lifelong learning in the Prisoner.

To address these needs, SecureFuture will offer:

- foundation (basic) skills
- general education
- vocational education.

#### **5.5.1.1 Foundation (Basic) skills**

SecureFuture will provide integrated literacy and numeracy tuition to take Prisoners from minimal functionality in these disciplines to a basic operational level. Where appropriate, the programme will also include providing basic computer literacy skills. Group sizes will reflect the intensive nature of these activities and the high degree of support needed. SecureFuture recognises that at these levels, literacy and numeracy programmes may first have to overcome significant barriers to learning. Prisoners may be reluctant to address their shortcomings through fear of peer pressure, whilst others may have developed highly sophisticated coping strategies to compensate for, and mask, their needs.

In order to most effectively address these challenges, SecureFuture will employ skilled expert practitioners in this field.

SecureFuture also intends to utilise Prisoners qualified in Assessment and Workplace Training as tutors. In addition to benefitting the Prisoners lacking literacy and numeracy skills, SecureFuture believes that this initiative will help foster a spirit of camaraderie within the Prisoner group and enable the tutors to practise the skills for post-release employment.

SecureFuture will liaise closely with external service providers, such as Literacy Aotearoa to support its foundation skills literacy and numeracy provision.

A system of peer review will be used as part of SecureFuture's quality assurance system. At regular intervals, a different member of staff will observe another session delivery and provide constructive feedback to share best and effective practice.

SecureFuture will explore and implement where appropriate informal and incidental learning. To do this, SecureFuture will train a number of staff around the Prison to act as basic skills tutors who are able, through their interactions with Prisoners, to integrate basic skills development in immediately tangible and useful ways. Whilst not education staff, the training will provide them with the confidence and techniques to provide basic skills support using their activity as a vehicle for learning. For example, a PE trainer may use a Prisoner's interest in weight loss or gain to explain how to convert imperial to metric, or a chef use the process of meal preparation to explain solid and fluid measurements, fractions (portions) and time calculations.

SecureFuture's sensitivity to low literacy levels will extend to the library operations, where SecureFuture will ensure that written material held is complemented with verbal advice. This will be achieved by including legal material in literacy programmes and through visits and addresses from community legal centre staff. In addition, staff training will include material on sources of legal advice so that they can appropriately and accurately direct Prisoners.

#### **5.5.1.2 General education**

The general education element of the provision will offer a mixed curriculum to develop existing competencies in Prisoners and provide a balanced and engaging programme of studies. Within the curriculum, subjects will be offered at varying levels to offer clear progression routes wherever possible.

SecureFuture does not propose to stream Prisoners by ability, but will use differentiated delivery within programmes to ensure educational objectives are met and Prisoners are challenged and operate at a level that delivers incremental improvement.

As a transition task, SecureFuture will develop a detailed curriculum that will cover areas such as:

- foundation skills
- ICT
- secondary school subjects
- tertiary bridging courses
- tertiary courses
- arts and crafts/design technology/ceramics
- life skills/independent-living skills
- social skills/parenting
- preparation for employment
- small business development
- pre-release
- expressive art (drama and music)
- projects.

#### **5.5.1.3 Vocational training**

SecureFuture will provide a comprehensive and attractive range of vocational training opportunities at the Prison:

- A flexible industries space, able to be configured into a range of vocational workshops. The configuration will be based on identified Prisoner employment and training needs, local skill shortages and specific industrial work contracts. One of the industries bays will be configured as a vocational training facility.
- A training kitchen which is configured to allow pastries training in addition of other requirements linked to apprenticeships.
- Vocational training linked to the Kaitiaki Plan, such as horticulture, habitat recovery and wetland management.
- Vocational training as a natural part of Prisoners providing Prison related services.
- Vocational short courses.

Where practical, SecureFuture will seek to focus its training programmes on fulfilling areas of skills shortages in sectors such as agriculture, construction and manufacturing as well as emerging industry opportunities in areas such as land care, environmental and water resources and, as noted above, to support the Kaitiaki Plan.

An integral part of this emphasis on linking vocational training to 'real' job opportunities is SecureFuture's Job Placement Programme, described in more detail in Appendix 5. This programme will offer a range of training and employment opportunities with sponsor companies who have committed to making offers of employment to successful trainees upon their release.

Vocational education will be an integral part of SecureFuture's industries workshops, main and training kitchen and external horticulture and wetlands regeneration. With the vocational trainers providing an outreach provision to industries, these activities will be closely linked. Where trades instructors are suitably qualified, they will provide in-house vocational education with the education and vocational education department offering accreditation, resources and underpinning knowledge support.

Where appropriate, the dedicated vocational education workshops will pre-train Prisoners allocated to a particular industry to develop and accredit their skills as needed prior to starting work, or after they have been working in the industry as a pre-requisite for 'promotion'.

Vocational education will also be delivered as part of Prison services, with a number of the functions of the Prison closely tied in with vocational training in the following areas/positions:

- Horticulture

- Kitchen
- Induction orderly
- Gym orderly
- Learning resource centre orderly
- Education orderly
- Stores orderly
- Canteen orderly
- Grounds maintenance
- Physical education
- Residences cleaners
- Healthcare cleaner
- Prison maintenance.

#### **5.5.1.4 In-cell learning via a Virtual Learning Environment**

SecureFuture sees each cell as a site for learning. In-cell learning will provide Prisoners with the opportunity to undertake learning during periods of lock down, improving their ICT skills, increasing their access to education and enabling them to complete courses and qualifications that will directly help them through the gate.

Benefits of in-cell learning:

- The Prisoner In-Cell System will provide access to the Virtual Learning Environment (VLE)
- Computer based Training and learning can take place during periods of lock down, increasing access to education
- The VLE allows Prisoners to develop and increase their knowledge, education and improve their ICT skills
- Prisoners can gain qualifications from within the cell
- Prisoners can complete distance learning and degree level course activities
- Prisoners can continue with their course work starters within the Prison education environment after they return to their cells

Where Prisoners are in a shared cell, they will be encouraged to make an agreement to ensure both have appropriate access to the VLE, and usage will be monitored to ensure equitable access.

### **5.5.2 Employment**

SecureFuture is fully committed to the promotion of relevant positive and transferable work habits. SecureFuture realises that for many of the Prisoners, work will not have featured as a normal part of their life. Therefore, there can be no assumption that a strong work ethic is already established within the majority of the Prison population.

SecureFuture will provide structure, challenge, and an environment where the discipline of getting up in the morning and doing a good day's work for a fair return is the critical starting point of the process. Opting out will not be an option for the Prisoners, and attempts to do so will be to his detriment. The development of the Responsible Prisoner and SecureFuture's suite of attractive opportunities, which are of demonstrable worth to the Prisoner, will encourage active and willing engagement.

SecureFuture will link Prisoner work with opportunities for accredited vocational skills training where possible. SecureFuture will maximise the accredited training potential of Prisoner work, both in terms of servicing commercial contracts and the performance of internal Prison work, including industries.

Prisoners in SecureFuture's care will have an opportunity to work in the following areas within the Prison:

- Horticulture
- Kitchen
- Induction services (as induction orderlies)

- Gym
- Education services (as tutors or education orderlies)
- Stores
- Canteen
- Grounds maintenance
- Cleaning.

The industries space may incorporate:

- A repair workshop offering generic skills development in elements of electrical and non-electrical repair and renovation (this will include an industrial cleaning element).
- A general construction trades workshop including:
  - bricklaying
  - plumbing
  - electrics
  - painting and decorating.
- A metal trades workshop including:
  - welding
  - fabrication
  - sheet metal work.

## 5.6 Achieving Effectiveness with Māori

SecureFuture has tried where possible to enable Kaupapa Māori to become part of the Prison's operational and physical environment. The initial or tentative kaupapa for the Prison are as follows:

- Te Reo Māori – SecureFuture recognises that Te Reo Māori is the medium through which tikanga Māori is expressed and through which Māori articulate and communicate meaning and identity. The Prison will foster Te Reo Māori through bi-lingual communications, including signage, audio-visual information and documentation.
- Manaakitanga – all relevant staff and Prisoners will endeavour to demonstrate mana-enhancing behaviour to others, and will take care not to undermine another person's mana. The overall approach of the Prison will show clearly that it is a positive and nurturing environment
- Rangatiratanga – all relevant staff and Prisoners will, in their interactions with each other, reveal the attributes of rangatira (chieftainship) – facilitating rather than commanding, modelling behaviour, humility, honesty, generosity; commitment to the Prison community and responsibility for self. They will also acknowledge and respect the rangatiratanga of fellow inmates and their individuality
- Whanaungatanga – all relevant staff and Prisoners are part of the Prison and wider communities. Prisoners are not alone – they will be provided with support and assistance and with the means to maintain contact with families and whānau. They remain citizens with rights which will be respected, but also have responsibilities. SecureFuture may encourage whakawhanaungatanga among Prisoners as a way of fostering greater awareness of blood ties within the Prison environment. This may have a positive effect
- Kotahitanga – the behaviour of staff and Prisoners will develop and maintain a safe and humane Prison; they will show unity of purpose and avoid actions which lead to division and disharmony. This involves mutual respect and for Prisoners to have opportunities to contribute to the Prison and its services.
- Wairuatanga – the Prison will respect the belief that there is a spiritual existence for Māori, in addition to the physical. It will also respect this attribute in non-Māori people. With this recognition comes the acknowledgement that the taha wairua of a person requires regular nourishment
- Ukaipotanga – all relevant people in the Prison, staff, Prisoners, volunteers and visitors are important and have contributions to make to the collective endeavour which are respected. The Prison will assist Prisoners find themselves, rebuild their lives and wellbeing and re-engage, as

lawful citizens, with their communities. Prisoners will be treated with respect as both Responsible Prisoners and as Prisoners who are Citizens

- Pukengatanga – the Prison is committed, in its operations and programmes, to preserving Mātauranga Māori/Māori knowledge, culture, skills and expertise and to draw upon these in the provision of services to Māori Prisoners and to their families and whānau
- Kaitiakitanga – all relevant staff and Prisoners will behave in a manner which supports the capability of the Prison to execute its responsibilities for the rehabilitation and reintegration of Prisoners back into the community. It also embraces relationships with Mana Whenua, Iwi and hapū, to facilitate their ability to exercise kaitiakitanga on behalf of Prisoners, SecureFuture acknowledges that Kaitiaki is important to the Prison in its relationship to the wider site. It will be the way the Prisoners will reconnect to the whenua/land and their position in relationship to it
- Whakapapa – the common ancestry of many of those within the Prison and their responsibility to past and future generations provides a connection between and common purpose of all relevant people involved in the life of the Prison and in the community and the basis for mutual respect and cooperation between them. Whakapapa can (re) connect whānau create alliances and support between Prisoners. It can also link to the community.

### 5.6.1 Approach

In its operation of the Prison, SecureFuture will ensure that Māori who are motivated are exposed to the Māori world view and supported by staff, whānau, hapū, Iwi, Māori service providers and other community members.

SecureFuture will introduce programmes and services designed to reconnect Māori to their cultural heritage and will ensure that day-to-day interactions with Māori Prisoners are used as opportunities to have a positive influence and build their abilities to stop offending.

SecureFuture will work in partnership with the Department of Corrections, whānau, hapū, Iwi and other Māori community groups and volunteers to assess the rehabilitation and reintegration needs of Prisoners and develop a suite of appropriate and nationally consistent programmes and interventions that respond to assessed needs and aim to decrease Prisoner re-offending and support sentence compliance.

SecureFuture will place an emphasis on Prisoners' re-entry/reintegration needs and will work with the Department to establish a number of initiatives that improve throughcare services. SecureFuture's primary objectives to assist Prisoners for effective community re-entry are:

- To support Prisoners' re-entry/reintegration into the community, leading to reduced re-offending and encouraging the adoption of law-abiding lifestyles
- To support whānau during the period of imprisonment, with the visits centre acting as a gateway for family support and advice
- To establish effective partnerships with Government agencies, hapū, Iwi and other Māori community groups and volunteers and community organisations to provide community and whānau-focused services and continuity of care and support from the Prison to community
- To increase active personal involvement in justice proceedings of the victim, Prisons and others who may be affected in accordance with the Ministry of Justice Restorative Justice initiative
- To ensure that Prisoners contribute to, rather than take from, the social capital of their communities when they return on release.

SecureFuture will be cognisant of this need in the design of its policies, operational systems, programmes and services to provide Māori Prisoners with the opportunity to understand the four interrelated domains: te taha tinana (body), te taha hinengaro (mind), te taha wairua (spirit) and te taha whānau (family).

In its operation of the Prison, SecureFuture will ensure that Māori who are motivated are exposed to Tikanga and Kawa supported by the provision of a traditional marae and Wharekura. These key

cultural spaces will be a hub for teaching and learning about Te Ao Māori: from Te Reo Māori and Whaikorero programmes, to acting as a place for the teaching of Matauranga Māori within a nurturing and culturally appropriate environment.

The wharekura which is located within the secure zone of the Prison will be available to all Prisoners as appropriate. Unlike the Wharenuī located in the marae complex, the wharekura will have a more fluid kaupapa that allows a certain amount of flexibility in relation to tikanga and kawa. It also allows wider kaupapa Māori educational initiatives to take place.

### 5.6.2 First offence unit

SecureFuture intends to establish a first offence unit within the Prison specifically targeted at short term, first time young Prisoners, many of whom may be Māori. SecureFuture Māori staff working in the unit will be supported by Māori service providers, including, where possible, by Kaiwhakamana.

The focus of the unit, with regard to Māori Prisoners, will be on Te Ao Māori and Te Ao Hurihuri. SecureFuture will provide a supportive regime involving induction, assessment, programmes and positive reinforcement to reconnect Māori Prisoners with the values of Te Ao Māori (the Māori world), address health and associated issues and learn the skills required to succeed in Te Ao Hurihuri (the global world). SecureFuture wants first-time Māori Prisoners to rejoin the whānau and community without having established links, absorbed the world view of, or become obligated to established criminals or gang members.

SecureFuture will establish Whānau Liaison Officers to assist Prisoners maintain and improve relationships with their families and communities. The first offence unit will play an important role in this support effort. A key aspect of this support will be to ensure visits are productive and mutually satisfying events. In this regard, cultural support will be sought from Kaiwhakamana and Mana Whenua.

To provide the opportunity for increased whānau, hapū and Iwi contact and involvement for all relevant Prisoners, SecureFuture will ensure a visits regime to include the weekends, with the length of visits to be determined by the Director, recognising minimum entitlements and standards.

### 5.6.3 Proposed programmes

- Tikanga Māori. This is directed at reintegrating traditional Māori cultural kaupapa (values). Tikanga will have formal and informal elements; the latter supporting reception procedure and induction programme and visits by Kaiwhakamana. Formal elements will include short, intensive tikanga Māori programmes, delivered under a *Memorandum of Understanding* with SecureFuture. Other tikanga Māori programmes will be delivered as elements of the bi-cultural therapy model as applied to programmes such as the Matua Tanga programme described below. SecureFuture is negotiating a *Memoranda of Understanding* to engage service providers, such as Ngati Whatua o Orakei and Unitec to deliver tikanga Māori.
- Matua Tanga (Fatherhood) programme. SecureFuture intends to deliver a tikanga Māori “Fathers Inside programme”, Matua Tanga (Fatherhood). This initiative works through the issues of male parenthood, child welfare, social responsibility and provides practical advice on child care. It also explains the impact and value of male role models.

These Māori-specific programmes will be delivered in conjunction with SecureFuture’s other bi-cultural programmes:

- men’s health and wellbeing
- physical recreation
- gambling
- literacy and numeracy
- Kaitiaki programme
- skills employment/work readiness audits

- art
- computers/ICT/graphics/webpage development/digital art and e-content development
- music therapy.

## 5.7 Rehabilitation and Reintegration KPIs

The case management system will record on the achievement of the Rehabilitation and Reintegration KPIs. SecureFuture will develop a detailed process for the methodology to be used to identify the Rehabilitation and Reintegration KPIs against which each Prisoner will be measured, and to record progress and scoring of those KPIs, in accordance with the framework set out in Appendix 6, Approach to R&R KPIs.

## 6. INTEGRATION AND RELATIONSHIPS

SecureFuture recognises that the Prison sits within a wider correctional system and that its Prisoners will include the newly sentenced from Mt Eden, but also some on a release to Community Probation Service trajectory to engage in the programmes detailed in the Department's document *Community Based Interventions 2011*. Reflecting the multiplicity of release types noted above, others will commence programmes at the Prison and may move to other Prisons before programme completion.

SecureFuture will work closely with the Parole Board, Community Probation Services, contracted community-based service providers and volunteers (Kaiwhakamana and Fatua the Pasifika) to manage the transition of Prisoners from the Prison to the community, where the Prisoner will be supervised by CPS or will be released.

A unique feature of the SecureFuture reintegration solution is the Prison community office which will likely be co-located with a contracted community-based service provider. The community office will provide a venue for advice and support to the ex-Prisoner and his family. A limited range of support interventions will also be provided, on an as-required basis.

SecureFuture recognises that ex-Prisoners have clear psychosocial and social difficulties in leaving Prison and that these rise from 9% during the first days to 21% at the 1st-month mark. To respond to this, SecureFuture will establish a volunteer-based mentoring scheme at the community office which will be supported by a hotline. This will provide an alternative source of advice, support and practical assistance.

Apart from equipping the Prisoner with the skills and knowledge to allow him to add to the social capital of family/whānau or Iwi or wider community, there is a symbolic aspect to Prisoner reintegration which SecureFuture and Mana Whenua Iwi will jointly facilitate. Once a Prisoner has completed his term of incarceration, he will be invited to receive a poroporoaki or potaetanga as he graduates. The representatives of the Prisoner's Iwi or hapū will be present at that ceremony and each Prisoner will be presented with a tohu, a symbol of their learning and commitment to their positive personal development. Given by the Mana Whenua, the tohu symbolises an acknowledgement of the Prisoner's participation and tautoko of the Kaitiaki programme. In this way, a Prisoner's release from the Prison will be culturally ratified.

SecureFuture recognises that successful reintegration requires the close and timely collaboration of multiple organisations, agencies and positions in the Department and in the Prison. SecureFuture will work closely with these.

### 6.1 Department and other Governmental Entities

The SecureFuture approach to integrating with the Department's intervention suite is to ensure that SecureFuture is consistent with the principles underpinning the Department's provision of rehabilitation and reintegration programmes. These principles are:

- intensive rehabilitation interventions are offered to the Prisoners most likely to re-offend
- rehabilitation focuses on the key factors linked to a person's offending behaviour
- interventions offered take into account an individual's way of learning and changing.

To these principles SecureFuture adds its commitment that its services are evidence-based – a key element of SecureFuture's service delivery philosophy.

SecureFuture acknowledges that while the Department has been successful with a number of its the existing programmes, such as Whare Oranga Ake, it continues to seek innovations that can further promote effective rehabilitation and reintegration for Prisoners and achieve a reduction in re-offending. SecureFuture's approach to integration with the Department's intervention suite will also be through the development and sharing of innovation.



### 6.1.1 Levels of integration

SecureFuture considers that there are three levels at which integration with the Department's intervention suite will take place.

#### 6.1.1.1 *The policy and legislative level*

SecureFuture considers that the first dimension of integration with the Department's integration suite will take place at the Legislative and Policy level. In formulating its solution, SecureFuture has developed a thorough familiarity with, and understanding of, the New Zealand legislative framework and Department intervention philosophy and objectives.

In addition, SecureFuture's operations will be closely informed by, and aligned with, the Department's strategic planning documents, including:

- Statement of Intent 2011-2014
- Strategic Business plan 2011-2014
- Prisoner Skills and Employment Strategy 2009-2012
- Drug and Alcohol Strategy 2009-2012
- Māori Strategic Plan 2008-2012
- Pacific Strategy 2008-2013.

#### 6.1.1.2 *Practice and operational level*

SecureFuture confirms that its solution will achieve:

- functional integration within the agency
- programme integration
  - motivational programmes (including tikanga Māori)
  - rehabilitation programmes (plus Māori specific)
  - reintegrative programmes (living skill focus)
  - employment and education programmes.

#### 6.1.1.3 *Service Delivery Level*

The integration of SecureFuture programmes and interventions with the Department's intervention suite will be facilitated, in the first instance, by the SecureFuture service delivery philosophy.

Integration will be further facilitated by SecureFuture's adoption of a version of the proven alliance offender management model which will bring together community service providers, such as the Salvation Army or PARS, into Prison rehabilitation and reintegration effort from the reception and induction phase, providing continuity through Prisoners' sentences to release and re-integration. This will build on the Department's substantial use of community-based service providers.

This will be supported by the reintegration unit located in the education/health building, which includes facilities linked to the Prisoner pathways. Reflecting the need for a normalised and therapeutic learning environment, these facilities include a real estate office (accommodation pathway) and job centre (employment pathway). The reintegration unit will have a strong focus on working closely with the CPS and the RRS.

### 6.1.2 Rehabilitation and Reintegration Services

SecureFuture understands that RRS:

- Is responsible for developing and managing sentence plans for Prisoners.
- Provides a pathway for Prisoners to be prioritised for assessment, planning and interventions.
- Is focused on employment, education, constructive activities, specialised treatment services and offence-focused programmes.

- Works closely with other services and agencies and is in particular committed to utilising Māori leadership and expertise from both within and outside the Department to better support pathways out of crime for Māori Prisoners.
- Delivers interventions to Prisoners to address their offending behaviour. For many Prisoners substance misuse is a factor in their offending
- Gives Prisoners the opportunity, through its Corrections Inmate Employment arm, to improve their work habits, work experience and skills so they can improve their chances of employment after their release.

SecureFuture notes also that there are prison-based units with special areas of rehabilitation. These include sex offender treatment units, a violence prevention unit, a faith based unit, Māori focus units and youth units.

Whilst committed to delivering innovative solutions, SecureFuture will integrate with RSS endeavours to ensure a consistent foundation across its interventions so that Prisoners are able to move between Prisons without disruption to IMP content.

### 6.1.3 Community Probation Services

SecureFuture understands that the purpose and goal of the Department's CPS are to:

- ensure Prisoners comply with the requirements of their sentence or order
- reduce the likelihood of Prisoners re-offending
- minimise the risk of harm Prisoners present to others.

SecureFuture also acknowledges that the outcome(s) sought by CPS are:

- Prisoners successfully complete their sentence/order
- Prisoners comply with the requirements of their sentence or order.
- appropriate enforcement action is taken against Prisoners who do not comply or successfully complete their sentence/order
- Prisoners' re-offending rates reduce
- seriousness of Prisoners' re-offending reduces
- frequency of Prisoners' re-offending reduces
- harm to others is reduced.

SecureFuture recognises its obligation to assist CPS in managing the demands placed upon it at all three levels of integration. In particular, this will apply to meeting the requirements of the courts and the Parole Board. The latter will undoubtedly have an expectation of consistency in intervention service provision so that its requirements can be met regardless of where the Prisoner is accommodated.

SecureFuture also recognises that there are several Prisoner discharge scenarios which also require intervention suite integration. These include for example, remitted release, release on orders and release on sentence completion. Some of these various forms of release may come with community-based interventions attached. SecureFuture will work closely with CPS and RSS to ensure that its interventions suite complement those of the latter.

## 6.2 External Service Providers

SecureFuture has commenced discussions with several community based service providers to investigate capacities and willingness to be engaged in the project. Following contract financial close SecureFuture will negotiate service level agreements with selected service providers to be ready to deliver services from the Service Commencement Date. Potential partners include:

- PARS
- UNITEC
- Salvation Army

- Auckland City Mission
- Tertiary education sector
- Problem Gambling Foundation
- Citizen Advice Bureau
- NZ Federation of Budget Advisors
- Prison Fellowship
- Relationships Services
- Literacy and Numeracy Aotearoa
- Work base
- Art Therapy NZ
- Music Therapy NZ
- Mahi Mahi Trust
- Waipareira Trust
- PILLARS
- Rape Prevention Education.

SecureFuture notes that there are groups which do not currently have the capacity to be engaged in service provision at the Prison. SecureFuture expects to be involved with selected groups, over the life of the contract, to develop their capacity to provide services to Prisoners and to their families/whānau and Iwi.

## 7. CONTRACT MANAGEMENT

### 7.1 Staff

#### 7.1.1 Ensuring good order and management

The Prison Director, Associate Directors and senior management team will be critical to the successful management of the Prison and the overall maintenance of good order. The senior management team will provide strong and unequivocal plans, programmes, direction and support to managers, supervisors and staff so that the Prison operates effectively and achieves its goals and vision.

A key strategy for SecureFuture regarding the management of staff is to have the right people, doing the right job at the right time. This will ensure that safety, security and good order issues are not compromised and that staff feel supported and valued in their role. Visible leadership remains a key element to this and the management team at the Prison will provide appropriate role models for this behaviour.

#### 7.1.2 The Prison management team

The following is an overview of SecureFuture's senior management team and their roles in providing leadership and management to the Prison:

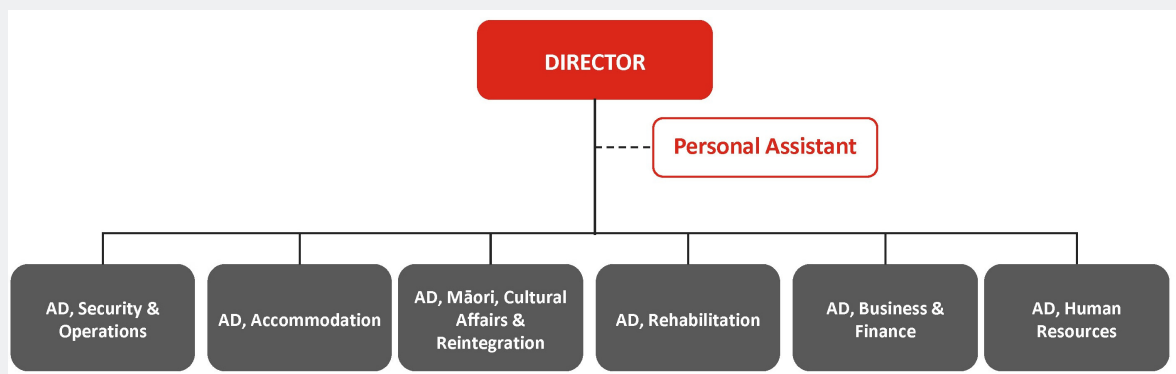


Figure 6: Prison Management Team

##### 7.1.2.1 Prison Director

- to demonstrate clear and visible leadership, both for staff and Prisoners and to operate in an open and approachable manner
- to manage the Prison and the Contract to the required standard and to ensure the safety and security of those in their care
- to determine and implement the strategic vision for the Prison and ensure the appropriate selection of staff to deliver the requirements
- to ensure the Prison operates in accordance with the relevant legislation, directives, policies and procedures, including financial processes
- to have managerial responsibility for the senior management team and a wider responsibility for general management of staff, including disciplinary procedures
- to seek to develop the Prison, staff and Prisoners within their charge
- to meet and assure performance and to work in conjunction with the Department, meeting the needs of the wider justice sector.

SecureFuture acknowledges the requirements of Section 199 of the Corrections Act and will keep the Department fully informed during the selection and appointment process of the Prison Director

#### **7.1.2.2 Associate Director Security and Operations**

- to be responsible for the day-to-day operations of the Prison
- to manage the Prison in the Director's absence, therefore taking on the full remit of authority as prescribed to the Director during those periods
- to be responsible for the review of policies, procedures and processes in relation to all relevant aspects of the Prison and its operation
- to ensure risk management is appropriately managed, including the creation and regular review of the risk register
- to deliver a safe and secure Prison, and assure the welfare and safety of all relevant stakeholders
- to be responsible for the security of the Prison and manage the operations within this context
- to minimise the level of drugs entering the Prison and incidents of violence which occur
- to manage the intelligence gathering systems and encourage the promotion of their use
- to be responsible for the following departments and staff: security & intelligence, risk assessments, gate, control room, entry procedures, reception, visits, contingency plans, searching procedures and security training
- to ensure processes and policies are regularly tested, reviewed and updated.

#### **7.1.2.3 Associate Director Business and Finance**

- to manage all finance and accounting duties for the Prison
- to prepare and assist with the interpretation of accurate timely and relevant management reporting in support of operations
- to provide input and support for financial corporate and statutory reporting
- to coordinate information from all relevant departments and complete reporting
- to oversee the performance, maintenance and development of information technology and systems in consultation with system providers and users
- to be responsible for the proper recording and accounting of all relevant assets
- to manage office and administration services.

#### **7.1.2.4 Associate Director Rehabilitation**

- to be responsible for the regime operating at the Prison and ensure performance measures and standards are met in relation to these areas
- to ensure a Reducing Re-offending Strategy is completed and informs both the development of the regime, the provision of work, education and programmes, but also outlines the groups with whom SecureFuture will be partnering to achieve delivery
- to demonstrate clear links between the Reducing Re-offending Strategy and the wider social inclusion agenda
- to develop a Local Reducing Re-offending Action Plan
- to be responsible for the departments and staff as follows: education, chaplaincy, industries, Prisoner work, vocational qualifications, gymnasium, offender management and rehabilitation
- to manage the offender planning process, to ensure appropriate assessments are conducted and the process completed in accordance with the appropriate legislation, directives, policies and procedures; including monitoring the population changes and how Individual Management Plan (IMP) objectives are being met
- to manage the delivery and development of programmes throughout the Prison and ensure this meets the needs of Prisoners in terms of offence related risk and their IMP objectives.

#### **7.1.2.5 Associate Director Māori, Cultural Affairs and Reintegration**

- provide leadership for all Māori and Pasifika staff
- ensure the delivery of high quality, timely Reintegrative services to Prisoners
- manage the involvement of whānau, hapū and Iwi in the reintegration process
- manage the reintegration unit and the Prison community office

- ensure the close collaboration of reintegration staff and activities
- ensure effective cooperation with and service delivery to the Parole Board, RSS and CPS
- ensure close and productive relationships with whānau, hapū and Iwi
- ensure close and productive working relationship with Pasifika representatives and those of other cultural communities
- provide the primary point of contact within the Prison for Mana Whenua Iwi
- manage all cultural events within the Prison
- ensure the Prison's compliance with diversity obligations
- control the use of all cultural facilities within the Prison
- work collaboratively with the Department's Māori and Pasifika staff

#### **7.1.2.6 Associate Director Accommodation**

- to manage the accommodation areas, staff and Prisoners in a fair, open and pro social manner
- to develop and encourage the use of the correctional management system (CMS) and ensure it is applied correctly to ensure Prisoners are not unfairly treated
- to manage the Prisoner population and any issues resulting from increasing or decreasing the Prisoner population or a change in the nature of the population
- to ensure applications, complaints and requests are dealt with in accordance with the appropriate directives, policies, procedures and manuals and that all relevant time scales are adhered to
- to ensure Prisoners have regular access to managers, to ensure the organisation of the PIAC meeting and the various other Prisoner representative groups
- to ensure catering services meet the needs of Prisoners
- to ensure that issues relating to diversity and the various Prisoner groups are appropriately met
- to manage the suicide and self-harm strategy, including chairing the multi-disciplinary meeting in regards to self-harm incidents
- to ensure the delivery of the appropriate procedures in relation to those considered to be at risk.
- Assistant Director Human Resources
- to manage the Recruitment, Training and Retention Strategy, and HR policies and directions
- to manage all specific HR/IR issues.

#### **7.1.3 Staff Behaviours**

SecureFuture strongly believes that the success of its rehabilitation efforts is inherently dependent on ensuring that all relevant staff are supportive of the interventions SecureFuture deliver to the Prisoners in their care.

Officers will have job descriptions detailing their duties and the work standards which apply to those duties, an annual appraisal with clear objectives and a PDP outlining any training to be undertaken. Job descriptions will also contain cultural competency requirements to ensure case management for Māori and Pasifika is culturally appropriate. SecureFuture will use these job descriptions, and staff personal development plans, as tools to train, assess and manage staff in a pro-active and positive manner. This will ensure consistency in performance and reflect any developmental needs an individual may demonstrate. These tools also provide the basis of the system to reward staff who perform their case management (and other) roles enthusiastically and competently.

SecureFuture understands the graduated level of responsibility required to make various decisions within a case management context and to encourage and motivate a Prisoner to meet agreed IMP pathways and goals. Staff will also be made aware of their collective role and of where the Department makes the decisions regarding Prisoners. It will be vital that staff understand the legislative provisions and the relevant policies, processes and procedures to which they are bound. This will ensure that staff do not step beyond their boundaries, leaving the Prison or the Department exposed to external regulatory agency or public criticism, with consequent reputation damage.

To achieve successful rehabilitation outcomes for the Māori Prisoners in its care, SecureFuture will have a workforce that is fully equipped, through recruitment, training, development and support, to be culturally responsive with Māori. In its recruitment, vetting, induction and training procedures at the Prison, SecureFuture will be cognisant of the ethnicity of the Prisoner population and obtain both ethnic and cultural balance.

Working together with its Māori advisors, SecureFuture will carefully select the case management team to ensure that its members have both the necessary organisational ability and skills to deliver the reports and process, but also that they are culturally responsive to Māori and confident in their dealings with families, whānau, hāpu, Iwi and other Māori community groups and volunteers. SecureFuture will have in place training and support structures for Māori staff, to build their confidence in core skills and encourage their development. In particular, management staff will be actively encouraged to become competent in Te Reo and comfortable in tikanga Māori.

SecureFuture notes from the Departments' published information, that considerable success has been achieved through the provision of cultural training modules and support from Kaiwhakamana, Kaiwhakahaere, cultural advisors, liaison officers and the Department's Māori staff. SecureFuture also notes this has been supported through the development of staff networks across groups and services and the provision of an internal managerial mentoring programme, to raise leadership capability amongst Māori staff.

#### **7.1.4 Lines of responsibility**

SecureFuture will structure its businesses to ensure that there is no confusion about who is responsible for the outcomes of a section, area or activity. In this structuring there will be clear lines of responsibility and reporting. This will be achieved regardless of SecureFuture's organisational structure being on the basis of function or geography. SecureFuture will avoid complex structures where reporting lines, responsibility and authority could be ambiguous and confusing (e.g. matrix management, functional relationships).

#### **7.1.5 Role definition**

Role definition will be a foundation component of the SecureFuture management system. SecureFuture's position descriptions will set out reporting relationships, dimensions of the position, key responsibilities and the competencies required for satisfactory performance in the position. These role descriptions will also ensure that the activities of the Prison are clearly delegated and avoid confusion where respective roles require close work between colleagues without confusion and undue overlap. Clear position descriptions will also ensure that the position is well defined, including skills and competencies, ensuring that the individuals are well matched to their respective roles.

#### **7.1.6 Setting staff objectives**

SecureFuture will set staff objectives which require discussion and agreement between a manager and his/her direct reports as to:

- prospective corporate targets
- business or functional unit specific targets
- personal targets
- objectives
- development plan.

These abovementioned processes are collaborative. Employees will have a clear view of what is expected of them and will be able to monitor their progress against agreed objectives as the system cycle progresses.

### 7.1.7 Performance review

Performance reviews of SecureFuture's staff will be conducted every six months. Performance reviews are an important formal opportunity for two-way communication between a manager and his/her direct reports about immediate past performance against agreed targets, the content of the position and the employee's future development. It also involves the refining of objectives, the setting of new objectives and adjustment of the accountabilities and responsibilities expected of the position. Reviews will be recorded in writing and copies held by managers and their direct reports.

### 7.1.8 Training

SecureFuture staff will be well trained in the requirements of their duties and the responsibilities of the positions they are deployed to. All relevant staff will be cognisant of the Department's Project Outcome requirements for the Prison regarding sentence compliance and reducing re-offending and achieving effectiveness with Māori. Staff training will identify the role of each individual staff member's position and their contribution to achieving these outcomes.

Staff will undergo regular refresher training according to any performance review outcomes, changes in roles, relevant legislation or procedures and particularly in regards to emergency response and incident management via live and desktop exercises.

## 7.2 Performance Management and Reporting

Performance management is an integral component of SecureFuture's service delivery philosophy. SecureFuture recognises that performance needs to be accurately measured and assessed to ensure that the contract objectives are being met and to allow ongoing analysis as part of a continuous improvement process to identify ways to improve service delivery.

As part of the on-site service delivery team there is a dedicated performance management unit headed by a performance manager who reports to the Associate Director Business and Finance to ensure that the performance goals are being achieved and that service delivery standards are being improved. The performance manager is assisted by two compliance and audit team members who are trained officers.

SecureFuture will develop and implement an agreed performance monitoring programme (PMP) that will form part of the Policy and Procedures Manual. The development and implementation of the PMP will draw upon Serco's established quality management system which is geared towards continuous compliance monitoring.

The PMP will set out the manner in which SecureFuture will monitor its own performance to ensure that it provides all the services to the standards specified in the Agreement.

Generally, the purpose of the PMP is to:

- articulate SecureFuture's delivery philosophy
- assist with early identification of service performance issues (for example, consistent performance standards, trends, reoccurring issues and themes)
- review performance results
- modify or adjust operational policies and procedures as a result of the review process, and
- provide background information to obviate the need for abatement.

The PMP will define and describe the performance obligations during the Operating Term. Specifically, it will detail how SecureFuture will deliver against the performance parameters, and its intended approach to performance monitoring.

The PMP development process will address each element and sub-element of the services and take into account factors such as:



- operations and maintenance service requirements
- applicable performance parameters
- failure parameters
- performance assessment periods
- policies and procedures referable to the relevant service element
- the perceived objectives behind each performance parameter
- identify appropriate performance monitoring methodologies and allocate responsibility.

Some elements of the PMP will refer to other programmes (for example the Rehabilitation and Reintegration Programme, Quality Plan), to ensure integrated services delivery and performance management.

The PMP will be reviewed as part of the Policy and Procedures Manual when that manual is updated.

The PMP will reference applicable policies, procedures, manuals, and template documents, to ensure that self monitoring draws upon and makes appropriate comparisons to agreed operational approaches.

The performance management team will produce the monthly performance reports. Regular meetings will be held with the Prison Director regarding achievement of the required performance targets and thereby provide a regular forum for collective monitoring and review of Service performance.

Performance will be reviewed as part of the monthly contract meeting as well as part of a joint quarterly review by a joint Prison Board structure.

### 7.2.1 Performance Management Unit

To consistently maintain a well managed and ordered Prison, the performance management unit will have processes and scheduled audits and tests in place to check that SecureFuture is compliant with its own procedures, legislation and the requirements of the Contract.

In addition, SecureFuture's senior management team will conduct regular checks in their areas of responsibility.

SecureFuture's approach to satisfying the process requirements for the good order and management of the Prison will be undertaken by a number of strategies and actions, namely:

**Table 16: Model for achieving compliance**

Approach	
<b>Commitment</b>	<ul style="list-style-type: none"> <li>– SecureFuture has indicated that part of its philosophy and approach is a strong commitment to delivering a safe and secure Prison</li> <li>– Intrinsic in this is the requirement for a well managed Prison and one that has a foundation of good order</li> </ul>
<b>Policy and Procedures Manual</b>	<ul style="list-style-type: none"> <li>– The Prison Policy and Procedures Manual will capture the relevant requirements of:               <ul style="list-style-type: none"> <li>– All relevant legislation</li> <li>– Departmental policies and procedures</li> <li>– Contract requirements</li> <li>– The duty of care owed to Prisoners, staff and visitors to the Prison</li> <li>– Processes to enable a safe and secure Prison</li> <li>– The processes to ensure good order is maintained in the Prison</li> <li>– Contingency responses to emergencies</li> </ul> </li> </ul>
<b>Staff training</b>	<ul style="list-style-type: none"> <li>– There will be segments in SecureFuture's pre-service training courses, security awareness courses and recurring training covering the Policy and Procedures Manual and other relevant Operative Documents.</li> </ul>

	<b>Approach</b>
	<ul style="list-style-type: none"> <li>– This training will enshrine the need for complete compliance with these formal requirements</li> <li>– The training will have a heavy focus on safety, security and good order</li> </ul>
<b>Checks</b>	<ul style="list-style-type: none"> <li>– An important role of SecureFuture’s managers and shift supervisors will be the checking of the actions of its base grade staff to make certain that their actions are in accordance with the requirements of the Policy and Procedures Manual</li> <li>– Where any deviation by staff from the procedure requirements is observed, then there will be actions taken by the supervisor to discuss, adjust and rectify such observations.</li> <li>– If the supervisor concludes that there is a training deficit in a staff member in regard to procedure knowledge or understanding of the need to comply, the staff member will be referred for further training and development</li> <li>– Safety, security and good order will be specifically assessed as part of all relevant checks</li> </ul>
<b>Reviews of Incidents and events</b>	<ul style="list-style-type: none"> <li>– SecureFuture will have all incidents investigated to establish the cause, as appropriate. A key requirement of such investigations will be any issues pertaining to good order within the Prison</li> <li>– The Associate Director Security and Operations will review all relevant breaches and complaints regarding Prisoners to establish that the required level of control and good order was being maintained</li> </ul>
<b>Regular checks</b>	<ul style="list-style-type: none"> <li>– Management processes will include in-depth performance and compliance checks. These checks will be in many formats including: <ul style="list-style-type: none"> <li>– Safety and security of the Prison</li> <li>– Elements of good order and control within the Prison</li> <li>– Checking of log books and registers for applicable entries</li> <li>– Investigating incidents or occurrences to produce findings</li> <li>– Appraising reports and operational reviews from supervisors</li> <li>– Meeting with supervisors and discussing aspects of operations pertaining to safety, security and good order</li> <li>– Feedback from meetings with staff</li> <li>– Observing daily operations and service delivery</li> </ul> </li> <li>– A collective outcome of these managerial checks will be a knowledge of areas where there is a need for minor managerial attention to ensure good order is being maintained</li> </ul>
<b>Annual Audits</b>	<ul style="list-style-type: none"> <li>– SecureFuture will have a performance management unit with compliance and audit officers as part of the management team. These positions will be responsible for having a comprehensive set of checks in place.</li> <li>– Central in these checks will be the Annual Audit Plan for the Prison, outlined in the section below. These audits will have a focus of the main areas of: <ul style="list-style-type: none"> <li>– Compliance</li> <li>– Safety</li> </ul> </li> </ul>

Approach	
	<ul style="list-style-type: none"> <li>– Security</li> <li>– Good order</li> <li>– Overall relevance and applicability of the current procedures</li> <li>– As part of its transparent approach to management, SecureFuture will supply to the Department a full copy of all audit reports</li> <li>– The assessment and subsequent action plans will require rectifications to any areas where compliance might have been identified as an issue</li> </ul>
<b>Meetings with the Department</b>	<ul style="list-style-type: none"> <li>– SecureFuture is keen to meet with the Department on a regular basis. The agenda for such meetings will, in part, be discussions on any areas of concern or perceptions regarding any issues of safety and order within the Prison operations</li> </ul>
<b>Contingency Plan testing</b>	<ul style="list-style-type: none"> <li>– SecureFuture will have a annual regime of live contingency plan tests and desk top reviews of contingency plans</li> <li>– These test and reviews will ensure that the Prison has a capacity to respond to emergencies and to ensure that the good order and security of the Prison can be maintained</li> </ul>

### 7.2.2 Quality Assurance

The Operational Quality Assurance Plan will be developed and reviewed in accordance with Schedule 5, and will provide details of how SecureFuture will review and assess compliance with Corrections Services Requirements and with its own Policy and Procedures Manual. Compliance will be formally assessed in accordance with the Annual Audit Plan, which will assess performance in areas such as:

- Safety and security, including (but not limited to):
  - Conduct of searches
  - Entry and exit controls
  - Management of keys, tools and other critical equipment
  - Prisoner transfers and escorts
  - Monitoring telephone calls
- Prisoner entitlements, including:
  - Management of Prisoner complaints and suggestions
  - Trust accounts
  - Prisoner pay
  - Prisoner purchases
  - Access to information
  - Access to pro-social networks, family and whānua
- Rehabilitation and Reintegration, including:
  - Compliance with the Rehabilitation and Reintegration Programme
  - Encouragement of involvement of family
  - Provision of education and training opportunities linked to NZQF, where appropriate
- Interfaces with external agencies, stakeholders and providers, including compliance with Department Applications and procedures.

Rehabilitation	Activities	Industries	Operations and Accommodation	Reintegration	Health
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TIME		ACTIVITY
8.40am		Prisoners to work in the industries areas
8.50am		General practitioner sessions commence – 8.50am to 11.20am - Mon to Fri
8.50am		Healthcare (general and Psychiatric nurses) sessions commence – 8.50am to 11.20am - Mon to Fri
9.00am		Visits commence – session one - 1 hour – Fri, Sat and Sun
9.00am		Induction Program commences – 9.00am to 11.30am – Mon to Fri
9.00am		Job Centre opens – 9.00am to 11.30am & 1.00pm to 4.00pm – Mon to Fri
9.00am		Accommodation Office opens – 9.00am to 11.30am & 1.00pm to 4.00pm – Mon to Fri
9.00am		Library opens – 9.00am to 11.30am & 1.00pm to 4.00pm – Mon to Sun
9.00am		Spiritual Space opens – 9.00am to 11.30am & 1.00pm to 4.00pm – Mon to Sun
9.00am		Morning programs sessions commence – 9.00am to 9.45am - Mon to Fri
9.10am		Morning programs - Session A – 9.10am to 10.10am Mon to Fri
9.10am		Morning programs - Session A – Schedule Classroom 1 - 10 Prisoners Classroom 2 - 10 Prisoners Classroom 3 - 10 Prisoners Classroom 4 - 10 Prisoners Classroom 5 - 10 Prisoners Classroom 6 - 10 Prisoners Classroom 7 - 10 Prisoners Classroom 8 - 10 Prisoners Classroom 9 - 10 Prisoners Classroom 10 - 10 Prisoners
9.15am		Morning activities sessions commence – 40 minutes – 9.15am to 9.55am – Mon to Sun
9.55am		Second activities session commences - 40 minutes – 9.55am to 10.35am - Mon to Sun
10.00am		Visits commence – session two - 1 hour – Fri, Sat and Sun
10.10am		Morning programs - Session B – 10.10am to 11.10am - Mon to Fri
10.10am		Morning programs - Session B – Schedule Classroom 1 - 10 Prisoners Classroom 2 - 10 Prisoners Classroom 3 - 10 Prisoners Classroom 4 - 10 Prisoners Classroom 5 - 10 Prisoners Classroom 6 - 10 Prisoners

TIME		ACTIVITY
		Classroom 7 - 10 Prisoners Classroom 8 - 10 Prisoners Classroom 9 - 10 Prisoners Classroom 10 - 10 Prisoners
10.35am		Third activities session commences- 40 minutes – 10.35am to 11.05am - Mon to Sun
11.15am		Prisoners working in kitchen deliver lunch meal to unit and retrieve any breakfast items
11.15am		All Prisoners not involved in industries returned to the accommodation units
11.30am		Midday medication round
11.35am		Prisoners in secure accommodation units issued lunch
11.50am		Secure accommodation and residential area locked down
11.55am		Headcount and wellbeing check conducted
12.00pm		Officers meal break
12.00pm		Prisoners in industries remain there over the lunch period. Lunch on site
1.00pm		Prisoners unlocked
1.00pm		Induction Program commences – 1.00pm to 4.00pm – Mon to Fri
1.00pm		Job Centre opens – 1.00pm to 4.00pm – Mon to Fri
1.00pm		Accommodation Centre opens – 1.00pm to 4.00pm – Mon to Fri
1.00pm		Library opens – 1.00pm to 4.00pm – Mon to Sun
1.00pm		Spiritual Space opens – 1.00pm to 4.00pm – Mon to Sun
1.10pm		Visits commence – session three - 1 hour – Fri, Sat and Sun
1.15pm		Afternoon programs - Session C – 1.15pm to 2.15pm - Mon to Fri
1.15pm		Afternoon programs - Session C – Schedule Classroom 1 - 10 Prisoners Classroom 2 - 10 Prisoners Classroom 3 - 10 Prisoners Classroom 4 - 10 Prisoners Classroom 5 - 10 Prisoners Classroom 6 - 10 Prisoners Classroom 7 - 10 Prisoners Classroom 8 - 10 Prisoners Classroom 9 - 10 Prisoners Classroom 10 - 10 Prisoners
1.20pm		Fourth activities session commences- 40 minutes – 1.20pm to 2.00pm - Mon to Sun
2.00pm		Fifth activities session commences- 40 minutes – 2.00pm to 2.40pm - Mon to

TIME	ACTIVITY	
		Sun
1.45pm		General practitioner sessions commence – 1.45pm to 3.45pm - Mon to Fri
1.45pm		Healthcare (general and psychiatric nurses) sessions commence – 1.45pm to 3.45pm – Mon to Fri
2.10pm		Visits commence – session four - 1 hour – Fri, Sat and Sun
2.15pm		Afternoon programs - Session D – 2.15pm to 3.00pm - Mon to Fri
2.15pm		Afternoon programs - Session D – Schedule Classroom 1 - 10 Prisoners Classroom 2 - 10 Prisoners Classroom 3 - 10 Prisoners Classroom 4 - 10 Prisoners Classroom 5 - 10 Prisoners Classroom 6 - 10 Prisoners Classroom 7 - 10 Prisoners Classroom 8 - 10 Prisoners Classroom 9 - 10 Prisoners Classroom 10 - 10 Prisoners
2.40pm		Sixth activities session commences- 40 minutes – 2.40pm to 3.20pm - Mon to Sun
3.00pm		Sixth activities session commences- 40 minutes – 1.20pm to 2.00pm - Mon to Sun
3.00pm		Afternoon programs - Session E – 3.00pm to 3.45pm - Mon to Fri
3.00pm		Afternoon programs - Session E – Schedule Classroom 1 - 10 Prisoners Classroom 2 - 10 Prisoners Classroom 3 - 10 Prisoners Classroom 4 - 10 Prisoners Classroom 5 - 10 Prisoners Classroom 6 - 10 Prisoners Classroom 7 - 10 Prisoners Classroom 8 - 10 Prisoners Classroom 9 - 10 Prisoners Classroom 10 - 10 Prisoners
3.10pm		Visits commence – session five – 45mins – Fri, Sat and Sun
3.20pm		Seventh activities session commences - 35 minutes – 3.20pm to 4.15pm - Mon to Sun
3.45pm		All industries cease and Prisoners returned to accommodation areas/units
3.45pm		All programs cease and Prisoners returned to accommodation areas/units

TIME	ACTIVITY
3.55pm	Visits cease – Prisoners returned to accommodation areas/units
4.15pm	Activities cease – Prisoners returned to accommodation areas/units
4.00pm	Quiet time
4.00pm	Evening meals delivered to accommodation units - lunch containers removed
4.15pm	Evening meal for Prisoners and medication round
4.45pm	Secure block Prisoners locked down
4.45pm	Headcount and wellbeing check conducted
4.55pm	Debrief of day shift
5.00pm	All day shift (Secure Accommodation – except the Induction Unit) staff off duty
5.00pm	Residential Area Prisoners allowed access to the oval area - 5.00pm to 6.00pm
5.00pm	Induction Unit staff supervise the Secure Accommodation areas – 5.00pm to 7.00pm
6.00pm	Residential Area Prisoners restricted to the Residential Area
6.45pm	Residential Area Prisoners secured into the Accommodation Units
7.00pm	Night shift on duty - handover - Prison in night shift mode
8.00pm	Headcount and wellbeing check conducted
11.00pm	Headcount and wellbeing check conducted
2.00am	Headcount and wellbeing check conducted
4.00am	Headcount and wellbeing check conducted



## APPENDIX 2: INDICATIVE ACTIVITY PROFILE

The tables below provide an overview of the indicative numbers of Prisoners SecureFuture has planned to be engaging in each category of activity at any one time during the core day. It is not intended to be definitive, since the SecureFuture solution is primarily focussed on tailoring programmes and activities to meet each Prisoner's individual needs.

Education	
Topic	Indicative Number Engaged
Numeracy	10
Literacy	10
IT Skills	20
Creative Arts	10
Library	10
Tourism	10
Hospitality	10
Business Skills	10
<b>TOTAL</b>	<b>90</b>

Programmes	
Topic	Indicative Number Engaged
Substance misuse	10
Cognitive skills/rehabilitation interventions	20
Life skills	15
Health education	10
Chaplaincy	5
Maori and cultural programs	20
Induction Programme	60
Drug and Alcohol Unit/Programme	60
<b>TOTAL</b>	<b>200</b>

Domestic Employment	
Positions	Indicative Number Employed
Unit cleaners - secure	30 (2 per unit x 12) (2 per building x 3)
Kitchen servery workers - secure	12 (1 per unit)
Main kitchen	50 (2 shifts of 25)
Prisoner purchases	10
Visit orderlies	4
Reception orderlies	4
Education orderlies	4
Education peer tutors	10
Accommodation cleaners	42 (1 per unit 40) (2 area cleaners)
<b>TOTAL</b>	<b>166</b>

Industrial Employment	
Positions	Indicative Number Employed
Workshop One	50
Workshop Two	50
Workshop Three	50
Workshop Four – Vocational Training	80 (4 x 20)
<b>TOTAL</b>	<b>230</b>

Recreational Sport	
Positions	Indicative Number Employed
Weights Room	15
Cardio Room	15
Indoor Sports Hall	20
Outdoor pitches	30
<b>TOTAL</b>	<b>80</b>

### Vocational Training

Positions	Indicative Number Engaged
Waste Management and Recycling	15
Horticulture	25
Ground Maintenance	20
Catering – training kitchen	20
Laundry	15
<b>TOTAL</b>	<b>95</b>

### Unavailable for on-site Activities

Positions	Indicative Number Employed
Sick	17
Management Unit	2
Outside prison – hospital appointments/Court	5
Reception – transfer in/out	5
Visits	50
Pre-release employment in the community	20
<b>TOTAL</b>	<b>99</b>

### Summary

Positions	Number employed
Domestic Employment	166
Industrial Employment	230
Education	90
Vocational Training	95
Programmes	200
Recreational Sports	80
Unavailable for on-site Activities	99
<b>TOTAL</b>	<b>960</b>

## APPENDIX 3: INDICATIVE PROGRAMMES PLAN

The table below provides an indicative list of the programmes SecureFuture proposes to offer at the Prison, mapped against each of the pathways.

Pathway	Core Programmes	Complementary Programmes	Support
Attitudes, thinking and behaviour	<ul style="list-style-type: none"> <li>– Short motivational interviewing (MI) interventions *</li> <li>– Violence Reduction Programme</li> <li>– Saili Matagi</li> <li>– Short Intensity Rehabilitation Programme *</li> <li>– Medium Intensity Rehabilitation Programme</li> <li>– Adult Sex Offending Programme</li> </ul>	<ul style="list-style-type: none"> <li>– Sycamore Tree</li> </ul>	
Alcohol and Drugs	<ul style="list-style-type: none"> <li>– Level 1 Orientation Programmes *</li> <li>– Level 2 Adjustment Programmes *</li> <li>– Level 3 Building Blocks for Change *</li> <li>– Levels 4 and 5 Criminogenic Residential AOD Treatment</li> <li>– Methadone Maintenance Treatment (MMT)</li> </ul>	<ul style="list-style-type: none"> <li>– Relapse Prevention</li> <li>– Alcoholics Anonymous</li> <li>– Narcotics Anonymous</li> </ul>	
Children and Family	<ul style="list-style-type: none"> <li>– Domestic Abuse Programme (DAP)</li> </ul>	<ul style="list-style-type: none"> <li>– Story Time Dads *</li> <li>– Fathers Inside *</li> <li>– Father-child Bonding *</li> <li>– Parenting Programme</li> <li>– Tiaki Tinana</li> </ul>	<ul style="list-style-type: none"> <li>– Community Office</li> <li>– Visitor Centre</li> <li>– Family Support</li> </ul>
Health and Wellbeing	<ul style="list-style-type: none"> <li>– Physical Activity Programme *</li> </ul>	<ul style="list-style-type: none"> <li>– Men's Health *</li> <li>– Preventative Health *</li> <li>– Sexual Health *</li> <li>– Music Therapy *</li> <li>– Arts Therapy *</li> </ul>	<ul style="list-style-type: none"> <li>– First Night Unit</li> <li>– Spiritual / religious services</li> <li>– Peer support</li> </ul>
Finance and Debt		<ul style="list-style-type: none"> <li>– Problem Gambling Programmes</li> <li>– Personal Finance and Debt Management *</li> </ul>	

Pathway	Core Programmes	Complementary Programmes	Support
Employment, learning and skills	<ul style="list-style-type: none"> <li>– Literacy and numeracy *</li> <li>– Preparation for Work Programme *</li> <li>– Employment in Industries</li> <li>– Employment opportunities in the Prison</li> <li>– Education Programmes</li> <li>– Vocational Training</li> </ul>		<ul style="list-style-type: none"> <li>– In-cell learning through VLE</li> <li>– Library</li> <li>– Employment Office</li> <li>– Employment opportunities with FM Subcontractor and Construction Company</li> </ul>
Accommodation	N/A (individual advice and support)		<ul style="list-style-type: none"> <li>– Reintegration Unit</li> <li>– Real Estate Office</li> <li>– Visitor Centre - Housing NZ, PARS etc.</li> </ul>
Social Support	<ul style="list-style-type: none"> <li>– Employment Programmes linked to Kaitiaki Plan *</li> </ul>	<ul style="list-style-type: none"> <li>– Tikanga Māori *</li> <li>– New Life Akoranga *</li> <li>– Kaiwhakamana</li> <li>– Fatua Pasifika</li> <li>– Bi-cultural Therapy</li> <li>– Restorative Justice Programmes</li> <li>– Creative Arts Programmes</li> <li>– Malaga Polynesia</li> <li>– Driving Offender Treatment (DOT) Programme</li> </ul>	<ul style="list-style-type: none"> <li>– In-cell learning through VLE</li> <li>– Mentoring via Community Office</li> </ul>

\* Note: Whilst all programmes will be considered when developing a Prisoner's Individual Management Plan (IMP), the programmes marked with '\*' are particularly suitable for Prisoners with a short sentence. Support activities in the above table will be available to, and accessible for, all Prisoners. Wherever possible and appropriate, Prisoners' family / whanau will be involved in the development of the IMP, and will be invited to access a suitable range of the support activities.

# APPENDIX 3: SCENARIO MAPPING FOR PRISONER PROFILES

The scenarios below are illustrative examples intended to show SecureFuture's approach to individual Prisoners. It provides indicative content on the measures SecureFuture will adopt to:

- Ensure the Prisoner's safety and security
- Provide for the Prisoner's health and wellbeing
- Plan a range of Interventions that will meet the Prisoner's rehabilitation and reintegration needs

For each of the sample Prisoners, we have provided an example of what their core day, and weekly activities, may look like.

## Prisoner Profile 1 – Jon A Prisoner

### Components of Prisoner's Individual Management Plan (IMP)

Scenario Mapping – Jon A Prisoner	
Personal Details	
Name	Jon A Prisoner
Ethnicity	Maori
Home Address	
Domestic Arrangements prior to imprisonment	A partner and a 2-year old child
Age	24
Classification	Medium
Physical Condition	Cannabis user Regular smoker
Language Skills	
Other factors	Reports leaving school at 13  The Probation Officer who completed his Pre-sentencing report has queried possible gang affiliation (Mongrel Mob)
Employment prior to imprisonment	Unemployed
RoC*RoI	0.69

## Scenario Mapping – Jon A Prisoner

### Sentence Details

Sentence Term	2 years, 8 months
Date of Sentence	
Offending History	No previous prison sentences 8 previous Community Based Sentences and a Youth Justice history
Nature of Offence	Violence (Male Assaults Female) Possession of a Class A Substance Dishonesty Offences (Multiple)
Observed Behaviours	Officers report that he is a model Prisoner Presents as a role model to other Prisoners Continually offers to assist with other Prisoners in the unit
Release details	

### How will we ensure the safety and security of the Prisoner?

- Prisoner has recurring issues with substance abuse
- To be accommodated in the Drug and Alcohol Unit in House Block Two
- Individual Management Plan to be flagged that this Prisoner should not be accommodated with gang related Prisoners (Mongrel Mob)

### What will we do to provide for his health, comfort and wellbeing?

- To be employed within the Carpentry Industry
- Family Liaison Officer to establish a visit programme with the Defacto and child. Establish what the options are in regards the relationship. Is it an option post release
- If contact is an option, nurse to assist with advice to the partner on the health of the two year old on visits

### What rehabilitation and Reintegration needs does he have, and how can we best meet those needs within the time available? What support will we provide (or facilitate) that will help him achieve a successful re-entry into society?

Pathway	Rehabilitation	Reintegration
Attitudes, Thinking, Behaviour	<ul style="list-style-type: none"> <li>– To be enrolled for the Motivational Interviewing (MI) Programme, Tikanga Maori, New Life Akoranga</li> <li>– Medium Intensity Rehabilitation Programme (MIRP)</li> <li>– Possible participation in Tiaki Tiana</li> </ul>	<ul style="list-style-type: none"> <li>– Community office to support conditions of release</li> </ul>
Alcohol & Other Drugs	<ul style="list-style-type: none"> <li>– Level 1 AOD</li> <li>– Quit Smoking support</li> <li>– Review AOD treatment needs after MIRP</li> </ul>	<ul style="list-style-type: none"> <li>– Referrals to community based AOD interventions will be required</li> </ul>

## Scenario Mapping – Jon A Prisoner

<b>Children &amp; Families</b>	<ul style="list-style-type: none"> <li>– Participation in father – child bonding (link to anti-gang efforts if affiliation confirmed)</li> <li>– Family Liaison Officers to make contact with partner/whānau – determine support needs</li> <li>– Nurse to engage with partner on weekend visits to assist with access to healthcare support and paediatric care for the child</li> <li>– Refer to Child Support</li> <li>– In cell telephone contact with partner and child</li> </ul>	<ul style="list-style-type: none"> <li>– Referral to Relationships Services</li> </ul>
<b>Finance &amp; Debt</b>		
<b>Health &amp; Well-being</b>	<ul style="list-style-type: none"> <li>– Mental health referral arising from cannabis use</li> </ul>	<ul style="list-style-type: none"> <li>– Referrals to community mental health is required</li> </ul>
<b>Employment, Learning, Skills</b>	<ul style="list-style-type: none"> <li>– Education or Vocational Education programme based on assessments and agreed IMP</li> </ul>	<ul style="list-style-type: none"> <li>–</li> </ul>
<b>Accommodation</b>	<ul style="list-style-type: none"> <li>– Reintegration Unit to check on accommodation circumstances</li> </ul>	<ul style="list-style-type: none"> <li>–</li> </ul>
<b>Social Support</b>	<ul style="list-style-type: none"> <li>– Engage whānau, and Mana whenua Iwi</li> <li>– Kaiwhakamana contact</li> </ul>	<ul style="list-style-type: none"> <li>– Reintegration Unit to follow up continuing contact with whānau and mana whenua iwi</li> </ul>



### Sample Core Day

Time	Sample Core Day – Jon A Prisoner
7.00am	
8.00	Unlock
9.00	Employed in the Carpentry Area of the Industries
10.00	
11.00	
12.00pm	Prisoner will remain at work over the lunch period
1.00	Attend the Medium Intensity Rehabilitation Programme
2.00	
3.00	Special family visits
4.00	Whānau, Mana whenua Iwi meetings
5.00	Lockdown
Evening	Approved hobbies and activities
Night	

Key:

Rehabilitation	Activities and Free Time	Industries and Work	Operations and Accommodation	Reintegration	Health	In Cell (Lockdown)
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### Sample Weekly Schedule

Weekly Schedule - Jon A Prisoner							
	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
am	Work - Carpentry	MIRP Sport and recreation	Work - Carpentry	MIRP Sport and recreation	Work - Carpentry	Special family visits	Unit Support
pm	Work – Carpentry  AOD Prog	Work – Carpentry  MIRP	Work – Carpentry  AOD Prog	Work – Carpentry  MIRP	Work – Carpentry  AOD Prog	Unit Support  Mana Whenua, Iwi meeting	Special family visits  Sport and recreation
evening	Approved hobbies and activities	Approved hobbies and activities	Approved hobbies and activities	Approved hobbies and activities	Approved hobbies and activities	Approved hobbies and activities	Approved hobbies and activities

## Prisoner Profile 2 – Fred Smith

### Components of Prisoner's Individual Management Plan (IMP)

Scenario Mapping - Fred Smith	
<b>Personal Details</b>	
Name	Fred Smith
Ethnicity	Pasifika (Tonga)
Home Address	Auckland
Domestic Arrangements prior to imprisonment	Lived at home
Age	18
Classification	Low
Physical Condition	Obese
Language Skills	Good
Other factors	
Employment prior to imprisonment	Was preparing to enter Degree level studies in science
RoC*RoI	
<b>Sentence Details</b>	
Sentence Term	7 weeks
Date of Sentence	1 April 2015
Offending History	First offender
Nature of Offence	Stealing a motor vehicle
Observed Behaviours	<p>Officers report that he is articulate and communicates positively with staff</p> <p>Mixes with other prisoners</p> <p>Appears positive</p>
Release details	To be released full time
<b>How will we ensure the safety and security of the Prisoner?</b>	
<ul style="list-style-type: none"> <li>To be accommodated in the First Offence Unit. The rationale being to reduce the impact on the Prisoner during the sentence.</li> <li>Movement within the Prison will be controlled and restricted to movements with other First Offence Unit Prisoners.</li> <li>Special visits are to be arranged to maintain family contact and support. The Mother and Father are both shift workers and will have difficulty attending visits on normal times of weekends. The In Cell Telephone will assist in maintaining family contact.</li> </ul>	

## Scenario Mapping - Fred Smith

- Fatua Pasifika Visitors Group to be included in the management of the Prisoner. This is to assist with the maintenance of the family and community contact and to enable support post release.

### What will we do to provide for his health, comfort and wellbeing?

- Healthcare Manager to arrange for the Prisoner to be involved in the Preventative Health Education courses for obesity and heart disease.
- Contact to be established to enable the Preventative Health Education to be continued post release.
- Physical Education Supervisor to arrange for the Prisoner to be enrolled in the Healthy Exercise regime.
- An exercise programme to be developed for the Prisoner as part of the Release Plan.
- For employment within the unit as a Programmes Orderly.

### What rehabilitation and Reintegration needs does he have, and how can we best meet those needs within the time available? What support will we provide (or facilitate) that will help him achieve a successful re-entry into society?

Pathway	Rehabilitation	Reintegration
Thinking, Attitudes, Behaviour		
Alcohol & Other Drugs	<ul style="list-style-type: none"> <li>• Level 1 Psych/AOD - Orientation</li> </ul>	
Children & Families	<ul style="list-style-type: none"> <li>• CMS in-cell telephone to maintain contact with family on shift work</li> <li>• Engage Fatua Pasifika to connect with family</li> <li>• Family Liaison Officers to connect with family</li> </ul>	<ul style="list-style-type: none"> <li>• Family Liaison Officers to maintain with family post-release</li> </ul>
Finance & Debt		
Health & Well-being	<ul style="list-style-type: none"> <li>• Preventative Health &amp; Nutrition for obesity and heart disease</li> <li>• Physical activity programme to support Preventative Health Programme</li> </ul>	<ul style="list-style-type: none"> <li>• Referrals to community health providers</li> <li>• Physical activity programme post release - referrals</li> </ul>
Employment, Learning, Skills	<ul style="list-style-type: none"> <li>• Education Manager to check education entitlements understood</li> <li>• Education to interview and engage with the Prisoner to assist with preparation for degree-level studies post release</li> <li>• Utilise CMS in-cell Virtual Learning Environment to maintain motivation for studies</li> </ul>	<ul style="list-style-type: none"> <li>• Family Liaison Officers to follow up with Prisoner his university enrolment</li> </ul>
Accommodation		<ul style="list-style-type: none"> <li>• Will live at home</li> </ul>
Social Support	<ul style="list-style-type: none"> <li>• Fatua Pasifika to engage prisoner on the potential career and family consequences of the theft of motor vehicle with mates for joy-riding</li> <li>• Tongan church representatives engaged through Chaplaincy</li> </ul>	

### Sample Core Day

Time	Sample Core Day - Fred Smith
7.00am	
8.00	Unlock
9.00	Employed as Programmes Orderly – House Block Three
10.00	
11.00	Preventative Health Education – Obesity and Heart Disease
12.00pm	
1.00	Employed as Programmes Orderly – House Block Three
2.00	
3.00	
4.00	Attend the Healthy Exercise Regime
5.00	Lockdown
Evening	Virtual Learning Environment on CMS In-cell telephone access
Night	

Key:

Rehabilitation	Activities and Free Time	Industries and Work	Operations and Accommodation	Reintegration	Health	In Cell (Lockdown)
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### Sample Weekly Schedule

Weekly Schedule - Fred Smith							
	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
am	Work – Progs Orderly	Work - Progs Orderly Health Education	Work - Progs Orderly Educ Manager one on one sessions	Work - Progs Orderly	Contact visit Health Education	Work - Progs Orderly Hobbies	Hobbies Meet with Fatua Pasifika Group
pm	Work - Progs Orderly Exercise regime	Work - Progs Orderly	Work - Progs Orderly Exercise regime	Work - Progs Orderly	Work - Progs Orderly	Exercise regime	Contact visit Sport
evening	Virtual Learning Environment 2 hours	Virtual Learning Environment 2 hours	Virtual Learning Environment 2 hours	Virtual Learning Environment 2 hours	Approved hobbies and activities	Virtual Learning Environment 2 hours	Approved hobbies and activities

## Prisoner Profile 3 – Ivan Thomas

### Components of Prisoner's Individual Management Plan (IMP)

Scenario Mapping – Ivan Thomas	
Personal Details	
Name	Ivan Thomas (alias) - Kuznetsov
Ethnicity	Russian Immigrant
Home Address	From Murmansk, Russia
Domestic Arrangements prior to imprisonment	No known address No known family
Age	22
Classification	Low
Physical Condition	Diabetic Hepatitis C positive – likely intravenous drug user History of alcohol abuse
Language Skills	Poor English skills
Other factors	Does not want to return to Russia Has 2 cats and is obsessed with their welfare Has a 1 year old child to a defacto in NZ
Employment prior to imprisonment	Unknown – likely as a casual labourer
RoC*RoI	
Sentence Details	
Sentence Term	18 months
Date of Sentence	1 December 2014
Offending History	First offender – in New Zealand – unable to establish any offence history in Russia or other countries
Nature of Offence	Aggravated Assault (assaulted an Estate Agent), Resisting arrest
Observed Behaviours	Officers report that he appears aggressive Keeps to himself and does not mix. Language skills could be the cause of this Low level of interactions with staff, possibly language related
Release details	To be released on remitted release

## Scenario Mapping – Ivan Thomas

### How will we ensure the safety and security of the Prisoner?

- Communication with the Prisoner is difficult due to his poor English skills. Both language and written skills are poor. Russian Interpreter to be used.
- To be accommodated in the First Offence Unit. Prisoner to be counselled regarding violence. Any poor behaviours will likely result in the Prisoner being moved to a mainstream unit
- To be accommodated in a single use cell to maximise the access to the CMS system and In Cell Telephone after hours

### What will we do to provide for his health, comfort and wellbeing?

- Healthcare Manager to interview the Prisoner. To be enrolled in the Preventative Health Education programmes for Diabetes and Blood Borne Viruses
- To have Health Education for nutrition and dietary management

### What rehabilitation and Reintegration needs does he have, and how can we best meet those needs within the time available? What support will we provide (or facilitate) that will help him achieve a successful re-entry into society?

Pathway	Rehabilitation	Reintegration
<b>Thinking, Attitudes, Behaviour</b>	<ul style="list-style-type: none"> <li>— Once Literacy and Numeracy level permits commence Medium Intensity Rehabilitation Programme</li> </ul>	
<b>Alcohol &amp; Other Drugs</b>	<ul style="list-style-type: none"> <li>— Once Literacy &amp; Numeracy level permits, link to AOD programme if assessments confirm IDU status.</li> <li>— Sequenced after MIRP</li> <li>— Level 1 Psych/AOD Orientation Programme – with a Russian Interpreter support</li> </ul>	<ul style="list-style-type: none"> <li>— Referrals to community -based AOD provider</li> <li>— Follow-up from community office on conditions of remitted release</li> <li>— Link to AOD Relapse Prevention Programme</li> </ul>
<b>Children &amp; Families</b>	<ul style="list-style-type: none"> <li>— Contact Child Support on situation</li> <li>— Nurse to make contact with partner during visits to offer support in accessing healthcare services and advice of paediatric care</li> </ul>	
<b>Finance &amp; Debt</b>	<ul style="list-style-type: none"> <li>— Interview prisoner and partner to determine financial circumstances</li> <li>— Referrals to WINZ etc support</li> </ul>	

## Scenario Mapping – Ivan Thomas

<b>Health &amp; Well-being</b>	<ul style="list-style-type: none"> <li>— Healthcare Manager to interview for Preventative &amp; Health Management programmes for diabetes and HEP C and other Blood Borne Communicable Diseases (will require interpreter support)</li> <li>— Healthcare Manager to enrol in nutrition and dietary management (will require interpreter support)</li> </ul>	<ul style="list-style-type: none"> <li>— Referrals to community based diabetes and HEP C support services</li> </ul>
<b>Employment, Learning, Skills</b>	<ul style="list-style-type: none"> <li>— Education manager to enrol in literacy and numeracy programme</li> </ul>	<ul style="list-style-type: none"> <li>— Referrals to community-based</li> <li>— L &amp; N programme</li> </ul>
<b>Accommodation</b>	<ul style="list-style-type: none"> <li>— Engage Housing NZ, PARS etc on housing situation</li> </ul>	<ul style="list-style-type: none"> <li>— Follow up from community office – support conditions of remitted release</li> </ul>
<b>Social Support</b>	<ul style="list-style-type: none"> <li>— Interpreter services required for communications</li> <li>— Single cell accommodation to access CMS in-cell telephone to approved numbers</li> <li>— Engage Russian Orthodox Church through Chaplaincy</li> <li>— Family Liaison Officers to connect with Russian community</li> <li>— Manager Rehabilitation to liaise with Immigration NZ and Consulate of the Russian Federation</li> </ul>	<ul style="list-style-type: none"> <li>— Follow up from community office – support conditions of remitted release</li> <li>— Case manage release options with CPS &amp; RRS</li> </ul>

### Sample Core Day

Time	Sample Core Day – Ivan Thomas
7.00am	
8.00	Unlock
9.00	Employment – Unit Cleaner
10.00	
11.00	Preventative Health Education – Diabetes and Blood Borne Viruses Attend Literacy and Numeracy Attend Psych/AOD Level 1 Orientation Programme
12.00pm	
1.00	Employment – Unit Cleaner
2.00	
3.00	Sport
4.00	Russian / English Lessons
5.00	Lockdown
Evening	Approved hobbies and activities
Night	

Key:

Rehabilitation	Activities and Free Time	Industries and Work	Operations and Accommodation	Reintegration	Health	In Cell (Lockdown)
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### Sample Weekly Schedule

Weekly Schedule - Ivan Thomas							
	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
am	Unit work  Literacy & Numeracy	Unit work  Health Education	Unit work AOD Prog Level 1 Orient. Prog. Russian / English lessons	Unit work=  Literacy & Numeracy	Health Education AOD Prog	Unit work	Sport and recreation
pm	Unit work	Unit work	Unit work Sport	Unit work	Russian / English lessons	Unit work	
evening	Virtual Learning Environment 2 hours	Virtual Learning Environment 2 hours	Virtual Learning Environment 2 hours	Virtual Learning Environment 2 hours	Virtual Learning Environment 2 hours	Sport Approved hobbies and activities	Approved hobbies and activities



## Prisoner Profile 4 – Derek Harvey

### Components of Prisoner's Individual Management Plan (IMP)

Scenario Mapping - Derek Harvey	
<b>Personal Details</b>	
Name	Derek Harvey (alias) – Duncan Hapeta
Ethnicity	Maori
Home Address	defacto lives in Manukau, Auckland
Domestic Arrangements prior to imprisonment	Public housing
Age	36
Classification	High
Physical Condition	
Language Skills	
Other factors	History of violence History of alcohol abuse Low level of response to interventions Denies gang membership but associates with known members
Employment prior to imprisonment	
RoC*RoI	
<b>Sentence Details</b>	
Sentence Term	10 years
Date of Sentence	1 March 2008
Offending History	Served 6 years Multiple reoffender and a high risk reoffender Multiple internal breaches Attempted to escape from a minimum security prison
Nature of Offence	290 warrants. Most serious offences include aggravated assault, break and enter, robbery, resisting arrest
Observed Behaviours	Officers report that the Prisoner is unpleasant and resisting to any attempts to engage with him Prefers to associate with the hardened end of the Prisoner population
Release details	To be released on parole with strict observation conditions
<b>How will we ensure the safety and security of the Prisoner?</b>	

## Scenario Mapping - Derek Harvey

- Prisoner is regarded as a risk to other Prisoners. He has a recent past escape attempt. Accommodate in House Block One

### What will we do to provide for his health, comfort and wellbeing?

- Work in the laundry
- Healthcare Manager to have the Prisoner examined for any residual health damage from the alcohol abuse
- For enrolment on the Alcohol and Other Drug Residual Programme
- To be enrolled for the Motivational Interviewing (MI) Programme and Tikanga Maori

### What rehabilitation and Reintegration needs does he have, and how can we best meet those needs within the time available? What support will we provide (or facilitate) that will help him achieve a successful re-entry into society?

Pathways	Rehabilitation	Reintegration
<b>Attitudes, Thinking, Behaviour</b>	<ul style="list-style-type: none"> <li>– Enrolment in Motivational Interviewing Programme, Tikanga Maori and New Life Akoranga</li> <li>– Possible candidate for gang focused Violence Reduction Program (VRP)</li> <li>– If not VRP enrolled, Medium Intensity Rehabilitation Programme</li> </ul>	<ul style="list-style-type: none"> <li>– Pre-discharge support for Parole Board requirements</li> <li>– Support to CPS supervision. Indications are that a period of release to Parole would be more productive than release to community after completion of sentence in prison with no period of supervision in the community</li> </ul>
<b>Alcohol &amp; Other Drugs</b>	<ul style="list-style-type: none"> <li>– Enrolment in Alcohol &amp; Drug Residential Programme</li> </ul>	<ul style="list-style-type: none"> <li>– Possible relapse prevention but this will be under CPS</li> </ul>
<b>Children &amp; Families</b>	<ul style="list-style-type: none"> <li>– Family Liaison Officers to establish contact with whānau and Mana whenua Iwi</li> </ul>	
<b>Finance &amp; Debt</b>		
<b>Health and well-being</b>	<ul style="list-style-type: none"> <li>– Health assessment to assess impact of alcohol abuse</li> </ul>	
<b>Employment, Learning, Skills</b>	<ul style="list-style-type: none"> <li>– Employability assessment, followed by education &amp; vocational education linked to employment in the Prison</li> </ul>	<ul style="list-style-type: none"> <li>– Through Employment Office, assist with job search</li> </ul>
<b>Accommodation</b>	<ul style="list-style-type: none"> <li>– Through Real Estate Office engage with Housing NZ on accommodation issues</li> </ul>	<ul style="list-style-type: none"> <li>– Housing required</li> </ul>
<b>Social Support</b>	<ul style="list-style-type: none"> <li>– Establish linkages with Kaiwhakamana, whānau and Mana whenua Iwi</li> </ul>	<ul style="list-style-type: none"> <li>– Reintegration Unit to liaise with CPS to monitor social supports</li> </ul>

### Sample Core Day

Time	Sample Core Day – Derek Harvey
7.00am	
8.00	Unlock
9.00	Employed in the Laundry
10.00	
11.00	Attend the Alcohol and Other Drug Residual Programme
12.00pm	
1.00	Attend the Motivational Interviewing (MI) Programme and Tikanga Maori
2.00	
3.00	Attend the Anti Gang Violence Reduction Program
4.00	
5.00	Lockdown
Evening	Approved hobbies and activities
Night	

Key:

Rehabilitation	Activities and Free Time	Industries and Work	Operations and Accommodation	Reintegration	Health	In Cell (Lockdown)
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### Sample Weekly Schedule

Weekly Schedule - Derek Harvey							
	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
am	Work – laundry	Work – laundry	Work – laundry	Work – laundry	Work – laundry	Sport, recreation	Sport, recreation
	MI Prog	VR Prog	Sport, recreation	MI Prog	VR Prog	Visits	Visits
pm	Work – laundry	Work – laundry	Work – laundry	Work – laundry	Work – laundry	Iwi Meeting	Iwi Meeting
	AOD Prog	MI Prog	AOD Prog	MI Prog	AOD Prog	Hobbies	Hobbies
evening	Approved hobbies and activities	Approved hobbies and activities	Approved hobbies and activities	Approved hobbies and activities	Approved hobbies and activities	Approved hobbies and activities	Approved hobbies and activities

# APPENDIX 5:

## JOB PLACEMENT PROGRAMME

### OBJECTIVE AND BACKGROUND

SecureFuture understands that individuals in a correctional institution are significantly disadvantaged in contrast to the rest of the population in regards to social, economic and educational factors. Critically, SecureFuture acknowledges the link between employment and decreased recidivism and the requirement for Prisoners to receive education and training whilst in a correctional institution to assist in facilitating successful reintegration back into the community.

Under the terms of the Job Placement Programme, SecureFuture will offer a minimum of 24 placements per year to selected Prisoners, develop and facilitate training opportunities for those Prisoners while they are in the Prison, matched to employment opportunities in the community, and leading to post-release employment offers for those Prisoners who successfully completed the requisite training programme.

The Job Placement Programme will be an integral part of SecureFuture's approach to rehabilitation and reintegration; the objectives and scope of the Programme are described below.

For the first 2 years of the Operating Term, the Construction Sub-contractor and the Facility Management Sub-contractor have agreed to participate in a pilot programme, as described in more detail in the section entitled Pilot Scheme below.

### ENGAGEMENT STRATEGY

SecureFuture is committed to an engagement strategy which seeks to successfully develop and support the needs of Prisoners, their community and Māori groups by facilitating employment and training opportunities to develop a Job Placement Programme which includes:

- engagement of key stakeholders
- creating pathways to employment through traineeships, apprenticeships, mentors, use of elders
- development of training programmes which aim to improve social, economic and educational prospects of Prisoners
- real employment opportunities

SecureFuture has committed resources to develop and implement an engagement strategy which will contribute to the overall aims of:

- a reduction in recidivism
- increasing the rate of Prisoners' successful reintegration back into the community
- building strong long-term relationships with Māori, communities, governments and other organisations that share our vision
- encouraging and supporting community activities and initiatives
- assisting Prisoners to successfully enter the workforce

SecureFuture will work with local employers, communities, councils, governments and other organisations to enhance the effectiveness of this programme. SecureFuture will also work with relevant government departments, including other prisons, to facilitate information and share experiences across the wider prison network in New Zealand. SecureFuture will conduct regular reviews of market conditions, identify skills shortages within the local community, and work with employers in markets that are experiencing such skills shortages.

## APPLICATION AND ENROLMENT

SecureFuture will work with sponsor companies to develop:

- job descriptions for employment opportunities they are seeking to fill through the programme
- acceptance criteria for Prisoners wishing to join the programme
- an agreed pathway for Prisoners to follow in order to be successful on the programme and receive an offer of employment upon release. This will include details of training, including any relevant certification, pre-release employment opportunities, support and mentoring to Prisoners engaged in the programme
- completion criteria for Prisoners
- minimum number of offers of employment that will be awarded by the sponsor company for each job type they are seeking to fill, and terms and conditions of these offers of employment.

SecureFuture will develop acceptance criteria that are achievable and relevant to a specific job type, taking into account any essential requirements in relation to behaviour, education, aptitude, and physical condition. The approach will be to develop acceptance criteria that are fair and equitable.

It is envisaged that sponsor companies will meet with SecureFuture on a quarterly basis to confirm placements available over the next six months.

Prisoners will be considered for the programme either by nomination, or by application. SecureFuture will seek to identify candidates for the scheme through the case management process, in consultation with other relevant staff members, such as personal officers and the vocational education and training staff, and will also consider applications from Prisoners directly. The Induction Programme will provide Prisoners with an overview of the programme, and will explain the application process. Prisoners who apply for the programme will receive a clear explanation of the acceptance criteria, and of the requirements and expectations of the programme.

Minimum requirements of applicants will include commitments such as:

- to be courteous and respectful to trainers and other participants at all times
- adhere at all times to health and safety practices
- adhere to Prison rules at all times
- not to misuse equipment or the facility
- not to leave a trainer/training session without permission
- not to refuse any reasonable order from a trainer or other member of staff
- not to participate in anti-social behaviour
- to be clean and respectable at the commencement of each work session
- to make an effort to learn and fully participate in the course.

Prisoners accepted on to the programme will be referred to as ‘trainees’. Trainees will be inducted into the programme with an explanation of relevant policies, protocols, safety training procedures and trainee expectations. Trainees will receive a full OH&S induction and be required to pass a verbal induction test prior to commencement of the course.

SecureFuture will provide programme administration through its vocational education and training team. SecureFuture will conduct regular progress meetings with trainees, in which progress against the agreed completion criteria will be assessed, and plans to address any areas of concern are agreed.

## TRAINING

SecureFuture understands that different people learn in different ways. SecureFuture, through its vocational education and training team, will provide a conducive training environment which is specific to individual learning styles. Trainees will be given tools to help them identify their preferred learning

style so that they can maximise their training experience. Tutors will be trained to adapt their training delivery to accommodate potential variances. A mix of theory and practical unit standards will be incorporated into the training and opportunities will be provided for the trainees to learn via experience (touching, moving and doing). The programme will utilise the experience of the Operator's Registered Training Organisation in delivering certified/accredited programmes within the correctional environment.

The practical component of the Job Placement Programme may involve a trainee being allocated to a trainer/tradesman specialising in a specific duty. The trainer/tradesman will provide the instruction and training relating to the tasks to be performed. Training could be undertaken across various sessions, with each level varying in workload and complexity. At the end of each training session or block of sessions, the trainer will complete an assessment of the trainee relating to the quality of work completed, interest, aptitude, demeanour and work ethic. Once the progress is deemed to sufficiently comply with the expectations set, the trainee will progress to the next level of their training. The training programme will, where appropriate, fit within the NZQA framework and will consist of a number of unit standards which when successfully accomplished will form a qualification.

The focus of the training for the trainees will be on being able to demonstrate their skill or knowledge to achieve competence as opposed to a pass/fail model which many would remember negatively from school. If the trainee is deemed 'not yet competent' at any interim assessment stage, further coaching or practice will be provided prior to reassessment.

Trainees will maintain a record of work that will be checked and signed by a workplace verifier, which will record completion of designated work requirements.

Throughout the training, the relevant sponsor company will assign a mentor/coach from within their organisation who will make regular communication with the trainee.

SecureFuture will work with each sponsor company to develop a relevant approach to mentoring/coaching for trainees pre- and post-release.

## **COMPLETION AND POST-RELEASE SUPPORT**

With any project, to be successful we must recognise achievements and celebrate success. For many of the trainees they may never have experienced success or celebrated it. The simple task of recognising an achievement sends out a positive message, and inspires the trainee to do more or inspires others to achieve.

At the completion of courses, a graduation ceremony will be held to celebrate the trainees' achievements. For many trainees this may be the first qualification or in fact the first certificate that they have attained. It is a very important day and they feel very proud of their achievements.

If the trainee has met all of the conditions specified in the completion criteria for the specific job type, he will receive a formal offer of employment from the sponsor company, which will come into effect upon his release.

As for all staff, employment will be conditional upon the statutory 90 day trial period. The sponsor companies will have a duty to ensure that there is equity with other staff (especially as it relates to unions and to the rights of the new employee).

SecureFuture will work with local organisations, community stakeholders and sponsor companies to develop an approach to the provision of appropriate support to successful participants on the programme for the months following release. Examples of support will vary according to an individual Prisoner's needs, and according to the nature of employment, and may involve the tutor maintaining contact with the trainee, visiting them, mentoring and coaching them.

During the period of training, the tutor will have become familiar with the trainees and developed a high level of respect and trust. This level of trust is paramount for the programme to succeed as the participant may need to feel that they are not on their own upon their release. Support may also be provided to family/whanau.

## PILOT SCHEME

The Construction Sub-contractor and the Facility Management Sub-contractor have committed to be sponsor companies for this programme in the pilot scheme, and have committed to collaborate and offer a training course with a minimum of 24 placement opportunities for each of these 2 years (12 placements per sponsor company per year).

The pilot course will be designed to provide trainees with a range of skills and aptitudes that will improve their ability to gain and maintain employment, such as:

- food service skills
- a basic understanding of construction methodology
- construction trades
- health and safety practices
- a practical ability to carry out maintenance tasks including:
  - maintenance and repair of air grilles, diffusers, registers and the like
  - maintenance and repair of ventilation fans
  - maintenance and repair of sanitary taps, showers, toilets and fittings
  - maintenance and replacement of filter medium in AHU's and A/C's
  - maintenance and repair of AHU's and FCU's
  - maintenance and repair of water storage units and heat exchangers
  - basic maintenance of non-security automatic doors
  - maintenance of door/gate hinges (greasing/oiling)
  - basic roller door maintenance
  - non-security glazing
  - basic maintenance and repair of floor finishes
  - painting, line marking and decorating
  - repair and maintenance of selected FF&E
  - repair, maintenance and fitting of signage
  - general building maintenance
  - non-security fencing
  - emergency and exit lighting basic maintenance (non electrical only)
  - testing and maintenance of mechanical smoke dampers
  - checking and use of fire blankets
  - maintenance and repair of pumps
  - inspection and maintenance of tanks
  - calibration and repair of chilled water taps
  - maintenance and repair of kitchen hoods
  - inspection and basic maintenance of compressors
  - inspection, basic maintenance and repair of cool rooms, freezers and kitchen equipment
  - inspection and calibration of thermostatic mixing valves and other valves
  - inspection and basic unblocking of drainage and sewer systems
  - basic maintenance and repair of industry equipment
- cleaning skills
  - follow safe work procedures within the cleaning industry to clean floors, toilet facilities, fixtures and fittings
- grounds maintenance skills

- follow safe work procedures to mow and edge a lawn, carry out basic garden care, spray weeds, remove small trees, shrubs and plants.
- choose and use correct cleaning personal protective equipment (PPE)
- choose, use, clean and store cleaning tools and materials correctly and safely
- keep the work area clean and safe and dispose of waste.



# **APPENDIX 6 TO CORRECTIONS SERVICES SOLUTION**

## **REHABILITATION AND REINTEGRATION KPIS – APPROACH, MEASURES AND METHODOLOGY**

## 1. CONDUCTING ASSESSMENTS TO IDENTIFY NEEDS

SecureFuture intends to use a validated<sup>1</sup> dynamic risk assessment tool to identify the criminogenic needs of Prisoners, as part of the assessment process completed during the Induction Programme. This information will be used to develop the Prisoner's Individual Management Plan.

It is likely that the dynamic risk assessment tool will be adapted from a tool used in another jurisdiction. Should this be the case, amendments will be made to the tool to ensure that it is appropriate for use with New Zealand prisoners, that its ability to predict likelihood of reoffending has been maintained in relation to New Zealand offenders, specifically Maori.

The tool will comprise assessments against the following eight pathways:

- Accommodation
- education, training and employment (ETE)
- mental and physical health
- drugs and alcohol
- finance, benefits and debt
- children and families of prisoners
- attitudes, thinking and behaviour
- social support.

Against each of the pathways, Prisoners will be given a score that reflects their needs and risk in that area. The score is likely to be one of:

- no risk/need
- low risk/need
- med risk/need
- high risk/need
- very high risk/need

Where the assessment identifies a significant criminogenic need in one or more of the pathways (typically resulting from a score of 'high' or 'very high'), the case manager is guided to further action, which may be to conduct further, specialist assessments in the area, and/or to propose Interventions to address the need.

Case managers will take a sequencing approach to risk and need assessment, such that immediate risks and needs will be addressed as a priority above other risks and needs. Where further specialist assessments are appropriate, these are typically conducted prior to, and after, the relevant Intervention; as such, they serve as tools to measure the effectiveness of that Intervention on the individual Prisoner.

SecureFuture acknowledges that some Prisoners may present at the Prison with existing behaviours or issues which are so severe that conducting structured assessments as described above is not possible or appropriate (examples are likely to be in the areas of mental health, drug addiction and violence). In such cases, the case manager will make a record, on the case management system, assigning the behaviours or issues to a pathway, and proposing actions to address them. These actions, and the Prisoner's progress, will also be recorded on the case management system. The structured assessment process will only be conducted if/when these behaviours or issues have been addressed.

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<sup>1</sup> 'Validated' means that the tool has been evaluated by an independent academic body or government body to determine that the tool is able to predict the likelihood of an offender being reconvicted.

## 2. CASE MANGEMENT SYSTEM

SecureFuture intends to implement an integrated case management system to record information relating to assessment of risks and needs, and then the development, delivery, monitoring and review of individualised plans to meet those needs<sup>2</sup>. The case management system will be used as the single system on which all information is recorded (with the exception of information that has to be recorded on IOMS), and will be accessible to external service providers where appropriate. SecureFuture will work with the Department to identify opportunities to develop an interface between IOMS and the case management system.

It is intended that the dynamic risk assessment tool will be embedded within the case management system through a series of computer-based forms, enabling case managers to record assessment information directly into the system rather than uploading paper-based assessments.

The functionality of the case management system will enable data to be easily extracted from the system and analysed for the purpose of reporting to the Department against the R&R KPIs.

## 3. ELIGIBLE PRISONERS

SecureFuture's case management system will determine which specific Rehabilitation and Reintegration KPIs will apply to each Eligible Prisoner. In this context, consideration will be taken of the following factors:

- Where the KPI definition includes reference to 'criminogenic need', this need will be identified following the assessment process described above, and recorded in the case management system. Where there is no criminogenic need identified against the individual KPI, the Prisoner will not be considered Eligible.
- The Rehabilitation and Reintegration KPIs will only apply to Prisoners who serve a minimum of 3 months at the Prison.
- Prisoners with immediate physical or mental health needs that mean they are not able to attend any Interventions will not be considered Eligible. This factor recognises that a Prisoner with significant mental health issues, or who is undergoing, for example, drug withdrawal, is not able to benefit from any of the measures a case manager would otherwise propose to address a criminogenic need.
- Some KPIs' definition includes reference to Prisoners having 'sufficient time left to serve on their sentence to attend the recommended Intervention(s)'. This qualification is intended to acknowledge that a measurable improvement in these pathways is generally only attained over time. The case manager will, during the Induction Programme, develop a plan to address the Prisoner's need; if the plan cannot be achieved in the time the Prisoner has left to serve, he will not be considered Eligible. Where Prisoners are not able to complete an Intervention due to non-availability of the Intervention (i.e. as a result of waiting times or scheduling) this will not result in the Prisoner being considered as not Eligible. Note: the content, frequency and length of individual Interventions will be finalised in the Rehabilitation and Reintegration Programme, which will be developed in accordance with Schedule 5. Upon completion of that Operative Document, SecureFuture will review these definitions and will, if appropriate, replace the current wording.

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<sup>2</sup> At this time, it is intended that MegaNexus will be used at the Prison, but SecureFuture retains the freedom to decide to use a an alternative system should it identify a more effective solution

- Where a Prisoner presents with criminogenic needs in multiple pathways, the case manager will prioritise the Interventions recommended to address those needs, taking into account the length of the Prisoner's sentence. This may result in a Prisoner being assessed as not Eligible in some of the KPIs.

#### 4. MEASURING KPIS

For the purposes of measuring achievement of the Rehabilitation and Reintegration KPIs, case managers will conduct a review of a Prisoner's scores, against each of the KPIs for which he is Eligible, shortly before his release.

This review will comprise accessing and assessing some or all of the following information sources:

- details of scores resulting from assessments conducted prior to, and after, Interventions
- details of Interventions attended and any observations relating to the Prisoner's behaviour
- formal, recorded observations on a Prisoner's behaviour or progress made by key workers, personal officers, and any other relevant Staff Member or external service provider who regularly interacts with the Prisoner
- information gained from other systems that relates to the Prisoner's behaviour in the Prison – this may include information regarding Incentive and Earned Privileges status, details of any adjudications, or details of the frequency of visits and/or telephone contact with pro-social support persons as recorded in the Custodial Management System
- details of relationships established with external service providers or support agencies with whom the Prisoner can maintain contact after his release
- employment and/or training record, including details and feedback of any work or training conducted outside of the Prison (temporary release)

All of the above information sources will be available to the reviewing case manager via the case management system. Wherever possible, the case manager will draw on a combination of objective measures (e.g. scores from psychometric tests, or quantitative data such as extent and frequency of contact with family members) and subjective measures (e.g. observations from appropriately trained key workers and personal officers). The reviewing case manager will provide a summary explaining which elements were considered as part of the review, and will substantiate any decisions made to alter a Prisoner's score. In this way, the review is fully auditable.

#### 5. VALIDATION AND MONITORING

Prior to Service Commencement, SecureFuture will develop and implement the full suite of assessments and case management processes. As part of this process, SecureFuture will evidence to the Department that the proposed dynamic risk assessment tool has been validated by either an independent academic body or a government body to determine that the tool is able to predict the likelihood of an offender being reconvicted.

SecureFuture will also evidence that the tool is appropriate for use with New Zealand prisoners, and will identify any modifications that have been made to the tool and provide assurance that these modifications have not affected the internal validity of the tool. Time has been built into SecureFuture's preparations, as outlined in the Preliminary Operational Completion Plan, to allow for such validation (through its academic partners) of any areas where such adjustments are deemed to be material.

The procedures SecureFuture will develop with regards to the conduct of the assessment and case management processes will be contained within the Policy and Procedures

Manual. These procedures will provide guidance to case managers on the conduct of assessments, the gathering and recording of supporting evidence as part of the Prisoner's Management Plan, and the review and re-evaluation of Prisoners prior to release. The above development and documentation processes will ensure that the methodology behind SecureFuture's self-reporting processes are transparent and measurable.

Checks and audits will be an integral part of Serco's processes in assessment and case management, and will be critical in providing assurance that KPI reporting is accurate and compliant. SecureFuture's internal Quality Assurance programme, as defined in the Policy and Procedures Manual and Annual Audit Plan, will include provision for reviewing the efficacy of the assessment and case management processes, and will also detail the process to audit compliance against KPIs.

## 6. PROPOSED KPI DEFINITIONS, TARGETS, MEASURES AND METHODOLOGIES

KPI #	Description	Proposed Target	Proposed Definition	Proposed Measure and Methodology
4.01	Eligible <sup>3</sup> Māori Prisoners' offending attitudes, thinking and behaviour	50%	The percentage of Eligible Māori Prisoners with an identified criminogenic need in the area of offending attitudes, thinking and behaviour, and who have sufficient time left to serve on their sentence to attend the recommended Intervention(s), who have an improvement in their level of pro-social (non-criminal) attitudes, thinking and behaviour.	Prisoners with an identified criminogenic need in this area, who have sufficient time left to serve on their sentence to attend the recommended Intervention, will be subject to further, detailed assessment of their offending attitudes, thinking and behaviour using a validated psychometric test, and will complete an Intervention addressing their needs. The test will be completed a second time after completion of the Intervention, and the score will be used as part of the evaluation by SecureFuture's case manager. If a Prisoner presents with behaviours that preclude the conduct of formal, structured assessments, SecureFuture's case manager will record any actions and/or Interventions proposed, and update the Prisoner's progress.
4.02	Eligible non-Māori Prisoners' attitudes, thinking and behaviour	50%	The percentage of Eligible non-Māori Prisoners with an identified criminogenic need in the area of offending attitudes, thinking and behaviour, and who have sufficient time left to serve on their sentence to attend the recommended Intervention(s), who have an improvement in their level of pro-social (non-criminal) attitudes, thinking and behaviour.	(as above)

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<sup>3</sup> 'Eligible' is intended to be defined to mean Prisoners who have served a minimum of 3 months within the Prison, and is further qualified by the considerations detailed in section 2 of this document

KPI #	Description	Proposed Target	Proposed Definition	Proposed Measure and Methodology
4.03	Eligible Māori Prisoners' employment	60%	The percentage of Eligible Māori Prisoners with an identified criminogenic need in the area of employment who have an improvement in their ability to gain and maintain employment on release.	Prisoners with an identified criminogenic need in this area will be offered a range of actions and Interventions that address their needs in this area – Interventions may be proposed to improve the Prisoner's skills in areas such as literacy and numeracy, IT, interviews and job searching. Tools will be used to measure these skills where appropriate. Suitable education, vocational training and employment opportunities will be agreed and monitored. The evaluation by SecureFuture's case worker will include consideration of all these factors, and of any post-release placement or offer for training or employment that the Prisoner has obtained.
4.04	Eligible non-Māori Prisoners' employment	60%	The percentage of Eligible non-Māori Prisoners with an identified criminogenic need in the area of employment who have an improvement in their ability to gain and maintain employment on release.	(as above)
4.05	Eligible Māori Prisoners' Settled Accommodation	80%	The percentage of Eligible Māori Prisoners who have arrangements in place to move to Settled Accommodation on release.	Evidence of an existing or new tenancy for Settled Accommodation in place for the Prisoner after his release.
4.06	Eligible non-Māori Prisoners' Settled Accommodation	80%	The percentage of Eligible non-Māori Prisoners who have arrangements in place to move to Settled Accommodation on release.	(as above)

KPI #	Description	Proposed Target	Proposed Definition	Proposed Measure and Methodology
4.07	Eligible Māori Prisoners' alcohol and drugs	40%	The percentage of Eligible Māori Prisoners with an identified criminogenic need in the area of alcohol and drugs, who have sufficient time left to serve on their sentence to attend the recommended Intervention(s), who have a reduction in substance misuse (dependency and harmful behaviour).	<p>Prisoners with an identified criminogenic need in this area, who have sufficient time left to serve on their sentence to attend the recommended Intervention, will be subject to further, detailed assessment of their substance misuse and will complete an Intervention addressing their needs. The test will be completed a second time after completion of the Intervention, and the score will be used as part of the evaluation by SecureFuture's case manager.</p> <p>If a Prisoner presents with addiction-related issues that preclude the conduct of formal, structured assessments, SecureFuture's case manager will record any actions and/or Interventions proposed, and update the Prisoner's progress.</p>
4.08	Eligible non-Māori Prisoners' alcohol and drugs	40%	The percentage of Eligible Māori Prisoners with an identified criminogenic need in the area of alcohol and drugs, who have sufficient time left to serve on their sentence to attend the recommended Intervention(s), who have a reduction in substance misuse (dependency and harmful behaviour).	(as above)
4.09	Eligible Māori Prisoners' health and wellbeing	80%	The percentage of Eligible Māori Prisoners who have an improved level of health and wellbeing.	During the induction programme, Prisoners will undergo a health assessment that covers a range of areas, including the identification of chronic diseases. This assessment may trigger medical or other health-related treatments or Interventions, in particular where such treatment will improve the Prisoner's ability to engage in other rehabilitative Interventions, and will trigger appropriate health and wellbeing promotion activities. The evaluation process will involve the test being re-run.
4.10	Eligible non-Māori Prisoners' health and wellbeing	80%	The percentage of Eligible non-Māori Prisoners who have an improved level of health and wellbeing.	(as above)



KPI #	Description	Proposed Target	Proposed Definition	Proposed Measure and Methodology
4.11	Eligible Māori Prisoners' families, children and whanau	70%	The percentage of Eligible Māori Prisoners who maintain or strengthen their pro-social relationships with families, children and whanau.	During the induction programme, case managers will establish the status of pro-social relationships the Prisoner has with relevant family and whanau, and agree a plan to maintain existing relationships, or strengthen them where necessary. The evaluation process will involve SecureFuture's case manager reviewing a range of information sources, such as frequency of visits and telephone contact, and attendance at any relevant Interventions.
4.12	Eligible non-Māori Prisoners' families, children and whanau	70%	The percentage of Eligible non-Māori Prisoners who maintain or strengthen their pro-social relationships with families, children and whanau.	(as above)
4.13	Eligible Māori Prisoners' finances, benefits and debt	40%	The percentage of Eligible Māori Prisoners with an identified criminogenic need in the area of finances, benefits and debt who have an improved ability to manage their finances, benefits and debt.	Prisoners with an identified criminogenic need in this area will agree a range of actions and Interventions that address their needs in this area – Interventions may be proposed to improve the Prisoner's skills in areas such as numeracy, debt management and budgeting. Tools will be used to measure these skills where appropriate. SecureFuture's case managers and other relevant key workers will support the Prisoner to agree any action plans required on a case-by-case basis. The evaluation by SecureFuture's case worker will include consideration of all these factors.
4.14	Eligible non-Māori Prisoners' finances, benefits and debt	40%	The percentage of Eligible non-Māori Prisoners with an identified criminogenic need in the area of finances, benefits and debt who have an improved ability to manage their finances, benefits and debt.	(as above)

KPI #	Description	Proposed Target	Proposed Definition	Proposed Measure and Methodology
4.15	Eligible Māori Prisoners' social support	70%	The percentage of Eligible Māori Prisoners with a connection to pro-social support networks, tailored to their needs in the community.	During the induction programme, case managers will establish the status of any social support networks the Prisoner already has access to, and agree a plan to maintain existing relationships, or develop additional relationships he may need, tailored to his needs, to support him after his release. The evaluation process prior to the Prisoner's release will involve SecureFuture's case manager considering contacts the Prisoner has made with pro-social support networks while in Prison, through visits, temporary release and other forms of communication.
4.16	Eligible non-Māori Prisoners' social support	70%	The percentage of Eligible non-Māori Prisoners with a connection to pro-social support networks, tailored to their needs in the community.	(as above)

## Schedule 6: Review Procedures

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### 1. Generally

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#### 1.1 Application

The provisions of this Schedule 6 shall apply whenever any item, document or course of action is required to be reviewed, approved or otherwise processed in accordance with the Review Procedures.

#### 1.2 Reviewing person

The Review Procedures are to be conducted by one or more reviewing persons (as directed by the Department). A reviewing person may be the Department's Representative and/or a qualified person appointed by the Department to conduct or assist in the conduct of the relevant Review Procedures.

#### 1.3 Contractor acknowledgments

The Contractor acknowledges and agrees that where, pursuant to this Agreement, any Reviewable Document is reviewed (or is available to be reviewed) by a reviewing person under the Review Procedures or where the Department's Representative or other person acting on behalf of the Department participates (or has the opportunity to participate) in any workshop, presentation or other forum in respect to the development of a Reviewable Document:

- (a) the Review Procedures and the Department's participation in such reviews, workshops, or presentations or any other forum (or the Department's opportunity to so review or participate) are solely for the benefit of the Department;
- (b) neither the Department, nor the Department's Representative, a reviewing person nor any other person on behalf of the Department, assumes or owes any duty of care to the Contractor to:
  - (i) participate in workshops, presentations or any other forum, or in so participating in such workshops, presentations or other forum;
  - (ii) review any Reviewable Document; or
  - (iii) ascertain errors, omissions or compliance with this Agreement; and
- (c) neither the Department's participation in any workshops, presentations or other forum nor any review of, comments upon or failure to review or comment upon any Reviewable Document by the reviewing person or anyone else on behalf of the Department will:
  - (i) relieve the Contractor from, or alter or affect, the Contractor's obligations or liability under this Agreement;
  - (ii) constitute any representation by the Department or anyone acting on its behalf as to the compliance of the Reviewable Document with the requirements of this Agreement;
  - (iii) evidence or constitute the granting of an extension of time, or affect the time for performance by the Contractor of its obligations under this Agreement;

- (iv) imply that any Works or Services have been or will be provided in accordance with this Agreement or that the Works or any Facility will be Fit for the Intended Purpose; or
- (v) prejudice the Department's rights against the Contractor under this Agreement or otherwise according to Law.

## 1.4 Reviewable Documents

In this Schedule 6, unless the context otherwise requires:

**Reviewable Document** means each document described in Schedule 5 (Operative Documents), the Reviewable Design Material listed in Exhibit 1 to this Schedule 6, the "Hardware for Prisoner-accessible areas (Operational Completion)" document (which shall include all fixtures, fittings and fastenings) and any replacement Major Sub-contract, together with such other documentation that the parties agree should be a Reviewable Document.

## 2. Submitted Items

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### 2.1 Contractor's submissions

- (a) Each submission under the Review Procedures shall be made to the Department.
- (b) Each submission under the Review Procedures shall comprise:
  - (i) a complete copy of the Reviewable Document to be reviewed;
  - (ii) particulars of the relevant provisions of this Agreement under which such document is so submitted;
  - (iii) such other information necessary to enable the reviewing person to undertake the review for the purposes of this Schedule 6; and
  - (iv) where a Reviewable Document would, if finalised, result in an amendment to any Design Documentation appended to Schedule 10 (Works Requirements), that Reviewable Document must clearly identify the amendment that would be required to be made to such Design Documentation through Part 13 (Changes) of the Base Agreement.

A submission, (as described in this paragraph 2.1(b)) is referred to in this Schedule 6 as a **Submitted Item**.

- (c) Where a Reviewable Document is to be submitted by a date or within a timeframe, specified in the Works Provisioning Programme, that Reviewable Document must be submitted by that date or within that timeframe.

### 2.2 Department's response

- (a) The reviewing person will:
  - (i) subject to paragraph 2.2(b), within 10 Business Days of the date of receipt of a submission (or re-submission, as the case may be) of a Submitted Item of Reviewable Design Material to the Department;

- (ii) subject to paragraph 2.2(b), within 20 Business Days of the date of the receipt of a submission of a Submitted Item other than Reviewable Design Material to the Department;
- (iii) subject to paragraph 2.2(b), within 10 Business Days of the date of the receipt of a re-submission of a Submitted Item other than Reviewable Design Material to the Department; or
- (iv) within 10 Business Days of the date additional information in relation to the Submitted Item requested pursuant to paragraph 2.2(b) is provided to the reviewing person,

(or such other reasonable period as advised to the Contractor by the Department at or about the time the Submitted Item is received by the reviewing person), provide to the Contractor an endorsement in relation to the relevant Submitted Item of “no comment” or (subject to and in accordance with paragraph 3.2 (Grounds for raising comments)) “comments” as appropriate.

- (b) The Contractor shall submit any further or other information, data and documents that the reviewing person reasonably requires. Any request by the reviewing person for further or other information, data and documents must be made:

- (i) in the case of Reviewable Design Material, within five Business Days; and
- (ii) in the case of other Reviewable Documents, within 10 Business Days,

of the date of receipt of a submission (or re-submission, as the case may be) of the Submitted Item to the Department and, from the date of that request, the timeframe under paragraph 2.2(a) applicable to the Department's review and response shall be that set out in paragraph 2.2(a)(iv).

- (c) If the Contractor does not submit any such information, data and documents, on a timely basis and in any event within 10 Business Days following the request from the reviewing person, the reviewing person shall be entitled to:
  - (i) comment on the Submitted Item on the basis of the information, data and documents which have been provided; or
  - (ii) object to the Submitted Item on the grounds that insufficient information, data and documents have been provided to enable the Department to determine whether he or she has a legitimate basis for commenting or objecting in accordance with this Schedule 6.
- (d) If the reviewing person fails to provide to the Contractor its endorsement in relation to a Submitted Item (including any re-submitted Submitted Item) in accordance with paragraph 2.2(a) and within the applicable timeframe specified in or agreed pursuant to paragraph 2.2(a), then the Department shall, unless it has objected to the Submitted Item under paragraph 2.2(c)(ii) above, be deemed to have endorsed the Submitted Item “no comment”.
- (e) The reviewing person may make comments in relation to any Submitted Item in accordance with this paragraph 2.2 and paragraph 3 (Grounds upon which Department may comment on Submitted Items). In such cases, he or she shall state the ground upon which such comments are based and the evidence or other information necessary to substantiate that ground.

### **3. Grounds upon which Department may comment on Submitted Items**

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#### **3.1 Raise comments**

The expression “raise comments” shall be construed to mean “raise comments or make objections” unless the contrary appears from the context.

#### **3.2 Grounds for raising comments**

The reviewing person may raise comments in relation to any Submitted Item on the grounds that:

- (a) the Submitted Item is incomplete, of poor quality or otherwise is not in a condition to allow the Department to adequately review it;
- (b) the Submitted Item is inconsistent with previously submitted and implemented documentation (including the terms of this Agreement, excluding Schedule 26 (Related Documents)) or creates ambiguity;
- (c) the Submitted Item (on the balance of probabilities) is not in accordance with Good Industry Practice;
- (d) the Submitted Item (on the balance of probabilities):
  - (i) is not in accordance with the Works Requirements (when read subject to clause 25.2 (Works Requirements, Works Provisioning Programme and Operational Completion Plans) of the Base Agreement);
  - (ii) is not in accordance with, or is not likely to enable the Contractor to be in compliance with, the Corrections Services Requirements;
  - (iii) is not in accordance with, or is not likely to enable the Contractor to be in compliance with, the Facility Management Requirements or would (in the case of Scheduled Maintenance) exceed the period reasonably required for the relevant works;
  - (iv) is not in accordance with, or is not likely to enable the Contractor to be in compliance with, the ICT Requirements;
  - (v) in the case of any Reviewable Design Material:
    - (A) is inconsistent with or is not in accordance with the Design Documentation appended to Schedule 10 (Works Requirements) (as may be updated through a Non-Material Change); or
    - (B) has not been submitted in accordance with the requirements of clause 27 (Design and Design Development) of the Base Agreement or in accordance with the Design Development Plan;
  - (vi) in the case of the Works Provisioning Programme, would not enable the Works to be completed on time or for the Facility to be completed by the Planned Service Commencement Date; or

- (vii) is not in accordance with any Changes requested by or consented to by the Department or does not otherwise comply with the terms of this Agreement or is likely to result in a breach of the terms of this Agreement;
- (e) the Submitted Item (on the balance of probabilities):
  - (i) would lead to an increase in the Unitary Charge in circumstances where the proposed revision is not solely required due to a Qualifying Change in Law, a Compensation Extension Event, a Compensation Intervening Event or a Department-initiated Change;
  - (ii) is likely to increase the likelihood of deductions being made pursuant to clause 53.3 (Payment) of the Base Agreement and Schedule 17 (Payment Mechanism);
  - (iii) would result in an inferior standard of performance of the relevant Services to the standard of performance in accordance with the Service Requirements;
  - (iv) is not in accordance with any of the Project Documents; or
  - (v) would breach any Law or not be in accordance with any Contractor Consent or any Department Consent and/or is likely to result in a threat to health and safety;
- (f) the Contractor's or the Department's ability to perform their respective obligations under this Agreement would (on the balance of probabilities) be adversely affected;
- (g) the Department's ability to carry out any of its legal duties or other functions would be adversely affected;
- (h) the proposed course of action would be likely to result in a material increase to the Department's Liabilities or potential or contingent Liabilities under the Agreement or is likely to result in the Department incurring material additional expense; and/or
- (i) the proposed course of action would adversely affect any right of the Department under this Agreement or its ability to enforce any such right.

### **3.3 Replacement sub-contract**

The reviewing person may also raise comments where the Submitted Item is a replacement sub-contract submitted under clause 16 (Sub-contractors) of the Base Agreement, on the grounds that the relevant replacement sub-contract:

- (a) does not comply with the requirements of clause 16 (Sub-contractors) of the Base Agreement;
- (b) is not on the same or similar terms as the sub-contract which the Contractor is proposing to replace; or
- (c) may result in the Department having a greater exposure to Liability than the Department would have had under the sub-contract which the Contractor is proposing to replace.

## **4. Effect of review**

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### **4.1 Finalised Submitted Item**

Any Submitted Item which is endorsed, or deemed to have been endorsed, by the Department “no comment” under these Review Procedures or any similar process undertaken by the Contractor and the Department prior to Financial Close:

- (a) will be deemed to have been “finalised” for the purposes of this Agreement; and
- (b) shall then and only then be complied with or implemented (as the case may be) by the Contractor at its own risk and expense,

it being acknowledged by the Contractor that notwithstanding any term of this Schedule 6 and the other terms of this Agreement (express or implied), no Review Procedure relieves the Contractor of any of its obligations under this Agreement (including the Contractor’s obligation to ensure that the Submitted Item complies with the relevant terms of this Agreement) nor does any Review Procedure constitute an acknowledgement by the Department that the Contractor has complied with any such obligations. For the avoidance of doubt, once a Reviewable Document is deemed “finalised” for the purposes of this Agreement in accordance with this paragraph 4.1, the contents of that Reviewable Document cannot be amended unless the updated version of that Reviewable Document, clearly showing its amendments, is re-submitted to the Review Procedures.

### **4.2 Amended Submitted Item**

In the case of any Submitted Item, if the Department returns to the Contractor an endorsement of “comments” in relation to any Submitted Item, the Contractor shall:

- (a) amend such Submitted Item in accordance with the comments, and re-submit (on one or more occasions) the Submitted Item as amended for further review under the Review Procedures until such time as the Submitted Item is returned to the Contractor without any comment or with the endorsement “no comment”;
- (b) ensure that all amendments made to the Submitted Item since it was last reviewed by the Department are clearly marked as amendments; and
- (c) comply with such Submitted Item after amendment in accordance with the comments unless the Contractor considers that:
  - (i) such comments are outside the applicable grounds for objection permitted by paragraph 3.2 (Grounds for raising comments) or paragraph 3.3 (Replacement sub-contract), in which case the Contractor or the Department may refer the matter for determination under the Accelerated Dispute Resolution Procedures; or
  - (ii) compliance with or implementation of the Submitted Item as amended by the “comments” would constitute a Change (including a Change that the Contractor would be entitled to reject under clause 45.5(a) (Contractor’s right to refuse) of the Base Agreement), in which case the Contractor or the Department may (subject to the terms of paragraph 5 (Disputes as to effect of Department’s comments)) refer the matter for determination under the Accelerated Dispute Resolution Procedures,

provided that, in the event that any Submitted Item is endorsed with a comment that any Reviewable Design Material is inconsistent with or not in accordance with previously submitted Design Documentation, the Contractor may (as an alternative to amending such Submitted Item in accordance with this paragraph 4.2) issue a Change Notice under Part 13 (Changes) of



the Base Agreement to amend the relevant Design Documentation so as to remove any such inconsistency with that Submitted Item, and the terms of Part 13 to the Base Agreement shall apply.

#### **4.3 Meeting to discuss “comments”**

In the event that any Submitted Item has been endorsed “comments” on more than one occasion, where the comments so lend themselves, the parties shall, if requested by either party, meet as soon as reasonably practicable to discuss such Submitted Item, the grounds for the comments and any suggestions that may enable that Submitted Item to be endorsed “no comments” when re-submitted.

#### **4.4 Referral for determination**

Where the Contractor or the Department refers a matter concerning a Submitted Item for determination under the Accelerated Dispute Resolution Procedures, the Contractor may proceed with Works Provisioning or provision of the Operational Services in accordance with the Submitted Item, but it may only do so at its own risk and expense (which expense may extend to the costs of undertaking rework as a result of any determination made under the Accelerated Dispute Resolution Procedures that is adverse to the Contractor).

#### **4.5 Copy of Submitted Item**

Within five Business Days of receiving the comments of the Department on any Submitted Item, the Contractor shall send a copy of the Submitted Item as amended to the Department pursuant to paragraph 4.2(a) and the provisions of paragraphs 2.2 (Department's response), paragraph 3 (Grounds upon which Department may comment on Submitted Items) and this paragraph 4 shall apply (changed according to context) to such re-submission. Any failure to clearly mark all amendments to a Submitted Item in accordance with paragraph 4.2(b) in its re-submission shall result in:

- (a) any such amendment not being considered by the Department; and
- (b) the Submitted Item being deemed to continue to be endorsed “comments” until such time as the amendment is brought to the attention of the Department through re-submission of that item under the Review Procedures.

Should the Contractor comply with or implement the Submitted Item notwithstanding this failure, such compliance or implementation remains at the Contractor's risk and expense.

### **5. Disputes as to effect of Department's comments**

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#### **5.1 No limitation**

No approval or comment or any failure to give or make an approval or comment under this Schedule 6 shall operate to exclude or limit the Contractor's obligations or liabilities under this Agreement (or the Department's rights under this Agreement) and/or shall constitute a Department Change proposed by the Department except as set out in this paragraph 5.

#### **5.2 Department-initiated Change**

If, having received comments from the reviewing person, the Contractor considers that compliance with those comments would amount to a Change, the Contractor shall, before complying with the comments, notify the Department of the same.

### **5.3 Department response**

Where the Department agrees that compliance with the comments of the reviewing person does constitute a Department-initiated Change, the Department may either:

- (a) withdraw the comment; or
- (b) notify the Contractor that it intends to proceed with the comment in which case the provisions of Part 13 (Changes) of the Base Agreement will apply.

### **5.4 Dispute**

Where the Department does not agree that compliance with the comments of the reviewing person does constitute a Department-initiated Change, either party may refer the dispute for resolution in accordance with the Accelerated Dispute Resolution Procedures.

### **5.5 Treatment of Change**

If it is determined following dispute resolution that the comment will result in a Department-initiated Change, the Department may:

- (a) withdraw the comment; or
- (b) notify the Contractor that it intends to proceed with the comment, in which case the provisions of Part 13 (Changes) of the Base Agreement will apply.

### **5.6 Acceptance**

Any failure by the Contractor to notify the Department that it considers that compliance with any comments of a reviewing person would constitute a Department-initiated Change will constitute an irrevocable acceptance by the Contractor that any compliance with the reviewing person's comments will be without cost to the Department and without any extension of time.

### **5.7 Interpretation of Change**

For the purposes of this Schedule 6, any reference to a Change shall be interpreted and construed on the basis that the words "that the Department considers (on reasonable grounds) to be in furtherance of the Objectives" shall be disappplied from the definition of Change set out in the Base Agreement and ignored.

## **6. Document management**

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### **6.1 Document submission**

In relation to any document, information or notification given or submitted in the course of the Review Procedures, the provisions of clause 96.3 (Deemed delivery) of the Base Agreement shall apply. Where the document, information or notification is provided by way of upload to a shared information system, such document, information or notification shall be deemed to have been delivered only when a notification email is provided by the sender to the recipient (in relation to which email, clause 96.3(c) of the Base Agreement shall apply).

### **6.2 Register**

The Contractor shall compile and maintain a register of:

- (a) the date and contents of the submission of all Submitted Items; and
- (b) the date of receipt and content of all Submitted Items that are returned or deemed to be returned by the Department.

### **6.3 Database**

The Contractor shall establish and maintain a computerised database which the Contractor and the Department may access remotely by computer to view, download or print out all or any Reviewable Documents and the documents comprising or referenced in Reviewable Documents. If the Department is unable to access that database, the Contractor shall procure that the database is made available as soon as reasonably practicable for access and/or use by the Department or any person authorised by the Department.

## **Exhibit: Reviewable Design Material**

- (a) secure perimeter - Detailed Sections including mesh and energised fence specification;
- (b) [REDACTED]
- (c) landscaping plan;
- (d) individual buildings – 1:100 floor plans, elevations, roof plans and typical sections 1:50 scale, in each case excluding those included in Appendix D (Drawings) to Schedule 10 (Works Requirements);
- (e) cell detailed drawings - 1:20 or 1:50 floor plans and internal elevations and 1:10, 1:5 & 1:2 details;
- (f) cell fixtures and fittings schedule;
- (g) cell fastenings;
- (h) typical door and door hardware;
- (i) balance of door and window hardware (for Prisoner-accessible areas);
- (j) general hardware (for Prisoner-accessible areas) e.g., grab rails, door stops, coat hooks, etc;
- (k) built in joinery including kiosks - plans and elevations (for Prisoner-accessible areas);
- (l) structural design features report;
- (m) structural calculations for buildings that are to have a 100 year design life;
- (n) structural details of House Block Prison Cell window horizontal bars;
- (o) building services (ICT and Vertical Transportation) design features report;
- (p) colour boards;
- (q) kitchen Fitout floor plan;
- (r) civil drawings:
  - (i) combined services plan - 1:1000 site wide;
  - (ii) bulk earthworks plan - 1:1000 site wide; and
  - (iii) details of stormwater and sewer systems passing under the secure perimeter;
- (s) mechanical drawings:
  - (i) legend;
  - (ii) BMS system schematic;
  - (iii) HVAC ventilation schematic; and

- (iv) HVAC piping schematic;
- (t) electrical drawings:
  - (i) legend;
  - (ii) electrical schematic;
  - (iii) luminaire schedule and lighting layout (type and location);
  - (iv) GPO provisions (allowance per room); and
  - (v) Power Control Monitoring System (PCMS) including a load shedding matrix;
- (u) hydraulic drawings:
  - (i) legend;
  - (ii) plumbing schematic; and
  - (iii) drainage schematic;
- (v) ICT drawings:
  - (i) legend;
  - (ii) IT/Comms schematic; and
  - (iii) data outlet provisions (allowance per room);
- (w) weathertightness risk matrix calculations; and
- (x) cell phone jamming specifications.

## Schedule 7: Governance and Service Management

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### Part 1 – Project groups

#### 1. Description of Project groups

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##### 1.1 General

- (a) The parties agree that there shall be not less than two “Project groups” put in place in relation to the governance and management of the Project as a whole, including a Project Governance Group and a Relationship Management Group. Where the Project Governance Group or the Relationship Management Group creates a subgroup for any purpose, that subgroup shall be governed by the same terms as its parent group, unless that parent group expressly forms that subgroup on restricted terms (in which case such restricted terms shall apply to that subgroup).
- (b) The Project Governance Group shall, unless otherwise agreed, comprise persons representing the Department and the Contractor respectively, who shall be responsible for the overall governance of the Project from the Execution Date until the Expiry Date or the Actual Termination Date (whichever occurs first) and for guiding the development of strategy and innovation. Further detail in relation to the Project Governance Group is set out in Part 1A (Project Governance Group).
- (c) The Relationship Management Group shall, unless otherwise agreed, comprise persons representing the Department and the Contractor respectively, who shall be responsible for overseeing the implementation and performance of this Agreement from the Execution Date until the Expiry Date or the Actual Termination Date (whichever occurs first) as well as implementing any strategies or innovations agreed upon by the Project Governance Group. Further detail in relation to the Relationship Management Group is set out in Part 1B (Relationship Management Group).
- (d) In this Schedule 7, reference to a “Group” refers to either the Project Governance Group or the Relationship Management Group, as the case may require.

##### 1.2 Effect of decisions

The parties recognise that decisions of either Group shall not be binding nor confer rights or obligations on either the Department or the Contractor under, or otherwise affect, any of the Project Documents, unless any such decision of either Group is given as an express direction pursuant to this paragraph 1.2 by the Department’s Representative in writing within five Business Days of the meeting, or a Confirmed Change results after the matter is progressed in accordance with Part 13 (Changes) of the Base Agreement.

##### 1.3 Effect of exercise of rights by Department

The Department’s exercise, or omission to exercise, any of its rights and obligations with respect to either Group will not:

- (a) constitute an Event;
- (b) lessen or otherwise affect the Contractor’s obligations and the Department’s rights, whether under this Agreement or at Law;
- (c) entitle the Contractor to make any Claim against the Department; or

- (d) be construed as a Change,

save that in the event of any direction given, or Change initiated, by the Department following any meeting of a Group, the relevant provisions of this Agreement shall, notwithstanding the foregoing, apply.

## **Part 1A – Project Governance Group**

### **2. Project Governance Group members**

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#### **2.1 Composition**

Unless otherwise agreed by the parties, the Project Governance Group shall comprise:

- (a) representatives of the Contractor, including:
  - (i) the chairman of the Contractor's board of directors;
  - (ii) representatives of each of the holders of equity in HoldCo; and
  - (iii) other members of either the HoldCo's board of directors or the Contractor's board of directors, in each case with relevant knowledge and oversight applicable to the then-current phase of the Project; and
- (b) representatives of the Department, who shall be members of the Department's senior management, in each case with relevant knowledge and oversight applicable to the then-current phase of the Project.

#### **2.2 Notification of membership**

On or prior to Financial Close, each party must give the other party written notice of the representatives (and any alternates to those representatives) it appoints to the Project Governance Group. Subject to paragraph 2.1, each party may replace a representative or alternate appointed by it by written notice to the other party.

#### **2.3 Authority of members**

Each party must ensure the members of the Project Governance Group appointed by it:

- (a) are authorised to represent the respective party in respect of any of the duties or functions of the Project Governance Group; and
- (b) attend all meetings as required, subject to the terms of paragraphs 6.3 (Method of attendance) and 6.4 (Quorum).

#### **2.4 Chair**

One of the Department's representatives (or his or her alternate) shall be the chair of the Project Governance Group.

### **3. Purpose of Project Governance Group**

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The purpose of the Project Governance Group is:

- (a) to review and set the overall strategy for the Project;
- (b) to manage the strategic relationships required within the Project;
- (c) to inform members of developing and planned strategic matters relating to the New Zealand prison estate, including those matters impacting, or reasonably capable of impacting, on the Prison and the delivery of the Services;
- (d) to review and discuss ideas for Innovation;
- (e) to review and discuss key stakeholder relationships;
- (f) to discuss issues of public concern;
- (g) to act as a strategic risk management forum; and
- (h) to act as a forum to discuss any other issues arising in relation to the Works Provisioning or the Operational Services, including any issues that may be escalated from the Relationship Management Group.

## **Part 1B – Relationship Management Group**

### **4. Relationship Management Group members**

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#### **4.1 Composition**

Unless otherwise agreed by the parties, the Relationship Management Group shall comprise six members, being:

- (a) the Contractor's Representative and two other representatives appointed by the Contractor; and
- (b) the Department's Representative and two other representatives appointed by the Department.

#### **4.2 Notification of membership**

Subject to paragraphs 9.4 (Notification of appointment) and 10.4 (Notification of appointment), on or prior to Financial Close, each party must give the other party written notice of the representatives (and any alternates to those representatives) it appoints to the Relationship Management Group. Subject to paragraphs 4.1, 9.4 and 10.4, each party may replace a representative or alternate appointed by it by written notice to the other party.

#### **4.3 Authority of members**

Each party must ensure the members of the Relationship Management Group appointed by it:

- (a) are authorised to represent the respective party in respect of any of the duties or functions of the Relationship Management Group; and



- (b) attend all meetings as required, subject to the terms of paragraphs 6.3 (Method of attendance) and 6.4 (Quorum).

#### **4.4 Chair**

The Department's Representative (or his or her alternate) shall be the chair of the Relationship Management Group.

### **5. Purpose of Relationship Management Group**

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The purpose of the Relationship Management Group is:

- (a) to monitor the progress and delivery of the Works Provisioning and the Operational Services delivered pursuant to the Agreement, with reference to all applicable Operative Documents;
- (b) to review reports prepared by the Contractor, any Major Sub-contractor, the Independent Reviewer or any other person in relation to the Works Provisioning and the Operational Services;
- (c) to discuss any issues arising from any manuals, plans, programmes, reports or documents provided by or on behalf of the Contractor or the Independent Reviewer;
- (d) to discuss issues of public concern;
- (e) to discuss quality assurance;
- (f) to report on and discuss health and safety and environmental issues;
- (g) to raise for discussion any potential Changes, where practicable, prior to the issue of any Change Notice in accordance with Part 13 (Changes) of the Base Agreement;
- (h) to monitor and oversee the implementation and negotiation of any proposed Change;
- (i) to act as a forum to discuss any other issues arising in relation to the Works Provisioning or the Operational Services; and
- (j) to work together to implement any strategy agreed by the Project Governance Group.

## **Part 2 – Operation of Groups**

### **6. Meetings of Groups**

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#### **6.1 Meetings of Project Governance Group**

- (a) The Project Governance Group shall meet:
  - (i) quarterly or as otherwise agreed by the Project Governance Group; and
  - (ii) at such other times as the parties may reasonably require.
- (b) The Contractor shall, within one month before the Planned Service Commencement Date, propose for approval by the Department (acting reasonably) a schedule of Project Governance Group meetings during the provision of the Operational Services.

Once approved, each party shall use reasonable endeavours to adhere to such schedule.

## **6.2 Meetings of Relationship Management Group**

- (a) The Relationship Management Group shall meet:
  - (i) monthly or as otherwise agreed by the Relationship Management Group; and
  - (ii) at such other times as the parties may reasonably require.
- (b) The Contractor shall:
  - (i) within one month after the Execution Date, propose for approval by the Department (acting reasonably) a schedule of Relationship Management Group meetings for the period up until the Planned Service Commencement Date (which shall be updated as necessary to reflect the likely Service Commencement Date); and
  - (ii) no later than one month following the Service Commencement Date and thereafter within one month following each anniversary of the Service Commencement Date, propose for approval by the Department (acting reasonably), a schedule of Relationship Management Group meetings for the immediately following 12 month period.
- (c) Each party shall use its reasonable endeavours to adhere to the schedules of Relationship Management Group meetings approved by the Department under paragraph 6.2(b).
- (d) During Works Provisioning:
  - (i) either party may have other sub-contractors, advisors and consultants present at any Relationship Management Group meeting from time to time as required, subject to giving the other party not less than two Business Days' prior notice of such attendance; and
  - (ii) the Independent Reviewer shall be required to attend all meetings of the Relationship Management Group during the Works Provisioning where his or her monthly report (verbal or written) will be considered, unless otherwise agreed by the Department's Representative and the Contractor's Representative in advance of the meeting.

## **6.3 Method of attendance**

Subject to paragraph 6.4, a meeting of a Group may be held:

- (a) by a number of members, who constitute a Quorum, being assembled together at the place, date, and time appointed for the meeting; and
- (b) where requested by a Group member not less than five Business Days in advance, by means of audio, or audio and visual, communication by which all Group members participating can simultaneously hear each other throughout the meeting.

## **6.4 Quorum**

- (a) For a meeting of a Group to proceed there must be in attendance in person at all times during the meeting at least four Group members, including all least two

representatives of the Department and at least two representatives of the Contractor (a **Quorum**).

- (b) If a Quorum is not present within 15 minutes after the time appointed for the meeting, the meeting is adjourned for two Business Days at the same time and place or to such other date, time and place as the Group members present at the meeting may appoint.
- (c) A Group member is not regarded as present for the purposes of a Quorum if he or she attends by telephone or by video conference or similar telecommunication device. However, he or she shall, provided such device allows all persons participating in the meeting to hear each other at the same time, be entitled to participate fully in such Group meeting after a Quorum is established. A Group member may be represented by an alternate (either in person, by telephone or by video conference or using such similar device, but only counting towards a Quorum if such alternate is present in person).

## **7. Agenda and minutes**

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### **7.1 Agenda**

At least five Business Days prior to the scheduled date of each meeting, the Contractor shall prepare and provide to the members of the relevant Group a draft agenda for the next meeting, along with supporting reports and information. The Department shall advise the Contractor within two Business Days whether it wishes to make additions to the agenda and whether it requires the Contractor to provide additional information prior to the meeting, which additional information requests must be reasonable. The final agenda shall be circulated by the Contractor at least one Business Day prior to the meeting, together with any additional material requested by the Department. The agenda may be amended at the meeting by agreement of at least three members of the relevant Group present at the meeting.

### **7.2 Minutes**

Within five Business Days of the conclusion of each meeting of the relevant Group, the Contractor shall prepare and circulate detailed minutes of the meeting to each member of the relevant Group. The minutes must include:

- (a) a list of attendees;
- (b) details of the matters discussed at the meeting; and
- (c) the actions arising from the meeting as agreed by the relevant Group at that meeting.

### **7.3 Completion of agreed actions**

Without prejudice to the right of the Department to issue directions and Change Notices in accordance with the Base Agreement, each party must seek to complete any actions assigned to it, which are agreed at the relevant Group meeting, within a timely manner, and shall be carried out in accordance with the relationship principles set out in clause 7.2 (Relationship principles) of the Base Agreement.

### **7.4 Provision of additional information**

The Department may require, from time to time, the Contractor to provide additional information on matters discussed at any Group meeting and, provided that such requirement is reasonable, the Contractor must provide such information in a timely manner.

## **8. Conduct at meetings**

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### **8.1 Transparency**

Each party acknowledges the requirements of clause 7.2 (Relationship principles) of the Base Agreement and shall at all times act in accordance with those relationship principles on the terms set out in that clause.

### **8.2 Procedures, protocols and quorum**

Meetings of each Group will be conducted according to such procedures and protocols as the members from time to time agree, except that a quorum for a Group meeting is at least one member (or alternate, if a member is unavailable) appointed by each of the Department and the Contractor.

## **Part 3 – Parties’ representatives**

## **9. Department’s Representative**

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### **9.1 General**

The Department’s Representative will:

- (a) exercise the rights, powers and authority and perform the roles delegated to the Department’s Representative by the Department as may be notified to the Contractor from time to time;
- (b) exercise such other power or authority of the Department under any Project Document, delegated in writing by the Department to the Department’s Representative and notified to the Contractor (including any conditions applying to the delegated power);
- (c) bind the Department under this Agreement or other Project Documents, only to the extent of compliance with the conditions of any lawfully delegated power to do so; and
- (d) exercise all powers, duties, discretions and authorities on behalf of the Department (and not as an independent certifier, assessor or valuer).

### **9.2 Notices**

Any notice that is required to be given to the Department under this Agreement or any Project Document can, unless otherwise specified, be given to the Department’s Representative. Any notice given to, or any information within the possession of, the Department’s Representative is deemed to have been given to, or to be within the possession of, the Department.

### **9.3 Reliance on instruction**

- (a) Save where notified in writing by the Department before such act, instruction, notice or direction, the Contractor and the Contractor’s Representative shall be entitled to treat any act, instruction, notice or direction of the Department’s Representative that is within the delegated authority of the Department’s Representative as being expressly authorised by the Department, and the Contractor and the Contractor’s Representative shall not be required to determine whether authority has in fact been given.

- (b) The Contractor shall be entitled to rely on written instructions given by:
  - (i) the Department's Representative or authorised delegate acting within his or her delegation;
  - (ii) the Chief Executive; or
  - (iii) a person to whom the Chief Executive has delegated appropriate authority, evidence of which has been provided to the Contractor.
- (c) The Contractor shall not be entitled to rely on or claim, and the Department will not be responsible for, any relief, additional time, losses or expenses, damages, costs or other losses should the Contractor fail to act on any notice, communication or other purported instruction given by a person alleging to act for or on behalf of the Department unless such instruction is given in accordance with paragraph 9.3(b).
- (d) The Contractor shall not be required to act on any notice, communication or other purported instruction given by a person alleging to act for or on behalf of the Department unless such instruction is given in accordance with paragraph 9.3(b).

## **9.4 Notification of appointment**

- (a) The Department must provide written notice to the Contractor of the name and contact details of, and the extent of the delegation exercisable by, the Department's Representative on or before Financial Close.
- (b) The Department may appoint a replacement or additional Department's Representative at any time by written notice to the Contractor, which notice shall contain the information required by paragraph 9.4(a).

## **9.5 Delegation of function**

For the avoidance of doubt, the Department's Representative may, from time to time, delegate all or part of his or her functions and powers to a suitably qualified and experienced alternate by written notice to the Contractor's Representative and may at any time revoke such delegation or limit or qualify its extent (in each case) on written notice to the Contractor's Representative.

# **10. Contractor's Representative**

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## **10.1 Generally**

The Contractor's Representative will:

- (a) exercise the rights, powers and authority and perform the roles accorded to the Contractor's Representative by the Contractor as may be notified to the Department from time to time;
- (b) exercise such other power or authority of the Contractor under any Project Document, delegated in writing by the Contractor to the Contractor's Representative and notified to the Department (including any conditions applying to the delegated power);
- (c) bind the Contractor under this Agreement or other Project Documents, only to the extent of compliance with the conditions of any lawfully delegated power to do so; and

- (d) exercise all powers, duties, discretions and authorities on behalf of the Contractor (and not as an independent certifier, assessor or valuer).

## **10.2 Notices**

Any notice that is required to be given to the Contractor under this Agreement or any Project Document can, unless otherwise specified, be given to the Contractor's Representative. Any notice given to, or any information within the possession of, the Contractor's Representative is deemed to have been given to, or to be within the possession of, the Contractor.

## **10.3 Reliance on instruction**

- (a) Save to the extent notified in writing by the Contractor before such act, instruction, notice or direction, the Department and the Department's Representative shall be entitled to treat any act, instruction, notice or direction of the Contractor's Representative as being expressly authorised by the Contractor, and the Department and the Department's Representative shall not be required to determine whether authority has in fact been given.
- (b) The Department will not be entitled to rely on or claim, and the Contractor shall not be responsible for, any relief, additional time, losses or expenses, damages, costs or other losses should the Department fail to act on any notice, communication or other instruction given by a person alleging to act for and on behalf of the Contractor unless that person is the Contractor's Representative or authorised delegate acting within his or her delegation.
- (c) The Department shall not be required to act on or acknowledge any notice, communication or other purported instruction given by a person alleging to act for or on behalf of the Contractor unless such instruction is given by the Contractor's Representative or authorised delegate acting within his or her delegation.

## **10.4 Notification of appointment**

- (a) The Contractor must provide written notice to the Department of the name and contact details of, and the extent of the delegation exercisable by, the Contractor's Representative on or before Financial Close.
- (b) Subject to clause 15.2 (Service management) of the Base Agreement, the Contractor may appoint a replacement Contractor's Representative at any time by written notice to the Department, which notice shall contain the information required by paragraph 10.4(a).

## **10.5 Delegation**

For the avoidance of doubt, but subject to clause 15.2 (Service management) of the Base Agreement, the Contractor's Representative may, from time to time, delegate his or her functions and powers to a suitably qualified and experienced alternate appointed when the Contractor's Representative is incapacitated, ill or on holiday and may at any time revoke such delegation or limit or qualify its extent (in each case) on written notice to the Department's Representative.