Schedule 28

New Grafton Correctional Centre
Operator Side Deed

[Insert name of Operator]
[insert ABN/ACN]

[Insert name of Parent Guarantor]
[insert ABN/ACN]

[Insert name of Project Co]
[insert ABN/ACN/ARBN]

[Insert name of State party]
[insert ABN]
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This Subcontract Side Deed is made on

Between:

[Insert name of party] ABN [Insert ABN] of [Insert address] (Operator)

[Insert name of party] ABN [Insert ABN] of [Insert address] (Parent Guarantor)

[Insert name of party] ABN [Insert ABN] of [Insert address] (Project Co)

Recitals:

A The State and Project Co have entered, or will enter, into the Project Deed for the provision of the Project.

B Project Co has subcontracted its obligations to perform the Services (as that term is defined in the Project Deed) to the Operator pursuant to the Subcontract.

C The Parent Guarantor has, pursuant to the Parent Guarantee, guaranteed to Project Co the performance of the Operator's obligations under the Subcontract.

D The Operator and the Parent Guarantor have agreed to grant to the State certain rights in relation to the Subcontract Documents.

The parties agree as follows:

1. Definitions and interpretation

1.1 Project Deed definitions incorporated

Unless otherwise expressly defined in this Deed, expressions used in this Deed have the meanings given to them in the Project Deed.

1.2 Definitions

In this Deed:

Additional Obligor means a company or other entity which is wholly owned by the State.

Additional Obligor Step-In Notice has the meaning given in clause 5.1(a)(iv).

Additional Obligor Step-Out Date has the meaning given in clause 5.3(d).

Approved Nominee means a person nominated by the State and approved by the Operator in accordance with clause 6.9 as:

(a) having the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Subcontract; and

(b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and subcontracts) which are sufficient to enable it to perform the obligations of Project Co under the Subcontract.
Assumption Date has the meaning given in clause 5.3(a).

Deed means this deed and includes all schedules, exhibits, attachments and annexures to it.

Default Event means:
(a) any default (howsoever described) by Project Co under the Subcontract; or
(b) any other event or circumstance,
which alone or with the giving of notice or passage of time or both, would entitle the Operator to terminate, rescind, accept the repudiation of, or suspend any or all of the Operator's obligations under the Subcontract.

Default Event Notice has the meaning given in clause 4.2(a).

Effective Date means the date specified in the Novation Notice.

Material Adverse Effect means a material adverse effect on:
(a) the ability of any of a Project Co Entity, the Operator or the Parent Guarantor to perform and observe their respective obligations under any Project Document to which it is a party; or
(b) the rights of the State under any State Project Document, or the ability or capacity of the State to exercise its rights or perform its obligations under a State Project Document.

Novation Notice has the meaning given in clause 6.1.

Parent Guarantee means each deed of guarantee dated on or about the date of this Deed from the Parent Guarantor in favour of Project Co in respect of the obligations of the Operator under the Subcontract and, if the State gives a Novation Notice, each new guarantee entered into pursuant to clause 6.6.

PPS Law means:
(a) the Personal Property Securities Act 2009 (Cth) and any regulation made at any time under the PPSA, including the Personal Property Securities Regulations 2010 (Cth) (each as amended from time to time); and
(b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a).

Project Co's Rights has the meaning given in clause 5.3(b)(i)(A).

Project Deed means the document entitled 'New Grafton Correctional Centre - Project Deed' between the State and Project Co dated on or about the date of this Deed.

Receiver means any agent, attorney, trustee, manager, receiver, receiver and manager, administrator, liquidator or provisional liquidator or analogous person appointed under or in connection with the State Security or pursuant to court order on application by the State.

Security Interest has the meaning given to the term in the PPS Law.

Services means [insert].

State means:
(a) The Minister for Corrections on behalf of the Crown in right of the State of New South Wales;
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(b) Infrastructure New South Wales (ABN 85 031 302 516); and

(c) for the purposes of the Project Deed and this Deed only, the Commissioner of Corrective Services.

State Cure Notice has the meaning given in clause 4.2(c).

Step-In Right has the meaning given in clause 5.1(a).

Step-In Period has the meaning given in clause 5.1(b).

Subcontract means the contract titled [Insert] between Project Co and the Operator dated on or about the date of this Deed.

Subcontract Documents means the Subcontract and the Parent Guarantee (or either as the context requires).

1.3 Interpretation

In this Deed:

(a) (headings): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

(b) (count and gender): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;

(c) (Deed and Schedule references): a reference to:

(i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Deed; and

(ii) a section is a reference to a section of a Schedule;

(d) (document as amended): a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;

(e) (party): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;

(f) (person): a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(g) (legislation): a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;

(h) (Policies): a reference to a Policy includes that Policy as amended or updated from time to time;

(i) (definitions): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(j) ('includes'): 'includes' and 'including' will be read as if followed by the phrase '(without limitation)';
(k) ("or"): the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;

(l) (information): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

(m) ("$"): a reference to '$', AUD or dollar is to Australian currency;

(n) (business day): if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;

(o) (day): except as otherwise provided in this Deed or where a reference is made to 'Business Days', day means a calendar day;

(p) (time): a reference to time is a reference to time in Sydney, Australia;

(q) (rights): a reference to a right includes any benefit, remedy, function, discretion, authority or power;

(r) (function): a function includes a power, authority or duty;

(s) (obligations and liabilities): a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;

(t) ("may"): except to the extent that the State is expressly required under this Deed to act reasonably in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion (and without regard to Project Co, the Operator or the Parent Guarantor) and the State has no obligation to do so;

(u) (construction): where there is a reference to an Authority, institute or association or other body referred to in this Deed which:

(i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or

(ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;

(v) (asset): references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset;

(w) (contra proferentem rule not to apply): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision; and

(x) (PPS Law defined terms): each of the terms 'financing statement', 'financing change statement' and 'verification statement' have the meanings given to them in the PPS Law.

1.4 Inconsistencies

To the extent of any inconsistency between the terms of this Deed and a Subcontract Document, this Deed will prevail over the applicable Subcontract Document.

1.5 Project Deed, the State Security and Financiers Tripartite Deed

The Operator and the Parent Guarantor acknowledge that they have received a copy of the Project Deed, the State Security and the Financiers Tripartite Deed.
1.6 Exclusion of Civil Liability Act

To the extent permitted by Law, the operation of Part 4 of the Civil Liability Act 2002 (NSW) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this Deed, howsoever those rights, obligations or liabilities are sought to be enforced.

1.7 State's executive rights, duties and functions

(a) (Acknowledgements): The parties acknowledge the substance, operation and potential effect and consequences of clause 2.10 (State's executive rights, duties and functions) of the Project Deed in relation to this Deed.

(b) (No Claim): Subject to clause 1.7(c), Project Co, the Operator and the Parent Guarantor will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.

(c) (Liability for breach): Clauses 1.7(a) and 1.7(b) do not limit any Liability which the State would have had to Project Co, the Operator or the Parent Guarantor under any State Project Document as a result of a breach by the State of a term of any State Project Document but for these clauses.

2. Securities

2.1 Operator acknowledgements and consents

The Operator:

(a) acknowledges and consents to the grant of, subject to the Financiers Tripartite Deed, security over all of each Project Co Entity's right, title and interest in and to the Subcontract Documents pursuant to the State Security;

(b) acknowledges the rights created under the State Security in favour of the State, including the appointment by Project Co of the State as the lawful attorney of Project Co to do, perform and exercise all things, acts and rights under the Subcontract on behalf and for the account of Project Co, pursuant to the State Security, subject to the rights of the Security Trustee under the Financiers Tripartite Deed;

(c) acknowledges and agrees that, without limiting the State's obligations under this Deed, the State is not subject to any duty or obligation under the Subcontract as a result of the State Security; and

(d) acknowledges that the grant of the State Security is not, and the exercise by the State of its rights under the State Security will not, of itself, constitute a Default Event.

2.2 Parent Guarantor acknowledgements and consents

The Parent Guarantor:

(a) acknowledges and consents to the grant of the security over all of Project Co's rights, title and interest in and to the Parent Guarantee pursuant to the State Security;

(b) acknowledges the rights created under the State Security in favour of the State, including the appointment by Project Co of the State as the lawful attorney of Project Co to do, perform and exercise all things, acts and rights under the Parent Guarantee on behalf of and for the account of Project Co, pursuant to the State Security, subject to the rights of the Security Trustee under the Financiers Tripartite Deed;

(c) acknowledges and agrees that, without limiting the State's obligations under this Deed, the State is not subject to any duty or obligation under the Parent Guarantee as a result of the State Security; and

(d) acknowledges that the grant of the State Security does not, and the exercise by the State of its rights under the State Security will not, of itself, give rise to any rights by the Parent Guarantor to revoke or terminate the Parent Guarantee.
3. **Operator’s warranty and State’s rights and liability**

3.1 **Operator’s warranty**

(a) The Operator warrants to the State that it has carried out and, provided the Subcontract has not been terminated, will continue to carry out its duties under the Subcontract in accordance with the Subcontract and that it has exercised and will continue to exercise, in carrying out the Services, the level of skill and care reasonably to be expected from an appropriately qualified and competent contractor providing those Services in relation to a project of a similar size and scope to the Services. In particular and without limiting the generality of the foregoing, the Operator covenants with the State that it has carried out and will, provided the Subcontract has not been terminated, carry out and complete the Services in accordance with the Subcontract and duly observe and perform all its duties and obligations thereunder.

(b) Without prejudice to any of the State’s other rights under this Deed (including, without limitation, under clauses 4 and 6), the State may only exercise its rights under this clause 3.1 upon:

(i) the State exercising its step-in rights under the Project Deed;

(ii) the termination of the Project Deed or Project Co’s employment under the Project Deed; or

(iii) Project Co no longer being responsible for performing the Project substantially on the basis set out in the Project Deed and/or the Monthly Service Payment regime no longer applying.

3.2 **State’s rights under Project Deed and State Security**

(a) The Operator and the Parent Guarantor each acknowledge and agree that:

(i) the State’s rights under any State Security, including the appointment by any Project Co Entity of the State as attorney of the relevant Project Co Entity to do, perform and exercise all things, acts and rights under the Subcontract Documents on behalf of and for the account of the relevant Project Co Entity; and

(ii) the State’s rights and Project Co’s obligations under the Project Deed, including under the following clauses of the Project Deed:

(A) clause 11.3 (Audits for compliance with this Deed);

(B) clause 13 (Workforce);

(C) clause 20 (State access during the Delivery Phase);

(D) clause 28.2 (State access to the Correctional Complex, records and Inmates);

(E) clause 32 (Asset Ownership and Condition);

(F) clause 37 (Expiry obligations);

(G) clause 42 (Emergencies and Step-In by the State);

(H) clause 48 (Major Default);

(I) clause 49 (Termination);

(J) clause 60 (Records and Accounts);

(K) clause 61 (Intellectual Property Rights);

(L) clause 62 (Confidential Information and disclosure); and
(M) clause 63 (Probity Events and Probity Investigations).

(b) The Operator must:

(i) exercise its rights under the Subcontract in a way that facilitates the effective exercise by the State of the rights referred to in clause 3.2(a); and

(ii) permit the State or a State Associate to have access to, and take copies of, the information to which the State is entitled to have access in accordance with the State’s rights referred to in clause 3.2(a).

(c) During the period in which the State is exercising a right referred to in clause 3.2(a), the State may, in accordance with the Project Deed and the Subcontract, require the suspension or the continuation of performance by the Operator of its obligations under the Subcontract, and if it does so, the Operator must (without limiting its rights under clauses 4 and 5) comply with this requirement and with all reasonable directions of the State in relation to the performance of the Subcontract by the Operator during such period.

(d) The requirement of the State that the Operator suspend or continue to perform its obligations under the Subcontract and the giving of any direction under clause 3.2(c) by the State does not constitute an assumption by the State of any obligations of the Operator under the Subcontract.

3.3 Subcontracting and Probity Investigations

(a) The Operator and the Parent Guarantor each acknowledges the State’s rights and Project Co’s obligations under the following clauses of the Project Deed:

(i) clause 12 (Subcontracting and third party arrangements);

(ii) the clauses listed in clause 12.3(a)(iii) (Requirements for subcontracting); and

(iii) clause 63 (Probity Events and Probity Investigations).

(b) The Operator must not subcontract any of its obligations under the Subcontract without ensuring that Project Co has obtained the prior consent of the State to that subcontract, where the State’s consent is required in accordance with clause 12 (Subcontracting and third party arrangements) of the Project Deed.

(c) Without limiting the previous paragraphs, the Operator and the Parent Guarantor each acknowledge and agree that:

(i) in accordance with clauses 12 (Subcontracting and third party arrangements) and 63 (Probity Events and Probity Investigations) of the Project Deed, the State may, from time to time, or may require Project Co to, conduct Probity Investigations of the Operator, the Parent Guarantor and/or Relevant Persons in respect of the Operator (excluding the Project Co Representative), or other persons to whom the Operator is proposing to subcontract any of its obligations under the Subcontract;

(ii) it will procure all relevant consents from any persons in respect of whom a Probity Investigation is to be conducted; and

(iii) it will not appoint, or retain the appointment of, and will ensure that no other person appoints, or retains the appointment of, a person to the position of a Relevant Person in relation to the performance of any Project Activities unless the State has given approval (including following a Probity Investigation and any other investigations that the State reasonably requires in accordance with the Project Deed).

3.4 No liability for information

The Operator and the Parent Guarantor each acknowledge and agree that:

(a) any information, data and documents provided by the State:
(i) are provided for information purposes only and all of the State's and its Associates' Intellectual Property Rights therein remain the property of the State or its Associates (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 State or its Associates; and

(b) to the extent permitted by Law, neither the State nor any of its Associates will have any Liability to the Operator, the Parent Guarantor or any of their Associates, nor will the Operator, the Parent Guarantor or any of their Associates be entitled to make any Claim against the State, or seek, pursue or obtain an indemnity against or contribution to Liability from the State or any of its Associates arising out of or in connection with:

(i) the provision of, or purported reliance upon, or use of any information, data and documents referred to in clause 3.4(a) by the Operator, the Parent Guarantor, or any other person to whom such information is disclosed by the Operator, the Parent Guarantor, any of their respective Associates or any person on any of their behalf;

(ii) any reference to the State in a Subcontract Document; or

(iii) any review of, comments upon, acceptance, approval or certification of the form or substance of a Subcontract Document by the State.

3.5 Subcontract not to affect State's rights

Each of Project Co, the Operator and the Parent Guarantor acknowledge and agree that:

(a) where the Operator is expressed in the Subcontract to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the Project Deed or an equivalent or similar right of Project Co:

(i) this does not of itself expand Project Co's rights, or the State's Liability, under the Project Deed to include the compensation or relief to which the Operator is or may become entitled under the Subcontract; and

(ii) Project Co's rights, and the State's Liability, under the Project Deed will be determined solely in accordance with the terms of the Project Deed;

(b) as between the State (on the one hand) and Project Co, the Operator and the Parent Guarantor (on the other hand), Project Co, the Operator and the Parent Guarantor accept and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the Subcontract and this Deed; and

(c) notwithstanding anything to the contrary in the Subcontract, neither the Operator nor the Parent Guarantor has any right to deal directly with the State or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:

(i) expressly provided to the contrary in the Project Deed or this Deed; or

(ii) the State consents in writing.

4. State's right to cure Default Event

4.1 State's cure rights

(a) On becoming aware of any Default Event (and subject to clause 4.1(b)), the State may (but is not obliged to) take steps to cure or remedy, or procure the cure or remedy of, that Default Event.

(b) Clause 4.1(a) only applies if the Operator has given a State Cure Notice in accordance with clause 4.2(c).
Upon the State exercising any of its rights under this clause 4.1, Project Co must cease exercising its rights and performing its obligations under the Subcontract (other than Project Co's obligation to pay money) to the extent and for such period as Project Co is prevented from performing such obligations by the State's exercise of its rights pursuant to clause 4.1(a) (but only until such time as the State ceases to exercise those rights in accordance with clause 4.1(d)).

If the State exercises its rights pursuant to clause 4.1(a), the State may, after giving reasonable prior notice to Project Co, cease to exercise those rights, and in any event, will cease to exercise those rights once the relevant Default Event has been remedied.

4.2 Restriction on right to terminate or suspend

The Operator must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Subcontract unless each of the following conditions has been satisfied:

(a) the Operator has given to the State prior notice setting out details of the Default Event giving rise to the right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Subcontract, together with the statements referred to in clause 4.3 (Default Event Notice);

(b) if the Operator's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Subcontract is subject to any right of a Financier to cure or remedy the Default Event:
   (i) the cure or remedy period available to the Financiers in respect of the Default Event under any Finance Document has expired without a cure or remedy being achieved; or
   (ii) the Security Trustee has notified the Operator in writing that it does not intend to cure or remedy the Default Event;

(c) the Operator has given notice to the State confirming that, either:
   (i) the requirements of clause 4.2(b) are satisfied; or
   (ii) the Operator's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Subcontract is not subject to any right of the Financiers to cure or remedy the Default Event,

(State Cure Notice); and

(d) any one of the following has occurred:
   (i) if:
      (A) the Default Event is a failure to pay an amount which is due and payable to the Operator, such Default Event has not been cured or remedied within [10] Business Days after the date on which the State Cure Notice is given to the State (or such longer period as is permitted under the Subcontract or agreed to by the Operator); or
      (B) the Default Event is not one described in clause 4.2(d)(i)(A) but is otherwise capable of cure or remedy within [20] Business Days after the date on which the State Cure Notice is given to the State (or such longer period as is permitted under the Subcontract or agreed to by the Operator), that Default Event has not been cured or remedied within the relevant period;
   (ii) if the Default Event is not one described in clause 4.2(d)(i) but is nevertheless reasonably capable of cure or remedy, the State has not commenced curing or remedying the Default Event within 20 Business Days after the date on which the
State Cure Notice is given and has not continued to diligently pursue that cure or remedy;

(iii) if the 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, Project Co or the State (or another person on behalf of either of them) have not paid or otherwise provided that compensation to the Operator:

(A) to the extent that the relevant amount of compensation has been referred to expert determination under clause 11, within 20 Business Days after that dispute is resolved; or

(B) otherwise within 20 Business Days after the date on which the State received the State Cure Notice;

(iv) if the 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 Default Event, the State does not commence and continue to perform Project Co's obligations under the Subcontract within 20 Business Days after the date on which the State Cure Notice is given to the State; or

(v) the State notifies the Operator in writing after receipt of the State Cure Notice that it elects not to cure or remedy, or procure the cure or remedy of, the Default Event.

4.3 Statements concerning Default Event

(a) As part of any Default Event Notice, the Operator must submit to the State statements of:

(i) where the Default Event is a monetary default:

(A) the provisions of the Subcontract alleged to have been breached or not fulfilled; and

(B) the amount which must be paid to the Operator to remedy the Default Event;

(ii) where the Default Event is of a non-monetary nature:

(A) the provisions of the Subcontract alleged to have been breached or not fulfilled;

(B) sufficient information to enable the State to identify the material facts;

(C) the steps reasonably required to cure or remedy the specified breaches or conditions not fulfilled if reasonably capable of cure or remedy; and

(D) the time within which the specified steps can reasonably be expected to be taken;

(iii) any rights available to the Financiers, pursuant to any Finance Document to which the Operator is a party, to cure or remedy that Default Event and the period within which that cure or remedy must occur before the Finance Documents permit the Operator to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Subcontract; and

(iv) any claims in connection with the Default Event which the Operator is not waiving or abandoning in accordance with clause 4.4.

(b) If the Operator gives a State Cure Notice to the State in accordance with clause 4.2(c), as part of that notice the Operator must update the matters referred to in clause 4.3(a).

4.4 Warranty of accuracy
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(a) The Operator warrants to the State that statements submitted by it under clause 4.3 will be, as far as reasonably practicable and subject to unintended error which the Operator agrees to promptly rectify, true, complete and accurate statements of the amounts to which the Operator considers itself entitled.

(b) The Operator and the Parent Guarantor each waive and abandon all claims then known or which ought reasonably to have been known either to the Operator or the Parent Guarantor arising out of or in connection with the Subcontract Documents prior to the date of the Default Event Notice other than the claims disclosed in the statements submitted by it under clause 4.3.

4.5 Disputes as to statements

If the State disputes the amount of any claim or the existence of any default referred to in a Default Event Notice pursuant to clause 11:

(a) the State must pay the amount not in dispute;

(b) upon resolution of the dispute in accordance with clause 11, the parties must make payments as determined; and

(c) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the Project Documents.

4.6 Verification

The State may appoint a firm of independent chartered accountants or a firm of technical advisers, in each case approved by Project Co and the Operator (such approval not to be unreasonably withheld or delayed), to verify (at the cost of Project Co) statements submitted by the Operator, and the Operator must (subject to such firm(s) executing an appropriate confidentiality agreement in a form reasonably requested by the Operator) permit such firm to have access to and make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such statements.

4.7 No Liability

Project Co and the Operator acknowledge that, without limiting the Liability of Project Co (which continues to be responsible for the performance of its obligations under the Subcontract), and without limiting the State's obligations under clause 6, the State will not be liable for any obligation or Liability of Project Co under the Subcontract by reason only of the State performing Project Co's obligations in accordance with the Subcontract. Project Co and the Operator each release the State from any such Liability, except to the extent that such Liability occurs or arises as a direct result of any criminal conduct, fraud or wilful misconduct on the part of the State.

4.8 Project Co to compensate the State

Any reasonable loss suffered or incurred by the State arising out of or in any way in connection with the exercise of its rights under this clause 4 will be a debt due from Project Co to the State.

4.9 No limitation on other rights

The exercise (or failure to exercise) by the State of its rights under this clause 4 will not limit the State's rights against Project Co under the State Project Documents or otherwise according to Law.

5. Step-in by the State

5.1 Step-In Right

(a) Following receipt of a State Cure Notice, the State may:
(i) if permitted under the State Security, appoint a Receiver over any Project Co Entity or any or all of its assets (including the Subcontract Documents);

(ii) itself enter into possession of any or all of the assets of any Project Co Entity;

(iii) take such other action as it is permitted to take under the terms of the Project Documents; or

(iv) by notice to the Operator (Additional Obligor Step-In Notice), procure that an Additional Obligor assumes jointly and severally with Project Co all of Project Co's rights and obligations under the Subcontract Documents,

(each a Step-In Right).

(b) The period from the date on which the Operator 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 Operator terminates the Subcontract;

(iii) the date of any transfer under clause 6;

(iv) the date which the State has notified the Operator that the State will cease to exercise its Step-In Rights; and

(v) any other date on which the State ceases to continue to exercise its Step-In Rights,

is the Step-In Period.

(c) The Operator and the Parent Guarantor each acknowledge that the exercise by the State of a Step-In Right will not of itself contravene the Subcontract Documents, or constitute a Default Event under the Subcontract or entitle the Operator or the Parent Guarantor to exercise any right (including termination) under the Subcontract Documents.

5.2 Step-In by the State

(a) Subject to the Financiers Tripartite Deed, the State may at any time after it has become entitled to exercise a Step-In Right, exercise all or any of its rights and carry out all or any of the obligations of Project Co in connection with the Subcontract Documents, as if it were Project Co to the exclusion of Project Co.

(b) Project Co, the Operator and the Parent Guarantor each agree that, subject to clause 5.3(b), neither the State nor any Associate of the State will have any Liability, and none of Project Co, the Operator or the Parent Guarantor will be entitled to make, continue or enforce any Claim against the State or any Associate of the State, arising in connection with the Subcontract Documents or this Deed by reason only of the State or any Associate of the State exercising any of Project Co's rights, or performing any of Project Co's obligations under the Subcontract Documents other than, and then only to the extent of, any Liability for fraudulent, negligent, reckless, unlawful or malicious acts or omissions of the State or any Associate of the State.

5.3 Step-In using Additional Obligor

(a) The Additional Obligor will become a party to the Subcontract Documents on the date on which the Additional Obligor Step-In Notice is given to the Operator or such later date as the Operator and the State may agree (Assumption Date).

(b) During a Step-In Period in respect of which the State has exercised a Step-In Right under clause 5.1(a)(iv):

(i) subject to clause 5.3(b)(ii), the Additional Obligor will be jointly and severally:
(A) entitled with Project Co to exercise the rights of Project Co under the Subcontract Documents (excluding any accrued rights of Project Co in respect of any loss, cost, damage, charge, expense, outgoing or payment to the extent that the rights arose prior to the Assumption Date) (Project Co's Rights); and

(B) liable with Project Co for the performance or non-performance of all of Project Co's obligations under the Subcontract Documents arising on or after the Assumption Date except as released in accordance with clause 5.3(e);

(ii) as between Project Co, the Operator, the Parent Guarantor and the Additional Obligor, only the Additional Obligor is authorised to deal with the Operator and the Parent Guarantor and to exercise Project Co's Rights;

(iii) Project Co acknowledges that it will be legally bound by all the acts and omissions of the Additional Obligor in so dealing with the Operator and the Parent Guarantor and in exercising Project Co's Rights;

(iv) the Additional Obligor will be bound by any earlier decision, directions, approvals, notices or consents given or made prior to the Assumption Date;

(v) clause 14 will apply to the Operator, the Parent Guarantor and the Additional Obligor as if the address and email address of the Additional Obligor were set out in addition to those of Project Co; and

(vi) the Operator and the Parent Guarantor will owe their respective obligations under the Subcontract Documents to Project Co and the Additional Obligor jointly but the performance by the Operator or the Parent Guarantor in favour of either Project Co or the Additional Obligor will be a good discharge of the relevant obligations under the Subcontract Documents.

(c) Without prejudice to the Operator's rights under clause 4.2, the Additional Obligor will have no obligation to, and no Liability in respect of, remedying any default or breach of Project Co under the Subcontract Documents arising prior to the Assumption Date.

(d) The Additional Obligor may at any time give the Operator not less than 30 days' notice terminating the Additional Obligor's rights or obligations under the Subcontract Documents (without affecting the continuation of Project Co's obligations or liabilities towards the Operator and the Parent Guarantor under the Subcontract Documents). Such notice must specify the date on which it takes effect, which must be:

(i) at least 30 days after the date of the notice; or

(ii) if a Novation Notice has been given, the date of the Novation Notice,

(the Additional Obligor Step-Out Date).

(e) On and from the Additional Obligor Step-Out Date, between the Operator, the Parent Guarantor and the Additional Obligor, each of the Operator, the Parent Guarantor and the Additional Obligor will be released from all obligations under the Subcontract Documents (except for those obligations which have arisen during the relevant 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.

5.4 Indemnity

Project Co must indemnify the State, the Associates of the State and any Additional Obligor against any Claim or Liability (including any Claim made by, or Liability to, a third party) the State or any Associate of the State or any Additional Obligor suffers or incurs arising in connection with taking any action under clause 5.2 or clause 5.3, except to the extent that such Claim or Liability is caused or contributed to by any of the events set out in clause 45.8 (Limits on Project Co liability to indemnity and release) of the Project Deed.
6. Novation of Subcontract Documents

6.1 Option

The State may require a novation of the Subcontract Documents in accordance with this clause 6 upon the termination of the Project Deed by giving a notice to the Operator and the Parent Guarantor (Novation Notice).

6.2 Novation of Subcontract

With effect from the Effective Date:

(a) the parties novate the Subcontract so that the State (or, if applicable, the Approved Nominee) and the Operator are parties to a new contract on the same terms as the Subcontract as amended by this Deed; and

(b) any reference in the Subcontract to Project Co shall be read as a reference to the State (or, if applicable, the Approved Nominee).

6.3 Rights and obligations of the State and the Operator under the Subcontract

If the State gives a Novation Notice then, subject to clause 6.7, with effect from the Effective Date:

(a) the State (or, if applicable, the Approved Nominee):

(i) is entitled to all rights and benefits under the Subcontract to which, but for this Deed, Project Co would have been entitled at and after the Effective Date;

(ii) must perform all obligations and discharge all liabilities under the Subcontract which, but for this Deed, Project Co would have been required to perform or discharge at and after the Effective Date; and

(iii) is bound by and must comply with all other provisions of the Subcontract by which, but for this Deed, Project Co would have been bound at and after the Effective Date; and

(b) the Operator:

(i) is entitled to all rights and benefits under the Subcontract to which, but for this Deed, it would have been entitled at and after the Effective Date;

(ii) must perform all obligations and discharge all liabilities under the Subcontract which, but for this Deed, it would have been required to perform or discharge at and after the Effective Date; and

(iii) is bound by and must comply with all other provisions of the Subcontract by which, but for this Deed, it would have been bound at and after the Effective Date, as if the State (or, if applicable, the Approved Nominee) had originally been a party to the Subcontract in place of Project Co.

6.4 Release by Operator

With effect from the Effective Date, the Operator releases Project Co from all obligations and liability under or in respect of the Subcontract to be performed or discharged at or after the Effective Date.

6.5 Release by Project Co

With effect from the Effective Date, Project Co releases the Operator from all obligations and liability under or in respect of the Subcontract to be performed or discharged at or after the Effective Date.
6.6 Novation of Parent Guarantee

If the State gives a Novation Notice then, subject to clause 6.7, with effect from the Effective Date:

(a) the parties novate the Parent Guarantee so that the State (or, if applicable, the Approved Nominee) will be named as beneficiary to the new deed of guarantee on the same terms as the Parent Guarantee;

(b) any reference in the Parent Guarantee to Project Co shall be read as a reference to the State (or, if applicable, the Approved Nominee); and

(c) the Parent Guarantor will guarantee for the benefit of the State (or, if applicable, the Approved Nominee) all of the obligations of the Operator in accordance with the Parent Guarantee.

6.7 Obligations and liability prior to the Effective Date

Nothing in this Deed releases:

(a) Project Co or the Operator from any obligation or liability under the Subcontract; or

(b) Project Co, the Operator or the Parent Guarantor from any obligation or liability under the Parent Guarantee,

arising or accruing before the Effective Date and the State (or, if applicable, the Approved Nominee) does not assume any such obligation or liabilities under this Deed.

6.8 Amendments to Subcontract

(a) With effect from the Effective Date, the terms of the Subcontract will be deemed to be amended as required to reflect the fact that the Project Deed is at an end, and that the Subcontract must operate independently of the Project Deed, on the basis that:

(i) the rights and obligations that the State (or, if applicable, the Approved Nominee) will assume under the Subcontract from the Effective Date will be equivalent to those that Project Co would have had under the Subcontract had the Project Deed not been terminated;

(ii) the rights and obligations that the Operator will assume under the Subcontract from the Effective Date will be equivalent to those that the Operator would have had under the Subcontract had the Project Deed not been terminated;

(iii) any provisions of the Project Deed incorporated by reference into the Subcontract prior to the Effective Date are incorporated in the Subcontract from the Effective Date; and

(iv) without affecting the generality of this clause 6.8(a), clauses [insert relevant clauses of the Subcontract] of the Subcontract will be deleted.

(b) If at or after the Effective Date, there is a dispute between the State (or, if applicable, the Approved Nominee) and the Operator as to how the terms of the Subcontract are deemed to have been amended pursuant to clause 6.8(a), then upon either party serving a written notice to this effect on the other, the dispute will be determined in accordance with clause 11.

6.9 Approved Nominee

(a) The State's nominee may be named as a party to the Subcontract Documents in substitution for Project Co if the State's nominee is an Approved Nominee.

(b) The Operator must:

(i) notify the State as to whether the State's nominee is an Approved Nominee, on or before the date falling 30 days after the date of receipt of all information
reasonably required by the Operator to decide whether the nominated person is an Approved Nominee;

(ii) not unreasonably withhold or delay its decision on whether the State's nominee is an Approved Nominee; and

(iii) enter into a side deed with the State and the Approved Nominee on substantially the same terms as this Deed.

(c) If the Novation Notice specifies that the Approved Nominee is a person other than the State, the State must, at the time it gives a Novation Notice, provide to the Operator the following particulars of the Approved Nominee:

(i) name, place of incorporation and identity of shareholder(s);

(ii) if available, its most recent published audited accounts; and

(iii) sufficient particulars of the finance available to the Approved Nominee to enable the Operator to decide whether to grant its consent to the Approved Nominee.

6.10 Bonds

If the State gives a Novation Notice then, as from the Effective Date, Project Co must (with the support of the Operator to effect this provision) either:

(a) procure the novation or assignment to the State (or, subject to clause 6.9, the Approved Nominee) of any [insert bonds to be novated/assigned] (each as defined in the Subcontract) held by Project Co under the Subcontract prior to the Effective Date (Bonds); or

(b) procure the issue to the State (or, if applicable, the Approved Nominee) of replacement bonds for the same undrawn value and on the same terms as the Bonds held by Project Co under the Subcontract prior to the Effective Date.

6.11 Insurances

(a) If the Operator is required under the Subcontract to take out and/or maintain any insurance required under clause 46 (Insurance) of the Project Deed to be taken out and maintained by Project Co (each such insurance, a Subcontract Insurance), then the Operator undertakes to the State to:

(i) take out and/or maintain the Subcontract Insurances; and

(ii) comply with clause 46 (Insurance) and Schedule 22 (Insurance Schedule) of the Project Deed with respect to the Subcontract Insurances, as if that clause and Schedule were set out in full in this Deed (mutatis mutandis).

(b) The Operator acknowledges and agrees that the proceeds of any Subcontract Insurance will be applied in accordance with clause 46.11 (Application of Insurance Proceeds) of the Project Deed.

6.12 Other documents under the Subcontract

If the State gives a Novation Notice then, as from the Effective Date, Project Co must procure the novation or assignment to the State (or, if applicable, the Approved Nominee) of:

(a) [Insert list of documents to be novated/assigned (eg, collateral warranty deeds)].

7. Appointment of Operator as Principal Contractor

[Note: This clause is to be reviewed in respect of the relevant Subcontractor.]
(a) In this clause 7, the terms 'workplace', 'construction project', 'principal contractor' and 'WHS management plan' have the same meanings as given to those terms under the WHS Legislation.

(b) Without limiting the Operator's obligations under any other provision of the Project Documents that the Operator is a party to:
   
   (i) the State:
      
      (A) engages the Operator as the principal contractor for any construction project forming the whole or part of the Services under regulation 293 of the WHS Regulation; and
      
      (B) authorises the Operator to have management or control of that part of the workplace to which the construction project relates and to discharge the duties of a principal contractor under the WHS Regulation in relation to any construction project forming the whole or part of the Services;

   (ii) the Operator agrees that its engagement and appointment as principal contractor in respect of any construction project in relation to the Services will continue until the earlier of:
      
      (A) that relevant construction project being complete;
      
      (B) the termination of the Subcontract; and
      
      (C) the Expiry Date;

   (iii) the Operator accepts the engagement in clause 7(b)(i) and agrees to discharge the duties imposed on a principal contractor under the WHS Legislation and under the Project Deed, this Side Deed and the State Project Documents (as applicable) and the Operator's WHS management plan for the construction project;

   (iv) if the State's engagement of the Operator as a principal contractor is not effective for any reason, the Operator agrees to discharge the duties imposed on a principal contractor under the WHS Regulation as if it had been engaged as the principal contractor for the construction project under the WHS Regulation, the WHS management plan for the construction project, the Project Deed, the Side Deeds and State Project Documents (as applicable); and

   (v) if the Operator fails to comply with any of its obligations as principal contractor under the WHS Regulation, the WHS management plan for the construction project, the Project Deed, the Side Deeds and the State Project Documents (as applicable), the State may direct Project Co to carry out the Operator's obligations as principal contractor.

8. Representations and warranties

8.1 Representations and warranties by Operator and Parent Guarantor

(a) The Operator and the Parent Guarantor each represent and warrant for the benefit of the State that:

   (i) **(power to execute):** it has the power to execute, deliver and carry out its obligations under this Deed and each other Project Document to which it is a party and all necessary action has been taken to authorise that execution, delivery and performance;

   (ii) **(legality):** the execution, delivery and performance of this Deed and each other Project Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;

   (iii) **(validity):** this Deed and each other Project Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
(iv) **(registration):** it is duly registered, properly constituted and remains in existence;

(v) **(no trust relationship):** except as stated in this Deed, it is not the trustee, manager or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;

(vi) **(information true and correct):** all information provided by it to the State is as at the date on which it is provided true and correct and neither the Operator nor the Parent Guarantor is aware of any material facts or circumstances that have not been disclosed to the State and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or consent to the entry into the Subcontract;

(vii) **(litigation):** no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a Material Adverse Effect upon it or its ability to perform its financial and other obligations under this Deed or any other Project Document to which it is a party;

(viii) **(Insolvency Event):** no Insolvency Event has occurred in respect of it;

(ix) **(accounts):**

(A) its most recent consolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its and its subsidiaries’ state of affairs as at the date to which they relate and the results of its and its subsidiaries’ operations for the accounting period ended on such date;

(B) there has been no material adverse change in its or its subsidiaries’ state of affairs since such date; and

(C) such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;

(x) **(no default):**

(A) it is not in default under any document or agreement binding on it or its assets which relates to financial indebtedness; and

(B) nothing has occurred which would, with the giving of notice and/or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement, which would have a Material Adverse Effect;

(xi) **(no immunity):** neither it nor any of its assets enjoys any immunity from set off, suit or execution in any jurisdiction; and

(xii) **(own investigations):** in entering into this Deed, the Subcontract, the Parent Guarantee and any other Project Document 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 the State, Project Co or any other person unless in respect of Project Co or any other person, other than the State or an Associate of the State, it is expressly permitted to do so in accordance with a Project Document to which it is a party.

### 8.2 Repetition of representations and warranties

The representations and warranties in this clause 8 are taken to be repeated immediately before Financial Close, on the basis of the facts and circumstances as at that date.

### 8.3 Reliance on representations and warranties
Each of the Operator and the Parent Guarantor acknowledge that the State executed this Deed and agreed to take part in the transactions that this Deed contemplates in reliance on the representations and warranties that are made or repeated in this clause 8.

9. Undertakings by Operator and Parent Guarantor

The Operator and the Parent Guarantor each undertake to the State as follows:

(a) (notification of Default Event): in the case of the Operator, it will notify the State of any Default Event promptly after it gives notice of that Default Event in accordance with the Subcontract;

(b) (documents in relation to Default Event): in the case of the Operator, it will promptly give the State a copy of all documents issued by the Operator to Project Co in relation to a Default Event;

(c) (no amendment without consent): it will not, without first obtaining the consent of the State:
   (i) make or permit any amendment or replacement of or addition to;
   (ii) subject to clause 4.2, terminate, surrender, rescind or accept repudiation of;
   (iii) permit the novation, assignment or substitution of any party's rights, obligations or interest in, except when in accordance with this Deed or clause 8.4 of the Financiers Tripartite Deed; or
   (iv) allow any express waiver of its material rights and obligations under, a Subcontract Document, provided that the State will not withhold its consent to an amendment or other action contemplated in clauses 9(c)(i) to 9(c)(iv) to which it has consented in accordance with the Project Deed;

(d) (disposals): it will not, after Financial Close, transfer, assign, mortgage, charge, encumber or otherwise deal with its rights, obligations or interests in a Subcontract Document without first procuring that the proposed transferee, assignee, mortgagee or chargee executes a deed in favour of the State (in form and substance approved by the State) pursuant to which the transferee, assignee, mortgagee or chargee agrees to accept and be bound by this Deed as if it were the Operator or Parent Guarantor (as the case may be);

(e) (attend meetings and inspections): it will (when reasonably requested by the State):
   (i) attend, where reasonable and appropriate, meetings with the State or any of the State's Associates;
   (ii) provide the State or any of the State's Associates and authorised personnel with:
      (A) in the case of the Operator, full access to:
         (I) the Site; and
         (II) any other place where any Services are being carried out or materials are being prepared or stored,
         to the extent provided in the Project Deed; and
      (B) any other information, records or documents that the State or any of its Associates (acting reasonably) requires in relation to the carrying out of the Services or compliance with the Subcontract or any information required by the State to comply with requests from the New South Wales Auditor-General; and
(iii) permit the State or any of the State's Associates to attend all tests and inspections to be carried out in connection with the Project in accordance with the terms of the Subcontract, to the extent provided in, and in accordance with, the Project Deed; and

(f) (access to records): in the case of the Operator, at the request of the State to the extent provided in, and in accordance with, the Project Deed, the Operator will:

(i) permit the State or any of its Associates to inspect all records, reports, plans, programs, specifications and design documents prepared or kept by the Operator in relation to the Services and the Project; and

(ii) supply the State or any of its Associates with a copy of any such report or document which they may require from time to time.

10. Acknowledgement by Project Co

Project Co consents to the terms of this Deed and will co-operate in the implementation of this Deed.

11. Dispute Resolution

If any dispute or difference of opinion arises between the parties under this Deed, each party may refer any such matter for resolution in accordance with this clause 11 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Project Deed are resolved. Accordingly, the provisions of clauses 50 (Dispute Resolution procedure) to 53 (Arbitration) of the Project Deed are incorporated into this Deed but as if:

(a) the only persons party to the Project Deed, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and

(b) the only matters for expert determination under those provisions are the matters referred for expert determination under this Deed.

12. GST

(a) (Interpretation):

(i) Except where the context suggests otherwise, terms used in this clause 12 have the meanings given to those terms by the GST Act (as amended from time to time).

(ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 12.

(iii) Unless otherwise expressly stated, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 12.

(iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

(b) (Reimbursements): Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

(c) (Additional amount of GST payable): Subject to clause 12(e), if GST becomes payable on any supply made by a party (Supplier) under or in connection with this Deed:
any amount payable or consideration to be provided under any provision of this Deed (other than this clause 12), for that supply is exclusive of GST;

(ii) any party (Recipient) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (GST Amount), at the same time as any other consideration is to be first provided for that supply; and

(iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 12(c)(ii).

(d) (Variation of GST):

(i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 12(c) and clause 12(e)), varies from the additional amount paid by the Recipient under clause 12(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 12(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 12(c).

(ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

(e) (Exchange of non-monetary consideration):

(i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 12(c) applies is a Taxable Supply made by the Recipient (the Recipient Supply), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 12(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.

(ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 12(c) (or the time at which such GST Amount would have been payable in accordance with clause 12(c) but for the operation of clause 12(e)(i)).

(f) (No merger): This clause 12 will not merge on completion or termination of this Deed.

(g) (Application of Project Deed): If clause 36 (Payments Adjustments & Taxes) of the Project Deed would apply in connection with a Taxable Supply to which this clause 12 also applies then clause 36 (Payments Adjustments & Taxes) of the Project Deed will apply in connection with that supply and the provisions of this clause 12 (but for this paragraph) will not apply.

13. PPSA

(a) If the State determines that this Deed is or contains a Security Interest, the parties (other than the State) agree to promptly do anything (including amending any document or executing any new document) which the State reasonably requires for the purposes of:

(i) ensuring that the Security Interest is enforceable, perfected and otherwise effective;

(ii) enabling the State to apply for registration, or give any notification, in connection with the Security Interest; or

(iii) enabling the State to exercise rights in connection with the Security Interest.
(b) The parties (other than State) agree not to exercise its rights to make any request of the State under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

(c) The parties (other than the State) irrevocably and unconditionally waives its right to receive any notice of any verification statement in respect of any financing statement or financing change statement relating to this Deed.

14. Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

(a) **(in writing):** must be in writing;

(b) **(addressed):** must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

**State**

Name: [Insert]
Address: [Insert]
Email: [Insert]
For the attention of: [Insert]

**Project Co**

Name: [Insert]
Address: [Insert]
Email: [Insert]
For the attention of: [Insert]

**Operator**

Name: [Insert]
Address: [Insert]
Email: [Insert]
For the attention of: [Insert]

**Parent Guarantor**

Name: [Insert]
Address: [Insert]
Email: [Insert]
For the attention of: [Insert]

(c) **(signed):** must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
(d) (form of delivery): must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 14(b); and

(e) (taken to be received): are taken to be received by the addressee at the address set out in clause 14(b):

(i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;

(ii) subject to clause 14(f), in the case of prepaid post, on the fourth Business Day after the date of posting to an address within Australia and on the tenth Business Day after the date of posting by airmail to an address outside Australia;

(iii) in the case of email, the first to occur of:

(A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;

(B) the time that the communication enters an information system which is under the control of the addressee; or

(C) the time that the communication is first opened or read by the addressee, unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day; and

(f) (notices sent by post): if sent by post from within Australia, must be sent using the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service.

15. Confidential Information and disclosure

15.1 Confidential Information and disclosure by the State

(a) Subject to clause 15.1(b), the State and any Authority may disclose any information in connection with the Project, including Project Information.

(b) The State may only disclose the Commercially Sensitive Information:

(i) in accordance with:

(A) Laws or for the enforcement of any criminal law;

(B) where disclosure is in the course of the official duties of a minister, the Treasurer, the Premier or the Attorney General;

(C) to satisfy the disclosure requirements of the NSW Auditor-General in accordance with the Public Finance and Audit Act 1983 (NSW);

(D) to satisfy the requirements of Parliamentary accountability;

(E) to any Associate of the State to the extent necessary for the purpose of the Project provided they agree to maintain the confidentiality of any Commercially Sensitive Information;

(F) in annual reports of the State; or

(G) in accordance with policies of the State or the NSW Government or any Authority;
(c) for any tender process required to be conducted under the Termination Payments Schedule; or

(d) where the Commercially Sensitive Information is any part of the Design Deliverables, the Design Requirements or the Services Requirements, for the purpose of conducting any tender process required by the terms of the Project Deed.

15.2 Confidential Information and disclosure by Operator and Parent Guarantor

(a) (Confidentiality obligation): Subject to clauses 15.2(b) and clause 15.4(b), the Operator and the Parent Guarantor must treat as secret and confidential all Confidential Information and must not, and must procure that its Associates do not, without the prior written consent of the State, make public or disclose to any person any Confidential Information.

(b) (Disclosure of Confidential Information): Without limiting the Operator and the Parent Guarantor's obligations under clause 15.2(a) and subject to clause 15.2(c), each of the Operator and the Parent Guarantor may disclose Confidential Information:

(i) to its Associates to the extent necessary for the purpose of undertaking the Project; and

(ii) in accordance with clause 15.4.

(c) (Confidentiality deed): Before disclosing any Confidential Information, the Operator and the Parent Guarantor (as applicable) must ensure that the person to whom the information is disclosed enters into a confidentiality deed with it to keep the Confidential Information confidential in accordance with this clause 15.

(d) (Permitted disclosure): The Operator and the Parent Guarantor may disclose Confidential Information and will not be required to seek the State's consent to a disclosure, announcement or statement under clause 15.2(a) or 15.3(a) or to enter into a confidentiality deed under clause 15.2(c) where the disclosure announcement or statement is:

(i) required by Law, provided that it:

(A) notifies the State of the requirement to make that disclosure; and

(B) takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;

(ii) required to obtain legal or other advice from its advisers, provided that the relevant adviser is under a duty of confidentiality;

(iii) required to be made to a court in the course of proceedings to which the Operator or the Parent Guarantor (as applicable) is a party; or

(iv) required by a relevant recognised stock exchange, subject to:

(A) the disclosure, announcement or statement does not refer to the State's or any of its Associates' involvement in the Project; and

(B) the Operator or the Parent Guarantor (as applicable) having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant recognised stock exchange.

15.3 Public announcements by Operator and Parent Guarantor
Subject to clause 15.2(d), the Operator and the Parent Guarantor must:

(a) not make any public disclosures, announcements or statements in relation to the Project or the State's or any of the State's Associates' involvement in the Project, without the State's prior consent;

(b) comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Project or the State's or any of the State's Associates' involvement in the Project before the relevant disclosure, announcement or statement is made; and

(c) as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State in accordance with this clause 15.3 or for which the State's consent or approval was not required in accordance with clause 15.4.

15.4 Information public or known

Notwithstanding anything in this clause 15, any party may disclose information in connection with the Project (including any Confidential Information) if:

(a) the party can demonstrate that the relevant information is already generally available and in the public domain otherwise than as a result of breach of this clause 15; or

(b) the relevant information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.

15.5 Disclosure by the State under GIPA Act

(a) Notwithstanding the other provisions of this clause 15, the parties acknowledge that:

(i) the Project Documents and information concerning the Project Documents will be published on the State's contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and

(ii) the State may make the Project Documents (other than the Key Subcontracts) or any of them available to any person.

(b) The parties acknowledge that:

(i) the State will notify the Operator of any proposed disclosure of Commercially Sensitive Information by the State under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;

(ii) following notification by the State in accordance with clause 15.5(b)(i), the State will take reasonable steps to consult with the Operator before disclosing Commercially Sensitive Information under the GIPA Act;

(iii) if, following:

(A) notification by the State in accordance with clause 15.5(b)(i); or

(B) consultation between the State and the Operator in accordance with clause 15.5(b)(ii),

the Operator objects to disclosure of some or all of the Commercially Sensitive Information, the Operator must provide details of any such objection within five Business Days after the date the Operator received notification from the State or the date on which the consultation process concluded (as relevant);

(iv) the State may take into account any objection received from the Operator pursuant to clause 15.5(b)(iii) in determining whether the Commercially Sensitive Information identified by the Operator should be disclosed; and
15.6 Personal Information

The Operator and the Parent Guarantor must:

(a) not collect any Personal Information except in accordance with the Design Requirements and Services Requirements, all Laws and Policies;

(b) not disclose any Personal Information to any person other than as is necessary to provide the Services or to comply with Laws, and then only in accordance with the Design Requirements and Services Requirements, all Laws and Policies; and

(c) keep, and make available to the State on request, records detailing the recipient of any Personal Information that the Operator has disclosed, the date of disclosure and the Personal Information that has been disclosed.

15.7 Confidential Design Information

The Operator and the Parent Guarantor must:

(a) (Access): only provide access to Confidential Design Information to Relevant Persons who:

(i) are not Uncleared Personnel, are permitted to receive Confidential Design Information in accordance with clause 62.2 of the Project Deed and, where required by the State, have satisfied any Probity Investigation under clause 63.2 of the Project Deed; and

(ii) require access to that Confidential Design Information to perform the Services;

(b) (Limited portion): where it is necessary to grant access to Confidential Design Information in accordance with clause 15.7(a), grant access to the most limited portion of the Confidential Design Information possible; and

(c) (Records): keep, and make available to the State on request, records detailing the recipient of any Confidential Design Information, the date of disclosure and the Confidential Design Information that has been disclosed.

15.8 Privacy

(a) (Compliance): Without limiting any obligations in respect of privacy set out in the Design Requirements or the Services Requirements, the Operator and the Parent Guarantor agree to, and will ensure that the Subcontract and any other subcontract entered into by the Operator in relation to the Project contains terms which require the Operator to, be bound by the Privacy Legislation with respect to any act done, or practice engaged in, by it in connection with this Deed or with the Subcontract or other relevant subcontract (as the case may be), in the same way as the State would be bound by the Privacy Legislation, in connection with that act or practice had it been directly done or engaged in by the State.

(b) (Release and Indemnity): The Operator and the Parent Guarantor must release, indemnify and must keep indemnified on demand the State and its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) which the State or any of its Associates suffer or incur resulting from any act done or practice engaged in by the Operator, the Parent Guarantor or any of their respective Associates in connection with the Project, which would, had that act or practice been done or engaged in by the State, have contravened any of the Privacy Legislation.

16. Termination of this Deed

(a) (Satisfaction of obligations under the Subcontract): This Deed will terminate upon the performance and satisfaction of all of the obligations under the Subcontract.
(b) (Does not affect rights of parties): The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.

(c) (Surviving clauses): All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:

(i) the State's rights to set-off and recover money;
(ii) confidentiality or privacy;
(iii) Intellectual Property Rights;
(iv) any obligation to make any records available to the State;
(v) any indemnity or financial security given in accordance with this Deed;
(vi) any limitation or exclusion of liability; and
(vii) any right or obligation arising on termination or expiry of this Deed.

(d) (Interpretation): No provision of this Deed which is expressed to survive the termination, rescission or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination, rescission or expiration of this Deed.

(e) (Survival of rights and obligations): No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

17. Governing law and jurisdiction

17.1 Governing law

This Deed is governed by, and must be construed according to, the laws of New South Wales, Australia.

17.2 Jurisdiction

Each party irrevocably:

(a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed; and

(b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought within an inconvenient forum, if that venue falls within clause 17.2(a).

18. Miscellaneous

18.1 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

(a) (entire understanding): embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and

(b) (prior agreements): supersedes any prior agreement of the parties.

18.2 Further acts and documents
Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to the parties) required by Law or reasonably requested by another party to give effect to this Deed.

18.3 Waiver

(a) *(Writing)*: A waiver given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.

(b) *(No waiver)*: A failure to, a delay in, or the partial exercise or enforcement of, a right provided by Law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.

(c) *(No waiver of another breach)*: No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

18.4 Consents and approvals

A consent or approval required under this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

18.5 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

18.6 Expenses

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

18.7 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

(a) any other provision of this Deed; or

(b) that provision under the Law of any other jurisdiction.

18.8 No representation or reliance

(a) Each party acknowledges that no party (nor any person acting on a party’s behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.

(b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

18.9 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

18.10 Moratorium legislation

The provisions of all Laws which come into effect after the date of this Deed and operate to:
(a) increase or improve any of Project Co's, the Operator's or the Parent Guarantor's rights, powers or remedies under this Deed or otherwise; or

(b) prejudicially affect the exercise by the State of any right, power or remedy under this Deed or otherwise,

are expressly waived.

18.11 Limitation of liability

[Note: This clause is to be reviewed in respect of the relevant subcontract.]

(a) Despite any other provision of any Project Document, the maximum aggregate liability of the Operator and the Parent Guarantor to the State, Associates of the State, Project Co, Associates of Project Co, the D&C Subcontractor and Associates of the D&C Subcontractor arising out of or in connection with the Project Documents whether in contract, in tort (including negligence) or otherwise is no greater than the maximum liability of the Operator under clause [insert] of the Subcontract, subject to the same exceptions, exclusions and limitations as are specified in the Subcontract and the Parent Guarantee, less the liability incurred (from time to time) by the Operator and the Parent Guarantor under the Subcontract Documents.

(b) The payment by the Operator or the Parent Guarantor of any moneys owing to Project Co under the Subcontract Documents:

(i) to the State in accordance with this Deed; or

(ii) in accordance with a direction of the State given under or in connection with this Deed,

will be deemed full discharge of the Operator and the Parent Guarantor's obligations in respect of that amount under the Subcontract Documents.

(c) The Operator must, within 10 Business Days of a request by the State, notify the value of any claim against the Operator or the Parent Guarantor by Project Co, the D&C Subcontractor or their respective Associates, together with any further detail regarding the calculation of such amount as reasonably requested by the State.
Executed as a deed.

[Execution blocks to be inserted prior to execution.]
Schedule 29
New Grafton Correctional Centre
Subcontract Side Deed

[Insert name of Subcontractor]
[insert ABN/ACN]

[Insert name of Parent Guarantor]
[insert ABN/ACN]

[Insert name of Project Co]
[insert ABN/ACN/ARBN]

[Insert name of State party]
[insert ABN]
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This Subcontract Side Deed is made on

Between:
[Insert name of party] ABN [Insert ABN] of [Insert address] (Subcontractor)
[Insert name of party] ABN [Insert ABN] of [Insert address] (Parent Guarantor)
[Insert name of party] ABN [Insert ABN] of [Insert address] (Project Co)

Recitals:
A The State and Project Co have entered, or will enter, into the Project Deed for the provision of the Project.
B Project Co has subcontracted its obligations to [insert purpose of subcontract] to the Subcontractor pursuant to the Subcontract.
C The Parent Guarantor has, pursuant to the Parent Guarantee, guaranteed to Project Co the performance of the Subcontractor's obligations under the Subcontract.
D The Subcontractor and the Parent Guarantor have agreed to grant to the State certain rights in relation to the Subcontract Documents.

The parties agree as follows:

1. Definitions and interpretation

1.1 Project Deed definitions incorporated
Unless otherwise expressly defined in this Deed, expressions used in this Deed have the meanings given to them in the Project Deed.

1.2 Definitions
In this Deed:
Additional Obligor means a company or other entity which is wholly owned by the State.
Additional Obligor Step-In Notice has the meaning given in clause 5.1(a)(iv).
Additional Obligor Step-Out Date has the meaning given in clause 5.3(d).
Approved Nominee means a person nominated by the State and approved by the Subcontractor in accordance with clause 6.9 as:
(a) having the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Subcontract; and
(b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and subcontracts) which are sufficient to enable it to perform the obligations of Project Co under the Subcontract.
Assumption Date has the meaning given in clause 5.3(a).
Deed means this deed and includes all schedules, exhibits, attachments and annexures to it.

Default Event means:

(a) any default (howsoever described) by Project Co under the Subcontract; or

(b) any other event or circumstance,

which alone or with the giving of notice or passage of time or both, would entitle the Subcontractor to terminate, rescind, accept the repudiation of, or suspend any or all of the Subcontractor's obligations under the Subcontract.

Default Event Notice has the meaning given in clause 4.2(a).

Effective Date means the date specified in the Novation Notice.

Material Adverse Effect means a material adverse effect on:

(a) the ability of any of a Project Co Entity, the Subcontractor or the Parent Guarantor to perform and observe their respective obligations under any Project Document to which it is a party; or

(b) the rights of the State under any State Project Document, or the ability or capacity of the State to exercise its rights or perform its obligations under a State Project Document.

Novation Notice has the meaning given in clause 6.1.

Parent Guarantee means each deed of guarantee dated on or about the date of this Deed from the Parent Guarantor in favour of Project Co in respect of the obligations of the Subcontractor under the Subcontract and, if the State gives a Novation Notice, each new guarantee entered into pursuant to clause 6.6.

PPS Law means:

(a) the Personal Property Securities Act 2009 (Cth) and any regulation made at any time under the PPSA, including the Personal Property Securities Regulations 2010 (Cth) (each as amended from time to time); and

(b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a).

Project Co's Rights has the meaning given in clause 5.3(b)(i)(A).

Project Deed means the document entitled 'New Grafton Correctional Centre - Project Deed' between the State and Project Co dated on or about the date of this Deed.

Receiver means any agent, attorney, trustee, manager, receiver, receiver and manager, administrator, liquidator or provisional liquidator or analogous person appointed under or in connection with the State Security or pursuant to court order on application by the State.

Security Interest has the meaning given to the term in the PPS Law.

[Services means [insert].]

State means:

(a) The Minister for Corrections on behalf of the Crown in right of the State of New South Wales;

(b) Infrastructure New South Wales (ABN 85 031 302 516); and
for the purposes of the Project Deed and the Operator Side Deed only, the Commissioner of Corrective Services.

State Cure Notice has the meaning given in clause 4.2(c).

Step-In Right has the meaning given in clause 5.1(a).

Step-In Period has the meaning given in clause 5.1(b).

Subcontract means the contract titled [Insert] between Project Co and the Subcontractor dated on or about the date of this Deed.

Subcontract Documents means the Subcontract and the Parent Guarantee (or either as the context requires).

[Works means [Insert].]

1.3 Interpretation

In this Deed:

(a) (headings): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

(b) (count and gender): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;

(c) (Deed and Schedule references): a reference to:

(i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Deed; and

(ii) a section is a reference to a section of a Schedule;

(d) (document as amended): a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;

(e) (party): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;

(f) (person): a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(g) (legislation): a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;

(h) (Policies): a reference to a Policy includes that Policy as amended or updated from time to time;

(i) (definitions): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(j) ('includes'): 'includes' and 'including' will be read as if followed by the phrase 'without limitation';
(k) ('or'): the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;

(l) (Information): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

(m) ('$'): a reference to '$', AUD or dollar is to Australian currency;

(n) (Business Day): if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;

(o) (day): except as otherwise provided in this Deed or where a reference is made to 'Business Days', day means a calendar day;

(p) (time): a reference to time is a reference to time in Sydney, Australia;

(q) (rights): a reference to a right includes any benefit, remedy, function, discretion, authority or power;

(r) (function): a function includes a power, authority or duty;

(s) (obligations and liabilities): a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;

(t) ('may'): except to the extent that the State is expressly required under this Deed to act reasonably in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion (and without regard to Project Co, the Subcontractor or the Parent Guarantor) and the State has no obligation to do so;

(u) (construction): where there is a reference to an Authority, institute or association or other body referred to in this Deed which:

(i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or

(ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;

(v) (asset): references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset;

(w) (contra proferentem rule not to apply): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision; and

(x) (PPS Law defined terms): each of the terms 'financing statement', 'financing change statement' and 'verification statement' have the meanings given to them in the PPS Law.

1.4 Inconsistencies

To the extent of any inconsistency between the terms of this Deed and a Subcontract Document, this Deed will prevail over the applicable Subcontract Document.
1.5 **Project Deed, the State Security and Financiers Tripartite Deed**

The Subcontractor and the Parent Guarantor acknowledge that they have received a copy of the Project Deed, the State Security and the Financiers Tripartite Deed.

1.6 **Exclusion of Civil Liability Act**

To the extent permitted by Law, the operation of Part 4 of the Civil Liability Act 2002 (NSW) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this Deed, howsoever those rights, obligations or liabilities are sought to be enforced.

1.7 **State's executive rights, duties and functions**

(a) **(Acknowledgements):** The parties acknowledge the substance, operation and potential effect and consequences of clause 2.10 (State’s executive rights, duties and functions) of the Project Deed in relation to this Deed.

(b) **(No Claim):** Subject to clause 1.7(c), Project Co, the Subcontractor and the Parent Guarantor will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.

(c) **(Liability for breach):** Clauses 1.7(a) and 1.7(b) do not limit any Liability which the State would have had to Project Co, the Subcontractor or the Parent Guarantor under any State Project Document as a result of a breach by the State of a term of any State Project Document but for these clauses.

2. **Securities**

2.1 **Subcontractor acknowledgements and consents**

The Subcontractor:

(a) acknowledges and consents to the grant of, subject to the Financiers Tripartite Deed, security over all of each Project Co Entity's right, title and interest in and to the Subcontract Documents pursuant to the State Security;

(b) acknowledges the rights created under the State Security in favour of the State, including the appointment by Project Co of the State as the lawful attorney of Project Co to do, perform and exercise all things, acts and rights under the Subcontract on behalf and for the account of Project Co, pursuant to the State Security, subject to the rights of the Security Trustee under the Financiers Tripartite Deed;

(c) acknowledges and agrees that, without limiting the State’s obligations under this Deed, the State is not subject to any duty or obligation under the Subcontract as a result of the State Security; and

(d) acknowledges that the grant of the State Security is not, and the exercise by the State of its rights under the State Security will not, of itself, constitute a Default Event.

2.2 **Parent Guarantor acknowledgements and consents**

The Parent Guarantor:

(a) acknowledges and consents to the grant of the security over all of Project Co's rights, title and interest in and to the Parent Guarantee pursuant to the State Security;

(b) acknowledges the rights created under the State Security in favour of the State, including the appointment by Project Co of the State as the lawful attorney of Project Co to do, perform and exercise all things, acts and rights under the Parent Guarantee on behalf of and for the account of Project Co, pursuant to the State Security, subject to the rights of the Security Trustee under the Financiers Tripartite Deed;
(c) acknowledges and agrees that, without limiting the State's obligations under this Deed, the State is not subject to any duty or obligation under the Parent Guarantee as a result of the State Security; and

(d) acknowledges that the grant of the State Security does not, and the exercise by the State of its rights under the State Security will not, of itself, give rise to any rights by the Parent Guarantor to revoke or terminate the Parent Guarantee.

3. Subcontractor's warranty and State's rights and liability

3.1 Subcontractor's warranty

(a) The Subcontractor warrants to the State that it has carried out and, provided the Subcontract has not been terminated, will continue to carry out its duties under the Subcontract in accordance with the Subcontract and that it has exercised and will continue to exercise, in carrying out the [Works][Services], the level of skill and care reasonably to be expected from an appropriately qualified and competent contractor providing those [Works][Services] in relation to a project of a similar size and scope to the [Works][Services]. In particular and without limiting the generality of the foregoing, the Subcontractor covenants with the State that it has carried out and will, provided the Subcontract has not been terminated, carry out and complete the [Works][Services] in accordance with the Subcontract and duly observe and perform all its duties and obligations thereunder.

(b) Without prejudice to any of the State’s other rights under this Deed (including, without limitation, under clauses 4 and 6), the State may only exercise its rights under this clause 3.1 upon:

(i) the State exercising its step-in rights under the Project Deed;

(ii) the termination of the Project Deed or Project Co's employment under the Project Deed; or

(iii) Project Co no longer being responsible for performing the Project substantially on the basis set out in the Project Deed and/or the Monthly Service Payment regime no longer applying.

3.2 State’s rights under Project Deed and State Security

(a) The Subcontractor and the Parent Guarantor each acknowledge and agree that:

(i) the State’s rights under any State Security, including the appointment by any Project Co Entity of the State as attorney of the relevant Project Co Entity to do, perform and exercise all things, acts and rights under the Subcontract Documents on behalf of and for the account of the relevant Project Co Entity; and

(ii) the State’s rights and Project Co's obligations under the Project Deed, including under the following clauses of the Project Deed:

(A) clause 11.3 (Audits for compliance with this Deed);

(B) clause 13 (Workforce);

(C) clause 20 (State access during the Delivery Phase);

(D) clause 28.2 (State access to the Correctional Complex, records and Inmates);

(E) clause 32 (Asset Ownership and Condition);

(F) clause 37 (Expiry obligations);
(G) clause 42 (Emergencies and Step-In by the State);
(H) clause 48 (Major Default);
(I) clause 49 (Termination);
(J) clause 60 (Records and Accounts);
(K) clause 61 (Intellectual Property Rights);
(L) clause 62 (Confidential Information and disclosure); and
(M) clause 63 (Probity Events and Probity Investigations).

(b) The Subcontractor must:

(i) exercise its rights under the Subcontract in a way that facilitates the effective exercise by the State of the rights referred to in clause 3.2(a); and

(ii) permit the State or a State Associate to have access to, and take copies of, the information to which the State is entitled to have access in accordance with the State's rights referred to in clause 3.2(a).

(c) During the period in which the State is exercising a right referred to in clause 3.2(a), the State may, in accordance with the Project Deed and the Subcontract, require the suspension or the continuation of performance by the Subcontractor of its obligations under the Subcontract, and if it does so, the Subcontractor must (without limiting its rights under clauses 4 and 5) comply with this requirement and with all reasonable directions of the State in relation to the performance of the Subcontract by the Subcontractor during such period.

(d) The requirement of the State that the Subcontractor suspend or continue to perform its obligations under the Subcontract and the giving of any direction under clause 3.2(c) by the State does not constitute an assumption by the State of any obligations of the Subcontractor under the Subcontract.

3.3 Subcontracting and Probity Investigations

(a) The Subcontractor and the Parent Guarantor each acknowledges the State's rights and Project Co's obligations under the following clauses of the Project Deed:

(i) clause 12 (Subcontracting and third party arrangements);

(ii) the clauses listed in clause 12.3(a)(iii) (Requirements for subcontracting); and

(iii) clause 63 (Probity Events and Probity Investigations).

(b) The Subcontractor must not subcontract any of its obligations under the Subcontract without ensuring that Project Co has obtained the prior consent of the State to that subcontract, where the State's consent is required in accordance with clause 12 (Subcontracting and third party arrangements) of the Project Deed.

(c) Without limiting the previous paragraphs, the Subcontractor and the Parent Guarantor each acknowledge and agree that:

(i) in accordance with clauses 12 (Subcontracting and third party arrangements) and 63 (Probity Events and Probity investigations) of the Project Deed, the State may, from time to time, or may require Project Co to, conduct Probity Investigations of the Subcontractor, the Parent Guarantor and/or Relevant Persons in respect of the Subcontractor (excluding the Project Co Representative), or other persons to whom the Subcontractor is proposing to subcontract any of its obligations under the Subcontract;
(ii) it will procure all relevant consents from any persons in respect of whom a Probity Investigation is to be conducted; and

(iii) it will not appoint, or retain the appointment of, and will ensure that no other person appoints, or retains the appointment of, a person to the position of a Relevant Person in relation to the performance of any Project Activities unless the State has given approval (including following a Probity Investigation and any other investigations that the State reasonably requires in accordance with the Project Deed).

3.4 No liability for information

The Subcontractor and the Parent Guarantor each acknowledge and agree that:

(a) any information, data and documents provided by the State:

(i) are provided for information purposes only and all of the State's and its Associates' Intellectual Property Rights therein remain the property of the State or its Associates (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 State or its Associates; and

(b) to the extent permitted by Law, neither the State nor any of its Associates will have any Liability to the Subcontractor, the Parent Guarantor or any of their Associates, nor will the Subcontractor, the Parent Guarantor or any of their Associates be entitled to make any Claim against the State, or seek, pursue or obtain an indemnity against or contribution to Liability from the State or any of its Associates arising out of or in connection with:

(i) the provision of, or purported reliance upon, or use of any information, data and documents referred to in clause 3.4(a) by the Subcontractor, the Parent Guarantor, or any other person to whom such information is disclosed by the Subcontractor, the Parent Guarantor, any of their respective Associates or any person on any of their behalf;

(ii) any reference to the State in a Subcontract Document; or

(iii) any review of, comments upon, acceptance, approval or certification of the form or substance of a Subcontract Document by the State.

3.5 Subcontract not to affect State's rights

Each of Project Co, the Subcontractor and the Parent Guarantor acknowledge and agree that:

(a) where the Subcontractor is expressed in the Subcontract to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the Project Deed or an equivalent or similar right of Project Co:

(i) this does not of itself expand Project Co's rights, or the State's Liability, under the Project Deed to include the compensation or relief to which the Subcontractor is or may become entitled under the Subcontract; and

(ii) Project Co's rights, and the State's Liability, under the Project Deed will be determined solely in accordance with the terms of the Project Deed;

(b) as between the State (on the one hand) and Project Co, the Subcontractor and the Parent Guarantor (on the other hand), Project Co, the Subcontractor and the Parent Guarantor accept and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the Subcontract and this Deed; and
(c) notwithstanding anything to the contrary in the Subcontract, neither the Subcontractor nor the Parent Guarantor has any right to deal directly with the State or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:

(i) expressly provided to the contrary in the Project Deed or this Deed; or

(ii) the State consents in writing.

4. State's right to cure Default Event

4.1 State's cure rights

(a) On becoming aware of any Default Event (and subject to clause 4.1(b)), the State may (but is not obliged to) take steps to cure or remedy, or procure the cure or remedy of, that Default Event.

(b) Clause 4.1(a) only applies if the Subcontractor has given a State Cure Notice in accordance with clause 4.2(c).

(c) Upon the State exercising any of its rights under this clause 4.1, Project Co must cease exercising its rights and performing its obligations under the Subcontract (other than Project Co's obligation to pay money) to the extent and for such period as Project Co is prevented from performing such obligations by the State's exercise of its rights pursuant to clause 4.1(a) (but only until such time as the State ceases to exercise those rights in accordance with clause 4.1(d)).

(d) If the State exercises its rights pursuant to clause 4.1(a), the State may, after giving reasonable prior notice to Project Co, cease to exercise those rights, and in any event, will cease to exercise those rights once the relevant Default Event has been remedied.

4.2 Restriction on right to terminate or suspend

The Subcontractor must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Subcontract unless each of the following conditions has been satisfied:

(a) the Subcontractor has given to the State prior notice setting out details of the Default Event giving rise to the right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Subcontract, together with the statements referred to in clause 4.3 (Default Event Notice);

(b) if the Subcontractor's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Subcontract is subject to any right of a Financier to cure or remedy the Default Event:

(i) the cure or remedy period available to the Financiers in respect of the Default Event under any Finance Document has expired without a cure or remedy being achieved; or

(ii) the Security Trustee has notified the Subcontractor in writing that it does not intend to cure or remedy the Default Event;

(c) the Subcontractor has given notice to the State confirming that, either:

(i) the requirements of clause 4.2(b) are satisfied; or

(ii) the Subcontractor's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Subcontract is not subject to any right of the Financiers to cure or remedy the Default Event,

(State Cure Notice); and
(d) any one of the following has occurred:

(i) if:

(A) the Default Event is a failure to pay an amount which is due and payable to
the Subcontractor, such Default Event has not been cured or remedied
within [10] Business Days after the date on which the State Cure Notice is
given to the State (or such longer period as is permitted under the
Subcontract or agreed to by the Subcontractor); or

(B) the Default Event is not one described in clause 4.2(d)(i)(A) but is
otherwise capable of cure or remedy within [20] Business Days after
the date on which the State Cure Notice is given to the State (or such longer
period as is permitted under the Subcontract or agreed to by the
Subcontractor), that Default Event has not been cured or remedied within
the relevant period;

(ii) if the Default Event is not one described in clause 4.2(d)(i) but is nevertheless
reasonably capable of cure or remedy, the State has not commenced curing or
remedying the Default Event within 20 Business Days after the date on which the
State Cure Notice is given and has not continued to diligently pursue that cure or
remedy;

(iii) if the 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,
Project Co or the State (or another person on behalf of either of them) have not
paid or otherwise provided that compensation to the Subcontractor:

(A) to the extent that the relevant amount of compensation has been referred
to expert determination under clause 11, within 20 Business Days after
that dispute is resolved; or

(B) otherwise within 20 Business Days after the date on which the State
received the State Cure Notice;

(iv) if the 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 Default
Event, the State does not commence and continue to perform Project Co's
obligations under the Subcontract within 20 Business Days after the date on which
the State Cure Notice is given to the State; or

(v) the State notifies the Subcontractor in writing after receipt of the State Cure Notice
that it elects not to cure or remedy, or procure the cure or remedy of, the Default
Event.

4.3 Statements concerning Default Event

(a) As part of any Default Event Notice, the Subcontractor must submit to the State
statements of:

(i) where the Default Event is a monetary default:

(A) the provisions of the Subcontract alleged to have been breached or not
fulfilled; and

(B) the amount which must be paid to the Subcontractor to remedy the Default
Event;

(ii) where the Default Event is of a non-monetary nature:

(A) the provisions of the Subcontract alleged to have been breached or not
fulfilled;
(B) sufficient information to enable the State to identify the material facts;

(C) the steps reasonably required to cure or remedy the specified breaches or conditions not fulfilled if reasonably capable of cure or remedy; and

(D) the time within which the specified steps can reasonably be expected to be taken;

(iii) any rights available to the Financiers, pursuant to any Finance Document to which the Subcontractor is a party, to cure or remedy that Default Event and the period within which that cure or remedy must occur before the Finance Documents permit the Subcontractor to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Subcontract; and

(iv) any claims in connection with the Default Event which the Subcontractor is not waiving or abandoning in accordance with clause 4.4.

(b) If the Subcontractor gives a State Cure Notice to the State in accordance with clause 4.2(c), as part of that notice the Subcontractor must update the matters referred to in clause 4.3(a).

4.4 Warranty of accuracy

(a) The Subcontractor warrants to the State that statements submitted by it under clause 4.3 will be, so far as reasonably practicable and subject to unintended error which the Subcontractor agrees to promptly rectify, true, complete and accurate statements of the amounts to which the Subcontractor considers itself entitled.

(b) The Subcontractor and the Parent Guarantor each waive and abandon all claims then known or which ought reasonably to have been known either to the Subcontractor or the Parent Guarantor arising out of or in connection with the Subcontract Documents prior to the date of the Default Event Notice other than the claims disclosed in the statements submitted by it under clause 4.3.

4.5 Disputes as to statements

If the State disputes the amount of any claim or the existence of any default referred to in a Default Event Notice pursuant to clause 11:

(a) the State must pay the amount not in dispute;

(b) upon resolution of the dispute in accordance with clause 11, the parties must make payments as determined; and

(c) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the Project Documents.
4.6 Verification

The State may appoint a firm of independent chartered accountants or a firm of technical
advisers, in each case approved by Project Co and the Subcontractor (such approval not to be
unreasonably withheld or delayed), to verify (at the cost of Project Co) statements submitted by
the Subcontractor, and the Subcontractor must (subject to such firm(s) executing an appropriate
confidentiality agreement in a form reasonably requested by the Subcontractor) permit such firm
to have access to and make copies of all records, documents, data and accounting and other
information not subject to legal (including, without limitation, solicitor and own client) and other
professional privilege which is reasonably required with a view to confirming the accuracy and
completeness of such statements.

4.7 No Liability

Project Co and the Subcontractor acknowledge that, without limiting the Liability of Project Co
(which continues to be responsible for the performance of its obligations under the Subcontract),
and without limiting the State's obligations under clause 6, the State will not be liable for any
obligation or Liability of Project Co under the Subcontract by reason only of the State performing
Project Co's obligations in accordance with the Subcontract. Project Co and the Subcontractor
each release the State from any such Liability, except to the extent that such Liability occurs or
arises as a direct result of any criminal conduct, fraud or wilful misconduct on the part of the State.

4.8 Project Co to compensate the State

Any reasonable loss suffered or incurred by the State arising out of or in any way in connection
with the exercise of its rights under this clause 4 will be a debt due from Project Co to the State.

4.9 No limitation on other rights

The exercise (or failure to exercise) by the State of its rights under this clause 4 will not limit the
State's rights against Project Co under the State Project Documents or otherwise according to
Law.

5. Step-in by the State

5.1 Step-In Right

(a) Following receipt of a State Cure Notice, the State may:

(i) if permitted under the State Security, appoint a Receiver over any Project Co
Entity or any or all of its assets (including the Subcontract Documents);

(ii) itself enter into possession of any or all of the assets of any Project Co Entity;

(iii) take such other action as it is permitted to take under the terms of the Project
Documents; or

(iv) by notice to the Subcontractor (Additional Obligor Step-In Notice), procure that
an Additional Obligor assumes jointly and severally with Project Co all of Project
Co's rights and obligations under the Subcontract Documents,

(each a Step-In Right).

(b) The period from the date on which the Subcontractor 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 Subcontractor terminates the Subcontract;

(iii) the date of any transfer under clause 6;
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(iv) the date which the State has notified the Subcontractor that the State will cease to exercise its Step-In Rights; and

(v) any other date on which the State ceases to continue to exercise its Step-In Rights,

is the Step-In Period.

(c) The Subcontractor and the Parent Guarantor each acknowledge that the exercise by the State of a Step-In Right will not of itself contravene the Subcontract Documents, or constitute a Default Event under the Subcontract or entitle the Subcontractor or the Parent Guarantor to exercise any right (including termination) under the Subcontract Documents.

5.2 Step-In by the State

(a) Subject to the Financiers Tripartite Deed, the State may at any time after it has become entitled to exercise a Step-In Right, exercise all or any of its rights and carry out all or any of the obligations of Project Co in connection with the Subcontract Documents, as if it were Project Co to the exclusion of Project Co.

(b) Project Co, the Subcontractor and the Parent Guarantor each agree that, subject to clause 5.3(b), neither the State nor any Associate of the State will have any Liability, and none of Project Co, the Subcontractor or the Parent Guarantor will be entitled to make, continue or enforce any Claim against the State or any Associate of the State, arising in connection with the Subcontract Documents or this Deed by reason only of the State or any Associate of the State exercising any of Project Co’s rights, or performing any of Project Co’s obligations under the Subcontract Documents other than, and then only to the extent of, any Liability for fraudulent, negligent, reckless, unlawful or malicious acts or omissions of the State or any Associate of the State.

5.3 Step-In using Additional Obligor

(a) The Additional Obligor will become a party to the Subcontract Documents on the date on which the Additional Obligor Step-In Notice is given to the Subcontractor or such later date as the Subcontractor and the State may agree (Assumption Date).

(b) During a Step-In Period in respect of which the State has exercised a Step-In Right under clause 5.1(a)(iv):

(i) subject to clause 5.3(b)(ii), the Additional Obligor will be jointly and severally:

(A) entitled with Project Co to exercise the rights of Project Co under the Subcontract Documents (excluding any accrued rights of Project Co in respect of any loss, cost, damage, charge, expense, outgoing or payment to the extent that the rights arose prior to the Assumption Date) (Project Co’s Rights); and

(B) liable with Project Co for the performance or non-performance of all of Project Co’s obligations under the Subcontract Documents arising on or after the Assumption Date except as released in accordance with clause 5.3(e);

(ii) as between Project Co, the Subcontractor, the Parent Guarantor and the Additional Obligor, only the Additional Obligor is authorised to deal with the Subcontractor and the Parent Guarantor and to exercise Project Co’s Rights;

(iii) Project Co acknowledges that it will be legally bound by all the acts and omissions of the Additional Obligor in so dealing with the Subcontractor and the Parent Guarantor and in exercising Project Co’s Rights;

(iv) the Additional Obligor will be bound by any earlier decision, directions, approvals, notices or consents given or made prior to the Assumption Date;

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(v) clause 14 will apply to the Subcontractor, the Parent Guarantor and the Additional Obligor as if the address and email address of the Additional Obligor were set out in addition to those of Project Co; and

(vi) the Subcontractor and the Parent Guarantor will owe their respective obligations under the Subcontract Documents to Project Co and the Additional Obligor jointly but the performance by the Subcontractor or the Parent Guarantor in favour of either Project Co or the Additional Obligor will be a good discharge of the relevant obligations under the Subcontract Documents.

(c) Without prejudice to the Subcontractor's rights under clause 4.2, the Additional Obligor will have no obligation to, and no Liability in respect of, remedying any default or breach of Project Co under the Subcontract Documents arising prior to the Assumption Date.

(d) The Additional Obligor may at any time give the Subcontractor not less than 30 days' notice terminating the Additional Obligor's rights or obligations under the Subcontract Documents (without affecting the continuation of Project Co's obligations or liabilities towards the Subcontractor and the Parent Guarantor under the Subcontract Documents). Such notice must specify the date on which it takes effect, which must be:

(i) at least 30 days after the date of the notice; or

(ii) if a Novation Notice has been given, the date of the Novation Notice, (the Additional Obligor Step-Out Date).

(e) On and from the Additional Obligor Step-Out Date, between the Subcontractor, the Parent Guarantor and the Additional Obligor, each of the Subcontractor, the Parent Guarantor and the Additional Obligor will be released from all obligations under the Subcontract Documents (except for those obligations which have arisen during the relevant 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.

5.4 Indemnity

Project Co must indemnify the State, the Associates of the State and any Additional Obligor against any Claim or Liability (including any Claim made by, or Liability to, a third party) the State or any Associate of the State or any Additional Obligor suffers or incurs arising in connection with taking any action under clause 5.2 or clause 5.3, except to the extent that such Claim or Liability is caused or contributed to by any of the events set out in clause 45.8 (Limits on Project Co liability to indemnify and release) of the Project Deed.

6. Novation of Subcontract Documents

6.1 Option

The State may require a novation of the Subcontract Documents in accordance with this clause 6 upon the termination of the Project Deed by giving a notice to the Subcontractor and the Parent Guarantor (Novation Notice).

6.2 Novation of Subcontract

With effect from the Effective Date:

(a) the parties novate the Subcontract so that the State (or, if applicable, the Approved Nominee) and the Subcontractor are parties to a new contract on the same terms as the Subcontract as amended by this Deed; and

(b) any reference in the Subcontract to Project Co shall be read as a reference to the State (or, if applicable, the Approved Nominee).
6.3 Rights and obligations of the State and the Subcontractor under the Subcontract

If the State gives a Novation Notice then, subject to clause 6.7, with effect from the Effective Date:

(a) the State (or, if applicable, the Approved Nominee):
   (i) is entitled to all rights and benefits under the Subcontract to which, but for this Deed, Project Co would have been entitled at and after the Effective Date;
   (ii) must perform all obligations and discharge all liabilities under the Subcontract which, but for this Deed, Project Co would have been required to perform or discharge at and after the Effective Date; and
   (iii) is bound by and must comply with all other provisions of the Subcontract by which, but for this Deed, Project Co would have been bound at and after the Effective Date;

(b) the Subcontractor:
   (i) is entitled to all rights and benefits under the Subcontract to which, but for this Deed, it would have been entitled at and after the Effective Date;
   (ii) must perform all obligations and discharge all liabilities under the Subcontract which, but for this Deed, it would have been required to perform or discharge at and after the Effective Date; and
   (iii) is bound by and must comply with all other provisions of the Subcontract by which, but for this Deed, it would have been bound at and after the Effective Date,

as if the State (or, if applicable, the Approved Nominee) had originally been a party to the Subcontract in place of Project Co.

6.4 Release by Subcontractor

With effect from the Effective Date, the Subcontractor releases Project Co from all obligations and liability under or in respect of the Subcontract to be performed or discharged at or after the Effective Date.

6.5 Release by Project Co

With effect from the Effective Date, Project Co releases the Subcontractor from all obligations and liability under or in respect of the Subcontract to be performed or discharged at or after the Effective Date.

6.6 Novation of Parent Guarantee

If the State gives a Novation Notice then, subject to clause 6.7, with effect from the Effective Date:

(a) the parties novate the Parent Guarantee so that the State (or, if applicable, the Approved Nominee) will be named as beneficiary to the new deed of guarantee on the same terms as the Parent Guarantee;

(b) any reference in the Parent Guarantee to Project Co shall be read as a reference to the State (or, if applicable, the Approved Nominee); and

(c) the Parent Guarantor will guarantee for the benefit of the State (or, if applicable, the Approved Nominee) all of the obligations of the Subcontractor in accordance with the Parent Guarantee.
6.7 Obligations and liability prior to the Effective Date

Nothing in this Deed releases:

(a) Project Co or the Subcontractor from any obligation or liability under the Subcontract; or

(b) Project Co, the Subcontractor or the Parent Guarantor from any obligation or liability under the Parent Guarantee,

arising or accruing before the Effective Date and the State (or, if applicable, the Approved Nominee) does not assume any such obligation or liabilities under this Deed.

6.8 Amendments to Subcontract

(a) With effect from the Effective Date, the terms of the Subcontract will be deemed to be amended as required to reflect the fact that the Project Deed is at an end, and that the Subcontract must operate independently of the Project Deed, on the basis that:

(i) the rights and obligations that the State (or, if applicable, the Approved Nominee) will assume under the Subcontract from the Effective Date will be equivalent to those that Project Co would have had under the Subcontract had the Project Deed not been terminated;

(ii) the rights and obligations that the Subcontractor will assume under the Subcontract from the Effective Date will be equivalent to those that the Subcontractor would have had under the Subcontract had the Project Deed not been terminated;

(iii) any provisions of the Project Deed incorporated by reference into the Subcontract prior to the Effective Date are incorporated in the Subcontract from the Effective Date; and

(iv) without affecting the generality of this clause 6.8(a), clauses [insert relevant clauses of the Subcontract] of the Subcontract will be deleted.

(b) If at or after the Effective Date, there is a dispute between the State (or, if applicable, the Approved Nominee) and the Subcontractor as to how the terms of the Subcontract are deemed to have been amended pursuant to clause 6.8(a), then upon either party serving a written notice to this effect on the other, the dispute will be determined in accordance with clause 11.

6.9 Approved Nominee

(a) The State's nominee may be named as a party to the Subcontract Documents in substitution for Project Co if the State's nominee is an Approved Nominee.

(b) The Subcontractor must:

(i) notify the State as to whether the State's nominee is an Approved Nominee, on or before the date falling 30 days after the date of receipt of all information reasonably required by the Subcontractor to decide whether the nominated person is an Approved Nominee;

(ii) not unreasonably withhold or delay its decision on whether the State's nominee is an Approved Nominee; and

(iii) enter into a side deed with the State and the Approved Nominee on substantially the same terms as this Deed.

(c) If the Novation Notice specifies that the Approved Nominee is a person other than the State, the State must, at the time it gives a Novation Notice, provide to the Subcontractor the following particulars of the Approved Nominee:
(i) name, place of incorporation and identity of shareholder(s);

(ii) if available, its most recent published audited accounts; and

(iii) sufficient particulars of the finance available to the Approved Nominee to enable the Subcontractor to decide whether to grant its consent to the Approved Nominee.

6.10 Bonds

If the State gives a Novation Notice then, as from the Effective Date, Project Co must (with the support of the Subcontractor to effect this provision) either:

(a) procure the novation or assignment to the State (or, subject to clause 6.9, the Approved Nominee) of any [insert bonds to be novated/assigned] (each as defined in the Subcontract) held by Project Co under the Subcontract prior to the Effective Date (Bonds); or

(b) procure the issue to the State (or, if applicable, the Approved Nominee) of replacement bonds for the same undrawn value and on the same terms as the Bonds held by Project Co under the Subcontract prior to the Effective Date.

6.11 Insurances

(a) If the Subcontractor is required under the Subcontract to take out and/or maintain any insurance required under clause 46 (Insurance) of the Project Deed to be taken out and maintained by Project Co (each such insurance, a Subcontract Insurance), then the Subcontractor undertakes to the State to:

(i) take out and/or maintain the Subcontract Insurances; and

(ii) comply with clause 46 (Insurance) and Schedule 22 (Insurance Schedule) of the Project Deed with respect to the Subcontract Insurances, as if that clause and Schedule were set out in full in this Deed (mutatis mutandis).

(b) The Subcontractor acknowledges and agrees that the proceeds of any Subcontract Insurance will be applied in accordance with clause 46.11 (Application of Insurance Proceeds) of the Project Deed.

6.12 Other documents under the Subcontract

If the State gives a Novation Notice then, as from the Effective Date, Project Co must procure the novation or assignment to the State (or, if applicable, the Approved Nominee) of:

(a) [insert list of documents to be novated/assigned (eg: collateral warranty deeds)].

7. Appointment of Subcontractor as Principal Contractor

[Note: This clause is to be reviewed in respect of the relevant Subcontract.]

(a) In this clause 7, the terms ‘workplace’, ‘construction project’, ‘principal contractor’ and ‘WHS management plan’ have the same meanings as given to those terms under the WHS Legislation.

(b) Without limiting the Subcontractor’s obligations under any other provision of the Project Documents that the Subcontractor is a party to:

(i) the State:
(A) engages the Subcontractor as the principal contractor for any construction project forming the whole or part of the [Works] under regulation 293 of the WHS Regulation; and

(B) authorises the Subcontractor to have management or control of that part of the workplace to which the construction project relates and to discharge the duties of a principal contractor under the WHS Regulation in relation to any construction project forming the whole or part of the [Works];

(ii) the Subcontractor agrees that its engagement and appointment as principal contractor in respect of any construction project in relation to the [Works] will continue until the earlier of:

(A) that construction project being complete;

(B) the termination of the Subcontract; and

(C) the Expiry Date;

(iii) the Subcontractor accepts the engagement in clause 7(b)(i) and agrees to discharge the duties imposed on a principal contractor under the WHS Legislation and under the Project Deed, this Side Deed and the State Project Documents (as applicable) and the Subcontractor's WHS management plan for the construction project;

(iv) if the State's engagement of the Subcontractor as a principal contractor is not effective for any reason, the Subcontractor agrees to discharge the duties imposed on a principal contractor under the WHS Regulation as if it had been engaged as the principal contractor for the construction project under the WHS Regulation, the WHS management plan for the construction project, the Project Deed, the Side Deeds and State Project Documents (as applicable); and

(v) if the Subcontractor fails to comply with any of its obligations as principal contractor under the WHS Regulation, the WHS management plan for the construction project, the Project Deed, the Side Deeds and the State Project Documents (as applicable), the State may direct Project Co to carry out the Subcontractor's obligations as principal contractor.

8. Representations and warranties

8.1 Representations and warranties by Subcontractor and Parent Guarantor

(a) The Subcontractor and the Parent Guarantor each represent and warrant for the benefit of the State that:

(i) (power to execute): it has the power to execute, deliver and carry out its obligations under this Deed and each other Project Document to which it is a party and all necessary action has been taken to authorise that execution, delivery and performance;

(ii) (legality): the execution, delivery and performance of this Deed and each other Project Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;

(iii) (validity): this Deed and each other Project Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;

(iv) (registration): it is duly registered, properly constituted and remains in existence;

(v) (no trust relationship): except as stated in this Deed, it is not the trustee, manager or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;
(vi) (information true and correct): all information provided by it to the State is as at the date on which it is provided true and correct and neither the Subcontractor nor the Parent Guarantor is aware of any material facts or circumstances that have not been disclosed to the State and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or consent to the entry into the Subcontract;

(vii) (litigation): no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a Material Adverse Effect upon it or its ability to perform its financial and other obligations under this Deed or any other Project Document to which it is a party;

(viii) (Insolvency Event): no Insolvency Event has occurred in respect of it;

(ix) (accounts):

(A) its most recent consolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its and its subsidiaries' state of affairs as at the date to which they relate and the results of its and its subsidiaries' operations for the accounting period ended on such date;

(B) there has been no material adverse change in its or its subsidiaries' state of affairs since such date; and

(C) such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;

(x) (no default):

(A) it is not in default under any document or agreement binding on it or its assets which relates to financial indebtedness; and

(B) nothing has occurred which would, with the giving of notice and/or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement, which would have a Material Adverse Effect;

(xi) (no immunity): neither it nor any of its assets enjoys any immunity from set off, suit or execution in any jurisdiction; and

(xii) (own investigations): in entering into this Deed, the Subcontract, the Parent Guarantee and any other Project Document 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 the State, Project Co or any other person unless in respect of Project Co or any other person, other than the State or an Associate of the State, it is expressly permitted to do so in accordance with a Project Document to which it is a party.

8.2 Repetition of representations and warranties

The representations and warranties in this clause 8 are taken to be repeated immediately before Financial Close, on the basis of the facts and circumstances as at that date.

8.3 Reliance on representations and warranties

Each of the Subcontractor and the Parent Guarantor acknowledge that the State executed this Deed and agreed to take part in the transactions that this Deed contemplates in reliance on the representations and warranties that are made or repeated in this clause 8.
9. **Undertakings by Subcontractor and Parent Guarantor**

The Subcontractor and the Parent Guarantor each undertake to the State as follows:

(a) *(notification of Default Event):* in the case of the Subcontractor, it will notify the State of any Default Event promptly after it gives notice of that Default Event in accordance with clause [insert relevant clause that relates to notice of Project Co Event of Default] of the Subcontract;

(b) *(documents in relation to Default Event):* in the case of the Subcontractor, it will promptly give the State a copy of all documents issued by the Subcontractor to Project Co in relation to a Default Event;

(c) *(no amendment without consent):* it will not, without first obtaining the consent of the State:

(i) make or permit any amendment or replacement of or addition to;

(ii) subject to clause 4.2, terminate, surrender, rescind or accept repudiation of;

(iii) permit the novation, assignment or substitution of any party's rights, obligations or interest in, except when in accordance with this Deed or clause [insert relevant clause that relates to the replacement of D&C Subcontractor or Operator] of the Financiers Tripartite Deed; or

(iv) allow any express waiver of its material rights and obligations under,

a Subcontract Document, provided that the State will not withhold its consent to an amendment or other action contemplated in clauses 9(c)(i) to 9(c)(iv) to which it has consented in accordance with the Project Deed;

(d) *(disposals):* it will not, after Financial Close, transfer, assign, mortgage, charge, encumber or otherwise deal with its rights, obligations or interests in a Subcontract Document without first procuring that the proposed transferee, assignee, mortgagee or chargee executes a deed in favour of the State (in form and substance approved by the State) pursuant to which the transferee, assignee, mortgagee or chargee agrees to accept and be bound by this Deed as if it were the Subcontractor or Parent Guarantor (as the case may be);

(e) *(attend meetings and inspections):* it will (when reasonably requested by the State):

(i) attend, where reasonable and appropriate, meetings with the State or any of the State's Associates;

(ii) provide the State or any of the State's Associates and authorised personnel with:

(A) in the case of the Subcontractor, full access to:

(I) the Site; and

(II) any other place where any [Works][Services] are being carried out or materials are being prepared or stored,

to the extent provided in the Project Deed; and

(B) any other information, records or documents that the State or any of its Associates (acting reasonably) requires in relation to the carrying out of the [Works][Services] or compliance with the Subcontract or any information required by the State to comply with requests from the New South Wales Auditor-General; and
(iii) permit the State or any of the State's Associates to attend all tests and inspections to be carried out in connection with the Project in accordance with the terms of the Subcontract, to the extent provided in, and in accordance with, the Project Deed; and

(f) (access to records): in the case of the Subcontractor, at the request of the State to the extent provided in, and in accordance with, the Project Deed, the Subcontractor will:

(i) permit the State or any of its Associates to inspect all records, reports, plans, programs, specifications and design documents prepared or kept by the Subcontractor in relation to the [Works][Services] and the Project; and

(ii) supply the State or any of its Associates with a copy of any such report or document which they may require from time to time.

10. Acknowledgement by Project Co

Project Co consents to the terms of this Deed and will co operate in the implementation of this Deed.

11. Dispute Resolution

If any dispute or difference of opinion arises between the parties under this Deed, each party may refer any such matter for resolution in accordance with this clause 11 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Project Deed are resolved. Accordingly, the provisions of clauses 50 (Dispute Resolution procedure) to 53 (Arbitration) of the Project Deed are incorporated into this Deed but as if:

(a) the only persons party to the Project Deed, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and

(b) the only matters for expert determination under those provisions are the matters referred for expert determination under this Deed.

12. GST

(a) (Interpretation):

(i) Except where the context suggests otherwise, terms used in this clause 12 have the meanings given to those terms by the GST Act (as amended from time to time).

(ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 12.

(iii) Unless otherwise expressly stated, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 12.

(iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

(b) (Reimbursements): Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
(c) **Additional amount of GST payable**: Subject to clause 12(e), if GST becomes payable on any supply made by a party (Supplier) under or in connection with this Deed:

(i) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 12), for that supply is exclusive of GST;

(ii) any party (Recipient) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (GST Amount), at the same time as any other consideration is to be first provided for that supply; and

(iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 12(c)(ii).

(d) **Variation of GST**:

(i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 12(c) and clause 12(e)), varies from the additional amount paid by the Recipient under clause 12(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 12(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 12(c).

(ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

(e) **Exchange of non-monetary consideration**:

(i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 12(c) applies is a Taxable Supply made by the Recipient (the Recipient Supply), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 12(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.

(ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 12(c) (or the time at which such GST Amount would have been payable in accordance with clause 12(c) but for the operation of clause 12(e)(i)).

(f) **No merger**: This clause 12 will not merge on completion or termination of this Deed.

(g) **Application of Project Deed**: If clause 36 (Payments Adjustments & Taxes) of the Project Deed would apply in connection with a Taxable Supply to which this clause 12 also applies then clause 36 (Payments Adjustments & Taxes) of the Project Deed will apply in connection with that supply and the provisions of this clause 12 (but for this paragraph) will not apply.

13. **PPSA**

(a) If the State determines that this Deed is or contains a Security Interest, the parties (other than the State) agree to promptly do anything (including amending any document or executing any new document) which the State reasonably requires for the purposes of:

(i) ensuring that the Security Interest is enforceable, perfected and otherwise effective;

(ii) enabling the State to apply for registration, or give any notification, in connection with the Security Interest; or
(iii) enabling the State to exercise rights in connection with the Security Interest.

(b) The parties (other than State) agree not to exercise its rights to make any request of the State under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

(c) The parties (other than the State) irrevocably and unconditionally waives its right to receive any notice of any verification statement in respect of any financing statement or financing change statement relating to this Deed.

14. Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

(a) (in writing): must be in writing;

(b) (addressed): must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

State
Name: [Insert]
Address: [Insert]
Email: [Insert]
For the attention of: [Insert]

Project Co
Name: [Insert]
Address: [Insert]
Email: [Insert]
For the attention of: [Insert]

Subcontractor
Name: [Insert]
Address: [Insert]
Email: [Insert]
For the attention of: [Insert]

Parent Guarantor
Name: [Insert]
Address: [Insert]
Email: [Insert]
For the attention of: [Insert]
(c) (signed): must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;

(d) (form of delivery): must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 14(b); and

(e) (taken to be received): are taken to be received by the addressee at the address set out in clause 14(b):

(i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;

(ii) subject to clause 14(f), in the case of prepaid post, on the fourth Business Day after the date of posting to an address within Australia and on the tenth Business Day after the date of posting by airmail to an address outside Australia;

(iii) in the case of email, the first to occur of:

(A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;

(B) the time that the communication enters an information system which is under the control of the addressee; or

(C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day; and

(f) (notices sent by post): if sent by post from within Australia, must be sent using the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service.

15. Confidential Information and disclosure

15.1 Confidential Information and disclosure by the State

(a) Subject to clause 15.1(b), the State and any Authority may disclose any information in connection with the Project, including Project Information.

(b) The State may only disclose the Commercially Sensitive Information:

(i) in accordance with:

(A) Laws or for the enforcement of any criminal law;

(B) where disclosure is in the course of the official duties of a minister, the Treasurer, the Premier or the Attorney General;

(C) to satisfy the disclosure requirements of the NSW Auditor-General in accordance with the Public Finance and Audit Act 1983 (NSW);

(D) to satisfy the requirements of Parliamentary accountability;
(E) to any Associate of the State to the extent necessary for the purpose of the Project provided they agree to maintain the confidentiality of any Commercially Sensitive Information;

(F) in annual reports of the State; or

(G) in accordance with policies of the State or the NSW Government or any Authority;

(c) for any tender process required to be conducted under the Termination Payments Schedule; or

(d) where the Commercially Sensitive Information is any part of the Design Deliverables, the Design Requirements or the Services Requirements, for the purpose of conducting any tender process required by the terms of the Project Deed.

15.2 Confidential Information and disclosure by Subcontractor and Parent Guarantor

(a) (Confidentiality obligation): Subject to clauses 15.2(b) and clause 15.4(b), the Subcontractor and the Parent Guarantor must treat as secret and confidential all Confidential Information and must not, and must procure that its Associates do not, without the prior written consent of the State, make public or disclose to any person any Confidential Information.

(b) (Disclosure of Confidential Information): Without limiting the Subcontractor and the Parent Guarantor’s obligations under clause 15.2(a) and subject to clause 15.2(c), each of the Subcontractor and the Parent Guarantor may disclose Confidential Information:

   (i) to its Associates to the extent necessary for the purpose of undertaking the Project; and

   (ii) in accordance with clause 15.4.

(c) (Confidentiality deed): Before disclosing any Confidential Information, the Subcontractor and the Parent Guarantor (as applicable) must ensure that the person to whom the information is disclosed enters into a confidentiality deed with it to keep the Confidential Information confidential in accordance with this clause 15.

(d) (Permitted disclosure): The Subcontractor and the Parent Guarantor may disclose Confidential Information and will not be required to seek the State’s consent to a disclosure, announcement or statement under clause 15.2(a) or 15.3(a) or to enter into a confidentiality deed under clause 15.2(c) where the disclosure announcement or statement is:

   (i) required by Law, provided that it:

      (A) notifies the State of the requirement to make that disclosure; and

      (B) takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;

   (ii) required to obtain legal or other advice from its advisers, provided that the relevant adviser is under a duty of confidentiality;

   (iii) required to be made to a court in the course of proceedings to which the Subcontractor or the Parent Guarantor (as applicable) is a party; or

   (iv) required by a relevant recognised stock exchange, subject to:

      (A) the disclosure, announcement or statement does not refer to the State’s or any of its Associates’ involvement in the Project; and
the Subcontractor or the Parent Guarantor (as applicable) having used all reasonable endeavours to obtain the State’s consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant recognised stock exchange.

15.3 Public announcements by Subcontractor and Parent Guarantor

Subject to clause 15.2(d), the Subcontractor and the Parent Guarantor must:

(a) not make any public disclosures, announcements or statements in relation to the Project or the State’s or any of the State’s Associates’ involvement in the Project, without the State’s prior consent;

(b) comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Project or the State’s or any of the State’s Associates’ involvement in the Project before the relevant disclosure, announcement or statement is made; and

(c) as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State in accordance with this clause 15.3 or for which the State’s consent or approval was not required in accordance with clause 15.4.

15.4 Information public or known

Notwithstanding anything in this clause 15, any party may disclose information in connection with the Project (including any Confidential Information) if:

(a) the party can demonstrate that the relevant information is already generally available and in the public domain otherwise than as a result of breach of this clause 15; or

(b) the relevant information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.

15.5 Disclosure by the State under GIPA Act

(a) Notwithstanding the other provisions of this clause 15, the parties acknowledge that:

(i) the Project Documents and information concerning the Project Documents will be published on the State’s contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and

(ii) the State may make the Project Documents (other than the Key Subcontracts) or any of them available to any person.

(b) The parties acknowledge that:

(i) the State will notify the Subcontractor of any proposed disclosure of Commercially Sensitive Information by the State under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;

(ii) following notification by the State in accordance with clause 15.5(b)(i), the State will take reasonable steps to consult with the Subcontractor before disclosing Commercially Sensitive Information under the GIPA Act;

(iii) if, following:

(A) notification by the State in accordance with clause 15.5(b)(i); or

(B) consultation between the State and the Subcontractor in accordance with clause 15.5(b)(ii),
the Subcontractor objects to disclosure of some or all of the Commercially Sensitive Information, the Subcontractor must provide details of any such objection within five Business Days after the date the Subcontractor received notification from the State or the date on which the consultation process concluded (as relevant);

(iv) the State may take into account any objection received from the Subcontractor pursuant to clause 15.5(b)(iii) in determining whether the Commercially Sensitive Information identified by the Subcontractor should be disclosed; and

(v) nothing in this clause 15.5 will limit or otherwise affect the discharge of the State's obligations under the GIPA Act.

15.6 Personal Information

The Subcontractor and the Parent Guarantor must:

(a) not collect any Personal Information except in accordance with the Design Requirements and Services Requirements, all Laws and Policies;

(b) not disclose any Personal Information to any person other than as is necessary to provide the Services or to comply with Laws, and then only in accordance with the Design Requirements and Services Requirements, all Laws and Policies; and

(c) keep, and make available to the State on request, records detailing the recipient of any Personal Information that the Subcontractor has disclosed, the date of disclosure and the Personal Information that has been disclosed.

15.7 Confidential Design Information

The Subcontractor and the Parent Guarantor must:

(a) (Access): only provide access to Confidential Design Information to Relevant Persons who:

(i) are not Uncleared Personnel, are permitted to receive Confidential Design Information in accordance with clause 62.2 of the Project Deed and, where required by the State, have satisfied any Probity Investigation under clause 63.2 of the Project Deed; and

(ii) require access to that Confidential Design Information to [carry out the Works][perform the Services];

(b) (Limited portion): where it is necessary to grant access to Confidential Design Information in accordance with clause 15.7(a), grant access to the most limited portion of the Confidential Design Information possible; and

(c) (Records): keep, and make available to the State on request, records detailing the recipient of any Confidential Design Information, the date of disclosure and the Confidential Design Information that has been disclosed.

15.8 Privacy

(a) (Compliance): Without limiting any obligations in respect of privacy set out in the Design Requirements or the Services Requirements, the Subcontractor and the Parent Guarantor agree to, and will ensure that the Subcontract and any other subcontract entered into by the Subcontractor in relation to the Project contains terms which require the Subcontractor to, be bound by the Privacy Legislation with respect to any act done, or practice engaged in, by it in connection with this Deed or with the Subcontract or other relevant subcontract (as the case may be), in the same way as the State would be bound by the Privacy Legislation, in connection with that act or practice had it been directly done or engaged in by the State.
(b) **Release and Indemnity**: The Subcontractor and the Parent Guarantor must release, indemnify and must keep indemnified on demand the State and its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) which the State or any of its Associates suffer or incur resulting from any act done or practice engaged in by the Subcontractor, the Parent Guarantor or any of their respective Associates in connection with the Project, which would, had that act or practice been done or engaged in by the State, have contravened any of the Privacy Legislation.

### 16. Termination of this Deed

(a) **Satisfaction of obligations under the Subcontract**: This Deed will terminate upon the performance and satisfaction of all of the obligations under the Subcontract.

(b) **Does not affect rights of parties**: The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.

(c) **Surviving clauses**: All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:

(i) the State's rights to set-off and recover money;
(ii) confidentiality or privacy;
(iii) Intellectual Property Rights;
(iv) any obligation to make any records available to the State;
(v) any indemnity or financial security given in accordance with this Deed;
(vi) any limitation or exclusion of liability; and
(vii) any right or obligation arising on termination or expiry of this Deed.

(d) **Interpretation**: No provision of this Deed which is expressed to survive the termination, rescission or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination, rescission or expiration of this Deed.

(e) **Survival of rights and obligations**: No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

### 17. Governing law and jurisdiction

#### 17.1 Governing law

This Deed is governed by, and must be construed according to, the laws of New South Wales, Australia.

#### 17.2 Jurisdiction

Each party irrevocably:

(a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed; and
18. Miscellaneous

18.1 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

(a) (entire understanding): embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and

(b) (prior agreements): supersedes any prior agreement of the parties.

18.2 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to the parties) required by Law or reasonably requested by another party to give effect to this Deed.

18.3 Waiver

(a) (Writing): A waiver given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.

(b) (No waiver): A failure to, a delay in, or the partial exercise or enforcement of, a right provided by Law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.

(c) (No waiver of another breach): No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

18.4 Consents and approvals

A consent or approval required under this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

18.5 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

18.6 Expenses

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

18.7 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

(a) any other provision of this Deed; or

(b) that provision under the Law of any other jurisdiction.
18.8 No representation or reliance

(a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.

(b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

18.9 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

18.10 Moratorium legislation

The provisions of all Laws which come into effect after the date of this Deed and operate to:

(a) increase or improve any of Project Co's, the Subcontractor's or the Parent Guarantor's rights, powers or remedies under this Deed or otherwise; or

(b) prejudicially affect the exercise by the State of any right, power or remedy under this Deed or otherwise,

are expressly waived.

18.11 Limitation of liability

[Note: This clause is to be reviewed in respect of the relevant subcontract.]

(a) Despite any other provision of any Project Document, the maximum aggregate liability of the Subcontractor and the Parent Guarantor to the State, Associates of the State, Project Co, Associates of Project Co, the [insert any other relevant entities] and [insert] Associates arising out of or in connection with the Project Documents whether in contract, in tort (including negligence) or otherwise is no greater than the maximum liability of the Subcontractor under clause [insert] of the Subcontract, subject to the same exceptions, exclusions and limitations as are specified in the Subcontract and the Parent Guarantee, less the liability incurred (from time to time) by the Subcontractor and the Parent Guarantor under the Subcontract Documents.

(b) The payment by the Subcontractor or the Parent Guarantor of any moneys owing to Project Co under the Subcontract Documents:

(i) to the State in accordance with this Deed; or

(ii) in accordance with a direction of the State given under or in connection with this Deed,

will be deemed full discharge of the Subcontractor and the Parent Guarantor's obligations in respect of that amount under the Subcontract Documents.

(c) The Subcontractor must, within 10 Business Days of a request by the State, notify the value of any claim against the Subcontractor or the Parent Guarantor by Project Co, [insert any other relevant entities] or their respective Associates, together with any further detail regarding the calculation of such amount as reasonably requested by the State.
Executed as a deed.

[Execution blocks to be inserted prior to execution.]
Schedule 30

New Grafton Correctional Centre
Expert Determination Agreement

[Insert name of First Party]
[insert ABN/ACN/ARBN]

[Insert name of Second Party]
[insert ABN/ACN/ARBN]

[Insert name of Expert]
Schedule 30 — Expert Determination Agreement

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Expert Determination Agreement made on

Parties

[Insert party's name, ABN/ACN/ARBN and address] (First Party)

[Insert party's name, ABN/ACN/ARBN and address] (Second Party)

[Insert name and address of Expert agreed between the Parties or appointed pursuant to clause 52.2 (Selection of expert) of the Project Deed or the equivalent clause in each Relevant Agreement) (Expert)

Recitals

A. The background to the Project is set out in the Project Deed.

B. On [Insert date of referral] [Insert either: the Parties agreed / the First Party/Second Party chose] that the matter described in Schedule 1 be determined by an Expert appointed under clause [Insert clause under which the Expert was appointed (eg, pursuant to clause 52.2 (Selection of expert) of the Project Deed or the equivalent clause in each Relevant Agreement) of the Relevant Agreement.

C. In accordance with clause [Insert clause under which the Expert was appointed (eg, pursuant to clause 52.2 (Selection of expert) of the Project Deed or the equivalent clause in each Relevant Agreement) of the Relevant Agreement, the Expert has been appointed to determine the Matter in accordance with the process set out in this Agreement and the Relevant Agreement.

Operative provisions

1. Definitions

1.1 Project Deed definitions incorporated

Unless otherwise expressly defined, expression used in this Agreement have the meanings given to them in the Project Deed.

1.2 Definitions

Agreement means this agreement and includes all schedules, exhibits, attachments and annexures to it.

Code of Conduct means the code of conduct set out in section 2 of Schedule 2.

Matter means a dispute under, arising out of, or in connection with the Relevant Agreement and referred to expert determination under clause [Insert relevant clause (eg, pursuant to clause 52.1 (Expert determination) of the Project Deed or the equivalent clause in the Relevant Agreement)] of the Relevant Agreement.

Parties means the First Party and the Second Party.

Project Deed means the document entitled 'New Grafton Correctional Centre – Project Deed' between the State and Project Co dated [Insert date].

Relevant Agreement means [Note: Insert the relevant Project Document under which the Matter arose].


Schedule of Fees and Disbursements is contained in Schedule 3.
1.3 Interpretation

In this Agreement:

(a) (headings): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

(b) (count and gender): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;

(c) (Agreement and Schedule references): a reference to:

(i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Agreement; and

(ii) a section is a reference to a section of a Schedule;

(d) (document as amended): a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;

(e) (party): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;

(f) (person): a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(g) (legislation): a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;

(h) (Policies): a reference to a Policy includes that Policy as amended or updated from time to time;

(i) (definitions): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(j) ('includes'): 'includes' and 'including' will be read as if followed by the phrase '(without limitation)';

(k) ('or'): the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;

(l) (information): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

(m) ('$'): a reference to '$', AUD or dollar is to Australian currency;

(n) (Business Day): if the day on or by which anything is to be done under this Agreement is not a Business Day, that thing must be done no later than the next Business Day;

(o) (day): except as otherwise provided in this Agreement or where a reference is made to 'Business Days', day means a calendar day;
(p) (time): a reference to time is a reference to time in Sydney, Australia;

(q) (rights): a reference to a right includes any benefit, remedy, function, discretion, authority or power;

(r) (function): a function includes a power, authority or duty;

(s) (obligations and liabilities): a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;

(t) (‘may’): except to the extent that the State is expressly required under this Agreement to act reasonably in exercising a power, right or remedy, the term ‘may’, when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion (and without regard to Project Co or the Expert) and the State has no obligation to do so;

(u) (construction): where there is a reference to an Authority, institute or association or other body referred to in this Agreement which:

(i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Agreement is deemed to refer to that other entity; or

(ii) ceases to exist, this Agreement is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;

(v) (asset): references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset;

(w) (remedy): the use of the word ‘remedy’ or any form of it in this Agreement means that the event to be remedied must be cured or its effects overcome; and

(x) (contra proferentem rule not to apply): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

2. Appointment of Expert

(a) (Parties to appoint Expert): The Parties appoint the Expert to determine the Matter in the manner and within the times set out in this Agreement and the Expert accepts the appointment on the basis set out in this Agreement.

(b) (Agreement of Conditions): The Parties agree that:

(i) the Expert will act as an expert and not as an arbitrator;

(ii) neither the determination of the Matter, nor the process required by this Agreement, is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;

(iii) the rules of evidence do not apply to the determination; and

(iv) the Expert must conduct the determination of the Matter in accordance with the Rules including the Code of Conduct.

(c) (Independence and bias): If, at any time during the determination, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert’s capacity to act independently or impartially, the Expert must inform the Parties immediately and, unless the Parties agree otherwise, terminate this Agreement.
3. Confidentiality

(a) Subject to clause 3(b), all proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), must be kept confidential.

(b) No such proceedings, submissions or documents referred to in clause 3(a), nor any other information relating to or arising out of the determination, may be divulged to any person except:

(i) with the prior written consent of both Parties;

(ii) as may be required by Law;

(iii) for the purpose of subsequent arbitration; or

(iv) to the extent necessary to enforce the Expert's determination.

4. Costs and fees

(a) (Parties joint and severally liable): As between the Parties and the Expert, the Parties are jointly and severally liable for the payment of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements.

(b) (Calculation of costs and fees): The Parties agree, unless otherwise provided in the Relevant Agreement, as between themselves that:

(i) they will each pay one half of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements; and

(ii) they will each bear their own costs of and incidental to the preparation of this Agreement and their participation in any determination.

5. Exclusion of liability and indemnity

Except in the case of fraud, the Expert will not be liable to either Party for any act or omission by the Expert in the performance or purported performance of this Agreement. The Parties jointly and severally indemnify the Expert against all Claims or Liability in connection with any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this Agreement.

6. Co-operation of the Parties

Each Party agrees to take part in the determination in good faith and to comply with the reasonable requests and directions of the Expert in relation to the conduct of the determination.

7. GST

(a) (Interpretation):

(i) Except where the context suggests otherwise, terms used in this clause 7 have the meanings given to those terms by the GST Act (as amended from time to time).

(ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 7.
(iii) Unless otherwise expressly stated, all consideration to be provided under this Agreement is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 7.

(iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

(b) **(Reimbursements):** Any payment or reimbursement required to be made under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

(c) **(Additional amount of GST payable):** Subject to clause 7(e), if GST becomes payable on any supply made by a party (Supplier) under or in connection with this Agreement:

(i) any amount payable or consideration to be provided under any provision of this Agreement (other than this clause 7), for that supply is exclusive of GST;

(ii) any party (Recipient) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (GST Amount), at the same time as any other consideration is to be first provided for that supply; and

(iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 7(c)(ii).

(d) **(Variation of GST):**

(i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 7(c) and clause 7(e)), varies from the additional amount paid by the Recipient under clause 7(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 7(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 7(c).

(ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Agreement as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

(e) **(Exchange of non-monetary consideration):**

(i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 7(c) applies is a Taxable Supply made by the Recipient (the Recipient Supply), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 7(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.

(ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 7(c) (or the time at which such GST Amount would have been payable in accordance with clause 7(c) but for the operation of clause 7(e)(i)).

(f) **(No merger):** This clause 7 will not merge on completion or termination of this Agreement.

(g) **(Project Deed):** If clause 36 (Payments Adjustments & Taxes) of the Project Deed would apply in connection with a Taxable Supply to which this clause 7 also applies then clause
36 (Payments Adjustments & Taxes) of the Project Deed will apply in connection with that supply and the provisions of this clause 7 (but for this paragraph) will not apply.

8. Proportionate liability

To the extent permitted by Law, the operation of Part 4 of the Civil Liability Act 2002 (NSW) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this Agreement, howsoever those rights, obligations or liabilities are sought to be enforced.

9. Governing Law and jurisdiction

(a) (Governing Law): This Agreement is governed by, and must be construed according to, the Laws of New South Wales, Australia.

(b) (Jurisdiction): Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Agreement.
Schedule 1 — The Matter

[Description of matter to be inserted]
**Schedule 2 — Rules for Expert Determination Process**

1. **Commencement**
   The expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules including the Code of Conduct.

2. **Code of Conduct**
   (a) The function of the Expert is to make a determination of the Matter in accordance with the Relevant Agreement, the Project Deed and this Agreement, including these Rules and the Code of Conduct.

   (b) The Expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in these Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.

   (c) The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.

   (d) The Expert must disclose to both Parties all information and documents received.

   (e) If a Party fails to make a written submission or attend a conference, the Expert may continue with the process.

   (f) Subject to section 4 of these Rules, meetings and discussions with the Expert must only take place in the presence of both Parties.

3. **Written Submissions**
   (a) Within 5 Business Days after the date that this expert determination process begins, the Party who gave notice under [insert either: clause 52.1 (Expert determination) of the Project Deed or the equivalent clause of the Relevant Agreement (Party A)] must give the other Party (Party B) and the Expert:

      (i) a written statement describing the Matter referred for expert determination;

      (ii) any agreed statement of facts; and

      (iii) a written submission on the Matter in support of Party A’s contentions.

   (b) Within 5 Business Days after the statement in section 3(a) is served, Party B must give Party A and the Expert a written response to Party A’s submissions.

   (c) If the Expert considers it appropriate, Party A may reply in writing to the other Party’s response in section 3(b) within the time allowed by the Expert.

   (d) If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.

4. **Conference**
   (a) The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in Sydney, Australia.
(b) At least 5 Business Days before the conference, the Expert must inform the Parties of the date, venue and agenda for the conference.

(c) The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under section 4(b), the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the expert determination process.

(d) The Parties:

(i) may be accompanied at a conference by legal or other advisers; and

(ii) subject to the terms of this Agreement and the Relevant Agreement, will be bound by any procedural directions given by the Expert in relation to the expert determination process.

(e) The conference must be held in private.

(f) If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.

5. General

(a) In making a determination or calling or holding a conference, the Expert must proceed in accordance with the Relevant Agreement, this Agreement and these Rules.

(b) Subject to section 4(c), meetings and discussions with the Expert must only take place in the presence of both Parties.

(c) Without limiting clause 2(a) of the Agreement, the Expert must:

(i) inform the Parties of:

(A) any relationship or interest the Expert has with the Parties or their respective Associates;

(B) any interest the Expert has in the matters in dispute; and

(C) any circumstance which might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, immediately upon becoming aware of any such circumstance; and

(ii) upon making any disclosure under this section 5(c), unless and until the Parties agree otherwise, terminate the proceedings.

6. The Determination

(a) As soon as possible after receipt of the submissions or after any conference and, in any event not later than 30 days after the Expert's acceptance of appointment, the Expert must:

(i) determine the Matter between the Parties; and

(ii) notify the Parties of that determination.

(b) The determination of the Expert must:

(i) be in writing stating the Expert's determination and giving reasons;
(ii) be made on the basis of the submissions (if any) of the Parties, the conference (if any) and the Expert's own expertise; and

(iii) meet the requirements of the Relevant Agreement.

(c) To the extent permitted by Law, the Expert's determination will be final and binding on the Parties unless:

(i) the Expert's determination includes:

(A) payment of compensation and the amount claimed, or subsequently determined by the Expert, to be payable is equal to or greater than $1,000,000 (indexed); or

(B) an extension of a Date for Completion or rejection of an extension to a Date for Completion and the period of the extension that was claimed in the notice under clause 51(a) (Senior Negotiations) of the Project Deed is more than 5 Business Days; and

(ii) within 10 Business Days of receipt of the determination, a Party gives notice to the other Party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 52.4(a)(ii) (Notification) of the Project Deed.

7. Costs

Security for the Expert's fees and disbursements must be deposited by both Parties at the commencement of the expert determination process in accordance with any direction of the Expert.

8. Modification

These Rules may be modified only by agreement of the Parties and, if the Expert has been appointed, the Expert.
Schedule 3 — Schedule of Fees and Disbursements

[Expert's fees and disbursements to be inserted.]
Signed as an agreement.

[Execution Blocks to be inserted prior to execution]
Schedule 31 – PAFA Act Deed Poll of Guarantee
Schedule 32 — Proprietary Software Schedule
Schedule 32A – Escrow Deed

New Grafton Correctional Centre
Escrow Deed

[insert]
(the State)

[insert]
(Project Co)

[insert]
(Escrow Agent)

[insert]
(D&C Subcontractor)

[insert]
(Operator)

[insert]
(Electronic Security Provider)
New Grafton Correctional Centre

12. Termination
   12.1 Termination by Escrow Agent
   12.2 Joint termination
   12.3 New agreement

13. Assignment
   13.1 Assignment by Escrow Agent
   13.2 Assignment by State and Project Co

14. Subcontracting

15. Dispute Resolution

16. Notices

17. Governing law and jurisdiction
   17.1 Governing law
   17.2 Jurisdiction

18. Miscellaneous
   18.1 Entire agreement
   18.2 Further acts and documents
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   18.4 Waiver
   18.5 Consents and approvals
   18.6 Amendments
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   18.8 Severance
   18.9 No representation or reliance
   18.10 Counterparts
   18.11 Moratorium legislation
   18.12 Proportionate liability
   18.13 Indemnity held on trust
   18.14 Set off
   18.15 Remedies cumulative

Schedule 1 — Relevant Software

Schedule 2 — Escrow Fee
This Escrow Deed is made on

Between:
[insert] (the State)
[insert] (Project Co)
[insert] (Escrow Agent)
[insert] (D&C Subcontract) [Note: Role of the D&C Subcontractor under this deed is to be resolved prior to execution.]
[insert] (Operator)
[insert] (Electronic Security Provider)

Recitals:
A. The background to this Project is set out in the Project Deed.
B. The Escrow Agent has been appointed by the State and Project Co to hold the Escrow Material in escrow.
1. Definitions and interpretation

1.1 Project Deed definitions incorporated
Unless otherwise expressly defined, expressions used in this Deed have the meaning given to them in or for the purpose of the Project Deed.

1.2 Definitions
In this Deed, unless the context otherwise requires:

Commencement Date means the date of this Deed.

Deed means this deed and includes all schedules, exhibits, attachments and annexures to it.

Escrow Fee means the fees described in Schedule 2.

Escrow Material means:

New Release means any version of or addition to the Relevant Software produced by or on behalf of Project Co, or made available by or on behalf of Project Co from time to time (whether by way of updates, fixes, enhancements, additions or replacement versions).

Production Version means the version of the Relevant Software that is deployed into production at the Site from time to time (and includes New Releases of that software deployed into production at the Site from time to time).

Project Deed means the document entitled "New Grafton Correctional Centre - Project Deed" between the State and Project Co dated on or about the date of this Deed.

Proprietary Development Environment means any proprietary programs used in the development environment for the Relevant Software in electronic form, including compilers, workbenches, tools and higher-level (or proprietary) languages employed by Project Co for the development, maintenance, and implementation of the source code, for which there is not a commercially available alternative available to the State on reasonable terms through readily known sources other than Project Co.

Relevant Software means the software listed in Schedule 1.

1.3 Interpretation
In this Deed:
(a) (headings): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

(b) (count and gender): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;

(c) (agreement and schedule references): a reference to:

(i) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Deed; and

(ii) a section is a reference to a section of a Schedule;

(d) (agreement as amended): a reference to this Deed or to any other deed, agreement, or instrument includes a reference to this Deed or such other deed, agreement, or instrument as amended, novated, supplemented, varied or replaced from time to time;

(e) (Party): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;

(f) (person): a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(g) (legislation): a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

(h) (definitions): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(i) ("includes"): "includes" will be read as if followed by the phrase "(without limitation)";

(j) ("or"): the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;

(k) (information): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

(l) ("$": a reference to "$", AUD or dollar is to Australian currency;

(m) (time): a reference to time is a reference to time in Sydney, Australia;

(n) (rights): a reference to a right includes any benefit, remedy, function, discretion, authority or power;

(o) (obligations and liabilities): a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;

(p) ("may"): the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;

(q) (construction): where there is a reference to an Authority, institute or association or other body referred to in this Deed which:

(i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or

(ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity; and

(r) (contra proferentem rule not to apply): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.
2. **Purpose of agreement**
Subject to the terms and conditions of this Deed, to secure the interests of the State and Project Co under the Project Deed:

(a) *(Deposit of Escrow Material)*: Project Co must deposit the Escrow Material in accordance with this Deed with the Escrow Agent in Sydney; and

(b) *(Escrow Material)*: the Escrow Agent must act as escrowee of the Escrow Material.

3. **Term of Deed**

(a) *(Commencement)*: Subject to clause 3(b), this Deed commences on the Commencement Date and will remain in force until:
   (i) the Escrow Material is released in accordance with this Deed; or
   (ii) the Deed is otherwise terminated.

(b) *(Conditions Precedent)*: The satisfaction or waiver of the Conditions Precedent in accordance with clause 3 *(Conditions Precedent)* of the Project Deed, is a condition precedent to the coming into operation of this Deed (other than this clause 3).

4. **Conduct of Escrow Agent**
Neither the State nor Project Co will be liable for any act or omission of the Escrow Agent.

5. **Project Co's obligations**

5.1 **Deposit of Source Code Materials**
Project Co must deliver to, and deposit with the Escrow Agent, one copy of the Source Code Materials within [insert] days after the Commencement Date.

5.2 **Maintenance of Source Code Materials**

(a) *(Updating the Source Code Materials)*: Project Co must, during the term of this Deed, maintain, amend, modify, update and enhance the Source Code Materials, and ensure that the Source Code Materials deposited with the Escrow Agent are kept up to date (and if necessary replaced), so that they accurately reflect the then-current Production Version of the Relevant Software to which the Source Code Materials relate.

(b) *(Procedure)*: In depositing or updating Source Code Materials pursuant to paragraph (a), Project Co must comply with any reasonable instructions and conditions imposed by the Escrow Agent, including the completion of any documents evidencing deposit or updating of the Source Code Materials.

5.3 **Other Material**
Project Co and the State may agree Other Material to be deposited with the Escrow Agent and the Escrow Agent must accept custody of such Other Material deposited with it.

5.4 **Warranty**
Project Co warrants to the State that the Escrow Material is, to the best of the knowledge of the Subcontractor, free from any malicious computer software or data which would prevent any part of the Escrow Material from performing its desired function or which would prevent or impede a thorough and effective verification of the Escrow Material.

5.5 **Licence**
Project Co grants to the Escrow Agent a licence to deal with the Escrow Material as is necessary to enable the Escrow Agent to comply with its obligations under this Deed.
6. Escrow Agent's obligations

6.1 Confirmation of receipt
The Escrow Agent must give Project Co and the State written confirmation of receipt of all Escrow Material referred to in clauses 5.1, 5.2 and 5.3 immediately when it is received.

6.2 Custody
The Escrow Agent must accept custody of the Escrow Material on the date of delivery in accordance with clause 5 of this Deed and, subject to the terms and conditions of this Deed, must hold the Escrow Material on behalf of the Project Co and the State. Title to any physical materials on which the Escrow Material is stored will pass to the Escrow Agent upon delivery.

6.3 Storage and preservation of Escrow Material
The Escrow Agent must:
(a) (Location): store the Escrow Material at the Escrow Agent’s premises in Sydney; and
(b) (Preservation): take all reasonably necessary steps to ensure the preservation, care, maintenance, safe custody and security of the Escrow Material while in the possession, custody or control of the Escrow Agent, including storage in a secure receptacle and in an environment that does not harm the Escrow Material.

6.4 Escrow Material register
The Escrow Agent must maintain a register of Escrow Material deposited, stored and released under this Deed in the form agreed by the State, Project Co and the Escrow Agent.

6.5 Information and inspection requests
(a) (Requests for inspection): The Escrow Agent must promptly comply with a request of the State or Project Co to inspect and be furnished with a copy of the register referred to in clause 6.4 and to be furnished with information about storage, safety and security procedures relating to the Escrow Material.
(b) (Cost of Escrow Agent): The reasonable costs of the Escrow Agent complying with a request in this clause 6.5 will be borne by Project Co.
(c) (State to reimburse for State requests): The State will promptly reimburse Project Co for the costs of the Escrow Agent borne by Project Co arising from a request by the State under this clause 6.5.

6.6 Loss of Escrow Material
If the Escrow Material or any medium containing the Escrow Material is lost, destroyed or damaged while in the possession, custody or control of the Escrow Agent:
(a) (notification): the Escrow Agent must promptly notify Project Co and the State; and
(b) (obligation to replace): Project Co must within 7 Business Days replace the lost, damaged or destroyed Escrow Material to the extent it is replaceable at:
   (i) the Escrow Agent's cost if the loss, damage or destruction was caused by the Escrow Agent's fraud, negligence, recklessness, act or omission or breach of this Deed; or
   (ii) Project Co's and the State's cost (shared equally in each case) in all other circumstances.

6.7 No responsibility for completeness
The Escrow Agent has no obligation to verify:
(a) (Completeness): the completeness or accuracy of Escrow Material, or of electronic or other notations on such deposits; or
6.8 Insurance
(a) (Cover): The Escrow Agent must:
(i) effect and maintain insurance during the term of this Deed and for a period of 12 months after this Deed terminates which, in the State's reasonable opinion, is suitable and sufficient to provide the State with appropriate cover against the risk of legal liability to any person arising in connection with the Escrow Material; and
(ii) ensure that each policy of insurance names the State as an additional insured.
(b) (Evidence): The Escrow Agent must provide the State with evidence of the terms and currency of the insurance required to be effected under paragraph (a) on the date of this Deed and whenever requested by the State.

7. Testing and verification

7.1 State may test Escrow Material
The State, or an independent assessor acting on behalf of the State (Inspector) may, on giving 5 Business Days' notice to Project Co, the Electronic Security Provider and the Escrow Agent, analyse and conduct tests in relation to the Escrow Material to verify that the Escrow Material has been deposited and maintained in accordance with the requirements of this Deed. The Inspector must permit Project Co to be present for this verification if Project Co wishes.

7.2 Responsibility of Escrow Agent
The Escrow Agent has no responsibility for testing and verification of the Escrow Material except as specified in clause 7.3.

7.3 Release to Inspector
The Escrow Agent must release the Escrow Material to the Inspector upon presentation of a copy of the notice issued to the Subcontractor under clause 7.1.

7.4 Access rights
The access granted to the Inspector may include the taking of copies of the Escrow Material and using copies of the Relevant Software with a computer system for the purpose of testing.

7.5 Return of Escrow Material
At the conclusion of any inspection the Inspector must return the Escrow Material and/or destroy or erase any copies as appropriate.

7.6 Costs
The cost of any such inspection will be borne by the State unless the verification shows that the Escrow Material does not contain the relevant materials, in which case Project Co must reimburse the State for its costs of the inspection including any amounts paid to the Inspector or the Escrow Agent.

7.7 Deficiencies
If the Inspector discovers any deficiency in the Escrow Material, the State may give Project Co notice requiring Project Co to correct the deficiency, at the expense of Project Co, within 5 Business Days, and in this respect time is of the essence.
8. Access to and release of Escrow Material

8.1 No access or release other than in accordance with this Deed
The Escrow Agent must not release, or allow access to, the Escrow Material except in accordance with the provisions of this Deed.

8.2 Release of Escrow Material by joint notice
(a) The Escrow Agent will immediately release the Escrow Material to any person nominated by a notice signed by both the State and Project Co, that one of the following has occurred:
   (i) the Electronic Security Provider has ceased to carry on business, or that portion of its business required to deliver or maintain the Electronic Security System;
   (ii) the Electronic Security Provider has become subject to any form of insolvency or administration (other than a solvent reconstruction); or
   (iii) in the opinion of the State and Project Co (acting reasonably), the Electronic Security Provider is unwilling or unable to continue to support and maintain the Relevant Software.
(b) Project Co will provide a copy of the notice to the Electronic Security Provider promptly and in any event within 2 Business Days of the date on which the Escrow Agent receives notice from the State and Project Co in accordance with clause 8.2(a) above.

8.3 Release of Escrow Material to the State
(a) (Release): Unless ordered by a court not to release the Escrow Material, and provided that the Escrow Agent has received a copy of the notice under paragraph (b) given at least 5 Business Days prior to the notice under this paragraph (a), the Escrow Agent must release the Escrow Material to the State immediately upon receipt of a notice from the State that:
   (i) Project Co is unable or unwilling to perform its obligations under this Deed;
   (ii) a Major Default or Default Termination Event has occurred under the Project Deed;
   (iii) the Project Deed has been terminated; or
   (iv) the Term of the Project Deed has expired.
(b) (Notice): The State must give Project Co and the Electronic Security Provider not less than 5 Business Days prior written notice of giving any notice to the Escrow Agent under paragraph (a).

8.4 No responsibility to verify notice
The Escrow Agent is under no obligation or responsibility to verify or otherwise test the validity of any notice received under clause 8.3, or its contents.

9. Escrow fees and charges

9.1 Payment
During the term of this Deed, Project Co and the State will each pay 50% of the Escrow Fee to the Escrow Agent without demand in accordance with the payment terms of the Escrow Fee in Schedule 2.

9.2 Increases
The Escrow Agent may increase its fees in accordance with Schedule 2.
9.3 Late payments

(a) (Escrow Agent to notify): The Escrow Agent will notify the parties within a reasonable period if either of them fails to make any payment to the Escrow Agent by the due date. On receipt of such notice, the other party may pay to the Escrow Agent all amounts for which the defaulting party is in arrears.

(b) (Deduction of late payments): The State or Project Co may deduct amounts paid or incurred under paragraph (a) by the State or Project Co (as the case may be) from any moneys otherwise due from the State or Project Co (as the case may be) under the Project Deed or otherwise or recover such amounts as a debt.

9.4 Other taxes

Subject to clause 10, the Escrow Fee is inclusive of all taxes, duties, fees or other government charges which may be imposed under or in connection with this Deed.

10. Goods and Services Tax (GST)

(a) (Interpretation):

(i) Except where the context suggests otherwise, terms used in this clause 10 have the meanings given to those terms by the GST Act (as amended from time to time).

(ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 10.

(iii) Unless otherwise expressly stated, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 10.

(iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

(b) (Reimbursements): Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

(c) (Additional amount of GST payable): Subject to clause 10(e), if GST becomes payable on any supply made by a party (Supplier) under or in connection with this Deed:

(i) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 10), for that supply is exclusive of GST;

(ii) any party (Recipient) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (GST Amount), at the same time as any other consideration is to be first provided for that supply; and

(iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 10(c)(ii).

(d) (Variation of GST):

(i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 10(c) and clause 10(e)), varies from the additional amount paid by the Recipient under clause 10(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 10(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 10(c).
(ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

(e) (Exchange of non-monetary consideration):

(i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 10(c) applies is a Taxable Supply made by the Recipient (the Recipient Supply), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 10(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.

(ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 10(c) (or the time at which such GST Amount would have been payable in accordance with clause 10(c) but for the operation of clause 10(e)(i)).

(f) (No merger): This clause 10 will not merge on completion or termination of this Deed.

(g) (Application of Project Deed): If clause 36 (Payments Adjustments & Taxes) of the Project Deed would apply in connection with a Taxable Supply to which this clause 10 also applies then clause 36 (Payments Adjustments & Taxes) of the Project Deed will apply in connection with that supply and the provisions of this clause 10 (but for this paragraph) will not apply.

11. Confidentiality

11.1 Confidentiality of Escrow Material
The Escrow Agent must treat the Escrow Material which comes into its possession, control or custody under this Deed as confidential.

11.2 Prohibited acts
Other than as set out in this Deed, the Escrow Agent must not copy, reproduce, deal with or in any way use the Escrow Material or disclose it to any person without the permission of both Project Co and the State.

11.3 After termination
The obligations under this clause 11 survive the termination of this Deed or the release of the Escrow Material.

12. Termination

12.1 Termination by Escrow Agent
The Escrow Agent may, by giving 3 months prior written notice to the State and Project Co, terminate this Deed subject to the pro-rata refund of any advance payment of the Escrow Fee.

12.2 Joint termination
The State and Project Co may jointly terminate this Deed immediately:

(a) (Insolvency Event): if an Insolvency Event has occurred in relation to the Escrow Agent; or

(b) (Breach): if the Escrow Agreement is in breach of any obligation under this Deed so that there is a material failure by the Escrow Agent to perform or observe this Deed.

12.3 New agreement
If this Deed is terminated for any reason, the parties to this Deed (other than the Escrow Agent) must enter into a new escrow agreement on terms and conditions which are the same in all
material respects as those out in this Deed, with an alternative escrow agent who is reasonably acceptable to both the State and Project Co, within 20 Business Days after the date this Deed is terminated. If Project Co refuses to enter into a new escrow agreement complying with this clause 12.3 within 20 Business Days of the date this Deed is terminated, the Escrow Agent must release the Escrow Materials to the State. Where such an agreement is not entered into within that 20 Business Day period for any other reason, then, without limiting any other provision of this Deed, Project Co will hold the Escrow Material and clause 8.3 will apply as though references to the Escrow Agent were references to Project Co, until such time as an escrow agreement complying with the requirements of this clause 12.3 is entered into. This clause 12.3 survives termination of this Deed.

13. Assignment

13.1 Assignment by Escrow Agent
The benefit of this Deed will not be dealt with in any way by the Escrow Agent (whether by assignment or otherwise) without the prior consent of both Project Co and the State.

13.2 Assignment by State and Project Co
The State and Project Co may at any time assign, novate or otherwise transfer all or any part of their rights or liabilities under this Deed to any person to whom the State or Project Co assign their rights under the Project Deed.

14. Subcontracting
The Escrow Agent must not subcontract or otherwise arrange for another person to perform any part of this Deed or to discharge any of its obligations under this Deed without the prior consent of the State and Project Co.

15. Dispute Resolution
If any dispute or difference of opinion arises between the parties under this Deed, each party may refer any such matter for resolution in accordance with this clause 15 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Project Deed are resolved. Accordingly, the provisions of clauses [50] to [53] of the Project Deed are incorporated into this Deed but as if:

(a) the only persons party to the Project Deed, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and

(b) the only matters for expert determination under those provisions are the matters referred for expert determination under this Deed.

16. Notices
All communications (including approvals, consents, directions, requirements, requests, claims, notices agreements and demands) in connection with this Deed:

(a) (in writing): must be in writing;

(b) (addressed): must be addressed as set out below (or as otherwise notified by that party to each other party from time to time):

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(c) (signed): must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;

(d) (form of delivery): must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 16(b); and

(e) (taken to be received): are taken to be received by the addressee at the address set out in clause 16(b):

(i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;

(ii) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and

(iii) in the case of email, the first to occur of:

(A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;

(B) the time that the communication enters an information system which is under the control of the addressee; or

(C) the time that the communication is first opened or read by the addressee, unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.
17. Governing law and jurisdiction

17.1 Governing law
This Deed is governed by, and must be construed according to, the Laws of New South Wales, Australia.

17.2 Jurisdiction
Each party irrevocably:
(a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed; and
(b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought within an inconvenient forum, if that venue falls within clause 17.2(a).

18. Miscellaneous

18.1 Entire agreement
To the extent permitted by Law and in relation to their subject matter, this Deed:
(a) (entire understanding): embody the entire understanding of the parties and constitute the entire terms agreed by the parties; and
(b) (prior agreements): supersede any prior agreement of the parties.

18.2 Further acts and documents
Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Deed.

18.3 Survival of certain provisions
(a) (Surviving clauses): All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
   (i) the State's rights to set-off and recover money;
   (ii) confidentiality or privacy;
   (iii) Intellectual Property Rights;
   (iv) any obligation to make any Records available to the State;
   (v) any indemnity or financial security given under this Deed; and
   (vi) any right or obligation arising on termination of this Deed.
(b) (Interpretation): No provision of this Deed which is expressed to survive the termination of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination of this Deed.
(c) (Survival of rights and obligations): No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

18.4 Waiver
(a) (Writing): A waiver given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
(b) **(No waiver):** A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.

(c) **(No waiver of another breach):** No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

### 18.5 Consents and approvals

A consent or approval required under this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

### 18.6 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

### 18.7 Expenses

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

### 18.8 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

(a) any other provision of this Deed; or

(b) that provision under the Law of any other jurisdiction.

### 18.9 No representation or reliance

(a) Each party acknowledges that no party (nor any person acting on a party’s behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.

(b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

### 18.10 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

### 18.11 Moratorium legislation

The provisions of all Laws which come into effect after the date of this Deed and operate to:

(a) increase or improve any of Project Co's, the Subcontractor's or the Parent Guarantor's rights, powers or remedies under this Deed or otherwise; or

(b) prejudicially affect the exercise by the State of any right, power or remedy under this Deed or otherwise,

are expressly waived.

### 18.12 Proportionate liability

(a) **(Excluded operation of Civil Liability Act):** The operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights of either party under this Deed whether such rights are sought to be enforced in contract, tort or otherwise.
(b) (Rights): Without limiting paragraph (a), the rights of the parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

18.13 Indemnity held on trust

(a) (Benefit of indemnities): The State holds on trust for its Associates the benefit of:

(i) each indemnity, promise and release given by Project Co or the Escrow Agent under this Deed in favour of the State's Associates; and

(ii) each right in this Deed to the extent that such right is expressly provided to be for the benefit of the State or its Associates.

(b) (Project Co and Escrow Agent acknowledgement): Project Co and the Escrow Agent acknowledge the existence of such trusts and consents to:

(i) the State exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of its Associates; and

(ii) the State's Associates exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to this Deed.

(c) (Consent not required): The parties agree that the State does not require the consent of its Associate to amend or waive any provision of any Project Document.

18.14 Set off

Without limiting the State's rights under the Project Deed, all moneys which the State may pay or incur and for which Project Co is liable under the terms of the Project Deed or in respect of which it is under this Deed liable to make reimbursement to or indemnify the State, may be deducted by the State from all moneys due, becoming due or to become due from it to Project Co under the Project Deed or may be recovered from Project Co by action at Law or otherwise.

18.15 Remedies cumulative

The rights and remedies provided in this agreement are cumulative and are not exclusive of any rights or remedies provided by Law or any other agreement, except to the extent expressly provided in this agreement.
Schedule 1 – Relevant Software
Schedule 2 – Escrow Fee

[To be inserted.]
Executed as a deed.

[Execution blocks to be inserted prior to execution.]