

**New Escambia County
Correctional Facility Lease**

Lease Agreement

Alabama Department of Corrections

February 1, 2021

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- Exhibit 2 Initial Authorized Representatives, Notice Addressees, and Key Individuals
- Exhibit 3 Project Site and Premises
 - Exhibit 3A Legal Description of Property for Project Site
 - Exhibit 3B Site Plan and Outline of Premises
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Development and Maintenance of the Facility

- Exhibit 10 Project Improvements
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 - Exhibit 10B General Conditions
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Noncompliance, Default, and Remedies

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Lease Agreement

This Lease Agreement (as amended from time to time, this "**Agreement**," and together with its exhibits, this "**Lease**") is entered into and effective as of _____, 2021 (the "**Effective Date**"), by and between the **Alabama Department of Corrections (Lessee)**, and **Government Real Estate Solutions of South Alabama LLC**, a limited liability company organized under the laws of Delaware (**Lessor**, and together with Lessee, the **Parties**).

RECITALS

A. The State of Alabama (the **State**) desires to lease an adult male correctional facility delivered for Lessee's occupation on a turnkey, built-to-suit basis (as further described in the Basic Lease Terms below), being the Project.

B. Lessee is authorized under Code of Alabama Section 14-1-1.1, as well as other Laws, to enter into this Agreement for the Project in accordance with the terms and conditions hereof.

C. Lessee issued a Request for Qualifications for 3 New Build to Suit Correctional Facilities (including the Project) on June 27, 2019. After receiving statements of qualifications pursuant to such request, Lessee identified two qualified proposers to submit proposals for the facilities.

D. Lessee issued a Request for Proposals for Development and Leasing of New Correctional Facilities (including the Project) on December 6, 2019 (as subsequently amended by addenda, the "**RFP**").

E. In response to the RFP, on May 14, 2020, Lessor submitted to Lessee technical and financial proposals for the Project (the proposal for the Project, the "**Proposal**"). At the same time, a proposal for the delivery and lease of the new built-to-suit adult male correctional facility to be located in Elmore County (the "**New Elmore County Facility Project**") was submitted to Lessee by the Equity-Related Entity, an Affiliate of Lessor.

F. After evaluating the Proposal and other proposals received, Lessee determined that Lessor's Proposal for the Project satisfied the criteria set forth in the RFP and provided the best value to the State. On the basis of such determination, Lessee and Lessor entered into negotiations for this Lease.

G. As of the Effective Date, Lessee and Lessor have come to agreement on the terms and conditions of this Lease for the Project.

H. This Agreement, the other Lease Documents, and other ancillary agreements related to the Project collectively constitute a lease as contemplated under Code of Alabama Section 14-1-1.1 and are entered into in accordance with Law and the RFP.

I. As of the Effective Date, Lessee is also entering into that certain lease agreement, by and between Lessee and Government Real Estate Solutions of Central Alabama LLC, for the New Elmore County Facility Project (the "**New Elmore County Facility Lease**"). Lessor and its Affiliate Government Real Estate Solutions of Central Alabama LLC are pursuing combined financing for the Project and the Elmore County Project under the respective lease agreements.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants and agreements set forth herein, the Parties hereby agree as follows:

BASIC LEASE TERMS

The following represents a basic summary of the terms of this Lease. In the event of any conflict, ambiguity, or inconsistency between the basic terms set forth below and any specific provision of this Lease, the more specific provision of this Lease shall prevail.

Lessee	Alabama Department of Corrections
Lessee Address	301 S. Ripley Street Montgomery, Alabama 36104
Lessor	Government Real Estate Solutions of South Alabama LLC
Lessor Address	5501 Virginia Way, Suite 110 Brentwood, Tennessee 37027
Project	Collectively, (a) the acquisition of the Property; (b) the development, permitting, design, construction, procurement, commissioning, closeout, and leasing of the Project Improvements and all other Initial Improvement Work and other Services required prior to Occupancy; (c) the provision of the Maintenance Services, including facility management and long-term maintenance and refurbishment of the Premises during the Occupancy Period; (d) the financing of the foregoing; and (e) all other Services required to be performed or furnished by Lessor under the Lease Documents. For the avoidance of doubt, Lessee, and not Lessor, shall be responsible for, and the "Project" does not include, correctional services and custodial detention functions performed at the Facility in connection with Lessee's Permitted Use of the Premises.
Property	The real property consisting of approximately 661 acres, located in Escambia County, Alabama, with an address to be determined at the time of building permit issuance, as such property is depicted and legally described on <u>Exhibit 3A</u> . The term " Project Site " refers generally to the Property but is further defined in <u>Exhibit 1</u> .
Facility	That certain turnkey, built-to-suit correctional facility to be constructed as Project Improvements, located on the Property as described in the Site Plan attached as <u>Exhibit 3B</u> .
Project Improvements	The Facility and related improvements constructed by Lessor in accordance with <u>Article 7</u> and <u>Exhibit 10</u> .
Premises	The Project Improvements, and all easements, rights, privileges, and amenities appurtenant to such improvements, and all other portions of and appurtenances to the Property demised to Lessee pursuant to this Lease for purposes of the Permitted Use, as outlined in <u>Exhibit 3B</u> .
Effective Date	As set forth above.

Lease Term	30 years, commencing on the Occupancy Date and ending on the day immediately prior to the 30th anniversary of the Occupancy Date, subject to extension or earlier termination in accordance with this Lease.
Term of Agreement	From and after the Effective Date until the expiration of the Lease Term, unless this Agreement is earlier terminated in accordance herewith, and subject to <u>Section 3.5</u> hereof.
Last Financial Close Date	June 1, 2021
Improvement Work Commencement Date	90 days after the Financial Close Date.
Occupancy Date	The date on which Lessor achieves Occupancy Readiness as described in <u>Section 7.6</u> and <u>Exhibit 10</u> .
Occupancy Deadline	To be determined as set forth in <u>Section 3.5</u> and <u>Exhibit 5</u> .
Long Stop Date	The date that is 365 days after the Occupancy Deadline.
Affordability Limit	\$88.6 million (\$FY2022) maximum for the sum of the initial year maximum annual lease payments for all three facilities procured under the RFP.
Maximum Annual Lease Payment (1st Lease Year)	To be determined at Financial Close in accordance with <u>Section 3.5</u> and <u>Exhibit 5</u> .
First Monthly Lease Payment Due	Upon receipt of Lessor's first invoice after the Occupancy Date, in accordance with <u>Section 4.2</u> .
Extension Options	To the extent permitted by Law, prior to the expiration of the Lease Term, the Parties may mutually agree, in accordance with <u>Section 9.1</u> , to a five-year extension of the Lease Term, with one or more options to further extend the Lease Term by five-year extension terms, (or such other extension(s) of the Lease Term as may be mutually agreed in accordance with <u>Section 9.1</u>).
Permitted Uses	Subject to terms and conditions further described in this Lease, the Premises shall be used by Lessee solely as a correctional facility operated by Lessee (or a successor department or agency of the State of Alabama) and such other lawful purposes as may be incidental thereto, and for no other purpose without the prior written consent of Lessor.

PART A THE LEASE TRANSACTION

ARTICLE 1 LEASE DOCUMENTS

1.1 Definitions. Definitions for the terms used in this Agreement and the other Lease Documents are contained in Exhibit 1.

1.2 Lease Documents. The following documents (together, the "**Lease Documents**"), each of which is an essential part of the agreement between the Parties, are intended to be complementary and to be read together as a complete agreement: (a) this Lease, including this Agreement, and all exhibits, appendices, and attachments thereto; (b) any amendments to the foregoing; and (c) any Change Orders and Supplemental Agreements.

1.3 Order of Precedence. In the event of any conflict, ambiguity, or inconsistency among the Lease Documents, (a) later-in-time revisions to the Lease Documents, including amendments, Change Orders, and Supplemental Agreements, shall prevail; (b) subject to the foregoing clause (a), Exhibit 10E (Lessor's Design) and Exhibit 11, Appendix A (Life Cycle Schedule) shall prevail over other Technical Requirements; (c) subject to the foregoing clauses (a) and (b), the provisions that are specific to the Project shall prevail over any provisions, including those incorporated by reference, that are not specific to the Project; and (d) subject to the foregoing clauses (a), (b), and (c), the provisions that establish the higher quality, manner, or method of performing the Services (including statements, offers, terms, concepts, or designs included in Exhibits 10 or 11, respectively) or that use more stringent standards, shall prevail. If either Party becomes aware of any such conflict, it shall promptly notify the other party of the conflict. Lessee shall promptly resolve the conflict by notice to Lessor in accordance with the terms hereof.

1.4 Approvals, Decisions, and Actions. Whenever the Lease Documents indicate that a matter is subject to a Party's approval, consent, determination, or decision, and no standard is otherwise provided, then such approval, consent, determination, or decision shall not be unreasonably withheld, conditioned, or delayed. Whenever the Lease Documents refer to an action of a Party, and no standard is otherwise provided, such action shall be undertaken by the Party acting reasonably and in good faith. Whenever the Lease Documents indicate that a matter is subject to a Party's approval, consent, determination, or decision in such Party's discretion, or that an action may be undertaken or not in a Party's discretion, then such Party's approval, consent, determination, decision, or action shall be binding and not subject to dispute resolution.

1.5 Construction and Interpretation of the Lease Documents

1.5.1 Interpretation. The language in all parts of the Lease Documents shall be construed in all cases simply, as a whole, and in accordance with its fair meaning and not strictly for or against any Party. The Parties acknowledge and agree that the Lease Documents are the product of an extensive and thorough arm's-length procurement and negotiation process, that each Party has been given the opportunity to independently review the Lease Documents with legal counsel, and that each Party has the requisite experience and sophistication to negotiate, understand, interpret, and agree to the provisions of the Lease Documents. Accordingly, in the event of an ambiguity in or Dispute regarding the interpretation of the Lease Documents, the Lease Documents shall not be interpreted or construed against the Party preparing them, and instead other rules of interpretation and construction shall be utilized.

1.5.2 Number and Gender. In the Lease Documents, terms defined in the singular have the corresponding plural meaning when used in the plural and vice versa, and words in one gender include all genders.

1.5.3 Headings. The division of the Lease Documents into parts, articles, sections, and other subdivisions is for convenience of reference only and shall not affect the construction or interpretation of the Lease Documents. The headings in the Lease Documents are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of the Lease Documents.

1.5.4 References to the Lease Documents. The words "herein", "hereby", "hereof", "hereto", and "hereunder" and words of similar import refer to the Lease Documents as a whole and not to any particular portion of them. The words "Article", "Section", "paragraph", "sentence", "clause", "Exhibit", and "Appendix" mean and refer to the specified article, section, paragraph, sentence, clause, exhibit, or appendix of, or to, the Lease Documents. A reference to a subsection or clause "above" or "below" refers to the denoted subsection or clause within the section in which the reference appears. A reference to a section, exhibit, appendix, attachment, or table that is not preceded by a reference to a particular Lease Document (e.g., "Section X" or "Exhibit X") is a reference to that section, exhibit, appendix, attachment, or table, as applicable, of, or to, the Lease Document in which the reference is located that is designated by that number or letter, respectively. A reference to an article or section that is preceded by the word "Lease" (e.g., "Lease Section X") is a reference to that article or section, as applicable, of this Agreement.

1.5.5 References to Other Agreements and Documents. Unless specified otherwise, a reference in the Lease Documents to an agreement or other document is considered to be a reference to such agreement or other document (including any schedules or exhibits thereto) as it may be amended, modified, or supplemented from time to time in accordance with its terms.

1.5.6 References to Any Person. A reference in the Lease Documents to any Person at any time refers to such Person's permitted successors and assigns.

1.5.7 Meaning of Including. In the Lease Documents, the word "including" (or "include" or "includes") means "including without limitation" and shall not be considered to set forth an exhaustive list.

1.5.8 Meaning of Discretion. In the Lease Documents, the word "discretion" with respect to any Person means the sole and absolute discretion of such Person.

1.5.9 Notice, Approval, Etc., in Writing. Whenever the Lease Documents require or provide for any notice, approval, consent, acceptance, determination, decision, certificate, certification, order, waiver, explanation, policy, information, or the like, the same and any request therefor must be in writing (unless otherwise waived in writing by the other Party).

1.5.10 Meaning of Promptly. In the Lease Documents, the word "promptly" means as soon as reasonably practicable in light of then-prevailing circumstances.

1.5.11 Trade Meanings. Unless otherwise defined herein, words or abbreviations that have well-known trade meanings are used the Lease Documents in accordance with those meanings.

1.5.12 Laws. Unless specified otherwise, a reference in the Lease Documents to a Law is considered to be a reference to (a) such Law as it may be amended, modified, or supplemented from time to time, (b) all regulations and rules pertaining to or promulgated pursuant to such Law, (c) the successor to the Law resulting from recodification or similar reorganizing of Laws, and (d) all future Laws pertaining to the same or similar subject matter.

1.5.13 Currency. Unless specified otherwise, all statements of or references to dollar amounts or money in the Lease Documents are to the lawful currency of the United States of America.

1.5.14 Time. Unless specified otherwise, all references in the Lease Documents to time are to local time in Montgomery, Alabama.

1.5.15 Days. Unless specified as a Business Day, the word "day" used in the Lease Documents means a calendar day.

ARTICLE 2 LEASE OF PREMISES; TERM

2.1 Condition Precedent and Demise.

2.1.1 No Rights Prior to Financial Close Date. Notwithstanding any other provision of the Lease Documents to the contrary, prior to the Financial Close Date, the Parties shall have no rights or obligations under the Lease Documents except as set forth in Section 3.5 and Exhibit 5A with respect to the achievement of Financial Close.

2.1.2 Demise. In consideration of Lessee's obligation to make Lease Payments as provided herein, and in consideration of the other terms and conditions of the Lease Documents, Lessor shall, on the Financial Close Date, lease to Lessee, and Lessee shall lease from Lessor, the Premises for the Lease Term, subject to the Permitted Encumbrances and the terms and conditions of the Lease Documents, including Section 3.5.

2.1.3 Memorandum of Lease. Within three Business Days after the Financial Close Date, each of Parties shall, as a ministerial act, execute a memorandum of lease, in a form acceptable to the Parties, and obtain acknowledgement of their signatures by an Alabama notary public. Within five Business Days after Lessor's receipt of the memorandum executed by Lessee, Lessor, at its expense, shall record the memorandum of lease and shall promptly deliver to Lessee a conformed copy of the memorandum of lease bearing all recording information.

2.1.4 Ownership of the Property. The Parties acknowledge and agree that, as of the Financial Close Date, Lessor will own the Property, and that Lessor will (subject to the rights of the Lenders) continue to own the Property and, upon their construction, the Project Improvements thereon, including the Premises, throughout the remaining term of this Agreement. Nothing in this Lease purports to encumber or create a lien or security interest against, or otherwise affect, the title of the Lessor to the Property and the Premises in any manner whatsoever.

2.1.5 Lessee's Exclusive Interest. Subject to the terms of this Lease, Lessee shall hold an exclusive leasehold interest in the Premises for the duration of the Lease Term. During the term of this Agreement, Lessor will not grant permission for any third party to use or occupy the Property for any purpose that is not ancillary or collateral to the Permitted Uses or that is unnecessary for Lessor's Services hereunder, except as expressly authorized by this Lease and the Lenders' Direct Agreement, or otherwise consented to by Lessee.

2.2 Project Improvements. Subject to Section 2.1.1 above, Lessor agrees to furnish the Project Improvements at its expense in accordance with Article 7 and Exhibit 10. All of the Initial Improvement Work shall be completed at Lessor's sole cost and expense, without contribution from Lessee, except to the extent that Project Development Costs are amortized in the Maximum Annual Lease Payments over the Lease Term as described in Section 4.1.

2.3 Acceptance of Premises. Without limiting any of Lessor's obligations, representations, or warranties under the Lease Documents, Lessee shall accept the Premises upon the Occupancy Date, *provided* that Lessor shall cause the Premises to be in good order and good operating condition and in compliance with all Laws and requirements of the Lease Documents as of such date.

2.4 Lease Term. The Lease Term will commence upon the Occupancy Date and will terminate on the day immediately prior to the 30th anniversary of the Occupancy Date, unless the Lease Term is extended or this Agreement, or Lessee's leasehold interest hereunder, is earlier terminated in accordance with the terms of this Lease. Upon issuance of a certificate of Occupancy Readiness in accordance with Exhibit 10A, Section 3.2, Lessor and Lessee will execute a "Notice of Lease Term Dates" memorandum, in a form reasonably acceptable to the Parties, setting forth the Occupancy Date and expiration date of the Lease Term. Within five Business Days after Lessor's receipt of the executed Notice of Lease Term Dates memorandum, Lessor, at its expense, shall record such notice memorandum as an amendment to the memorandum of lease and shall promptly deliver to Lessee a conformed copy of the memorandum bearing all recording information.

2.5 Quiet Enjoyment. So long as there exists no Lessee Default beyond any applicable cure period, and no Non-Appropriation Event has occurred and is continuing, Lessee shall, subject to the terms and conditions of the Lease Documents, have peaceful and quiet enjoyment of the Premises at all times during the Lease Term, without any manner of hindrance from Lessor.

2.6 Use of Premises. The right of Lessee to occupy and use the Premises under this Lease shall commence upon the Occupancy Date.

2.6.1 Permitted Uses. The Premises shall be occupied by Lessee and used for the Permitted Uses, and for no other purpose without Lessor's prior written consent. Lessee shall not use or occupy the Premises in any manner that will constitute waste or nuisance to the Property.

2.6.2 Lessee Compliance with Laws. Subject to Lessor's satisfaction of its obligations with respect to the Initial Improvement Work and its other obligations under the Lease Documents, including with respect to the Services, Lessee's use and occupation of, and operations at, the Premises shall be in material compliance with all Laws. Lessee shall not use the Premises for any unlawful purpose or in any way in violation of any certificate of occupancy applicable to the Premises, or permit the Premises to be used or occupied, in whole or in part, by any other Person, except as otherwise permitted in the Lease Documents or consented to by Lessor.

2.6.3 Lessor Compliance with Laws. From and after the Financial Close Date, and throughout the remaining term of this Agreement, Lessor shall comply with all Laws and all requirements of an owner under the Permitted Encumbrances that are applicable to the Property, regardless of whether compliance necessitates structural changes or structural improvements to the Premises (it being understood that Lessor may be entitled to certain relief for applicable Relief Events in accordance with Article 14).

2.7 Naming and Signs. Lessee shall have the exclusive right to name the Facility and any parts thereof. During the term of this Agreement, Lessor shall not place, or permit placement of, any advertising within the boundaries of the Project Site without the prior consent of Lessee. Prior to the Occupancy Date, Lessor shall provide and maintain any temporary Facility identification and information signs. Lessor shall remove temporary signs from the Project Site when Lessor determines they are no longer necessary. Except as provided otherwise in the Lease Documents, no advertising or signs shall be erected on the Property until their appearance, content, and location have been fully reviewed and approved by Lessee.

2.8 Liens. Lessor shall comply with all applicable Laws with respect to the protection of contractor lien rights. Lessor will pay, or cause to be paid, all charges for all work done, including all labor and materials, for all Improvement Work on or to the Premises. Lessor shall not suffer or permit any mechanic's, materialmen's, or similar liens for labor or materials furnished by or at the direction of Lessor to be maintained or filed against the Premises. If any such lien is filed, Lessor shall, within 30 days after such filing (or within such shorter time as may be required by Law), either pay the same, or procure the discharge thereof by giving security or in such other manner as may be required or permitted by Law. Nothing in this Section 2.8 shall affect Lessor's right to contest, appeal, object to, or interpose any defense applicable to any such lien, and Lessee, at Lessor's expense, shall reasonably cooperate with any such contest, appeal, objection, or defense by Lessor.

ARTICLE 3 FINANCING

3.1 Lessor's Responsibility to Finance. Lessor is solely responsible for obtaining and repaying all construction financing and other Project Debt necessary for the Project at its own cost and risk and without recourse to Lessee; *provided* that Lessee shall cooperate with Lessor and provide such information and execute such certificates and agreements as are reasonably necessary (including a continuing disclosure agreement pursuant to Rule 15c2-12, if applicable) in connection with such financing or the offering and/or issuance of Project Debt to the extent required by applicable federal securities Laws. Lessor shall pursue the necessary financing in accordance with Exhibit 5A and Lessor's Financing Plan set forth in Exhibit 5B. Except as may be otherwise agreed by the Parties in accordance with Exhibit 5A, as between Lessee and Lessor, Lessor exclusively bears the risk of any changes in the interest rate, payment provisions, collateral requirements, financing charges, or any other terms of Project Debt from and after Financial Close. Lessee acknowledges that Lessor may grant a mortgage and/or other security interests in, or assign Lessor's interests in, the Lease Documents, the Property, the Project Site, the Premises, the Facility, and/or the Project to the Lenders for purposes of securing the Project Debt, subject to the terms and conditions contained in this Lease, including this Article 3. Subject to the provisions of the Lenders' Direct Agreement, Lessor shall remain liable to Lessee for the performance and observance of all of Lessor's covenants and obligations under the Lease Documents, including the payment of any sums owing to Lessee under this Lease.

3.2 No Lessee Liability. All Project Debt or other obligations issued or incurred by Lessor in connection with this Lease or the Project shall be issued or incurred only in the name of Lessor. None of the State, Lessee, any other department, agency, or subdivision of the State, or any trustee, director, official, officer, employee, agent, or representative of any of them, shall have any: (a) obligation to pay debt service on any Project Debt or other debt, equity, or other obligation issued or incurred in connection with this Lease or the Project; (b) obligation to join in, execute, or guarantee any note or other evidence of indebtedness incurred in connection with this Lease, the Project, or the Financing Documents; (c) liability whatsoever for payment of the principal sum of any Project Debt, any other obligations issued or incurred by any Person in connection with this Lease or the Project, or any interest accrued thereon or any other sum secured by or accruing under any Financing Document; or (d) obligation to any Lender pursuant to the Lease Documents except for the express obligations set forth in the Lenders' Direct Agreement or in any other instrument or agreement signed by Lessee in favor of a Lender. Subject to the Lenders' Direct Agreement, and except where Lenders have succeeded to the rights and interests of Lessor under the Lease Documents, no Lender is entitled to seek any damages or other amounts from Lessee, whether for Project Debt or any other amount. Nothing in this Section 3.2 shall affect Lessee's obligations to make Lease Payments, or pay other amounts, due from Lessee under this Lease.

3.3 Compliance with Financing Documents. From and after the Financial Close Date, Lessor shall keep the Financing Documents in force and effect to the extent necessary to perform its obligations under the Lease Documents and shall ensure that none of the terms and conditions of the Financing Documents will prevent Lessor from performing its obligations hereunder, subject to the foreclosure and default rights and remedies of the Lenders under the Financing Documents. If at any time Lessor receives written notice from a Lender or Collateral Agent that an event of default, any event entitling the Lender to enforce any security interest, or any similar event has occurred under the Financing Documents, Lessor shall promptly deliver a copy of such notice to Lessee.

3.4 Mandatory Terms of Project Debt and Financing Documents. Project Debt, Financing Documents, and any amendments or supplements thereto, shall comply with the following terms and conditions.

3.4.1 Lessor is strictly prohibited from pledging or encumbering its interest, or any portion thereof, in the Property or the Project to secure any indebtedness of any Person other than indebtedness of: (a) Lessor; (b) any special purpose entity that owns Lessor but has no other assets and has purposes and powers limited to the Project and the Services; or (c) a special purpose entity subsidiary owned by either Lessor or an entity described in clause (b).

3.4.2 The Security Documents may only secure Project Debt. The proceeds of the Initial Project Debt (and, subject to Section 3.6, the proceeds of any other Project Debt) will be obligated to be used exclusively for the purposes of the Project (including to finance certain closing costs and expenses) and to satisfy Lessor's obligations under the Lease Documents.

3.4.3 No Security Document or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge, or security interest on or against the Project shall extend to or affect the leasehold interest of Lessee in the Premises or Lessee's rights or interests under the Lease Documents.

3.4.4 Each note, bond, or other negotiable or non-negotiable instrument evidencing Project Debt, or evidencing any other obligations issued or incurred by any Person in connection with this Lease or the Project, must include or refer to a document controlling or relating to the foregoing that includes a conspicuous recital on its face that payment of the principal thereof and interest thereon (a) is a valid claim only as against the obligor and the security pledged by Lessor or the obligor therefor and (b) is not an obligation, moral or otherwise, of the State, Lessee, any other department, agency, or subdivision of the State, or any trustee, director, official, officer, employee, agent, or representative of any of them, and neither the full faith and credit, nor the taxing power, nor any asset, of the State, Lessee, or other department, agency, or subdivision of the State is pledged to the payment of the principal thereof and interest thereon.

3.4.5 Subject to the Lenders' rights under any Lenders' Direct Agreement, and except where a Lender has succeeded to the rights and interests of Lessor under the Lease Documents, each Financing Document shall state, or incorporate a statement by reference to another Financing Document that states, that the Lender shall not name or join in any legal proceeding seeking collection of the Project Debt, or other obligations secured thereby, or the foreclosure or other enforcement of the Financing Document, or, except with respect to Lessee's obligations to make payments hereunder, seek any amounts from, the State, Lessee, any other department, agency, or subdivision of the State, or any trustee, director, official, officer, employee, agent, or representative of any of them, in connection with the Project Debt.

3.4.6 Each Financing Document containing provisions regarding default by Lessor shall require, or incorporate a requirement by reference to another Financing Document that requires, that if Lessor is in default thereunder and the Collateral Agent or a Lender gives written notice of such default to Lessor, then the Collateral Agent or such Lender shall also give prompt notice of such default to Lessee. Each Financing

Document that provides a Lender remedies for default thereunder shall require prompt delivery to Lessee of each notice of election to sell interests in the collateral granted pursuant to a Financing Document, notice of sale of interests in such indebtedness, or other material notice required by applicable Law or by a Finance Document, in connection with the exercise of remedies under the Financing Document in each case.

3.5 Financial Close. In connection with Lessor's financing of the Project in accordance with this Article 3, the Parties shall comply with their respective obligations for the achievement of Financial Close as set forth in Exhibit 5. Notwithstanding any provision hereof to the contrary, prior to the Financial Close Date, the Parties shall have no rights or obligations under the Lease Documents except as set forth in this Section 3.5 and Exhibit 5A with respect to the achievement of Financial Close and the payment of the fee under Section 7 of Exhibit 5A. For the avoidance of doubt, unless and until Financial Close is achieved on the Financial Close Date, (a) Lessor (other than as set forth in Exhibit 5A) shall have no obligation to furnish the Project Improvements or perform the Services hereunder, (b) Lessee's real property interest in the Property hereunder shall not vest, and (c) Lessee shall have no obligation to make payments to Lessor hereunder (other than as set forth in Exhibit 5A, Section 7).

3.5.1 Financial Close Documentation. As part of the Financial Close process, the Parties shall document the Financing and Financial Close as described in Exhibit 5A. The Base Case Financial Model shall also be established as provided in Exhibit 5A.

3.5.2 Termination Prior to Financial Close. If Financial Close is not achieved by the Last Financial Close Date, either Party may terminate this Lease, without fault or penalty, on 10 Business Days' prior notice to the other Party. This Section 3.5.2 (and Exhibit 5A) shall exclusively govern any termination of this Lease prior to Financial Close. Neither a failure to achieve Financial Close, nor a breach by a Party with respect to its obligations hereunder with respect to the Financing, shall constitute a Lessor Default or Lessee Default, or give rise to any Noncompliance Event or Deduction, any Relief Event or Pre-Payment Event, or any obligation to pay any Adjustment Amount or Pre-Payment Amount hereunder. Article 18 shall not apply prior to Financial Close.

(a) If a Party gives notice of termination pursuant to this Section 3.5.2, Lessor and Lessee shall engage in good faith discussions concerning terminating this Lease or continuing financing efforts in accordance with Exhibit 5A.

(b) Notwithstanding clause (a) above, termination of this Lease shall take effect upon the expiration the 10-Business Day period following a Party's notice of termination hereunder, unless, prior to the expiration of such period, the Parties, each acting in their respective discretion, agree to withdrawal of the notice of termination and elect to continue this Lease, extending the Last Financial Close Date and taking such other actions as they agree, in their respective discretion, to continue financing efforts under Exhibit 5A or otherwise.

3.6 Refinancing. Lessor shall not consummate any Refinancing without the prior written consent of Lessee, unless Lessor has demonstrated, to Lessee's reasonable satisfaction, in accordance with this Section 3.6 that such refinancing shall not adversely affect Lessor's ability to perform its obligations under the Lease Documents. If any such Lessee consent is required, it shall not be unreasonably withheld, conditioned, or delayed.

3.6.1 Effect of Refinancing on Lessee. No Refinancing shall in any way increase the liability, or potential liability, of Lessee under the Lease Documents, including in connection with any Adjustment Amounts or Pre-Payment Amount. Notwithstanding any provision hereof to the contrary, if a Refinancing occurs (a) any payment obligation of Lessee hereunder that is calculated by reference to the Lessor Outstanding Debt shall, and (b) any limitation on Abatements and other offsets against the Lease Payments

under Section 4.2.1 below, shall, unless Lessee agrees to the contrary in its discretion, be calculated by reference to the amount of the Initial Project Debt, and related coupon invoices, under the Initial Financing Agreements and not Project Debt under the Financing Agreements relating to the Refinancing. In connection with any proposed Refinancing, Lessor shall deliver to Lessee a financial model, based on the then-current Financial Model, reflecting the proposed Refinancing case, along with such supporting documentation as Lessee may reasonably request, to enable Lessee to reasonably evaluate any potential increase in liability or other potential adverse effect on Lessee as a result of the Refinancing. Such financial model will only be used for purposes of Lessee's evaluation in accordance with this Section 3.6 and shall not affect the Financial Model under this Lease except to the extent agreed by the Parties, in their discretion.

3.6.2 Lessee Cooperation. Lessee shall cooperate with Lessor, as reasonably requested by Lessor, in connection with the closing of any Refinancing permitted in accordance with this Section 3.6, including by entering into a customary lenders' direct agreement and providing customary legal opinions, instruments, and other documents reasonably requested from Lessee in connection with such Refinancing. To the extent that Lessee reasonably incurs more than nominal Lessee Recoverable Third-Party Costs in connection with Lessee's cooperation in a Refinancing as requested by Lessor, Lessor shall reimburse Lessee for such Lessee Recoverable Third-Party Costs promptly after receipt of Lessee's invoice therefor, including supporting documentation reasonably requested by Lessor.

3.6.3 No Lessee Liability. Except as provided in this Section 3.6, Lessee shall have no obligations or liabilities in connection with any Refinancing other than its obligations with respect to the rights, benefits, and protections set forth in the Lenders' Direct Agreement (subject to the terms thereof).

3.7 Financial Model

3.7.1 When Required. Lessor, in consultation with Lessee, shall update the Financial Model to reflect the financial impacts of only the following events (and no others):

- (a) To establish the Base Case Financial Model, including changes from the Initial Financial Model relating to the closing of the initial Project Debt at Financial Close, as provided in Exhibit 5A;
- (b) Achievement of Occupancy Readiness at the Occupancy Date;
- (c) The occurrence of a Relief Event in accordance with the Relief Event Determination;
- (d) Whenever the Parties adjust the Maximum Annual Lease Payments upon the occurrence of a Pre-Payment Event in accordance with Article 18; and
- (e) Whenever a Change Order is issued, or an amendment to this Lease is made, that the Parties agree will have a material effect on future costs of the Facility or use of the Premises.

3.7.2 Process for Updating the Financial Model. When updating the Financial Model, except as otherwise agreed by the Parties, (a) Lessor shall use the same formulae, unless previously agreed otherwise by both Parties, each in its discretion; and (b) Lessor shall incorporate only those changes caused by the event for which the Financial Model is required to be updated (unrelated changes caused by the actual performance of the Project shall be disregarded).

3.7.3 Approval of Financial Model Updates. Any update to the Financial Model shall be subject to mutual approval of the Parties. Any Dispute shall be resolved in accordance with the Dispute Resolution Procedures and the disputed update shall not become effective until resolution of the Dispute, but may be given retrospective application in accordance with such resolution.

3.7.4 Updates to MALP Schedule and Breakdown. Whenever the Financial Model is updated pursuant to this Section 3.7, the schedule and breakdown of Maximum Annual Lease Payments payable in each Lease Year as described in Section 4.1 below shall be revised consistent with the updated Financial Model, and Exhibit 7 shall be updated accordingly. Notwithstanding the foregoing, following the Occupancy Date, no change shall be made to the schedule of debt service for the Initial Project Debt set forth in Exhibit 7, Table 4 except as specifically agreed by the Parties.

3.8 Prohibition on Leasehold Financing by Lessee. Lessee shall not be permitted, without Lessor's prior written consent, and in any event subject to the Lenders' Direct Agreement, to obtain financing that is directly or indirectly secured in whole or in part by Lessee's interest in the Lease and/or the leasehold estate created by the same.

ARTICLE 4 PAYMENTS

4.1 Maximum Annual Lease Payments. Subject to adjustment for Adjustment Events pursuant to Article 14, the aggregate amount of the Maximum Annual Lease Payments (MALPs) payable by Lessee to Lessor hereunder reflects payment to Lessor for Lessee's leasehold interest in and occupancy of the Premises over the Lease Term, as well as the total costs of the Project that are payable by Lessee pursuant to this Lease (subject to Adjustment Events hereunder), including reimbursement of Project development costs (including costs of the Initial Improvement Work and related debt service) and payment for Lessor's provision of the Maintenance Services (including Life Cycle Work and Scheduled Maintenance) over the Lease Term. Upon achievement of Financial Close, the MALP for each Lease Year as of the Financial Close Date, including a breakdown of annual lifecycle costs, routine maintenance costs, and debt service, will be attached hereto as Exhibit 7. Exhibit 7 shall be updated in accordance with Articles 3 and 18.

4.2 Monthly Lease Payments. Beginning on the Occupancy Date and for the remainder of the Lease Term, Lessee shall make Lease Payments to Lessor in accordance with this Article 4 and the Payment Mechanism (Exhibit 8) for each full or partial Lease Month, upon Lessee's receipt of an invoice from Lessor submitted pursuant to this Section 4.2. Lessee shall make Monthly Lease Payments, calculated in accordance with the Payment Mechanism, to Lessor as partial payments of the Maximum Annual Lease Payment for relevant Lease Year as set forth in Exhibit 7, less applicable Lease Payment Abatements and subject to other offsets and adjustments in accordance with Exhibit 8 (the Payment Mechanism), subject to Section 4.2.1.

4.2.1 Coupon Book. Lessor shall deliver to Lessee a coupon book, in a form reasonably acceptable to Lessee, containing monthly invoices for that portion of each Monthly Lease Payment due within a Fiscal Year that is attributed to debt service on the Initial Project Debt, representing that portion of each Monthly Lease Payment that will not be subject to application of Abatements or other adjustments or offsets in accordance with Exhibit 8, Section 4.2.

(a) The amount of each coupon shall equal the debt service portion of the applicable Monthly Lease Payment as set forth in the monthly schedule of coupon amounts for each Fiscal Year of the Lease Term provided in the Base Case Financial Model, which shall be based on the annual debt service schedule by Lease Year set forth in Exhibit 7, Table 4. Such schedule of coupon amounts shall not be revised in the event of a Refinancing, but shall continue to be based on the Initial Project Debt under the Initial Financing Agreements.

(b) Each such coupon book shall be delivered to Lessee no earlier than July 1 and no later than September 1 prior to the start of the Fiscal Year in which the applicable Lease Payments will be made. If a coupon book is provided to Lessee in accordance with this Section 4.2.1, Lessee shall pay Lessor

the coupon amount of each Monthly Lease Payment not later than the fifth Business Day of the Lease Month for which the Monthly Lease Payment is due.

(c) Notwithstanding any provision of the Lease Documents to the contrary, Lessee shall not apply Lease Payment Abatements, or other deductions, offsets, or other adjustments permitted under the Lease Documents, against the coupon amount of a Monthly Lease Payment invoiced by coupon book in accordance with this Section 4.2.1. For the avoidance of doubt, notwithstanding any provision of the Lease Documents to the contrary, in no event shall the aggregate amount of any Lease Payment Abatements, deductions, offsets, or other adjustments to a Monthly Lease Payment reduce the amount of such Monthly Lease Payment below the coupon amount set forth in the coupon for such Lease Month in accordance with subsection (a) above.

4.2.2 Invoicing. For that portion of each Monthly Lease Payment that is not invoiced by coupon book in accordance with Section 4.2.1, Lessor shall submit an invoice for such amount for the applicable Lease Month (or portion thereof) not earlier than the first day, and not later than the 15th day, of that Lease Month, except that the invoice for the Monthly Lease Payment of the final Lease Month in the Lease Term may be submitted not earlier than the last day of that Lease Month. Each invoice must set forth the amount and calculation of the Monthly Lease Payment due, including any Deductions accrued and Lease Payment Abatements applied in the relevant Lease Month in accordance with the Payment Mechanism. Each Performance Monitoring Report shall include information for the prior Lease Month as required under Exhibit 11, Section 5.2 and invoices for any Monthly Lease Payments.

4.2.3 Payment of Invoiced Amounts. Lessee shall pay Lessor the portion of the Monthly Lease Payment invoiced in accordance with Section 4.2.2 within 30 days after Lessee receives a proper invoice for the applicable period that meets the requirements of the Lease Documents. Within 10 Business Days after receipt, Lessee shall return any invoice that is incomplete or incorrect in any material respect to Lessor for correction and resubmission, in which case, the 30-day payment period will begin upon Lessee's receipt of a proper, corrected invoice; *provided, however*, that, with respect to any portion of an invoice that Lessee does not dispute, Lessor may submit a new, separate invoice for the undisputed amount, which amount shall then be payable promptly upon Lessee's receipt of such invoice, or by the end of the 30-day payment period running from Lessee's receipt of the original invoice, whichever is later. Lessee shall verify the amount of each Monthly Lease Payment by (a) examining the invoice for the applicable Lease Month, (b) verifying the results reported, Deductions accrued, and Lease Payment Abatements calculated therein by Lessor, including through Lessee's independent oversight and auditing process, and (c) reconciling the actual Monthly Lease Payment earned and any other amount due and payable from Lessor to Lessee or from Lessee to Lessor under this Lease.

4.2.4 State Fiscal Policy and Procedures. All payments will be made in accordance with the then-effective State Fiscal Policy and Procedures adopted by the State of Alabama Comptroller. Pursuant to State Fiscal Policy and Procedures in effect as of the Effective Date, all payments shall be made by and through the STAARS system. Lessor is solely responsible for registering as a vendor through STAARS in order to effectuate any payment.

4.3 Additional Costs for Adjustment Events. This Lease obligates Lessee to pay for certain additional costs resulting from Lessee Changes, Vandalism, and other Adjustment Events. Upon the occurrence of an Adjustment Event, the Parties will either (a) proceed under Section 4.3.1 to negotiate and agree upon a lump sum Adjustment Amount to be paid by Lessee pursuant to a Change Order, Compensable Work Order, or Supplemental Agreement, as applicable, for additional costs caused solely and directly by the Adjustment Event, or (b) if Lessor and Lessee are unable to agree on a negotiated lump sum Adjustment Amount, or if

the terms and conditions applicable to the Adjustment Event require it, proceed under Section 4.3.2 to substantiate the additional costs required to be paid by Lessee.

4.3.1 Negotiated Lump Sum Adjustment Amount. Except as otherwise provided in the Lease Documents, the Parties may negotiate and agree to a lump sum Adjustment Amount for an Adjustment Event. To facilitate such negotiations, Lessor shall furnish Lessee with all information reasonably required by Lessee regarding Lessor's estimates of additional costs incurred or expected to be incurred as a result of the Adjustment Event, including Direct Costs of performing additional work and Missed Lease Payment Costs as described in Section 14.4.3(b). If requested by Lessee, lump sum Adjustment Amount negotiations shall be conducted on an Open Book Basis. If the Parties agree to a lump sum Adjustment Amount, that agreement shall be confirmed in writing pursuant to (a) a Change Order, in the case of a Lessee Change, (b) a Compensable Work Order, in the case of Vandalism or other costs payable pursuant to a Compensable Work Order under the FM Specifications (Exhibit 11), or (c) a Supplemental Agreement. Negotiated lump sum Adjustment Amounts may be paid through any one of the payment methods described in Section 4.3.3, as agreed by the Parties. Once the Parties agree upon the lump sum Adjustment Amount, Lessor's actual costs of performance will not be subject to substantiation in accordance with Section 4.3.2, except to the extent that the Parties agreed to after-the-fact substantiation as part of the lump sum negotiation.

4.3.2 Substantiation of Adjustment Amount. If Lessor and Lessee are unable to agree on a negotiated lump sum Adjustment Amount, or if the terms and conditions applicable to the Adjustment Event require substantiation, Lessor shall substantiate the Adjustment Amount payable by Lessee in accordance with this Section 4.3.2. Substantiation shall be provided by Lessor as soon as reasonably practicable after costs requiring substantiation have been incurred and, if requested by Lessee shall be provided on an Open Book Basis.

(a) When costs payable by Lessee under the Lease Documents require substantiation, Lessee shall only reimburse Lessor for Direct Costs, as determined in accordance with Exhibit 14, caused solely and directly by the Adjustment Event, as well as for Missed Lease Payment Costs in accordance with Section 14.4.3(b), if applicable. Mark-ups for overhead, risk, profit, and contingency shall be limited in accordance with Exhibit 14.

(b) In connection with the appropriate document (response to Change Proposal Request, Compensable Work Order, or Relief Request, as applicable), Lessor shall provide (i) a written statement of the Adjustment Amount that identifies the provision(s) under which the amount is payable by Lessee under the Lease Documents, and (ii) accompanying documentation reasonably necessary to document the cost paid or incurred (which may include copies of timesheets, invoices, purchase orders, expense reports, and receipts).

(c) At the request of either Party, the total substantiated Adjustment Amount may be confirmed in writing by Supplemental Agreement; *provided, however*, that Lessee may not request a Supplemental Agreement where the Adjustment Amount is already documented by Compensable Work Order.

4.3.3 Payment Method and Timing. Adjustment Amounts shall be paid by Lessee through one of the following methods as agreed by the Parties, in each case either separate and apart from the Monthly Lease Payment, or as an adjustment to the Monthly Lease Payment; *provided* that Lessor agrees that Lessee

shall not be required to pay any costs of Improvement Work or other future capital expenditures by Lessor in advance (as opposed to for progress made, work completed, or costs incurred):

(a) To the extent permitted by Law and agreed by the Parties, as a single lump sum payment or series of payments, due and owing according to the Parties' agreement pursuant to Section 4.3.1;

(b) As milestone or progress payments for Improvement Work as completed, due and owing as and when agreed by the Parties pursuant to Section 4.3.1 or as otherwise agreed by the Parties to be substantiated in accordance with Section 4.3.2;

(c) As reimbursement for Direct Costs as they are incurred, due and owing 60 days following Lessee's receipt of Lessor's substantiation documentation in accordance with Section 4.3.2;

(d) Where costs payable by Lessee are expected to be incurred on a regular, budgeted basis as part of the performance of the Maintenance Services over the Occupancy Period, as periodic payments or an equitable adjustment to the MALPs over the Lease Term commensurate with such budgeted costs;

(e) With the consent of Lessor, and subject to the terms and conditions of the Financing Documents and the Lenders' Direct Agreement, as a Deferred Payment; *provided* that, if requested by Lessee, Lessor shall, subject to the terms and conditions of the Financing Documents and the Lenders' Direct Agreement, undertake reasonable efforts to explore Deferred Payment options; and *provided further* that, with respect to such options, Lessee, unless otherwise agreed by Lessor, would be financially responsible for any additional financing and transaction costs of Deferred Payment, including any consent fees that may be payable to Lenders under the Financing Documents, and Lessee shall not be relieved of its obligations to timely pay the Adjustment Amount, including, as necessary, making timely requests for appropriation of such amount; or

(f) Any combination of the foregoing, as applicable.

4.3.4 Offset. Lessee, in its discretion, but subject to the Lenders' Direct Agreement, may elect to offset any amounts owing to Lessor in respect of costs for which Lessee is obligated to pay hereunder, except for amounts invoiced on a coupon book basis in accordance with Section 4.2.1, against any amounts due and owing to Lessee from Lessor pursuant to this Lease. Such offset rights are in addition to Lessee's offset rights under Section 16.4.8.

4.4 No Waiver; Disputes. No payments shall be construed as an acceptance of any defective work or improper materials. Failure by Lessee to pay any amount in dispute shall not alleviate, diminish, or modify in any respect Lessor's obligation to timely and diligently perform under the Lease Documents. For clarity, if a portion of an amount owing to Lessor is in dispute, Lessee may not withhold the undisputed portion of that amount.

4.5 Property Taxes. Commencing with the first tax year following the Occupancy Date and until the end of the Lease Term, Lessee shall reimburse Lessor for any ad valorem or real property Tax imposed by the County on all or any portion of the Property, the Facility, the Project, or Lessor's interest in this Lease. Not later than October 15th of each Lease Year, Lessor shall submit an invoice to Lessee for the assessed Tax amount, including the current appraised value and tax rate (millage), along with such other supporting, detailed documentation as is necessary to evidence the Tax assessment or as Lessee may reasonably require. Lessee shall pay the assessed amount to Lessor for remittance to the taxing authority not later than December 15th of that Lease Year, *provided* that Lessor has submitted a proper invoice therefor not later than October 15th of such Lease Year. If Lessor submits an invoice after October 15th, Lessee shall have the

obligation to make payment within 60 days after receipt of Lessor's invoice, and Lessor, not Lessee, will be responsible for any late fees or interest charged in the event that payment is delinquent, notwithstanding that Lessee may not yet have remitted payment to Lessor. Lessor shall be responsible for having the Property assessed upon purchase and for any new assessment required in the event of new improvements on the Property, removal of structures or features on the Property, or any other reason a new assessment of the Property is required by Law. Lessor shall provide prompt written notice to Lessee of any notice it receives from the County or State regarding any adjustment to the tax rate (millage), annual equalization, or any change in the appraised value of the Property (or other property taxed as described in this [Section 4.5](#)). If directed by Lessee, Lessor shall, acting in cooperation with Lessee, use commercially reasonable efforts to contest imposition of any such Tax or to protest or appeal any appraisal or assessment that is vulnerable to a reasonable argument (in both Parties' estimation) that such appraisal or assessment is improper, incorrect, or unreasonable.

4.6 Parties' Respective Costs. Except as expressly provided in this Lease, each Party shall bear its own costs in performing its respective obligations under the Lease Documents.

4.7 Lessee's Monetary Obligations. Notwithstanding any contrary provisions of the Lease Documents, this [Section 4.7](#) applies to all monetary obligations of Lessee under the Lease Documents, including Lease Payments, Adjustment Amounts, Pre-Payment Amounts, and other amounts due to Lessor from Lessee under this Lease.

4.7.1 Appropriations. All Lessee monetary obligations under the Lease Documents are subject to appropriation by the State Legislature.

(a) Lessee shall make best efforts to cause the State Legislature to appropriate all amounts sufficient to enable Lessee to pay amounts owed by Lessee to Lessor under this Lease. Further, Lessee hereby represents, warrants, and covenants that it shall perform all actions lawfully within its power to obtain and maintain funds from which to make all payments owed by Lessee to Lessor hereunder, including formulating budget proposals and making timely requests for appropriation, in amounts sufficient to make such payments, to the State Legislature in accordance with applicable Law, and to obtain, designate, or use any other lawfully available funds that are not funds appropriated by the State Legislature. To the extent permitted by Law, Lessee shall, prior to the satisfaction of its other obligations, prioritize and apply all funds appropriated by the State Legislature for the benefit of Lessee, as well as such other funds lawfully available to Lessee, to satisfy Lessee's obligations under this Lease, the New Elmore County Facility Lease, and any other lease for correctional facilities procured under the RFP, except to the extent that such prioritization would adversely impact Lessee's ability to comply with (i) Lessee's federal and State constitutional and/or statutory obligations and/or obligations arising out of common law; (ii) court orders or consent decrees; and/or (iii) settlement agreements entered into by Lessee in response to allegations or claims relating to its constitutional and/or statutory obligations and/or obligations arising out of common law.

(b) It shall be a "**Non-Appropriation Event**" if, by June 30th of any Fiscal Year, the State Legislature fails to appropriate or otherwise provide lawfully available funds sufficient to permit Lessee to satisfy its obligations under this Lease to make the full amount of all Lease Payments reasonably anticipated to be payable under this Lease during the next succeeding Fiscal Year. Further to the foregoing, Lessee covenants to promptly deliver to Lessor a written certification, in the form attached as [Exhibit 9](#), completed in a manner reasonably satisfactory to Lessor, not later than June 30th in each Fiscal Year for which the State Legislature has so appropriated funds sufficient to satisfy the above-described obligations of Lessee for the next succeeding Fiscal Year (an "**Appropriation Certification**"). Upon the occurrence of a Non-Appropriation Event, Lessee shall promptly undertake best efforts to cause the State Legislature to make

sufficient appropriations in accordance with clause (a) above. If a Non-Appropriation Event has not been cured by Lessee through sufficient appropriations by the State Legislature and submission of an Appropriation Certification reasonably acceptable to Lessor by October 1st of the Fiscal Year following the Non-Appropriation Event (i.e., by the start of the Fiscal Year for which insufficient appropriation has been made), it shall be a Pre-Payment Event, and Lessee shall commence the process of vacating the Facility in accordance with the Sections 9.3 and 9.4. If Lessee cures such Non-Appropriation Event by causing the State Legislature to appropriate sufficient funds and providing to Lessor no later than March 30th of the Fiscal Year following the Non-Appropriation Event (the "**Non-Appropriation Final Cure Date**") an Appropriation Certification for such Fiscal Year, as well as the next succeeding Fiscal Year (for the full amount of all Lease Payments and other amounts reasonably anticipated to be payable under this Lease during both such Fiscal Years), the vacation process commenced under Sections 9.3 and 9.4 shall cease, *provided* that Lessee shall have the right to cure a Non-Appropriation Event (i) by October 1st of the Fiscal Year following the Non-Appropriation Event (i.e., by the start of the Fiscal Year for which insufficient appropriation has been made) no more than once every five Lease Years, and (ii) by the Non-Appropriation Final Cure Date no more than once every 10 Lease Years.

(c) Any Non-Appropriation Event that occurs under the terms of the New Elmore County Facility Lease that is not timely cured as provided in Section 4.7 of such lease, shall also constitute a Non-Appropriation Event under this Lease, and each Party shall have the same rights and obligations with respect to such a Non-Appropriation Event as are set forth in Article 18 with respect to a Non-Appropriation Event hereunder, including any obligation of Lessee to pay a Pre-Payment Amount.

(d) With respect to any disputed amount, upon a final determination in accordance with the Dispute Resolution Procedures as to the amount payable by Lessee, if Lessee determines that Lessee lacks sufficient appropriated or available funds to pay such amount, Lessee shall promptly notify Lessor (and make such other notifications as may be required pursuant to the Lenders' Direct Agreement) that Lessee lacks sufficient appropriated or available funds and shall promptly undertake best efforts to cause the State Legislature to make sufficient appropriations in accordance with clause (a) above.

4.7.2 No State Indebtedness. No obligation of Lessee under this Lease to pay any amounts owed by Lessee to Lessor hereunder, including Lessee's obligation to make Lease Payments under this Article 4, shall constitute a debt of the State as prohibited by Section 213 of the Constitution of Alabama of 1901, as amended. The obligation of Lessee to make Lease Payments to Lessor does not constitute a pledge of the faith, credit, or taxing power of Lessee, the State, or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. Lessor has no right to have taxes levied or to compel appropriations by the State Legislature for any payment of Lease Payments, Adjustment Amounts, Pre-Payment Amounts, or other amounts owed by Lessee to Lessor under this Lease.

4.7.3 Non-Substitution. To the fullest extent permitted by Law, throughout the Term, Lessee will not procure, construct, purchase, acquire, lease, or otherwise utilize any other correctional facility if doing so would result in the effective replacement of the Facility, or a material reduction in, or substantial modification of, Lessee's need to utilize the Facility as contemplated in the Technical Requirements; *provided, however,* that the foregoing restriction shall not prohibit Lessee from initiating the process of procuring, constructing, acquiring, leasing, or otherwise seeking to utilize another correctional facility within the final five years of the Lease Term, *provided* that (i) Lessee has timely notified Lessor of Lessee's intention not to seek an extension of the Lease Term pursuant to Section 9.2 and (ii) the effective date of occupancy of any correctional facility in replacement of the Facility will not occur prior to the date which is six months immediately preceding the last day of the Lease Term. However, nothing in this Section 4.7.3 shall prevent Lessee from procuring, constructing, purchasing, acquiring, leasing, or utilizing other correctional facilities for programmed uses that are different from those of the Facility (including for housing female inmates) or

for purposes of managing its inmate population, including to manage overcrowding, to comply with its federal and State constitutional and legal obligations, or to provide work release programs or other programs not planned for the Facility as of the Effective Date, which other facility will not substantially negatively impact Lessee's need to occupy the Facility.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1 Lessor Representations and Warranties. Lessor hereby represents and warrants to Lessee as follows:

5.1.1 As of the Financial Close Date, the Financial Model that will be delivered to Lessee, including all formulae, estimates, budgets, forecasts, and projections therein, (a) will be prepared by or on behalf of Lessor in good faith with due care and skill, (b) will represent estimates, budgets, forecasts, projections, and assumptions that Lessor believes in good faith are reasonable for the Project, having regard to the circumstances prevailing as of the time made, subject to the understanding that such projections are based upon a number of estimates and assumptions and are subject to significant business, economic, and competitive uncertainties and contingencies, and that Lessor's stated belief regarding the projections does not constitute a representation that any of the assumptions are correct, that such projections will be achieved, or that the forward-looking statements expressed in such projections will correspond to actual results, and (c) will disclose all material cost, revenue, and other financial assumptions and projections that Lessor used in making its decision to enter into this Lease and in inducing the Lenders to provide Project Debt.

5.1.2 As of the Effective Date, and without limiting its rights and remedies expressly granted hereunder, Lessor has evaluated the constraints affecting design and construction of the Project, including the Project Site, the surface and subsurface conditions, Utilities, pre-existing Hazardous Materials, and other site conditions discoverable through a reasonable investigation, and applicable Laws, and Lessor has reasonable grounds for believing and does believe that the Project Improvements can be designed and built within such constraints.

5.1.3 Lessor, in accordance with Good Industry Practice, conducted a reasonable investigation of the Project Site prior to the Effective Date, and as a result of such reasonable investigation, Lessor is familiar with and accepts the physical requirements of the Initial Improvement Work, subject to Lessor's rights to seek relief under Article 14.

5.1.4 Prior to the Effective Date, Lessor familiarized itself with the requirements of any and all applicable Laws and the conditions of any required Governmental Approvals. As of the Effective Date, Lessor has no reason to believe that any Governmental Approval required to be obtained by Lessor will not be granted in due course and thereafter remain in effect so as to enable work on the Project Improvements to proceed in accordance with the Lease Documents.

5.1.5 All Services furnished by Lessor will be performed by, or under the supervision of, Persons who hold all necessary, valid licenses to practice in the State, by personnel who are skilled, experienced, and competent in their respective trades or professions, who are qualified to perform their respective work or services in accordance with the Lease Documents, and who shall assume responsibility for the accuracy and completeness of the documents prepared or checked by them pursuant to the Lease Documents.

5.1.6 As of the Effective Date, Lessor is a limited liability company, duly organized and validly existing under the laws of Delaware; has the requisite power and all required licenses to carry on its present

and proposed activities; and has full power, right, and authority to execute and deliver the Lease Documents and the Principal Project Documents to which Lessor is (or will be) a party and to perform each and all of the obligations of Lessor provided for herein and therein. Lessor is registered with the Alabama Secretary of State and is duly qualified to do business and in good standing in the State, in each case, as of the Effective Date, and will remain so registered, duly qualified, and in good standing thereafter throughout the term of this Agreement and for as long thereafter as any obligations remain outstanding under the Lease Documents.

5.1.7 The execution, delivery, and performance of this Lease and the Principal Project Documents to which Lessor is (or will be) a party have been (or will be) duly authorized by all necessary limited liability company action of Lessor; each person executing this Lease and such Principal Project Documents on behalf of Lessor has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of Lessor; and this Lease and such Principal Project Documents have been (or will be) duly executed and delivered by Lessor.

5.1.8 Neither the execution and delivery by Lessor of this Lease and the Principal Project Documents to which Lessor is (or will be) a party, nor the consummation of the transactions contemplated hereby or thereby, is (or at the time of execution will be) in conflict with, or has resulted or will result in a default under or a violation of, the governing instruments of Lessor or any other agreement or instrument to which Lessor is a party or by which Lessor is bound.

5.1.9 The execution and delivery by Lessor of this Lease and the Principal Project Documents to which Lessor is (or will be) a party, and the performance by Lessor of its obligations thereunder, will not conflict with any Laws applicable to Lessor that are valid and in effect on the Effective Date. As of the Effective Date, Lessor is not in breach of any applicable Law that would have a material adverse effect on the Project or the performance of any of Lessor's obligations under the Lease Documents.

5.1.10 As of the Effective Date, each of the Lease Documents and the Principal Project Documents to which Lessor is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid, and binding obligation of Lessor, enforceable against Lessor (and, if applicable, each Equity Member) in accordance with its terms, subject only to applicable bankruptcy, insolvency, and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

5.1.11 As of the Effective Date, there is no action, suit, proceeding, investigation, or litigation served on Lessor, or, to the knowledge of Lessor, pending, that challenges Lessor's authority to execute, deliver, or perform, or the validity or enforceability of, the Lease Documents and the Principal Project Documents to which Lessor is (or will be) a party, or that challenges the authority of Lessor official executing the Lease Documents or such Principal Project Documents; and Lessor has disclosed to Lessee prior to the Effective Date any pending and un-served or threatened action, suit, proceeding, investigation, or litigation with respect to such matters of which Lessor is aware. Lessor has no current, pending, or outstanding criminal, civil, or enforcement actions initiated by or against Lessee or the State, and agrees that it will immediately notify Lessee of any such actions.

5.1.12 As of the Effective Date, none of Lessor, its Equity Members, or the Equity-Related Entities, nor, to Lessor's knowledge, any (other) Key Contractors, based solely on a corresponding certification made to Lessor by each such Key Contractor, is presently in arrears in payment of Taxes, permit fees, or other statutory, regulatory, or judicially required payments to the State.

5.1.13 As of the Effective Date, Lessor has disclosed to Lessee all organizational conflicts of interest of Lessor and its Subcontractors of which Lessor is actually aware, and there have been no organizational

changes to Lessor or its Subcontractors identified in its Proposal that have not been approved by Lessee. For this purpose, organizational conflict of interest has the meaning set forth in the RFP.

5.1.14 Neither Lessor nor any of its Equity Members or Equity-Related Entities is in violation of any anti-corruption, anti-money laundering, or similar Law. None of Lessor, its Equity Members, or the Equity-Related Entities, or their respective principals, are, nor, to Lessor's knowledge, any of its (other) Key Contractors or their respective principals, based solely on a corresponding certification made to Lessor by such Persons, is, as of the Effective Date, presently a Prohibited Person, debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Lease by any federal agency or any department, agency, or political subdivision of the State. For purposes of this Section 5.1.14 and Section 5.2, the term "principal" means: (a) an officer or director, (b) in the case of a closely held company or partnership, a direct or indirect owner, shareholder, equity member, or partner holding a 10% or greater interest in the company or partnership, or (c) a Key Individual or other employee with primary management or supervisory responsibilities, or substantive control over the operations of the relevant entity, in respect of the Project or the Services to be delivered under this Lease.

5.2 Key Contractor Representations and Warranties. To the extent that the D&C Contractor, the Lead Design Firm, or the Lead Services Provider is not Lessor, Lessor shall obtain from such Key Contractor, and furnish to Lessee, the following representations and warranties as of the Effective Date (and, in the case of the Lead Services Provider, as of the Occupancy Date): (a) such Key Contractor is duly organized, validly existing, and in good standing under the laws of the state of its organization and is registered with the Alabama Secretary of State, duly qualified to do business, and in good standing in the State; (b) such Key Contractor has the power and authority to do all acts and things, and execute and deliver all other documents, as are required to be done, observed, or performed by it in connection with its engagement by Lessor; (c) such Key Contractor (i) has obtained and will maintain all necessary or required registrations, permits, licenses, and approvals required under applicable Law and (ii) has all necessary expertise, qualifications, experience, competence, skills, and know-how to perform their respective work or services in accordance with the Lease Documents; (d) such Key Contractor and its principals are not presently Prohibited Persons, debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Lease by any federal agency or any department, agency, or political subdivision of the State; and (e) such Key Contractor is not in violation of any applicable Law that would have a material adverse effect on the Project.

5.3 Lessee Representations and Warranties. Lessee hereby represents and warrants to Lessor as follows:

5.3.1 As of the Effective Date, Lessee has full power, right, and authority to execute, deliver, and perform the Lease Documents and the Principal Project Documents to which Lessee is (or will be) a party and to perform each and all of the obligations of Lessee provided for herein and therein.

5.3.2 Each person executing on behalf of Lessee the Lease Documents and Principal Project Documents to which Lessee is (or will be) a party has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of Lessee, and the Lease Documents and Principal Project Documents to which Lessee is (or will be) a party have been (or will be) duly executed and delivered by Lessee.

5.3.3 As of the Effective Date, each of the Lease Documents and Principal Project Documents to which Lessee is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid, and binding obligation of Lessee enforceable against Lessee in accordance with its terms, subject only to (a) applicable bankruptcy, insolvency, and similar Laws affecting the enforceability of the rights of creditors generally and the general principles of equity; (b) the effect of applicable Laws governing

equitable remedies and defenses, and the discretion of any court of competent jurisdiction in awarding equitable remedies, including the doctrine of sovereign immunity; and (c) the effect of applicable Laws governing enforcement and collection of damages against Lessee or the State, including the doctrine of sovereign immunity.

5.3.4 As of the Effective Date, there is no action, suit, proceeding, investigation, or litigation served on Lessee, or, to the knowledge of Lessee, pending, that challenges Lessee's authority to execute, deliver, or perform, or the validity or enforceability of, the Lease Documents and the Principal Project Documents to which Lessee is (or will be) a party, or that challenges the authority of Lessee official executing the Lease Documents or such Principal Project Documents; and Lessee has disclosed to Lessor prior to the Effective Date any pending and un-served or threatened action, suit, proceeding, investigation, or litigation with respect to such matters of which Lessee is aware.

5.3.5 The execution and delivery by Lessee of the Lease Documents and the Principal Project Documents to which Lessee is (or will be) a party will not result, at the time of execution, in a default under any other agreement or instrument to which Lessee is a party or by which Lessee is bound.

5.3.6 The execution and delivery by Lessee of the Lease Documents and the Principal Project Documents to which Lessee is (or will be) a party, and the performance by Lessee of its obligations thereunder, will not conflict with any Laws applicable to Lessee that are valid and in effect on the Effective Date. Except with respect to any matters disclosed to Lessor, as of the Effective Date, Lessee is not in breach of any applicable Law that would have a material adverse effect on the performance of any of its obligations under the Lease Documents the Principal Project Documents to which Lessee is a party.

5.4 Survival of Representations and Warranties. The representations and warranties of Lessor and Lessee contained in this Article 5 shall survive expiration or earlier termination of this Lease.

5.5 Special Remedies for Mutual Breach of Warranty. Notwithstanding any other provision of this Lease, if there exists or occurs any circumstance or event that constitutes or results in a concurrent breach of any of the warranties set forth in this Article 5 by both Lessor and Lessee, but does not also constitute or result in any other breach or default by either Party, then the only remedies shall be for the Parties to take action to rectify or mitigate the effects of such circumstance or event, to pursue severance and reformation of the Lease Documents and Principal Project Documents as set forth in Section 21.13, or remedies for a Court Ruling Event as set forth in Section 18.2.

PART B
DEVELOPMENT AND MAINTENANCE OF THE FACILITY

ARTICLE 6
STANDARDS FOR SERVICES

6.1 General Obligations of Lessor. As further described in Section 11.1, in performing its obligations under the Lease Documents, Lessor shall at all times (a) have full responsibility for prosecution and performance of the Services, including the Improvement Work and Maintenance Services; (b) comply with, and require that its Subcontractors and any other Persons performing Services comply with, all requirements of all applicable Laws; (c) cooperate with Lessee and all Governmental Entities having jurisdiction in all matters relating to the Project, including their review, inspection, and oversight of the Services; (d) maintain and comply with, and require that its employees, and all Subcontractors and their employees, maintain and comply with, all necessary or required registrations, permits, approvals, certifications, and licenses required for the applicable Services and their respective professional practice(s); and (e) ensure that all Services are performed by personnel who are skilled, experienced, and competent in their respective trades or professions, and who are qualified to perform the Services in accordance with Good Industry Practice, applicable Law, and any other applicable requirements of the Lease Documents, Design Documents, and Plans.

6.2 Environmental Compliance

6.2.1 Compliance by Lessor. In the performance of the Services, Lessor shall (a) comply with all applicable Environmental Laws and (b) comply with all conditions and requirements of the Environmental Approvals, including performing, or causing to be performed, all environmental mitigation measures, monitoring, and reporting.

6.2.2 Compliance by Lessee. In the performance of the Lessee FM Services and in operating the Facility, Lessee shall (a) comply with all applicable Environmental Laws and (b) comply with all conditions and requirements of the Environmental Approvals provided to Lessee by Lessor, including performing, or causing to be performed, all environmental mitigation measures, monitoring, and reporting required to be performed in connection with such Lessee FM Services or Facility operations.

6.3 Design and Construction Standards

6.3.1 Design Standards. Lessor shall furnish, or caused to be furnished, all aspects of the Design Work and all Design Documents, including design required in connection with the Services during the Occupancy Period, in accordance with (a) Good Industry Practice; (b) the requirements, terms, and conditions set forth in the Lease Documents; (c) all applicable Laws; and (d) the requirements, terms, and conditions set forth in applicable Governmental Approvals; in each case taking into account all constraints affecting the Project. All Design Work shall be performed by, or under the direction of, architects, engineers, and other appropriate professionals who are properly licensed as required by applicable Law and who shall assume professional responsibility for the accuracy and completeness of the Design Documents and other documents prepared or checked by them.

6.3.2 Construction Standards. Lessor shall construct, or cause to be constructed, the Project Improvements as designed and shall ensure that all Construction Work required under the Lease Documents is performed in accordance with the Final Design Documents (or other applicable design documents) and is free from defects in materials and workmanship.

6.4 Maintenance Services Standards. Lessee shall provide, or cause to be provided, all aspects of the Maintenance Services in accordance with the standards therefor set forth in the FM Specifications (Exhibit 11), particularly Exhibit 11, Sections 1.2, 1.3, and 1.5.

6.5 Software Compatibility. Unless otherwise specifically stated in the Lease Documents, Lessor is responsible for assuring that all software it uses for any aspect of the Project is compatible with software used by Lessee at the time, subject to Lessee having notified Lessor of the software used or to be used by Lessee. Prior to using any software, or version of software, known not to be compatible with software then in use by Lessee, Lessor must obtain approval from Lessee. In addition, subject to any applicable requirements of the Technical Requirements, Lessor shall provide to Lessee's staff, at Lessor's cost, any software, licenses, and training reasonably necessary to assure that Lessee is able to implement compatible usage of all software utilized by Lessor. As used in this Section 6.5, "compatible" means that Lessor-provided electronic files may be loaded or imported and manipulated by Lessee using its software with no modifications, preparation, or adjustments. All electronic information submitted to Lessee shall be in native format or, if not available, in a readable and useable format.

6.6 Changes to Standards

6.6.1 Changes in Law. Changes in Law are a Relief Event to the extent provided in Exhibit 13, for which Lessor may be entitled to relief in accordance with Article 14. Lessor shall comply with a Change in Law to the extent and when required by the terms of the new Law resulting in the Change in Law.

6.6.2 Changes in Standards Prior to the Occupancy Date. If a Standard with which Lessor would otherwise be obligated to comply pursuant to Exhibit 10, is modified, replaced, supplemented, or otherwise changed after the Setting Date and prior to the Occupancy Date, Lessor may, but is not obligated, to incorporate such modification, replacement, supplement, or change, at Lessor's own cost and risk, into Lessor's design and construction of the Project Improvements prior to the Occupancy Date; *provided, however*, that (a) in accordance with Section 10.4, Lessee may issue a Directive Letter to require incorporation of such change as a Lessee Change; (b) if, at any time prior to the Occupancy Date, such change in Standard becomes mandatory by Law for the Initial Improvement Work, such change shall be implemented as and when required, as a Change in Law; and (c) unless such change is incorporated prior to the Occupancy Date, the same shall be implemented during the Occupancy Period when and to the extent required pursuant to Section 6.6.3.

6.6.3 Changes in Standards During the Occupancy Period. If a Standard with which Lessor would otherwise be obligated to comply pursuant to Exhibit 10 or 11, as applicable, is modified, replaced, supplemented, or otherwise changed after the Occupancy Date, Lessor may, but is not obligated, to incorporate such modification, replacement, supplement, or change, at Lessor's own cost and risk, into Lessor's performance of the Services; *provided, however*, that (a) in accordance with Section 10.4, Lessee may issue a Directive Letter to require incorporation of such change as a Lessee Change, and (b) if, at any time during the Lease Term, such change in Standard becomes mandatory by Law for the performance of the Services (including the provision of Life Cycle Work and other Improvement Work required after the Occupancy Date), such change shall be implemented as and when required by Law, as a Change in Law.

6.7 Nonconforming and Defective Work. At its own risk and cost, Lessor shall be responsible for rectifying all Nonconforming Work, whether discovered by Lessor or Lessee, and shall promptly investigate, repair, replace, or otherwise correct and remedy Defects in accordance with the Technical Requirements, as well as errors and omissions in Design Work arising from or resulting in nonconformance with Good Industry Practice, the requirements of the Lease Documents, or any other applicable standard set forth in this Article 6.

6.8 Assignment of Certain Causes of Action. Lessor agrees to assign to Lessee all rights, title, and interest in and to all causes of action Lessor may have under Section 6 of the Clayton Act (15 U.S.C. § 15) or under comparable State Law, arising from purchases of goods, services, or materials pursuant to this Lease. This assignment shall be made and become effective automatically upon tender of the first Lease Payment (with adjustments and deductions as permitted under this Lease), without further acknowledgment by the Parties.

ARTICLE 7 ALLOCATION OF RESPONSIBILITY

7.1 Lessor Obligation to Develop. Lessor has agreed to furnish, prior to Lessee's Occupancy, the Project Improvements and all other Initial Improvement Work as described in Exhibit 10, in accordance with the standards set forth in Article 6 and with other applicable provisions of this Lease.

7.2 Lessor Obligation to Provide Maintenance Services. Lessor shall provide, or cause to be provided, Maintenance Services for the Facility, including performance of Life Cycle Work, as described in the FM Specifications (Exhibit 11), in accordance with the standards set forth therein and in Article 6 and with other applicable provisions of this Lease. Lessor shall use the Life Cycle Schedule set forth in Exhibit 11, Appendix A, as updated from time to time in accordance with the FM Specifications, as the principal guide for scheduling and performing Life Cycle Work.

7.3 FF&E and Personal Property. Lessor shall procure, install, commission, and maintain, or cause to be procured, installed, commissioned, and maintained, FF&E in accordance with Exhibits 10 and 11. FF&E that is Lessee's sole responsibility to procure, install, and commission pursuant to Exhibit 10 is referred to herein as "**Lessee FF&E**"; all other FF&E for the Project (excluding Lessee Property) is referred to herein as the "**Lessor FF&E**."

7.3.1 Access for Lessee FF&E and Personal Property. Lessee shall have reasonable access to install, maintain, and periodically replace, at Lessee's cost and expense, Lessee FF&E and any other FF&E or personal property of a temporary or permanent nature possessed or used by a Lessee Party in accordance with Section 2.6 ("Lessee Property"). Such access shall include reasonable access to install, maintain, and periodically replace Lessee-Furnished IT Equipment and cable behind the walls of the Facility in order to support Lessee-provided information technology systems. With respect to installation or replacement of permanent fixtures or equipment, or maintenance work that requires detachment or reattachment of FF&E, opening of walls, or other material damage to the Premises, Lessee shall undertake reasonable efforts to coordinate such work with Lessor, including providing Lessor written notice reasonably in advance of such work.

7.3.2 Removal of Lessee Property. Lessee shall have the right at any time during the Lease Term to remove any and all Lessee Property, including Lessee FF&E, that it may have stored or installed upon the Premises, subject to the conditions set forth in this Section 7.3.2. Lessee, at its cost and expense, shall promptly repair and restore, or reimburse Lessor to repair and restore, any and all damage to the Premises resulting from the installation, modification, or removal of any such items. With respect to any Lessee FF&E that is integral to the structure or operation of the Premises, Lessee shall provide Lessor written notice reasonably in advance of removal and shall promptly replace such FF&E, at Lessee's sole cost and expense, with equivalent fixtures, furniture, or equipment, as the case may be, in new or like new condition.

7.3.3 Relief Due to Lessee Work. Damage not promptly remedied by Lessee, or disruption of the Services caused by Lessee's removal of Lessee Property, may be a Relief Event under event (m) in Exhibit 13, entitling Lessor to relief in accordance with Article 14.

7.4 Utilities

7.4.1 Prior to Occupancy. Prior to the Occupancy Date, Lessor shall be responsible, at its cost and expense, for all utilities at the Project Site, including (a) supply of utilities required to perform the Initial Improvement Work, (b) performing, or causing to be performed, any utility adjustments required for the Initial Improvement Work, (c) arranging for and establishing the initial supply of electric, gas, water, sewer, and other utility service required for the Project in accordance with the Technical Requirements, and (d) utility connection work and tie-in of systems.

7.4.2 During Occupancy. From and after the Occupancy Date, Lessee shall be responsible for supplying utilities to the Facility, including timely payment of all utility bills for the Project. Lessee, with the assistance of Lessor, shall arrange for transfer of utility accounts from Lessor to Lessee, which such transfer shall be effectuated at a time reasonably close to the Occupancy Date, but no later than the 30 days following the Occupancy Date, and subsequently Lessee shall be responsible to pay the Utility Owner directly. To the extent the invoices for any such utilities are received by Lessor after the Occupancy Date, Lessor shall promptly notify Lessee of Lessor's receipt of such invoice, and Lessee shall either pay the charge for such utilities directly to the Utility Owner within the time required for such payment (or, if such invoice is received by Lessee after the payment due date, promptly after receipt) or request that Lessor pay such charges to the Utility Owner on Lessee's behalf and, if Lessor agrees and makes such payment, promptly reimburse Lessor for such charges paid by Lessor following receipt of evidence of Lessor's payment therefor. Thereafter, the Parties will work diligently to effectuate the transfer of such invoicing directly to Lessee. Lessee shall not charge Lessor for, or require Lessor reimbursement of, utility use costs following the Occupancy Date, except to the extent that Lessor may be responsible for excessive utility consumption costs as provided in Exhibit 11, Appendix G, Section 1.4 and Exhibit 15.

7.5 Hazardous Materials Management

7.5.1 Lessee Responsibility for Hazardous Materials. As between Lessor and Lessee, Lessee shall be considered the sole generator and arranger for any Lessee-Related Release of Hazardous Materials under 40 CFR Part 262 or Ala. Admin. Code 335-14. Lessee shall, at its cost and expense, manage, treat, handle, store, remediate, remove, transport (where applicable), and dispose of all Lessee-Related Releases of Hazardous Materials, or other Hazardous Materials that Lessee is responsible to manage pursuant to this Section 7.5, in each case in accordance with requirements of Law, any applicable Governmental Approvals, Good Industry Practice, and all applicable provisions of the Lease Documents. Lessee shall undertake all reasonable efforts to minimize the spread of any Hazardous Materials into uncontaminated areas.

7.5.2 Lessor Responsibility for Hazardous Materials. As between Lessor and Lessee, Lessor shall be considered the sole generator and arranger under 40 CFR Part 262 or Ala. Admin. Code 335-14 and shall assume sole generator and arranger responsibility for any Lessor Release of Hazardous Materials. Lessor shall sign all applicable undisputed manifests using its generator identification number. Lessor shall, at its cost and expense, manage, treat, handle, store, remediate, remove, transport (where applicable), and dispose of all Lessor Releases of Hazardous Materials, pre-existing Hazardous Materials encountered at the Project Site, including contaminated soil and groundwater, or other Hazardous Materials Management for which Lessor is responsible pursuant to this Section 7.5, in each case in accordance with requirements of Law, any applicable Governmental Approvals, Good Industry Practice, and all applicable provisions of the Lease Documents. Lessor, without cost to Lessee, shall adopt design and construction techniques for the Improvement Work that, to the maximum extent possible in accordance with Good Industry Practice, avoid the need for Hazardous Materials Management. Lessor shall undertake all reasonable efforts to minimize the spread of any Hazardous Materials into uncontaminated areas.

7.5.3 Third-Party Releases of Hazardous Materials

(a) Lessee will be responsible, at its cost and expense, to manage, treat, handle, store, remediate, remove, transport (where applicable), and dispose of (i) Hazardous Materials, used in or arising from the Lessee FM Services (including, for example, Hazardous Materials required for, and medical waste generated in, Lessee's operation of the Facility's medical facilities), except to the extent that there is a Lessor Release of Hazardous Materials with respect to such Hazardous Materials and (ii) Third-Party Releases of Hazardous Materials on the Premises on or after the Occupancy Date.

(b) Lessor will be responsible to manage, treat, handle, store, remediate, remove, transport (where applicable), and dispose of Third-Party Releases of Hazardous Materials affecting the Property that are not on the Premises and/or prior to the Occupancy Date, subject to relief available to Lessor in accordance with Article 14 for Third-Party Releases of Hazardous Materials as a Relief Event under event (g) in Exhibit 13.

(c) In each case, the responsible Party's performance of work required pursuant to this Section 7.5.3 shall be in accordance with requirements of Law, any applicable Governmental Approvals, Good Industry Practice, and all applicable provisions of the Lease Documents. Each Party shall use diligent efforts to handle disposal of Hazardous Materials required pursuant to this Section 7.5.3 in a manner that does not place any Lessor Party or Lessee Party in the position of assuming generator or arranger liability.

(d) Each of the Parties shall have a responsibility to promptly report to the other Party any Release of Hazardous Materials or previously unknown (whether in kind or in location) Recognized Environmental Condition that the reporting Party observes, discovers, or is otherwise made aware of, that may give rise to a responsibility or liability of the other Party. Additionally, each Party shall cooperate, including using commercially reasonable efforts to investigate, to determine the source of any Release of Hazardous Materials or Recognized Environmental Condition that was previously unknown or undocumented.

7.5.4 Lessee's Right to Perform Remedial Action during Occupancy. If, within a reasonable time after discovery of Hazardous Materials on or under the Premises after the Occupancy Date, and taking into consideration the nature and extent of the contamination, the type and extent of action required, and the potential impact upon use of and operations on the Premises, Lessor has not undertaken the Hazardous Materials Management that is required of it under this Section 7.5, Lessee may provide Lessor with reasonable notice (to the extent practical under the circumstances) that Lessee will undertake the any Hazardous Materials Management itself. Lessee thereafter may undertake the Hazardous Materials Management actions in compliance with a remediation plan approved by applicable Governmental Entities, if applicable, and in compliance with Law. Without limiting Lessee's rights and responsibilities set forth in this Section 7.5.4, Lessor shall reimburse Lessee for Lessee's Recoverable Costs in connection with carrying out such Hazardous Materials Management actions within 30 days after receipt of an invoice for such costs. Lessee shall have no liability or responsibility to Lessor arising out of Lessee's remedial Hazardous Materials Management actions hereunder, and such actions shall in no event constitute a basis for the assertion of a Relief Event or other Claim.

7.5.5 No Limitation on Rights or Remedies. Nothing in this Section 7.5 shall preclude or limit any rights or remedies that either Party may have against the other Party, third parties, or prior owners, lessees, licensees, or occupants of the Property.

7.6 Vandalism. If any maintenance, repair, or replacement of the Premises is required due to Vandalism from any cause or to any extent, Lessor shall perform such maintenance, repair, or replacement in accordance with Exhibit 11, Part 4. The rights and responsibilities of each Party in the event of damage

resulting from Vandalism, including cost responsibility, shall be as set forth in Exhibit 11, Part 4. Notwithstanding the allocation of responsibility for costs attributable to Vandalism set forth in Exhibit 11, Part 4, Lessee shall continue to have the right to assess Deductions for Noncompliance Events relating to Vandalism to the extent provided for in Exhibit 15 but in any event consistent with Exhibit 11, Part 4.

7.7 Independent Maintenance Inspector

7.7.1 Independent Maintenance Inspector Assessment. By the fifth anniversary of the Occupancy Date, and every five years thereafter, or more frequently as the Parties may mutually agree, the Parties shall jointly engage an Independent Maintenance Inspector, at a cost shared equally by the Parties and on such other terms as are reasonably agreed to by the Parties, to provide an assessment of the condition of the Facility and prepare a Facility Condition Report in accordance with Exhibit 11, Section 2.3, detailing any significant maintenance deficiencies in the Facility in contravention of Lessor's obligations under the Lease Documents.

7.7.2 Lessor's Obligation to Respond to Assessment. Lessor shall respond promptly to any deficiencies identified in the Facility Condition Report in accordance with Exhibit 11, Section 2.3.

7.8 Updates of Project Record Documents. Within 30 days after undertaking any Life Cycle Work or other Improvement Work during the Occupancy Period that results in a significant change (as reasonably determined by Lessor) to the design or construction of the Project Improvements, Lessor shall update the Project Record Documents, including those in the CMMS, to reflect such change.

7.9 Lessee Obligations Excluded from the Services. During the Occupancy Period, Lessee shall be responsible for the Lessee FM Services as described in Exhibit 11, Part 7, which such Lessee FM Services shall not constitute a Service to be provided or furnished by Lessor under this Lease. Subject to Article 8, Lessee shall perform such Lessee FM Services, or cause them to be performed, in such a manner as to not unduly interfere with Lessor's performance of the Services.

ARTICLE 8 SAFETY, SECURITY, AND OVERSIGHT

8.1 Prior to Occupancy. Prior to the Occupancy Date: (a) Lessor shall have full and sole responsibility for the Project Site and the Project Improvements; (b) as between Lessor and Lessee, Lessor shall have full and sole control of the Project Site, subject only to Lessee's rights of access and Monitoring set forth in Exhibit 10; and (c) Lessor shall be fully and solely responsible for the safety and security of the Project Site, including compliance with Exhibit 10B, Part 3.

8.2 Access and Control During Occupancy. From and after the Occupancy Date, Lessee shall have full and complete access to the Premises and primary control of the Premises, subject to conditions and limitations set forth in Article 2, shall transfer to Lessee for the duration of the Lease Term, as further described below.

8.2.1 Safety and Security. Lessee shall be responsible for the safety and security of the Premises, which responsibility shall be sole and exclusive to Lessee. Notwithstanding the foregoing, Lessor shall be responsible to perform the Maintenance Services in a safe manner in accordance with the requirements of the Lease Documents and to comply with Lessee's safety and security policies and procedures and Safety Compliance Orders issued in accordance with Section 8.3. Outside the Premises, Lessor shall be primarily responsible for the physical condition of the Property, and the safety of persons present on the Property outside the Premises, *provided* that Lessee shall maintain responsibility to the extent necessary or

appropriate for Lessee's operation of a correctional facility, care and custody of Inmates, safety of Lessee Invitees, and public safety obligations, and Lessor's obligations shall be subject to any relief that may be available to Lessor for any applicable Relief Event.

8.2.2 Move-in Process. Lessee shall be fully and solely responsible for the transfer of Inmates and commencement of Lessee's correctional facility operations to the Facility. Lessor shall cooperate with Lessee to ensure a smooth and orderly move-in process, including by submitting and implementing Plans in accordance with Exhibit 11.

8.2.3 Lessor Right of Access to Premises. Lessor and its authorized representatives and agents shall have, under and subject to the terms of the Lease Documents, access to the Premises at all times for performance of the Services and Lessor's other obligations under the Lease Documents and for the purposes of examining and maintaining the condition of the Property as and to the extent provided for under the Lease Documents; *provided, however*, that such examination or maintenance shall be performed in such a manner as to not interfere materially with Lessee's use of the Premises and shall otherwise be in compliance with Lessee Policies and Procedures.

8.2.4 Lessee Rights of Access. Lessee shall have such rights of access and Monitoring with respect to the Maintenance Services as are set forth in Section 8.3 and in Exhibit 11, Part 5.

8.3 Occupancy Period Monitoring by Lessee. Lessee shall have the right to monitor the Project and Lessor's provision of the Services, at any and all reasonable times during the Lease Term (subject to any applicable express limitations set forth in the Lease Documents), to the extent necessary or advisable (a) to comply with federal agency requirements, binding judicial or administrative order, or consent decree applicable to the Facility and (b) to verify Lessor's compliance with the Lease Documents. Such rights include Lessee's rights to monitor, review, audit, and inspect the Maintenance Services and related submittals as provided in Exhibit 11. Lessee may designate any Person(s) to carry out Monitoring on Lessee's behalf. All Lessee Monitoring activities shall be performed in such a manner as to not unduly interfere with Lessor's normal provision of the Services and shall otherwise comply with Lessor's reasonable safety and security policies provided to Lessee.

8.4 Security and Safety Compliance and Related Action During Occupancy

8.4.1 Safety Compliance Orders. Lessee may direct Lessor to take immediate action, at Lessor's cost and expense, to correct, mitigate, or otherwise address any condition relating to the Services identified by Lessee that presents a risk to health, safety, or security that, in Lessee's reasonable estimation, is likely to result in a Safety Compliance Order. Lessee shall use good faith efforts to inform Lessor at the earliest practicable time of any circumstance or information relating to the Project that, in Lessee's reasonable judgment, is likely to result in a Safety Compliance Order. Except in the case of Emergency, prior to issuing a Safety Compliance Order, Lessee shall consult with Lessor concerning the risk, alternative compliance measures, cost impacts, and the availability of Lessor resources to fund the Safety Compliance work. Subject to conducting such prior consultation, Lessee may issue Safety Compliance Orders to Lessor at any time from and after the Occupancy Date.

8.4.2 Duty to Comply. Subject to Section 8.4.1, Lessor shall implement all Safety Compliance as soon as reasonably practicable, and in any event not later than any time required for Repair or Rectification under Exhibit 15 or, if no such time is applicable, and except in case of Emergency, not later than 10 days following issuance of the Safety Compliance Order. Lessor shall diligently prosecute the work necessary to achieve such Safety Compliance until completion at Lessor's sole cost and expense, subject to any applicable Relief Event. Lessor may determine how to implement the Safety Compliance Order in accordance with Good Industry Practice and shall undertake best efforts to overcome any inability to comply with any Safety

Compliance Order caused by a Relief Event. Without limiting the foregoing, and for the avoidance of doubt, in no event shall Lessor be entitled to issue a Change Request or, except as provided in Section 8.4.3, claim that a Relief Event has occurred as a result of the existence of a Safety Compliance Order.

8.4.3 Contesting Safety Compliance Orders. Lessor may contest a Safety Compliance Order by delivering to Lessee a Relief Event Notice setting forth Lessor's claim that no Safety Compliance conditions exist to justify the Safety Compliance Order, or that conditions or practices without compliance with the Safety Compliance Order are nonetheless consistent with Good Industry Practice, accompanied or followed by a Relief Request, each in accordance with Article 14. If Lessor timely contests a Safety Compliance Order, Lessor nevertheless shall implement the Safety Compliance Order, but if it is determined under Article 14 or the Dispute Resolution Procedures that Lessor was not obligated to pay for the applicable Safety Compliance, then the Safety Compliance Order shall be treated as a Directive Letter for a Lessee Change.

8.4.4 Safety-Related Action. Lessee has the absolute right to undertake, or to direct Lessor to undertake, any work required to implement or comply with Safety Standards (as interpreted by Lessee) or a Safety Compliance Order whenever (a) Lessor fails to meet any Safety Standard or timely perform Safety Compliance or (b) Lessee and Lessor cannot agree on the interpretation or application of a Safety Standard or the valid issuance of a Safety Compliance Order within a period of time reasonably acceptable to Lessee. To the extent such work undertaken by Lessee is reasonably necessary to comply with Safety Standards or to perform validly issued Safety Compliance Orders, the costs of which Lessor is responsible for paying under this Section 8.4, Lessor shall reimburse Lessee all Lessee's Recoverable Costs in connection with such work within 10 Business Days after receipt of an invoice for such costs, and Lessee shall have no liability or obligation to compensate Lessor for any Losses suffered or incurred as a result of such work. If Lessor, by notice to Lessee, protests Lessee's intended work, and it is determined that such work was not necessary or was not required to be paid for by Lessor under this Section 8.4, the unnecessary work performed to comply with Safety Standards or under the Safety Compliance Order shall be treated as a Lessee Change; *provided* that any payment owing to Lessor as a result thereof shall be limited to Direct Costs incurred by Lessor as a direct result of such unnecessary work.

8.5 Emergency Action. The Parties acknowledge that Lessee has a paramount public interest in protecting safety on and in the vicinity of the Premises. Therefore, notwithstanding anything in this Lease to the contrary, if Lessee, in its good faith judgment, determines that Lessor has failed to meet any Safety Standards or perform Safety Compliance, and such failure results in an Emergency or other immediate danger to persons or property, and if Lessor is not promptly and diligently taking all necessary steps to rectify or deal with such Emergency or danger, then Lessee, without notice and without awaiting lapse of the period to cure any breach, and in addition and without prejudice to its other remedies, may (but is not obligated to) immediately take such action as may be reasonably necessary to rectify the Emergency or danger, including by suspending performance of applicable Services and closing (or causing to be closed) any and all portions of the Project affected by the Emergency or danger. Lessor shall reimburse Lessee for all Lessee's Recoverable Costs in connection with such work within 10 Business Days after receipt of an invoice for such costs. Immediately following rectification of such Emergency or danger, as determined by Lessee, Lessee shall allow recommencement of the Services or reopening applicable portions of the Project, as the case may be. So long as Lessee undertakes action pursuant to this Section 8.5 in good faith, even if under a mistaken belief in the occurrence of such failure or existence of an Emergency or danger as a result thereof, such action shall not be deemed unlawful or a breach of this Lease, shall not expose Lessee to any liability to Lessor, and shall not entitle Lessor to any other remedy. Lessee's good faith determination of the existence of such a failure, Emergency, or danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary. If Lessee takes action under this Section 8.5 and it is later finally

determined that Lessee did not have a good faith basis for its determination to take action, Lessee's action shall be treated as a Directive Letter for a Lessee Change.

8.6 Policing and Incident Response. The Parties acknowledge that any Governmental Entity empowered under applicable Laws to enforce any Law may enter the Property in accordance with such Laws, which may include entrance on and use of the Premises as and when necessary or appropriate for such Governmental Entity to carry out its law enforcement duties. No provision of this Lease is intended to surrender, waive, or limit (or increase or expand) any police powers of any Governmental Entity or Lessee, and all such police powers are expressly reserved. Except to the extent provided in the Lease Documents with respect to applicable Relief Events, Lessee shall have no liability or obligation to Lessor or any Lessor Party resulting from, arising out of, or relating to, the provision of any law enforcement services, including any failure of a public law enforcement agency to provide services, or its negligence or misconduct in providing services.

8.7 Control Over Inmate Population and Use of Facility. The Parties acknowledge Lessee's responsibilities under Section 14-1-1.2 of the Code of Alabama (1975). Lessee shall at all times retain control and management over its Inmate population. The Parties intend for Lessee to hold a leasehold interest in the Facility, and to have use of the Facility, only during the period contemplated by this Lease (including any period covered by a Transition Plan).

ARTICLE 9 END OF LEASE

9.1 Extension of the Lease Term. Prior to the expiration of the Lease Term, to the extent permitted by Law, the Parties may negotiate an extension of the Lease Term for a period agreed by the Parties, on reasonable and mutually agreeable terms, including with respect to Life Cycle Requirements and any Extended Term Works. Lessee shall notify Lessor of Lessee's intention to seek a negotiated extension of the Lease Term prior to commencement of the 25th Lease Year (which notice deadline may be waived or extended by Lessor in its discretion).

9.2 Extended Term Works

9.2.1 Lessor shall not be required to perform Extended Term Works, except (a) pursuant to a negotiated extension of the Lease Term on mutually agreeable terms pursuant to Section 9.1, or (b) to the extent that the Independent Maintenance Inspector has determined, based on its 25th anniversary assessment in accordance with Section 7.7, that performance of any additional Life Cycle Work is necessary for the Facility to meet the Performance Requirements applicable prior to expiration of the Lease Term (unless Lessee agrees, in its discretion, not to require such works).

9.2.2 Regardless of whether the Lease Term is extended pursuant to Section 9.1, for the duration of the Lease Term, the Facility, and each element comprising the Facility, will be in a condition that is consistent with (a) the Facility, and each applicable element of the Facility, having been designed and constructed in accordance with the applicable Design Requirements; (b) Lessor having performed the Maintenance Services and maintained the Facility in accordance with the FM Specifications and Life Cycle Requirements, including the Life Cycle Schedule (Exhibit 11, Appendix A); and (c) Lessor's obligation to address any significant maintenance deficiencies in response to an assessment by the Independent Maintenance Inspector in accordance with Section 7.7.

9.3 Lessee Vacation and Surrender of Premises. Prior to expiration of the Lease Term, or at earlier termination of Lessee's leasehold interest in the Premises in accordance with Section 18.2.1(c), Lessee shall

vacate the Facility and surrender possession of the Premises by the end of the Transition Period in accordance with the Transition Plan developed by the Parties pursuant to Section 9.4 for vacation of the Facility by Lessee, including transfer of Inmates. In accordance with the Transition Plan, Lessor will assist Lessee in implementing an orderly, safe, and efficient transition and surrender of the Facility.

9.4 Transition. The provisions of this Section 9.4 shall apply in connection with (a) expiration of the Lease Term or (b) a Pre-Payment Event requiring Lessee to vacate the Premises as described in Section 18.2.1(c). Lessor shall timely comply with such provisions independent of, and without regard to, the timing for determining, adjusting, settling, and paying any Pre-Payment Amounts or other amounts due to Lessor or Lessee on account of a Pre-Payment Event. If Lessor fails to timely comply with the provisions of this Section 9.4, it shall be a Lessor Default.

9.4.1 Transition Plan. Not later than 30 days after the Financial Close Date, Lessor and Lessee shall meet and confer for the purpose of developing a Transition Plan (within 120 days after the Financial Close Date) for the orderly transfer of Inmates, Lessee's vacation of the Facility and surrender of the Premises, demobilization of any Improvement Work, and transfer of Maintenance Services, as applicable. The time allowed for Lessee's complete vacation of the Facility and surrender of the Premises (a) shall begin 90 days prior to the end of the Lease Term and end at the expiration of the Lease Term, in the event of scheduled expiration of the Lease Term and (b) shall begin on the date of the occurrence of the event triggering Lessee's obligation to so vacate and surrender and end 180 days after such date, in the event of a vacation and surrender under Section 18.2.1(c) (the "**Transition Period**"). The Transition Plan (but not the Transition Period) shall be updated during the Lease Term as agreed by the Parties and, in any event, not later than 90 days prior to expiration of the Lease Term, or within 15 days after the occurrence of an event triggering Lessee's obligation to vacate and surrender in accordance with Section 18.2.1(c), as applicable. The Transition Plan shall be in form and substance acceptable to the Parties and shall include and be consistent with the other provisions and procedures set forth in this Article 9.

9.4.2 FF&E. Not later than 90 days prior to the scheduled expiration of the Lease Term, or within 15 days after the occurrence of an event triggering Lessee's obligation to vacate the Premises in accordance with Section 18.2.1(c), as applicable, Lessee shall provide Lessor with a list of Lessee FF&E that Lessee intends to remove from the Premises. No Lessee FF&E that is integral to the structure or operation of the Premises shall be removed without the consent of Lessor, and any removal by Lessee shall comply with Section 7.3.

9.4.3 Other Assistance. Lessor shall otherwise assist Lessee in such manner as Lessee may require prior to and for a reasonable period (not to exceed the Transition Period) following the expiration or earlier termination of this Lease in order to ensure the orderly transfer of Inmates, vacation of the Facility, and surrender of the Premises, and shall, if appropriate and if requested by Lessee, take all steps as may be necessary to enforce the provisions of the Key Contracts pertaining to such transfer, vacation, and surrender.

9.5 Holding Over; Month-to-Month Tenancy. If, despite its best efforts, Lessee is not able to complete the transition process and vacate and surrender possession of the Premises in accordance with the Transition Plan by the end of the applicable Transition Period, Lessee shall, no later than 60 days prior to the scheduled vacation date, notify Lessor and shall, after the scheduled vacation date, continue to make Lease Payments on a month-to-month basis for so long as Lessee continues to occupy the Facility; *provided, however*, that Lessee shall not be entitled to hold over for a period longer than 90 days following the expiration of the Lease Term or earlier termination of Lessee's leasehold interest in the Premises in accordance with Section 18.2.1(c); and *provided further* that there shall be no hold over period or month-to-month tenancy if the event giving rise to Lessee's obligation to vacate is a Non-Appropriation Event or a Lessee Default under event (1) of Exhibit 16, Table 2. Subject to Section 18.2.2, all terms and conditions of the Lease shall continue to apply to Lessee's month-to-month tenancy during any holdover pursuant to this

Section 9.5, including Lessee's obligation to make Lease Payments hereunder, but except for those terms and conditions pertaining to the Lease Term, and except that (a) the Monthly Lease Payment payable by Lessee for each month Lessee continues to occupy the Premises during the holdover period shall incrementally increase, in an amount reasonably acceptable to the Parties, from the monthly rate paid by Lessee immediately prior to the commencement of the holdover period, *provided* that the increased monthly rate shall not exceed 125% of the applicable prior Monthly Lease Payment; and (b) any provisions of this Lease that give Lessee the right to any Deductions or Lease Payment Abatements shall be inoperable and shall not apply during such holdover period.

9.6 Alabama Law. For the avoidance of doubt, any Lessor effort to require Lessee to vacate and surrender possession of the Facility shall be subject to applicable Law.

PART C PROJECT MANAGEMENT

ARTICLE 10 CHANGES AND ALTERATIONS DURING OCCUPANCY

10.1 Lessee Changes. At any time during the Occupancy Period, Lessee may request pursuant to a Change Order, or (subject to Section 10.4) require pursuant to a Directive Letter, changes in the Services (including reductions in the scope of Improvement Work or the Maintenance Services, subject to clause (h) below) or in terms and conditions of the Technical Requirements (including changes in the Standards applicable to the Services, subject to Section 6.6); *provided, however*, that Lessee has no right to require any change that (a) is not in compliance with Laws; (b) would (i) require issuance of a new Governmental Approval that Lessor, using reasonable efforts, could not obtain or (ii) contravene or cause the revocation of an existing Governmental Approval and such contravention or revocation could not, using reasonable efforts, be corrected by the issuance of a further or revised Governmental Approval; (c) constitutes a material change in the nature of the Project or a material modification to the Permitted Uses; (d) would cause a material insured risk to become uninsurable or would cause Lessor to assume a material new risk that is not insurable, unless Lessee, in issuing the Change Order, agrees to self-insure the risk in a manner satisfactory to Lessor, in its discretion; (e) is not technically feasible to design or construct, or would cause performance of the Maintenance Services to not be technically feasible; (f) Lessor would not, using reasonable efforts, be able to implement within the time specified; (g) would materially adversely affect the health and safety of Users of the Premises; or (h) except in the case of Directive Letters issued by Lessee in accordance with Section 10.4(a) or 10.4(b), would have a material adverse effect on Lessor's ability to comply with its obligations under the Financing Documents in a manner that could give rise to a default thereunder. Lessor shall have no obligation to perform any Services within any such exception unless on terms mutually acceptable to Lessee and Lessor, in their respective discretion.

10.2 Lessee-Initiated Change Orders

10.2.1 Change Proposal Request. If Lessee, in its discretion, desires to initiate, or to evaluate whether to initiate, a Change Order, then Lessee shall issue a request setting forth the nature, extent, and details of the proposed Lessee Change (a "**Change Proposal Request**"). Such proposed Lessee Change may (but need not) be:

(a) In response to a Change in Law, a change in the Services (including Alterations as described in clause (b) of Section 10.5.3) or in terms and conditions of the Technical Requirements required by, or arising from, a Change in Law; or

(b) A change in the Services (including Alterations as described in clause (a) of Section 10.5.3) or in terms and conditions of the Technical Requirements in order to conform or comply with (x) a change in Standards or (y) a change in Law that is not, under the terms of the Law, mandatory for the Project at the time the Change Proposal Request is issued; in each case, to the extent that

(i) Such change is a change in Safety Standards; or

(ii) Noncompliance or delayed compliance may (A) affect availability of federal or State funds to Lessee, (B) hinder Lessee's ability to comply with its federal and State constitutional and legal obligations, (C) impact Lessee's potential legal liability with respect to its custodial obligations, or

(D) otherwise materially adversely affects Lessee's ability to perform correctional activities and manage its inmate population in accordance with Law and good correctional practices.

10.2.2 Response to Change Proposal Request. Promptly after Lessor receives a Change Proposal Request, the Parties shall meet (or otherwise consult with one another) to define the proposed scope of the change and the estimated cost, schedule, and other impacts. As soon as possible through the exercise of diligent efforts, and in any event within 30 days following receipt of Lessee's Change Proposal Request, Lessor shall provide Lessee with a proposal (a "**Change Proposal**") containing a detailed assessment of the cost, schedule, and other impacts of the proposed Lessee Change, including the following:

(a) Lessor's detailed estimate of the impacts on costs of carrying out the proposed Lessee Change, Lessor's proposed Adjustment Amount, and Lessor's proposed adjustment to the Lease Payments, if any;

(b) The effect (if any) of the proposed Lessee Change on the Technical Requirements (including the Performance Indicators and Requirements, Life Cycle Requirements, and any Extended Term Works, as applicable) and Occupancy Period Plans; and

(c) Any other relevant information related to carrying out the proposed Lessee Change.

10.2.3 Negotiation and Directed Changes

(a) Following Lessee's receipt of Lessor's detailed assessment and of such further assessment by Lessee and its consultants of the cost, schedule, and other impacts of the proposed Lessee Change, Lessee and Lessor, giving due consideration to such assessments, shall exercise good faith efforts to negotiate a mutually acceptable Change Order, including, as applicable, (i) any adjustment of the Project Schedule and Occupancy Deadline, (ii) any changes in the Technical Requirements or Occupancy Period Plans, and (iii) any Adjustment Amount to which Lessor is entitled on account of such Lessee Change, and the timing and method for making such payment or adjustment, in accordance with Section 4.3.

(b) If Lessee and Lessor are unable to reach agreement on the terms of a Change Order for a Lessee Change, Lessee may, in its discretion, either resolve the Dispute according to the Dispute Resolution Procedures without issuing a Directive Letter, or, if permitted under Section 10.4(a) or (b), deliver to Lessor a Directive Letter thereunder directing Lessor to proceed with the performance of the Services in question notwithstanding such disagreement, which such Directive Letter shall be considered a Lessee Change and Adjustment Event in accordance with Exhibit 13.

10.3 Lessor-Initiated Changes

10.3.1 Lessor's Rights. Lessor may, from time to time, request (by submitting a "**Change Request**") that Lessee approve a change to the character, quantity, quality, description, scope, or location of any part of the Project Improvements or Services, or to modify or deviate from the requirements of the Lease Documents, provided that no Change Request shall be required to implement any change that is not a Deviation and is not specifically regulated or addressed by the Lease Documents or applicable Law.

10.3.2 Change Request. Lessor's Change Request shall set forth Lessor's detailed estimate of net impacts (positive and negative) on costs and schedule attributable to the requested change. Before making its decision to accept or reject a Change Request that may have material effect on the Life Cycle Requirements, Lessee may request and receive an opinion regarding the Change Request, to be arranged by Lessor at no cost to Lessee, from an independent consultant.

10.3.3 Response to Change Request. As soon as possible through the exercise of diligent efforts, and in any event within 30 days following receipt of Lessor's Change Request, Lessee shall accept or reject

such Change Request. If Lessee accepts such Change Request, Lessor shall execute a Change Order and shall implement such change in accordance with the Change Order, all applicable provisions of the Lease Documents, all applicable Laws, and Good Industry Practice.

10.3.4 Impacts of Accepted Lessor Change Requests. Lessor shall be solely responsible for payment of any increased costs and for delays or other impacts resulting from a Lessor Change Request accepted by Lessee. Lessor shall reimburse Lessee for Lessee Recoverable Third-Party Costs (supported by invoices or other documentation reasonably required by Lessor) reasonably incurred by Lessee in connection with a Change Request within 10 Business Days after receipt of an invoice for such costs.

10.3.5 Savings Attributable to Lessor Change Requests

(a) To the extent that a Change Request accepted by Lessee results in a net cost savings to Lessor in the performance of the Maintenance Services, Lessee shall (subject to subsection (b) below) be entitled to 50% of such savings that the Change Request indicates is likely to occur. A "net cost savings" for purposes of this Section 10.3.5 shall be calculated on a holistic basis, net of any cost overruns incurred by Lessor in the performance of the Services, and after deducting Lessee Recoverable Third-Party Costs reimbursable to Lessee and other reasonable, out-of-pocket costs incurred by Lessor in preparing the Change Request. The estimated net impact of a Change Request for purposes of Lessee's savings share shall be equal to any estimated savings in Maintenance Services Costs, minus any estimated increases in such costs, attributable to the proposed change (in each case, including financing costs). Any savings share amount owing to Lessee hereunder shall be due and payable by Lessor upon completion of the Change Order work or services, (i) as a deduction and offset from and against the Lease Payments as and when savings accrue, *provided* that Lessor shall be entitled first to its 50% share of the estimated savings, or (ii) at such other time or upon such other schedule as may be agreed by the Parties in the Change Order.

(b) The savings share in subsection (a) above shall only apply to the extent that Lessor is not in violation of, or out of compliance with, any minimum debt service coverage ratios in its Base Case Financial Model, and such sharing would not cause Lessor to be in violation of, or out of compliance with, such coverage ratios.

10.4 Directive Letters

10.4.1 Subject to applicable limitations under Section 10.1, Lessee may, at any time, and without an agreed Change Order, issue a Directive Letter:

(a) In the form of a Safety Compliance Order, in accordance with, and subject to the terms and conditions of Sections 8.4 and 8.5;

(b) If Lessee and Lessor are unable to reach agreement on the terms of a Change Order with respect to a Lessee Change Proposal Request under Section 10.2.1(a) or (b), which such Directive Letter shall be considered a Lessee Change and Adjustment Event in accordance with Exhibit 13; or

(c) In the event of any Dispute regarding the scope of the Services currently required under the Lease Documents, or whether Lessor has performed in accordance with such requirements, to direct Lessor to proceed in accordance with a Directive Letter that Lessee reasonably and in good faith believes, after due consultation with Lessor, does not constitute a Lessee Change; *provided, however*, that Lessor shall continue to have the right to assert a Claim that a Lessee Change has occurred by virtue of the Directive Letter and pursue the Claim in accordance with the Dispute Resolution Procedures.

10.4.2 Except in the case of Safety Compliance Orders, which shall be issued in accordance with Section 8.4, any Lessee Directive Letter will state that it is issued under this Section 10.4, will describe the

Services in question, and will state the basis for determining the Adjustment Amount, if any, and schedule adjustment, if any. Lessor shall proceed immediately as directed in the letter, pending, as applicable, the execution of a formal Change Order, issuance of a Relief Event Determination, or final resolution of the Dispute. In the interim, Lessee shall make monthly payments to Lessor for Direct Costs incurred for work and services properly completed to implement the Directive Letter, except to the extent that the Directive Letter was issued under Section 10.4.1(a) or Section 10.4.1(c).

10.4.3 Except as specifically provided in Sections 8.4, 8.5, and 10.4.1(b), the fact that a Directive Letter was issued by Lessee shall not be considered evidence that a Lessee Change has, in fact, occurred. Lessee shall determine whether a Lessee Change in fact occurred based on an analysis of the original requirements of the Lease Documents and a determination as to whether the Directive Letter in fact constituted a change in those requirements. Lessee's determination shall be subject to Lessor's right to dispute such determination in accordance with the Dispute Resolution Procedures.

10.5 Alterations

10.5.1 General Rights. Lessee will have the right, at its sole cost and expense, at any time during the Occupancy Period, to make such alterations, improvements, additions, deletions, and changes in and to the Premises, including alterations in the water, gas, and electrical wiring systems, as may be necessary to fit the same for Lessee's use of the Premises for the Permitted Uses (each an "**Alteration**"), but only with Lessor's prior written consent, which consent may be conditioned on performance of such Alterations by Lessor or its Subcontractor in accordance with an agreed Change Order or, at Lessee's option, by qualified, Lessor-approved contractors or employees of Lessee. (For the avoidance of doubt, the obligation of Lessor to perform Life Cycle Work, Reinstatement Works, or Extended Term Works, to comply with Life Cycle Requirements, or to correct or replace malfunctioning Lessor FF&E or other Nonconforming Work or Defects in accordance with the Lease Documents, shall not be considered an Alteration.) Lessee will deliver to Lessor written plans and specifications for such Alterations at least 30 days prior to commencement of any such work, and Lessee will make any reasonable modifications to such plans and specifications as requested by Lessor before starting such work.

10.5.2 Alterations Performed by Lessor. Unless Lessee elects to make the Alterations through its own forces or through a separate Lessee contractor approved by Lessor, Lessee shall provide Lessor with a written request with sufficiently detailed plans and specifications for Lessor to design and perform the requested Alterations. The Parties will then work to reach mutual agreement regarding the costs and manner in which the requested Alterations will be performed, including payment of a negotiated lump sum Adjustment Amount or Lessee's Direct Costs in accordance with Section 4.3. If the Parties reach such an agreement, it shall be documented in a Change Order as a Lessee Change for such Alterations in accordance with Section 10.1. If the Parties are unable to reach mutual agreement regarding the requested Alterations, Lessor shall have no obligation to perform any such Alterations.

10.5.3 ACA Standards; Compliance with Applicable Law. Lessee may, after exhausting the procedures in Section 10.2.1, issue a Directive Letter pursuant to Section 10.4 to require Lessor to make any Alterations (a) that Lessee believes are necessary due to changes in Standards of the American Correctional Association, as a Lessee Change in accordance with Section 6.6, or (b) that Lessee believes are required by a Change in Law, including pursuant to a binding judicial or administrative order or decree (including any consent decree).

10.5.4 Cost of Increased Insurance Premiums. Lessee shall be responsible for any increases in the premiums for the Insurance Policies resulting from any Alterations made or requested by Lessee, with payment to be made by Lessee prior to the date the relevant premiums are due.

ARTICLE 11 CONTRACTING AND LABOR PRACTICES

11.1 Requirements for All Subcontracts

11.1.1 Qualifications and Licensure. Lessor shall retain or cause to be retained only Subcontractors that are qualified, experienced, and capable in the performance of the portion of the Services or work assigned. Lessor shall ensure that each Subcontractor has at the time of execution of the Subcontract, and maintains at all times during performance of the assigned Services, all licenses and qualifications required by applicable Laws, Section 6.1, and applicable provisions of the Technical Requirements.

11.1.2 Lessor's Responsibility. The retention of Subcontractors by Lessor will not relieve Lessor of its responsibilities hereunder or for the quality of the Services or the materials, equipment, or work provided by it. Lessor shall supervise and, for purposes of this Lease, be fully responsible for the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any Lessor Party, or by any member or employee of Lessor or any Lessor Party, as though Lessor directly employed all such individuals.

11.1.3 No Lessee Liability. Nothing in this Lease will create any contractual relationship between Lessee and any Subcontractor. No Subcontract entered into by or under Lessor shall impose any obligation or liability upon Lessee to any Subcontractor or any of its employees.

11.1.4 Reporting and Disclosure of Subcontracts and Subcontractors. Lessor shall report and disclose information regarding its Subcontracts and Subcontractors in accordance with applicable requirements of Exhibits 10 and 11.

11.2 Additional Requirements for Key Contracts

11.2.1 Replacement of Key Contracts. Lessor shall not terminate any Key Contract, permit termination of a Key Contract, or permit or suffer any substitution or replacement of any Key Contractor, except (a) in the case of material uncured default by the Key Contractor; (b) termination of this Lease; (c) if the Key Contractor is no longer in business or, in Lessor's view, is unable or fails to fulfill its legal, financial, or business obligations; (d) due to termination of the Key Contract by the Key Contractor; or (e) with Lessee's prior approval.

11.2.2 Key Contract Provisions. In addition to complying with the requirements of Section 11.1, each Key Contract shall:

(a) Not be assignable by the Key Contractor to any Person other than Lessee (or its successor, assign, or designee) or the Collateral Agent (or its assignee) without Lessor's prior consent;

(b) Require the Key Contractor to comply with requirements of Exhibits 10 and 11 applicable to the subcontracted Services (including requirements related to Lessee rights of access and Monitoring thereunder) and with Article 8, particularly in respect of Lessee's rights of control and responsibility for safety and security of the Facility thereunder; and

(c) Include terms and conditions sufficient to ensure both the acknowledgement of and compliance by the Key Contractor with the applicable requirements of the Lease Documents and Good Industry Practice pursuant to Article 6, and shall include those terms that are specifically required by the Lease Documents or otherwise reasonably requested by Lessee to be included therein.

11.2.3 Lessee Review of Key Contracts. Before entering into a Key Contract, or any material amendment thereto, after the Financial Close Date, Lessor shall provide Lessee the opportunity to review and comment on a true and complete copy of the proposed Key Contract or amendment to Lessee for review and comment. Within 10 Business Days after Lessee receives such copy from Lessor, Lessee may object to the proposed Key Contract only if the proposed Key Contract (a) does not comply, or is inconsistent, in any material respect with the applicable requirements of the Lease Documents, (b) would, in Lessee's reasonable determination, increase Lessee's liability, or (c) would materially adversely affect Lessee's rights under this Lease. Lessor shall not enter into a proposed Key Contract to which Lessee has made reasonable objection pursuant to this Section 11.2.3.

11.3 Key Individuals. Lessor shall (a) utilize the Key Individuals specifically listed in Exhibit 2 to fill the corresponding positions listed therein Lessor shall cause each individual filling a Key Individual position to dedicate the full amount of time necessary for the proper prosecution and performance of the Services, (b) not change or substitute any such Key Individuals except with an individual with the requisite qualifications, expertise, and experience to satisfactorily perform the role in question, and (c) provide notice to Lessee of any proposed replacement of any Key Individual. Lessee shall have the right to review the qualifications and character of each individual to be appointed to replace a Key Individual position (including personnel employed by Subcontractors to fill any such position) and to make reasonable objection, prior to the commencement of any work or services by such individual, to the employment of such individual in the applicable Key Individual position.

11.4 Labor Standards

11.4.1 In the performance of its obligations under the Lease Documents, Lessor at all times shall comply, and require by contract that all Subcontractors and vendors comply, with all applicable federal and State labor, occupational safety, and health Laws and federal and State orders.

11.4.2 All individuals performing the Services shall have the skill and experience and any licenses or certifications required to perform the services or work assigned to them.

11.4.3 If any individual employed by Lessor or any Subcontractor is not performing the Services in conformance with the Lease Documents, then Lessor shall, or shall cause such Subcontractor to, remove such individual and such individual shall not be re-employed in connection with the Services. If, after notice and reasonable opportunity to cure, such individual is not removed, or if Lessor fails to ensure that skilled, experienced, licensed, and certified personnel are furnished for the proper performance of the Services, then Lessee may suspend the affected portion of the Services by delivering to Lessor notice of such suspension. Such suspension shall in no way relieve Lessor of any obligation contained in the Lease Documents or entitle Lessor to any additional payment or time extension hereunder.

11.5 Nondiscrimination; Equal Employment Opportunity. Lessor shall not, and shall cause the Subcontractors to not, discriminate on the basis of race, color, national origin, ancestry, sex, age, marital status, religion, creed, or disability, or any other classification or characteristic protected by federal or State constitutional or statutory Law, in the performance of the Services under the Lease Documents. Lessor shall carry out, and shall cause the Subcontractors to carry out, applicable requirements of 49 CFR Part 26. Lessor confirms for itself and all Subcontractors that Lessor and each Subcontractor has an equal employment opportunity policy ensuring equal employment opportunity without regard to any such classification or characteristic and that Lessor and each Subcontractor maintains no employee facilities segregated on the basis of any such classification or characteristic. Lessor shall comply with all applicable equal employment opportunity and nondiscrimination Laws, and shall require its Subcontractors to comply with such Laws. Lessor shall include the provisions of this Section 11.5 in every Subcontract to which Lessor is a party, and

in every Subcontract of any Lessor Party for the Services, and shall require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor.

11.6 ADA Compliance. The Facility will be fully compliant with ADA standards, other than with respect to those physical barriers and impediments necessary or appropriate to provide for the security of the Facility and for the safety of those in the Facility, to include Lessee Parties, Inmates, and Lessee Invitees, and for the safety and security of the general public. Lessee has entered into certain agreements incorporated into a Consent Decree, as amended, in that lawsuit currently pending in the United States District Court for the Middle District of Alabama styled *Braggs, et al v Dunn, et al, 2:14-cv-00601-MHT-WC* (the "**Braggs Litigation**"). These agreements generally provide, among other things, that Lessee will comply with the provisions of the ADA in providing housing, health care (to include mental health care) and rehabilitative services and programs to inmates in its custody. It shall be the responsibility of Lessor and its D&C Contractor to ensure that the design and construction of the Facility comports with the applicable requirements of the ADA and Consent Decree, as amended, and agreements made by Lessee in the Braggs Litigation, and Lessor shall comply with all monitoring and oversight activities conducted by the court or court-appointed personnel in connection with the Braggs Litigation.

11.7 Local Hiring. Where applicable and commercially practicable, Lessor, in hiring persons to perform the Services hereunder, shall use commercially reasonable efforts to demonstrate a hiring preference for those persons that reside in the local geographic area in which the Property is located and for a labor force that reflects the demographic diversity of the State and the local area in which the Property is located.

11.8 Uniforms. Following the Occupancy Date, any uniforms, badges, logos, and other identification worn by personnel of Lessor Parties shall bear colors, lettering, design, or other features to ensure clear differentiation from those of Lessee and its respective employees and shall comply with all applicable Lessee Policies and Procedures in effect from time to time.

11.9 State Merit System. For the avoidance of doubt, no work by any person employed by or contracted with Lessor in connection with this Lease or the Services hereunder shall entitle any such person to the benefits under the State Merit System.

11.10 Immigration Laws. Pursuant to Code of Alabama Section 31-13-9(k), by execution of this Agreement, the Parties affirm, for the duration of this Agreement, that the Parties will not violate federal immigration law or employ, hire for employment, or continue to employ an unauthorized alien within the State. Furthermore, a Party found to be in violation of this provision shall be deemed in breach of this Agreement and shall be responsible for all damages resulting therefrom.

11.10.1 Lessor shall enroll in the E-Verify Program, and filed the proper documentation with respect to such enrollment with Lessee, and shall at all times during the Initial Improvement Work and for the duration of the Lease Term remain enrolled in the E-Verify Program. Lessor is not required to participate should the E-Verify Program cease to exist.

11.10.2 Lessor shall verify through the E-Verify Program the work eligibility status of every newly hired employee, agent, representative, subcontractor, contract labor, and services required to be verified according to applicable Laws. Lessor shall not knowingly employ or contract with an unauthorized alien. Lessor shall not retain an employee or contract with a Person that Lessor subsequently learns is an unauthorized alien.

11.10.3 Lessor shall require all Subcontractors, and their respective subcontractors, who perform Services under this Lease, to certify to Lessor that they do not knowingly employ or contract with an unauthorized alien and that each Subcontractor and subcontractor has enrolled in and is participating in

the E-Verify program. Lessor agrees to maintain and make available to Lessee this documentation from and after the Effective Date and continuing for the term of this Agreement.

11.10.4 Upon receipt of notice from Lessee that Lessor is in violation of this Section 11.10, Lessor shall remedy the violation within 30 days, which may include Lessor terminating, or causing the termination of, the affected employee or Subcontractor. If Lessor does not remedy the violation within 30 days after receipt of notice from Lessee, it shall be considered a Lessor Default for which Lessee may terminate this Lease for cause.

11.11 Compliance with Act 2016-312. In compliance with Act 2016-312 as codified by Code of Alabama Section 41-16-5, Lessor will certify that it is not currently engaged in, and will not engage in, the boycott of a Person based in or doing business with a jurisdiction with which the State can enjoy open trade.

11.12 Compliance with PREA. Lessor shall comply with Code of Alabama Section 14-11-31, as well as 28 CFR Part 115 (collectively, the "**Prison Rape Elimination Act**" or "**PREA**"). ADOC has a Zero Tolerance Policy toward all forms of custodial sexual misconduct, sexual abuse, and sexual harassment. See ADOC Administrative Regulation 454, Inmate Sexual Assault and Harassment Awareness (Prison Rape Elimination Act (PREA)). Any type of conduct—including suspected conduct—that falls within the context of custodial sexual misconduct/sexual abuse, as defined by either the State or federal Laws referenced above, shall be reported immediately to the Warden of the responsive Prison, the Division Director, or his/her respective designee.

11.13 Safety and Security Regulations. Lessor acknowledges and understands that, from and after the Occupancy Date, all Lessor Parties will be subject to, and will be required to comply with, all security regulations and procedures of Lessee with respect to the use and operation of the Facility as a correctional facility. All Lessor Parties who may enter any ADOC facility, including the Facility, are subject to a background check and security check of his/her person and personal property (including his/her vehicle), and may be prohibited from entering any ADOC facility in accordance with such ADOC security regulations. Additionally, any Lessor Party found to have violated any ADOC security regulation then in effect may be barred from entering any ADOC facility, including the Facility, notwithstanding any other provision of this Lease to the contrary.

ARTICLE 12 INSURANCE; INDEMNITY

12.1 Insurance

12.1.1 Lessor Obligation to Maintain Insurance. Lessor shall procure and keep in effect, or cause to be procured and kept in effect, the Insurance Policies set forth in Exhibit 12. Each such Insurance Policy shall satisfy the applicable requirements of this Section 12.1 and Exhibit 12. Notwithstanding the period of coverage specified in Exhibit 12, each Insurance Policy shall be obtained and be effective prior to the performance of any Improvement Work or other Services or the commencement of any activity intended to be insured by such policy.

12.1.2 General Insurance Requirements

(a) **Qualified Insurers.** Each Insurance Policy shall be procured from an insurance carrier or company that, at the time coverage under the applicable policy commences is (i) licensed or authorized to do business in the State and has a current policyholder's management and financial size category rating

of not less than "A-, VII" according to A.M. Best's Insurance Reports Key Rating Guide or (ii) otherwise approved by Lessee.

(b) **Deductibles and Self-Insured Retentions.** Lessee shall have no liability for deductibles, self-insured retentions, and amounts in excess of the coverage provided under any Insurance Policy. In the event that any required coverage is provided under a self-insured retention, the entity responsible for the self-insured retention shall have an authorized representative issue a letter to Lessee, at the same time the Insurance Policy is to be procured, stating that it shall protect and defend, to the extent permitted by Law, Lessee to the same extent as if a commercial insurer provided coverage for Lessee.

(c) **Primary Coverage.** With respect to any Insurance Policy for which Exhibit 12 requires a specified Person be a named or additional insured, such Insurance Policy shall provide that the coverage thereof is primary and noncontributory coverage with respect to all named or additional insureds, except for coverage that by its nature cannot be written as primary. Any insurance or self-insurance beyond that specified in this Lease that is maintained by an insured or any such additional insured shall be excess of such insurance and shall not contribute with it.

(d) **Policies with Insureds in Addition to Lessor.** Each Insurance Policy that is required to insure Persons (whether as named or additional insureds) in addition to Lessor shall comply or be endorsed to comply with the following provisions:

(i) Each Insurance Policy (other than professional liability coverage) shall be written or endorsed so that no acts or omissions of an insured shall vitiate coverage of the other insureds. Without limiting the foregoing, any failure on the part of a named insured to comply with reporting provisions or other conditions of the Insurance Policy, any breach of warranty, any action or inaction of a named insured or others, or any change in ownership of all or any portion of the Project or Lessor's interest in the Property or this Lease shall not affect coverage provided to the other named insureds or additional insureds (and their respective members, directors, officers, employees, agents, and Project consultants, to the extent covered thereby).

(ii) The insurance shall apply separately to each named insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(iii) All endorsements adding additional insureds to required Insurance Policies shall contain no limitations, conditions, restrictions, or exceptions to coverage in addition to those that apply under the policy generally.

(e) **Notice of Cancellation, Reduction, Etc.** Each Insurance Policy shall be endorsed to state that coverage cannot be cancelled, voided, suspended, adversely modified, or reduced in coverage or in limits by endorsement (including for non-payment of premium), except after 60 days' prior notice (or (i) in the case of a corporate Insurance Policy (which is not Project-specific) the standard notice provision under that Policy, provided it is not less than 30 days, or (ii) 10 days in the case of cancellation for non-payment of premium) has been given to Lessee and each other insured or additional insured party required by the Lease Documents; *provided* that Lessor may obtain as comparable an endorsement as possible if it establishes unavailability of this endorsement as set forth in Section 12.1.6. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

(f) **Occurrence Basis.** Each Insurance Policy, other than a professional liability or pollution liability policy, shall provide coverage on an "occurrence" basis and not a "claims made" basis.

(g) **Waivers of Subrogation.** Lessee waives all rights against the Lessor Parties, and Lessor waives all rights against the Indemnified Parties, for any claims to the extent covered by valid and collectible insurance obtained pursuant to this Section 12.1, except such rights as they may have to the proceeds of such insurance. If Lessor is deemed to self-insure a claim or loss under Section 12.1.7(c), then Lessor's waiver shall apply as if it carried the required insurance. Lessor shall require all Subcontractors to provide similar waivers in writing each in favor of all other parties enumerated above. Subject to Section 12.1.5, each Insurance Policy and Subcontractor insurance coverage, including workers' compensation if permitted under the applicable workers' compensation insurance Laws, shall include a waiver of any right of subrogation against the Indemnified Parties or a consent to the insured's waiver of recovery in advance of loss.

(h) **No Recourse.** There shall be no recourse against Lessee for payment of premiums or other amounts with respect to the Insurance Policies, except to the extent of increased premium costs recoverable under Section 10.5.4 or Section 14.4.

(i) **Support of Indemnifications.** The Insurance Policies shall support, but are not intended to limit, Lessor's indemnity and defense obligations under the Lease Documents. Lessor's indemnification and defense obligations under the Lease Documents are not limited to the type or amount of insurance coverage that Lessor is required to provide hereunder.

(j) **Defense Costs.** No defense costs shall be included within or erode the limits of coverage of any of the Insurance Policies, except that defense costs may be included within the limits of coverage of professional and pollution liability policies and excess policies beyond what is required to be carried hereunder.

(k) **Umbrella and Excess Policies.** Requirements with respect to insurance coverage amounts for liability insurance may be satisfied through a combination of primary policies and umbrella or excess policies. Umbrella and excess policies shall comply with all insurance requirements, terms, and provisions set forth in this Lease for the applicable type of coverage.

(l) **Typical Terms.** Each Insurance Policy shall contain coverage terms and conditions that are typical for policies covering risks such as the Project. Lessee retains the right to review and approve specific policies for compliance with the provisions of this Section 12.1 and Exhibit 12.

12.1.3 Verification of Coverage

(a) Lessor shall deliver to Lessee a certificate or binder of insurance evidencing each required Insurance Policy when it is initially obtained and, thereafter, not later than 15 days prior to the expiration date of such policy or coverage. The certificate or binder of insurance shall be on a form acceptable to Lessee. Each required certificate or binder must be signed by a representative or agent of the insurer shown on the binder, with a statement that such person is an authorized representative or agent of such insurer and is authorized to bind it to the coverage, limits, and termination provisions shown on the binder. Each certificate or binder must: (i) be original; (ii) state the signer's company affiliation, title, and telephone number; (iii) state the identity of all carriers, named insureds, and additional insureds; (iv) state the type and limits of coverage, deductibles, subrogation waiver, and cancellation provisions of the policy, and other essential policy terms; (v) list and describe all endorsements; (vi) include as attachments all additional insured endorsements; and (vii) include a statement of non-cancellation consistent with Section 12.1.2(e). To satisfy its obligation to deliver timely to Lessee a written binder of insurance under this Section 12.1.3(a), Lessor may deliver to Lessee electronic documentation evincing binding of the Insurance Policies, so long as the original, written binder of insurance is delivered to Lessee within 10 days after delivery of the electronic documentation. Copies of all endorsements required by this Section 12.1 or

Exhibit 12 (including an endorsement containing non-cancellation provisions consistent with Section 12.1.2(e)) shall be provided together with the certificate or binder. In addition, if requested by Lessee, Lessor shall deliver to Lessee a complete certified copy of each such policy or modification, or renewal or replacement policy, and all endorsements thereto within 15 days after availability.

(b) If Lessor has not provided Lessee with the foregoing proof of coverage within five days after Lessee delivers to Lessor an Initial Lessor Default Notice of a Lessor Default under event (5) of Exhibit 16, Table 1 and demand for the foregoing proof of coverage, Lessee may, in addition to any other available remedy, without obligation or liability and without further inquiry as to whether such insurance is actually in force, (i) obtain such an Insurance Policy, and Lessor shall reimburse Lessee for the cost thereof upon demand, and (ii) suspend all or any portion of Services until Lessee receives from Lessor such proofs of coverage in compliance with this Section 12.1 (or until Lessee obtains an Insurance Policy, if it elects to do so).

12.1.4 Adjustments in Coverage Amounts

(a) Lessee and Lessor shall review and adjust, as appropriate, the per occurrence, aggregate, and combined single limits for the Insurance Policies (other than professional liability coverage) that have stated dollar amounts set forth in Exhibit 12 upon the Occupancy Date and at least once every five years thereafter during the Occupancy Period.

(b) Lessor shall retain a qualified and reputable insurance broker or advisor, experienced in insurance brokerage and underwriting practices for similar correctional facility projects, to analyze and recommend increases in limits or other policy changes, if any. In determining increases in limits, Lessor, Lessee, and the insurance broker or advisor shall take into account (i) claims and loss experience for the Project, (ii) the condition of the Premises, (iii) the Safety Compliance and Deductions record for the Project, (iv) then-prevailing Good Industry Practice for insuring comparable projects, (v) costs of coverages, and (vi) the provisions regarding unavailability of increased coverage set forth in Section 12.1.5.

(c) Lessor shall deliver to Lessee such analysis and recommendations for Lessee's approval not later than 120 days before the date upon which the adjustment would take effect. Lessee shall have 45 days after receiving such report to approve or disapprove the proposed increases in limits. Any Dispute regarding increases in limits shall be resolved according to the Dispute Resolution Procedures.

12.1.5 Inadequacy and Unavailability of Required Coverages

(a) Lessee makes no representation that the limits of liability specified for any Insurance Policy to be carried pursuant to this Lease or approved variances therefrom are adequate to protect Lessor against its undertakings under this Lease, to Lessee, or any third party. No such limits of liability or approved variances therefrom shall preclude Lessee from taking any actions as are available to it under the Lease Documents or otherwise at Law.

(b) If Lessor demonstrates to Lessee's reasonable satisfaction that it has used diligent efforts in the global insurance and reinsurance markets to place the insurance coverages it is required to provide hereunder, and if despite such diligent efforts and through no fault of Lessor any of such coverages (or any of the required terms of such coverages, including Insurance Policy limits) are or have become unavailable on commercially reasonable terms, Lessee will grant Lessor an interim variance from such requirements under which Lessor shall obtain and maintain or cause to be obtained and maintained alternative insurance packages and programs that provide risk coverage as comparable to that contemplated in this Section 12.1 as is commercially reasonable under then-existing insurance market

conditions. For this purpose, unfavorable loss history with respect to the Project shall not be considered to be Lessor's "fault".

(c) Lessor shall not be excused from satisfying the insurance requirements of this Section 12.1 merely because premiums for such insurance are higher than anticipated. To establish that the required coverages (or required terms of such coverages, including Insurance Policy limits) are not available on commercially reasonable terms, Lessor shall bear the burden of proving either that (i) the same is not available at all in the global insurance and reinsurance markets or (ii) the premiums for the same have so materially increased over those previously paid for the same coverage that a reasonable and prudent risk manager for a Person seeking to insure comparable risks would conclude that such increased premiums are not justified by the risk protection afforded. For the purpose of clause (ii) above, the only increases in premiums that may be considered are those caused by changes in market conditions in the insurance industry affecting insurance for detention facilities on a nationwide or multi-state basis, and Lessor shall bear the burden of proving that premium increases are the result of such changes in market conditions. For the avoidance of doubt, no increase in insurance premiums attributable to particular conditions of the Project or Project Site, or to claims or loss experience of any Lessor Party or Affiliate, whether under an Insurance Policy required by this Section 12.1 or in connection with any unrelated work or activity of Lessor Parties or Affiliates, shall be considered in determining whether required insurance is commercially unavailable.

12.1.6 Lender Insurance Requirements; Additional Insurance Policies

(a) If under the terms of any Financing Agreement or Security Document Lessor is obligated to, and does, carry insurance coverage with higher limits or broader coverage than required under this Lease, Lessor's provision of such insurance shall satisfy the applicable requirements of this Lease provided such Insurance Policy meets all the other applicable requirements of this Section 12.1.

(b) If Lessor (including through a Subcontractor) carries property or liability insurance coverage (other than professional liability insurance) in addition to that required under this Lease or by the Financing Agreements, and such coverage is applicable to or specifically insures the Project, then Lessor shall include Lessee and its officers, employees, agents, and Project consultants as additional insureds thereunder, if available, if and to the extent they have an insurable interest. The additional insured endorsements shall be as described in Section 12.1.2(d)(iii); and Lessor shall provide to Lessee the proofs of coverage and copy of the policy described in Section 12.1.2. If, however, Lessor demonstrates to Lessee that inclusion of such Persons as additional insureds will increase the premium, Lessee shall elect either to pay the increase in premium or forego additional insured coverage. The provisions of subsections (d), (g), and (h) of Section 12.1.2 and Sections 12.1.3, 12.1.7, and 12.1.8 shall apply to all such policies of insurance coverage, as if they were within the definition of Insurance Policies.

12.1.7 Prosecution of Claims

(a) Unless otherwise directed by Lessee with respect to Lessee's insurance claims, Lessor shall be responsible for reporting and processing all potential claims against the Insurance Policies required hereunder and, subject to Section 12.1.7(d), shall file potential claims that would be covered under such Insurance Policies on behalf of Lessee or any other Indemnified Party under such Insurance Policies promptly after being requested to do so (in writing) by Lessee or other Indemnified Party. Lessor agrees to report timely to the insurer under such Insurance Policies any and all matters which may give rise to an insurance claim by Lessee or another Indemnified Party of which Lessor is aware and, if requested to do so (in writing), to promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such Insurance Policies, whether for defense or indemnity or both. Lessor shall exercise all lawful and diligent means to enforce all legal rights against the insurer under the applicable Insurance Policies and

Laws in order to collect thereon, including pursuing necessary litigation and enforcement of judgments. It is understood that the foregoing obligation does not guarantee that Lessor will be able to attain or collect a judgment.

(b) Lessee agrees to promptly notify Lessor of Lessee's incidents, potential claims against Lessee, and matters which may give rise to an insurance claim against Lessee; to tender to the insurer Lessee's defense of the claim under such Insurance Policies; and to cooperate with Lessor as necessary for Lessor to fulfill its duties hereunder. If, solely as a result of a Lessee delay, Lessee loses coverage under an Insurance Policy, then Lessor shall be relieved of any obligation otherwise owing to Lessee to the extent of the required coverage. Lessor shall ensure that the defense of the claim is coordinated by the insurer with Lessee and the Alabama Office of the Attorney General and shall ensure that the insurer does not agree to any settlement without first obtaining the concurrence of Lessee and the Alabama Office of the Attorney General.

(c) If in any instance Lessor has not performed its obligations respecting insurance coverage set forth in this Lease, or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the Insurance Policies or to prosecute claims diligently, then, for purposes of determining Lessor's liability and the limits thereon, or determining reductions in payments due from Lessee to Lessor on account of available insurance, Lessor shall be treated as if it has elected to self-insure up to the full amount of insurance coverage which would have been available had Lessor performed such obligations and not committed such failure. Nothing in this Section 12.1.7 or elsewhere in this Section 12.1 shall be construed to treat Lessor as electing to self-insure where Lessor is unable to collect due to the bankruptcy or insolvency of any insurer which at the time the Insurance Policy is written meets the rating qualifications set forth in this Section 12.1.

(d) If in any instance Lessor has not promptly performed its obligation to report to applicable insurers and process any potential insurance claim tendered by Lessee or another Indemnified Party, then Lessee or the other Indemnified Party may, but is not obligated to, (i) notify Lessor of Lessee's intent to report the claim directly with the insurer and thereafter process the claim, and (ii) proceed with reporting and processing the claim if Lessee or the other Indemnified Party does not receive from Lessor, within 30 days after so notifying Lessor, proof that Lessor has reported the claim directly to the insurer. Lessee or the other Indemnified Party may dispense with such notice to Lessor if Lessee or the other Indemnified Party has a good faith belief that more rapid reporting is needed to preserve the claim.

12.1.8 Contesting Denial of Coverage. If any insurance carrier under an Insurance Policy denies coverage with respect to any claims reported to such carrier, upon Lessor's request, Lessee and, to the extent necessary, the other Indemnified Parties shall cooperate in good faith to establish whether and to what extent to contest, and how to fund the cost of contesting, the denial of coverage; *provided* that if the reported claim is a matter covered by an indemnity from Lessor under this Lease in favor of an Indemnified Party, then Lessor shall bear all costs of contesting the denial of coverage.

12.1.9 Bankrupt Insurer. If an insurer providing any of the Insurance Policies becomes the subject of bankruptcy proceedings, becomes insolvent, or is the subject of an order or directive limiting its business activities given by any Governmental Entity, including the Alabama Department of Insurance, then Lessor shall, at its own cost and expense, exercise best efforts to promptly (and in any event within 30 days after receiving notice of such an event) secure alternative coverage in compliance with the insurance requirements contained in this Section 12.1 so as to avoid any lapse in insurance coverage.

12.1.10 Requirements Not Limiting. The Parties acknowledge and agree that (a) requirements of specific coverage features or limits contained in this Section 12.1 and in Exhibit 12 are not intended as a limitation on coverage, limits, or other requirements or as a waiver of any coverage normally provided by

any Insurance Policy; (b) specific reference to a given coverage feature is not intended to be all-inclusive, or to the exclusion of other coverage, or a waiver of any type; and (c) all insurance coverage and limits provided by Lessor, or by third parties pursuant to obligations of Lessor hereunder, and, in each case, available or applicable to this Lease are intended to apply to the full extent of the Insurance Policies, and nothing contained in this Lease limits, or shall be deemed to limit, the application of such insurance coverage. Except as otherwise specifically set forth in this Lease, Lessor may meet its Insurance Policy and related obligations in any manner Lessor deems reasonably appropriate, so long as, in each case, and with respect to the coverages prescribed for each Insurance Policy, Lessor meets all the requirements therefor.

12.2 Indemnity by Lessor

12.2.1 Lessor's Indemnity Obligation. Subject to Section 12.2.2, Lessor shall release, protect, defend, indemnify, and hold harmless the Indemnified Parties from and against any and all Third-Party Claims arising out of, relating to, or resulting from:

(a) Lessor's material breach of any of its material obligations under the Lease Documents;

(b) The material failure by any Lessor Party to comply with the Governmental Approvals or applicable Laws;

(c) Any patent, trademark, or copyright infringement or other improper appropriation or use by any Lessor Party of trade secrets, patents, proprietary information, know-how, copyright rights, inventions, or other third-party proprietary rights in performance of the Services, or arising out of any use in connection with the Project of methods, processes, designs, information, or other items furnished or communicated by or on behalf of Lessor to Lessee or another Indemnified Party pursuant to the Lease Documents; *provided* that this indemnity shall not apply to any infringement resulting from Lessee's failure to comply with specific instructions regarding use provided to Lessee by Lessor or to the extent a specific method, process, design, or item is required by Lessee to be used for the Project;

(d) The fraud, bad faith, willful misconduct, negligence, breach of Law or contract, or other culpable act of any Lessor Party in or associated with performance of the Services;

(e) Any and all claims by any governmental or taxing authority claiming Taxes based on gross receipts, purchases or sales, the use of any property or income of any Lessor Party with respect to any payment for the Services made to or earned by any Lessor Party;

(f) Any and all stop notices, liens, and claims filed in connection with the Improvement Work, and any other liability to Lessor's Subcontractors and laborers for Lessor's failure to pay sums due for their work, services, materials, goods, equipment, or supplies, *provided* that Lessee is not in default in making Adjustment Amount payments (if any) owing to Lessor with respect to such Improvement Work;

(g) Any actual Lessor Release of Hazardous Materials;

(h) Any dispute between Lessor and a Utility Owner, or any Lessor Party's performance of, or failure to perform, its obligations under any agreement with a Utility Owner prior to transfer of such agreement or account to Lessee in accordance with Section 7.4.2;

(i) Acts or omissions of any Lessor Party that render Lessee unable to perform or abide by an obligation that Lessee owes to a third Person, including Governmental Entities, under any agreement between Lessee and a third Person, where the agreement and the relevant obligations have been previously disclosed to, or are otherwise known to, Lessor; or

(j) Any bodily injury (including death) to any person, or any loss or damage to the tangible property of third parties (i) prior to the Occupancy Period, if relating to or arising out of the Initial Improvement Work of any Lessor Party, or (ii) during the Occupancy Period, if relating to or arising out of (A) Maintenance Services provided by or on behalf of any Lessor Party (including any Improvement Work) or (B) the condition of the Premises, but only to the extent that such condition is proximately caused by any Lessor Party or is the responsibility of Lessor under the Lease Documents.

12.2.2 Limitation on Lessor's Indemnity. Subject to the releases and disclaimers herein, Lessor's indemnity obligation shall not extend to any Third-Party Claims to the extent caused by:

- (a) Negligent acts, negligent omissions, recklessness, willful misconduct, bad faith, or fraud of the Indemnified Party or any Lessee Party;
- (b) Lessee's breach of any of its obligations under the Lease Documents;
- (c) The Indemnified Party's or any Lessee Party's violation of any applicable Laws; or
- (d) Any material defect inherent in a prescriptive design, construction, facility management, or maintenance requirement specified in Exhibits 10C, 10D, or 11, but only where, prior to occurrence of the third-party Loss, the applicable Lessor Party(s) complied with such specification and did not actually know, or would not reasonably have known, while exercising reasonable diligence, that it was deficient, or, if such a Lessor Party actually know of the deficiency, unsuccessfully sought Lessee's waiver of or approval of a Change Order from such specification.

12.2.3 Effect of Benefits Under Employee Benefits Laws. In claims by an employee of Lessor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this Section 12.2 shall not be limited by a limitation on the amount or type of damages, compensation, or benefits payable by or for Lessor or a Subcontractor under workers' compensation, disability benefit, or other employee benefits laws.

12.2.4 Meaning of Third Party. For purposes of this Section 12.2, "third party" means any Person other than an Indemnified Party and Lessor, except that a "third party" includes any Indemnified Party's employee, agent, or contractor who asserts a claim that is (a) against an Indemnified Party, (b) within the scope of the indemnities, and (c) not covered by the Indemnified Party's worker's compensation program.

12.2.5 Intention of the Parties. The requirement to provide an indemnity as specified in this Section 12.2 is intended to provide protection to Lessee with respect to Third-Party Claims associated with the event giving rise to the indemnification obligation, and is not intended to provide Lessee with an alternative cause of action against Lessor for damages incurred directly by Lessee with respect to the event giving rise to the indemnification obligation.

12.3 Defense and Indemnification Procedures

12.3.1 Notice Requirements. If Lessee receives notice of a claim, or otherwise has actual knowledge of a claim, that it believes is within the scope of the indemnities under Section 12.2, and if Lessee gives notice thereof pursuant to Section 12.1, then Lessee shall have the right to conduct its own defense unless either an insurer accepts defense of the claim within the time required by Law or Lessor accepts the tender of the claim in accordance with Section 12.3.3.

12.3.2 Defense Tendered to Insurer. If the insurer under any applicable Insurance Policy accepts the tender of defense, Lessee and Lessor shall cooperate in the defense as required by the Insurance Policy. If no insurer under potentially applicable Insurance Policies provides defense, then Section 12.3.3 shall apply.

12.3.3 Defense Tendered to Lessor. If the defense is tendered to Lessor, then within 30 days after receipt of the tender it shall notify the Indemnified Party whether it has tendered the matter to an insurer and, if not tendered to an insurer or if the insurer has rejected the tender, shall deliver a notice stating that Lessor:

(a) Accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter;

(b) Accepts the tender of defense but with a "reservation of rights" in whole or in part;
or

(c) Rejects the tender of defense based on a determination that it is not required to indemnify against the claim under the terms of this Lease.

12.3.4 Selection of Legal Counsel

(a) If Lessor accepts the tender of defense under Section 12.3.3(a), Lessor shall have the right to select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party and the Attorney General of the State of Alabama, and Lessor shall otherwise control the defense of such claim, including settlement, and bear the fees and costs of defending and settling such claim. During such defense:

(i) Lessor shall fully and regularly inform the Indemnified Party of the progress of the defense and of any settlement discussions; and

(ii) The Indemnified Party shall fully cooperate in said defense, provide to Lessor all materials and access to personnel it requests as necessary for defense, preparation, and trial and which or who are under the control of or reasonably available to the Indemnified Party, and maintain the confidentiality of all communications between it and Lessor concerning such defense.

(b) If Lessor responds to the tender of defense as specified in Section 12.3.3(b) or (c), the Indemnified Party shall be entitled to select its own legal counsel and otherwise control the defense of such claim, including settlement.

12.3.5 Indemnified Party Assumption of Defense. In those instances where the claim has not been tendered to an insurer, or if an insurer has denied coverage, the Indemnified Party may revocably assume its own defense at any time by delivering to Lessor notice of such election and the reasons therefor, if the Indemnified Party, at the time it gives notice of the claim or at any time thereafter, reasonably determines that:

(a) A conflict exists between it and Lessor which prevents or potentially prevents Lessor from presenting a full and effective defense;

(b) Lessor has actually or effectively abandoned the defense of the claim; or

(c) Lessor and its Equity Members lack the financial capacity to satisfy potential liability or to provide an effective defense.

12.3.6 Reimbursement of Expenses. If the Indemnified Party is entitled and elects to conduct its own defense pursuant hereto of a claim for which it is entitled to indemnification, Lessor shall reimburse on a current basis all reasonable and documented out-of-pocket costs and expenses the Indemnified Party

incurs in investigating and defending. In the event the Indemnified Party is entitled to and elects to conduct its own defense, then:

(a) In the case of a defense that otherwise would be conducted under Section 12.3.3(a), the Indemnified Party shall have the right to settle or compromise the claim with each of Lessor's and Lessor's relevant insurer's prior written consent, which, in the case of Lessor, shall not be unreasonably withheld or delayed;

(b) In the case of a defense that otherwise would be conducted under Section 12.3.3(b), the Indemnified Party and Lessor shall consult with each other on a regular basis to determine whether settlement is appropriate and, subject to the rights of any insurer providing coverage for the claim under a policy required under this Lease, and the Indemnified Party shall have the right to settle or compromise the claim with Lessor's prior written consent without prejudice to the Indemnified Party's rights to be indemnified by Lessor; and

(c) In the case of a defense conducted under Section 12.3.3(c), the Indemnified Party shall, subject to the rights of any insurer providing coverage for the claim under a policy required under this Lease, have the right to settle or compromise the claim upon written notice to Lessor, but without Lessor's prior written consent and without prejudice to its rights to be indemnified by Lessor.

12.3.7 Failure to Accept Tender of Defense. A refusal of, or failure to accept, a tender of defense, as well as any Dispute over whether an Indemnified Party which has assumed control of defense is entitled to do so under Section 12.3.5, shall be resolved according to the Dispute Resolution Procedures. Lessor shall be entitled to contest an indemnification claim and pursue, through the Dispute Resolution Procedures, recovery of defense and indemnity payments it has made to or on behalf of the Indemnified Party; *provided, however,* that if Lessor accepted tender of defense under Section 12.3.3(a), Lessor shall bear, and shall be deemed to have irrevocably and forever waived and released any and all right to recover from the Indemnified Party, defense costs and expenses incurred by Lessor prior to final resolution of Lessor's contest of the indemnification claim through the Dispute Resolution Procedures.

12.4 No Lessee Indemnity. Neither Lessee nor the State shall have any obligation to indemnify Lessor or any other Lessor Party. This Section 12.4 shall in no way effect Lessor's rights with respect to Relief Events.

12.5 Disclaimer. Nothing in this Article 12 or elsewhere in the Lease Documents is intended to establish a standard of care owed to any Inmate or any member of the public, or to extend to any Inmate or member of the public the status of a third-party beneficiary for any of the insurance or indemnifications described in this Article 12.

PART D PROJECT RISKS

ARTICLE 13 DAMAGE OR DESTRUCTION; CONDEMNATION

13.1 Project Damage or Destruction. Except as otherwise expressly provided herein or (with respect to the use of insurance proceeds) in the Lenders' Direct Agreement, the partial destruction or damage, or complete destruction, of the Facility by fire or other casualty will not permit any Party to terminate this Lease or entitle Lessor abandon the Project or (except as expressly set forth in this Lease) to demand any increase in any amounts payable to Lessor under this Lease.

13.1.1 Protection. Lessor shall use care and diligence, and shall take reasonable and appropriate precautions, to protect the Project from loss, damage, or destruction.

13.1.2 Obligation to Repair and Restore. If all or any part of the Project is damaged or destroyed by fire or other casualty, Lessor shall, subject to Section 13.1.4(a) and Section 13.1.7, promptly repair, replace, reconstruct, or restore that part of the Project so damaged or destroyed to at least the character or condition thereof existing immediately prior to the damage or destruction, in compliance with the terms of this Section 13.1, applicable Laws, Good Industry Practice, and the Technical Requirements (subject to any agreement by the Parties to revise such Technical Requirements) as they pertain to such work (the "**Reinstatement Works**").

13.1.3 Reinstatement Plan. If the Facility suffers damage or destruction that is likely to cost more than \$1,000,000 (Index Linked), to repair, replace, and restore, Lessor shall, as soon as practicable and in any event within 30 days of such damage or destruction, and before undertaking any material remedial work (other than any emergency work required to stabilize other parts of the Facility or to facilitate the continued provision of Services to other parts of the Facility), provide to Lessee, for Lessee's review and comment, Lessor's draft plan for the Reinstatement Works.

(a) Lessor's plan for the Reinstatement Works shall include, to the extent reasonably known or anticipated under the circumstances, details regarding: (i) the persons intended to perform, or bid to perform, the Reinstatement Works; (ii) the terms and timetable upon which the Reinstatement Works are to be performed (including the date upon which the Facility is reasonably expected to become fully operational again and the Services to be fully provided); (iii) the impact that the Reinstatement Works plan will have in respect of Life Cycle Requirements; (iv) the total cost of the Reinstatement Works; and (v) the impact of any change in the Facility or Services requested by Lessee as part of the reinstatement.

(b) As soon as reasonably practicable, and in any event within 21 days after receipt of Lessor's draft plan for the Reinstatement Works, Lessee shall provide Lessor any comments Lessee may have on the draft plan and shall notify Lessor if Lessee has determined that, subject to Lessor's agreement, the Facility (or applicable portion thereof) need not be reinstated in the same form or to the same standard as prior to the damage or destruction.

(c) As soon as reasonably practicable, and in any event within 14 days after receipt of Lessee's comments pursuant to clause (b) above, Lessor will deliver to Lessee a revised plan reasonably taking into account the comments received from Lessee and reflecting the contractual terms agreed with the Subcontractor performing the Reinstatement Works.

(d) Except in the event described in Section 13.1.6, upon Lessee's acceptance of Lessor's "**Reinstatement Plan**," Lessor shall promptly commence to perform the Reinstatement Works in accordance with such plan.

13.1.4 Costs of Reinstatement Works

(a) **Responsibility for Costs.** Lessor shall be financially responsible for the cost of the Reinstatement Works (including financing costs), except to the extent that (i) such costs are not covered by net insurance proceeds (subject to Section 13.1.4(b)) or disaster relief funds (subject to Section 13.1.4(c)) received by Lessor, and (ii) the damage or destruction requiring such work is caused by (A) the negligence or willful misconduct of a Lessee Party, including in the supervision of Inmates and Lessee Invitees, (B) Vandalism, to the extent that Lessee is responsible for the costs of such Vandalism in accordance with Exhibit 11, Part 4, (C) an event or circumstance entitled Lessor to an Adjustment Amount under this Lease, or (D) an Uninsured Force Majeure Event. All casualty and insurance proceeds received on account of the casualty that caused the damage or destruction will be paid to Lessor, including for purposes of the Reinstatement Works.

(b) **Failure to Carry Requisite Insurance.** If Lessor fails to carry applicable insurance coverage required by this Lease, then, notwithstanding the exceptions set forth above in clause (a), Lessor will be financially responsible for costs attributable to damage or destruction otherwise excluded from Lessor's financial responsibilities pursuant to clause (a) up to the amount of insurance proceeds that would have been available to cover such costs but for Lessor's failure to carry such required Insurance Policies.

(c) **Disaster Relief.** If a disaster proclamation or declaration is issued that makes disaster relief funds available with respect to the casualty that caused the damage or destruction, Lessee will promptly apply for and use all reasonable efforts to obtain any available State and federal disaster relief funds in order to repair, replace, or rebuild the damaged or destroyed Facility. Any such funds received by Lessee for such purposes will be paid to Lessor. Lessor shall maintain estimates, cost records, and supporting documentation in accordance with requirements of Laws applicable to disaster relief and, as applicable, in a form and content to enable Lessee or Lessor, as applicable, to seek reimbursement for eligible costs from FEMA.

13.1.5 Lease Payments. In the event of the partial destruction or damage, or complete destruction, of the Facility as described herein, Lease Payments shall continue to be payable, subject to application of Lease Payment Abatements for unavailability for which Lessor is responsible pursuant to Exhibit 15.

13.1.6 Lessee Step-in Rights for Failure to Restore. Subject to Section 13.1.7 and applicable provisions of Relief Events, if, after the Occupancy Date, Lessor does not promptly begin to repair, replace, reconstruct, and restore the Facility upon damage or destruction as required by this Section 13.1, or if Lessor does not diligently prosecute and timely complete such work in accordance with a commercially reasonable timeline or, as applicable, the timeline established pursuant to the Reinstatement Plan, then Lessee may step in and complete such work in accordance with Section 16.4.5. In such event, Lessee shall, subject to Section 4.2.1, be entitled to offset such costs from applicable Lease Payments as Lease Payment Abatements in accordance with the Payment Mechanism and/or to collect, or be reimbursed from, any casualty and insurance proceeds received but not yet expended, to pay for Lessee's completion of such work.

13.1.7 Insufficient Funds. If, during the Occupancy Period: (a) the Facility is completely or substantially destroyed; (b) the cost of the Reinstatement Works exceeds the maximum amount of insurance coverage required under this Lease for the risk that caused the destruction (which such amount, for greater certainty, is the maximum amount of such coverage prior to any deductibles for which Lessor is responsible

hereunder), or the damage or destruction arises from an Uninsured Force Majeure Event; (c) Lessee is not liable under this Lease to pay the amount by which the cost to repair, replace, restore, or reconstruct the Facility exceeds the maximum amount referenced in clause (b) (the "**Uncovered Amount**"); (d) neither Lessor nor Lessee has otherwise agreed to pay the Uncovered Amount; and (e) the amount of any State and federal disaster relief funds actually received or committed is insufficient to cover the Uncovered Amount; then, either Party may, by notice to the other Party, declare a Pre-Payment Event under Section 18.1.6, and either Party, upon satisfaction of the Party's obligations under Article 18 (including Lessee's payment of any Pre-Payment Amount payable thereunder), may terminate this Lease.

13.2 Condemnation

13.2.1 If more than 10% of the Premises is taken by right of eminent domain, or by purchase by a Governmental Entity in lieu thereof (a "**Taking**" or "**Taken**"), or if any smaller partial Taking of the Premises would prevent or materially interfere with Lessee's access to or use of the Premises, then Lessee may declare a Pre-Payment Event under Section 18.1.5 and terminate this Lease, subject to any obligation of Lessee under Article 18 to pay a Pre-Payment Amount, effective as of the date the condemning authority takes title or possession, by delivering notice to the Lessor within 10 days after receipt of written notice of such Taking (or in the absence of such notice, within 10 days after the condemning authority takes title or possession).

13.2.2 If only part of the Premises is taken, and Lessee does not terminate the Lease under Section 13.2.1, the Lease will remain in effect as to the reduced Premises; in such event, Lessor shall, at its sole cost and expense, restore or replace the Premises to the extent reasonably practicable (taking into account the funds available to Lessor for such restoration or replacement, including proceeds from the Taking or any applicable insurance proceeds), and the MALPs/MLPs payable by Lessee during the unexpired Lease Term shall (subject to Section 4.2.1(c)) be adjusted to such extent as may be fair and reasonable under the circumstances in light of reduction in the Premises caused by the Taking, and any restoration or replacement of the Premises by Lessor.

13.2.3 If all of the Premises is Taken, or if any part of the Premises is Taken and the MALPs/MLPs payable for the reduced Premises during the unexpired Lease Term as adjusted pursuant to Section 13.2.2 would (but for the terms of Section 4.2.1(c)) be insufficient to pay Lessor the full amount of amortized Lessor Outstanding Debt remaining to be paid over the unexpired Lease Term as set forth in Exhibit 7, then either Party may, by notice to the other Party, declare a Pre-Payment Event, and either Party, upon satisfaction of the Party's obligations under Article 18 (including Lessee's payment of any Pre-Payment Amount payable thereunder), may terminate this Lease.

ARTICLE 14 RELIEF EVENTS

14.1 Relief Event Notice. Lessor shall provide prompt notice to Lessee whenever Lessor has determined that a Relief Event has occurred or is imminent (the "**Relief Event Notice**"). The Relief Event Notice shall include a reasonably detailed description of the circumstances and an initial estimate of the delay in performance of any obligations hereunder attributable to the Relief Event based on information available to Lessor at the time. If a single Relief Event is a continuing cause of delay, only one Relief Event Notice is necessary. If Lessor fails to deliver the Relief Event Notice within 30 days after the date on which Lessor first became aware (or should have been aware, using reasonable diligence) of the Relief Event, Lessor shall have irrevocably and forever waived and released the portion of any Claim or right to relief to the extent that the ability to mitigate was adversely affected, or the delay or costs attributable to the Relief Event have increased, as a result of Lessor's delay in delivering the Relief Event Notice. If Lessor fails to deliver the Relief

Event Notice within 90 days after the date on which Lessor first became aware (or should have been aware, using reasonable diligence) of the actual occurrence of the Relief Event, Lessor shall have irrevocably and forever waived and released any and all Claim or right to relief for any adverse effect attributable to the Relief Event.

14.2 Relief Request. Lessor shall submit to Lessee a request for relief (the "**Relief Request**") within 60 days after submitting the Relief Event Notice. The Relief Request shall include (a) a detailed description of the Relief Event, including its nature, the date of its occurrence, and its likely duration; (b) the effect of the Relief Event on Lessor's ability to perform any of its obligations under this Lease, including the specific effect on each affected obligation and the likely duration of that effect and an analysis of the effect to the Critical Path; (c) an explanation of the measures that Lessor proposes to undertake to mitigate the cost, delay, and other consequences of the Relief Event; (d) the specific relief requested by Lessor; and (e) if the relief requested includes an Adjustment Amount, Lessor's analysis and estimate of such amount.

14.3 Additional Information and Analysis

14.3.1 New and Additional Information. After submitting a Relief Request, Lessor shall provide promptly to Lessee any new information concerning the Relief Event of which Lessor becomes aware and any additional information concerning the Relief Event as reasonably requested by Lessee.

14.3.2 Open Book Basis. Lessor shall conduct all negotiations to determine any Adjustment Amount on an Open Book Basis, including by sharing with Lessee all data, documents, and information pertaining thereto.

14.4 Relief Event Determination. Lessee shall make a Relief Event Determination, which may be memorialized as a Supplemental Agreement, within 45 days after (a) Lessee receives a Relief Request and any new or additional information provided pursuant to Section 14.3.1 and (b) any Open Book Basis negotiations conducted pursuant to Section 14.3.2 have been concluded. The Relief Event Determination shall set forth Lessee's determination as to whether a Relief Event has occurred, and if so, Lessee's determinations as to the following:

14.4.1 Performance Relief. Lessor shall be excused from the performance of, and Deductions shall not be assessed for failing to perform, those non-monetary obligations that Lessor is unable to perform directly as a result of the Relief Event. The Relief Event Determination shall specify those obligations from which Lessor is excused. Lessor shall be excused for the duration of the Relief Event or until it is able to again perform its obligations, whichever is earlier.

14.4.2 Schedule. The Project Schedule and Occupancy Deadline shall be extended by the number of days by which performance is unavoidably delayed solely and directly as a result of the Relief Event ("**Relief Event Delay**"). A Relief Event Delay is unavoidable unless it could have been avoided through reasonable mitigation measures.

14.4.3 Adjustment Amount. For any Adjustment Event, Lessee shall determine and specify the amount (the "**Adjustment Amount**") necessary to pay Lessor for costs incurred as a result of the Adjustment Event as follows:

(a) **Reimbursement for Direct Costs.** Subject to Section 14.4.4 and any other applicable limitations, and except as agreed by the Parties pursuant to Section 4.3.1, Lessee shall reimburse Lessor for any Direct Costs, as determined in accordance with Exhibit 14, caused solely and directly by an Adjustment Event and substantiated in accordance with Section 4.3.2.

(b) **Missed Lease Payment Costs.** Subject to Section 14.4.4, Lessee shall pay Lessor for financing-related costs attributable to an Adjustment Event resulting in any Relief Event Delay in achieving Occupancy Readiness beyond the Occupancy Date then reasonably anticipated by Lessor, as reflected in the then-current Project Schedule and Financial Model, subject to the following:

(i) As soon as practicable, the Parties shall determine (A) the aggregate number of days of Relief Event Delays, (B) the estimated date that Occupancy Readiness would have occurred exclusive of the Relief Event Delays (the "**Adjustment Trigger Date**"), and (C) the dates that Lease Payments would have been made had Occupancy Readiness occurred on the Adjustment Trigger Date (each an "**Adjustment Date**").

(ii) Subject to Section 14.4.3(c), Lessee shall pay Lessor an amount equal to: (A) the Monthly Lease Payments that would have been owed to Lessor had Lessor achieved Occupancy Readiness at the Adjustment Trigger Date; *minus* (B) if applicable, costs avoided, or that could have been avoided through reasonable efforts, due to the delay, such as savings from reduced or delayed Project Debt drawdowns and reduced Maintenance Services Costs.

(c) **Payment of Missed Lease Payment Costs.** Adjustment Amounts owed under Section 14.4.3(b) shall be paid to Lessor as follows: (i) on each Adjustment Date, an amount shall be paid to Lessor equal to the Monthly Lease Payment that would have been paid on such date had the Occupancy Readiness occurred, but not to exceed the amount of debt service on the Initial Project Debt payable by Lessor using proceeds of such Monthly Lease Payment (as demonstrated by the Base Case Financial Model); and (ii) within 60 days after the final determination of other elements of the Adjustment Amount, the unpaid balance of the amount owed under Section 14.4.3(b) shall be paid to Lessor. In all cases, each payment shall be determined taking into account Sections 14.4.3(b)(i) and (ii).

14.4.4 Adjustment Limitations. Any Adjustment Amount owing under Section 14.4.3 is subject to the following:

(a) **Impact of Insurance.** For the purposes of determining Adjustment Amount owed to Lessor, except with respect to a Relief Event under event (n) (Vandalism) in Exhibit 13, (i) such amount shall be net of all insurance proceeds available to Lessor for the Adjustment Event (including, in the case of Section 14.4.3(b), the proceeds available to Lessor for the delay from any delayed start up or business interruption insurance policy procured to cover any loss of Lease Payments during the period commencing on the Adjustment Trigger Date and ending on the Occupancy Date) (for this purpose, and in particular with respect to business interruption insurance maintained by Lessor, the Adjustment Amount shall be net of all insurance that would be available to Lessor assuming that no reimbursement is made under Section 14.4.3(a)); and (ii) Lessor shall be deemed to have in full force and effect, with premiums paid, all Insurance Policies required to be maintained by Lessor and in place, even if any such policy is not so maintained.

(b) **Vandalism.** Adjustment Amounts owed for any event (n) (Vandalism) of Exhibit 13 (Relief Events) shall be paid pursuant to Section 7.6 and Exhibit 11, Part 4.

(c) **Lessee Changes.** Adjustment Amounts resulting from Relief Events that are Lessee Changes (event (o) of Exhibit 13 (Relief Events)) shall be paid pursuant to Section 10.1.

14.5 Disputes. Any Dispute regarding occurrence of a Relief Event or Adjustment Event, the Relief Event Determination, the Adjustment Amount, or waiver of Lessor's Claim or right to payment on account thereof, shall be resolved according to the Dispute Resolution Procedures. Lessee shall pay any undisputed portion of an Adjustment Amount pursuant to Section 14.4 pending final resolution of the Dispute.

14.6 Mitigation. Lessor shall take all steps reasonably necessary to mitigate the consequences of any Relief Event (including any Adjustment Amount for an Adjustment Event), including by taking all steps that would generally be taken in accordance with Good Industry Practice.

PART E
NONCOMPLIANCE, DEFAULT, AND REMEDIES

ARTICLE 15
NONCOMPLIANCE EVENTS

15.1 Noncompliance Events. Certain Noncompliance Events, including Service Failures, are identified on Exhibit 15. The Lessor shall promptly provide notice to Lessee of the occurrence of any breach or failure (including a Service Failure) that is or might become a Noncompliance Event. If Lessee becomes aware of a breach or failure that is or might become a Noncompliance Event for which Lessor has not yet provided such notice, Lessee shall provide Lessor notice thereof.

15.2 Deductions and Lease Payment Abatements

15.2.1 General. Without prejudice to any other rights and remedies available to Lessee, Lessee may assess Deductions annually and monthly, as applicable, in accordance with Exhibit 15. Lessee shall be entitled to apply Lease Payment Abatements in respect of assessed Deductions in accordance with the Payment Mechanism (Exhibit 8) and Exhibit 15, subject to applicable limitations set forth therein and in Section 4.2.1.

15.2.2 Basis for Deductions

(a) The Lessor acknowledges that any Deductions assessed in accordance with Exhibit 15 are reasonable liquidated damages in order to compensate Lessee for (i) Lessee's increased costs of administering the Lease Documents, including the increased costs of Monitoring, and any obligations to pay or reimburse Governmental Entities with regulatory jurisdiction over the Project for their increased costs of Monitoring and enforcing Lessor's compliance with applicable Governmental Approvals; (ii) Lessee's increased costs of fulfilling its mission (including providing alternative facilities, if necessary); (iii) potential harm to the credibility and reputation of Lessee with stakeholders, policy makers, and with the general public; and (iv) potential harm and detriment to Users.

(b) Lessor further acknowledges that such increased costs, harm, and detriment to Users, would be difficult and impracticable to measure and prove, because, among other things, the costs of Monitoring prior to increases in the level thereof will be variable and extremely difficult to quantify, the nature and level of increased Monitoring will be variable depending on the circumstances, and the variety of factors that influence use of the Facility make it difficult to sort out causation and quantify the precise degree of harm attributable to the matters that will trigger these liquidated damages.

(c) Subject to any other remedy expressly provided in this Lease, any Deductions assessed in accordance with this Lease, once applied as a Lease Payment Abatement, shall constitute Lessee's sole remedy in respect of the delay, breach, or failure, as applicable, for which such Deduction is assessed.

15.3 Increased Monitoring

15.3.1 Lessee's Rights. In addition to other remedies available under this Lease, Lessee shall be entitled to reasonably modify or increase (or both) the level of its Monitoring of the Project and Lessor's compliance with its obligations under the Lease Documents, if, at any time:

(a) Lessor has accrued Deductions in respect of any Service Failures (whether or not relating to the same type of Service Failure) in accordance with Exhibit 15, Section 1 in excess of \$35,000 (Index Linked) in each of any 2 consecutive Lease Months;

(b) Lessor has accrued Deductions in respect of any Service Failures (whether or not relating to the same type of Service Failure) in accordance with Exhibit 15, Section 1 in excess of \$200,000 (Index Linked) cumulatively over any 12 consecutive Lease Months;

(c) A Reporting Error occurs (whether or not related to the same type of Reporting Error) on more than 5 occasions in any 12 consecutive Lease Months; or

(d) Lessor receives an Initial Lessor Default Notice and fails to cure, or diligently commence to cure, the breaches or failures that are the basis for the potential Pre-Payment Event within 10 Business Days after receiving such Initial Lessor Default Notice.

In any such event, Lessee may continue its modified or increased Monitoring: (i) in the case of clauses (a), (b), or (c), for a period of up to 90 consecutive days, *provided* that thresholds for increased Monitoring for Deductions pursuant to clauses (a) and (b) are no longer met (i.e., because Deductions have not been assessed in excess of the applicable thresholds in the 90-day period) and no Reporting Errors have occurred in the 90-day period; or (ii) in the case of clause (d), until Lessor has fully and completely cured the breaches and failures that are the basis for a potential Pre-Payment Event and any other then-existing Lessor Defaults. If requested by Lessee, Lessor shall deliver to Lessee and, once approved by Lessee, complete performance of an approved Remediation Plan in accordance with Section 15.5.

15.3.2 Lessee's Recoverable Costs. If Lessee changes the type or increases the level of its Monitoring pursuant to Section 15.3.1, then Lessor shall reimburse Lessee for all Lessee Recoverable Costs reasonably incurred by Lessee in connection with such Monitoring (*provided* that such Monitoring is reasonably proportional to the circumstance that caused the increased or modified Monitoring) within 10 Business Days after receipt of an invoice for such costs (with appropriate supporting documentation).

15.3.3 Other Rights Reserved. This Section 15.3 does not preclude Lessee, at its discretion and expense, from increasing its level of Monitoring at other times during the Occupancy Period. This Section 15.3 does not preclude Lessor from disputing Lessee's justification for increasing its Monitoring and Lessor's obligation to reimburse Lessee for Lessee Recoverable Costs.

15.4 Persistent Lessor Breach

15.4.1 Threshold. A "Persistent Lessor Breach" occurs if, at any time:

(a) Lessor has accrued Deductions in respect of any Service Failures (whether or not relating to the same type of Service Failure) in accordance with Exhibit 15, Section 1 in excess of \$75,000 (Index Linked) in each of any 3 consecutive Lease Months; or

(b) Lessor has accrued Deductions in respect of any Service Failures (whether or not relating to the same type of Service Failure) in accordance with Exhibit 15, Section 1 in excess of \$300,000 (Index Linked) cumulatively over any 12 consecutive Lease Months;

(c) Lessor has accrued Deductions in respect of any Lessor-Caused Unavailability Events (whether or not relating to the same type of Lessor-Caused Unavailability Event) in accordance with Exhibit 15, Section 2 in excess of \$125,000 (Index Linked) in any one Lease Month; or

(d) Lessor has accrued Deductions in respect of any Lessor-Caused Unavailability Events (whether or not relating to the same type of Lessor-Caused Unavailability Event) in accordance with

Exhibit 15, Section 2 in excess of \$500,000 (Index Linked) cumulatively over any 12 consecutive Lease Months.

15.4.2 Consequences. Upon the occurrence of a Persistent Lessor Breach, Lessee may, in its discretion, but is not obligated to, modify or increase its Monitoring under Section 15.3 or pursue or undertake available remedies, including the preparation and implementation of a Remediation Plan pursuant to Section 15.5 and replacement of the Lead Services Provider or any other Subcontractor that may be primarily responsible the occurrence of the Persistent Lessor Breach in accordance with Exhibit 11, Section 5.9.

15.5 Remediation Plan Delivery and Implementation. Within 45 days after receiving notice of the occurrence of a Persistent Lessor Breach or, if a Remediation Plan is requested by Lessee in an Initial Lessor Default Notice, promptly after receiving such notice and within the applicable cure period, Lessor shall prepare, and submit to Lessee for approval, a Remediation Plan setting forth a schedule and specific actions to be taken by Lessor to improve its performance (including, if applicable, replacement of the Lead Services Provider pursuant to Section 16.4.4) and, as applicable, to recover the Project Schedule and promptly complete milestones for the Initial Project Improvements or to reduce the number of Noncompliance Events or Performance Failures so that the thresholds for Persistent Lessor Breach and for increased or modified Monitoring in Section 15.3 are no longer met (e.g., because subsequent Lease Months have been completed and, when taking those Lease Months into account, the thresholds are no longer met). Such actions may include: acceleration of Improvement Work, improvements to Lessor's quality management practices, plans, and procedures; revising and restating components of Plans required under Exhibit 11; changes in organizational and management structure; increased monitoring and inspections; changes in Key Individuals and other important personnel; replacement of Subcontractors (including replacement of the Lead Services Provider); and delivery of security to Lessee. Lessor's failure to deliver or comply in any material respect with the Remediation Plan shall constitute a material Lessor Default, for which Lessee may (among other remedies) issue an Initial Lessor Default Notice.

ARTICLE 16 DEFAULT AND REMEDIES

16.1 Lessor Defaults. Lessor shall be in breach of this Lease upon the occurrence of an event or circumstance set forth in Exhibit 16, Table 1 and the expiration of any applicable Lessor Default Cure Period (a "**Lessor Default**").

16.2 Initial Lessor Default Notice. An Initial Lessor Default Notice shall state in reasonable detail the matter or matters giving rise to the notice and, if applicable, amounts due from Lessor, and remind Lessor of the implications of the relevant Lessor Default.

16.3 Status Report on Cure Progress. For any event or circumstance for which an Initial Lessor Default Notice has been delivered by Lessee to Lessor, Lessor may request Lessee to provide a status report as to Lessor's progress in curing the Lessor Default.

16.4 Lessee Remedies

16.4.1 Pre-Payment Event. Subject to the Lenders' cure rights under the Lenders' Direct Agreement, in the event of any Lessor Default that is or becomes a Pre-Payment Event, Lessee may declare a Pre-Payment Event, and the Parties shall proceed in accordance with Article 18.

16.4.2 Exclusion of Lessor. Without notice and without awaiting lapse of the period to cure, in the event of any Lessor Default under event (3) of Exhibit 16, Table 1 occurring after the Occupancy Date, subject to the Lenders' Direct Agreement, Lessee may take control of the Premises and exclude Lessor Parties to the extent Lessee finds it necessary to stop any unpermitted use of or activities in the Facility and to restore permitted uses and continue operations for the benefit of Lessee, but only until such time as such breach is cured. Lessor shall reimburse Lessee for all Lessee's Recoverable Costs in connection with such action within 30 days after receipt of an invoice for such costs. Immediately following cure of such Lessor Default, Lessee shall re-allow ordinary Lessor access to the Premises. So long as Lessee undertakes such actions in good faith, such actions shall not be deemed unlawful or a breach of this Lease, and shall not expose Lessee to any liability to Lessor and shall not entitle Lessor to any other remedy, *provided* that if it is later finally determined that a Lessor Default had not occurred and Lessee did not undertake such action in good faith, Lessee's actions shall be treated as a Directive Letter for a Lessee Change, and Lessor shall not be obligated to pay (and Lessee shall refund if previously paid) Lessee's Recoverable Costs with respect to such exclusion as provided for herein.

16.4.3 Performance Security

(a) Subject to clause (b) below, upon the occurrence of a Lessor Default, without waiving or releasing Lessor from any obligations, Lessee shall be entitled to make demand upon and enforce any payment or performance bond, and make demand upon, draw on, and enforce and collect any letter of credit or other payment or performance security available to Lessee under this Lease with respect to Lessor Default in question. Lessee will apply the proceeds of any such action to the satisfaction of Lessor's obligations under this Lease, including payment of amounts due Lessee.

(b) If Lessee is an additional obligee under a payment or performance bond, Lessee shall forbear from exercising remedies as additional obligee or transferee beneficiary so long as (i) Lessor commences (or the Lenders, as provided in the Lenders' Direct Agreement, commence) the good faith, diligent exercise of remedies thereunder within the applicable cure period after receipt of the Initial Lessor Default Notice (or, as applicable, notice pursuant to the Lenders' Direct Agreement) and (ii) thereafter continues such good faith, diligent exercise of remedies until the default is cured. The foregoing obligation of Lessee to forbear shall not apply, however where access to a bond or other payment or performance security is to satisfy damages owing to Lessee, in which case Lessee shall be entitled to make demand, draw, enforce, and collect regardless of whether Lessor Default is subsequently cured.

16.4.4 Replacement of Lead Services Provider. Lessee may direct Lessor to replace, at Lessor's expense, the Lead Services Provider in the event of a Persistent Lessor Breach or Lessor Default, in each case relating to the performance of the Services. Any such replacement of the Lead Services Provider directed by Lessee shall not give rise to a Lessee-Caused Delay, Lessee Change, Relief Event, or any other basis for a Claim. If Lessor is directed to replace the Lead Services Provider pursuant to this Section 16.4.4, Lessor shall, within 90 days after receiving notice of Lessee's requirement for replacement or within any shorter cure period for the applicable Lessor Default, suspend and move to terminate the Lead Services Provider, identify and enter into a Subcontract with a replacement Lead Services Provider reasonably acceptable to Lessee and the Collateral Agent, and (re-)commence performance of the Services with the replacement Lead Services Provider. Lessee's acceptance of a replacement Lead Services Provider shall be based upon, and shall take into account, only one or more of the following factors: (a) the financial strength and integrity of the proposed Lead Services Provider, its direct and indirect beneficial owners, and each of their respective Affiliates; (b) the capitalization of the proposed Lead Services Provider; (c) the experience of the proposed Lead Services Provider in providing services related to similar facilities; (d) the background and reputation of the proposed Lead Services Provider, its direct or indirect beneficial owners, each of their respective officers, directors, and employees, and each of their respective Affiliates (including the absence of criminal,

civil, or regulatory claims or actions against any such Person and the quality of any such Person's past or present performance with respect to other similar facilities or services); and (e) the proposed terms of the engagement of the Lead Services Provider.

16.4.5 Lessee Step-in Rights

(a) Subject to the Lenders' Direct Agreement, upon the occurrence of a Lessor Default after the Occupancy Date, or a Persistent Lessor Breach as described in Section 15.4, and for so long as such Lessor Default or Persistent Lessor Breach remains uncured, Lessee may (but is not obligated to), without waiving or releasing Lessor from any obligations, pay and perform all or any portion of Lessor's obligations and the Services that are the subject of such Lessor Default or Persistent Lessor Breach and of any other then-existing breaches or failures to perform which Lessor has failed to cure despite having received prior notice. In connection with such action, to the extent reasonably required for or incident to curing such Lessor Default or Persistent Lessor Breach, Lessee may (i) deploy additional correctional officers, employ additional security, and institute other safeguards to protect the Project; (ii) spend such sums as are reasonably necessary to employ and pay such architects, engineers, consultants, and contractors, and obtain such materials and equipment, as may be required, without obligation or liability to Lessor or any Subcontractors for loss of opportunity to perform the same work or services or supply the same materials and equipment; (iii) draw on and use proceeds from bonds, letters of credit, and other performance security supplied by Lessor hereunder to the extent available under the terms thereof to pay such sums; (iv) execute all applications, certificates, and other documents as may be required; (v) make decisions respecting, assume control over, and continue Services as may be reasonably required; (vi) meet with, coordinate with, direct, and instruct contractors and suppliers, process invoices and applications for payment from contractors and suppliers, pay contractors and suppliers, and resolve claims of contractors, subcontractors, and suppliers, and for this purpose Lessor irrevocably appoints Lessee as its attorney-in-fact with full power and authority to act for and bind Lessor in its place and stead; (vii) take any and all other actions as may be reasonably required or incident to curing; and (viii) prosecute and defend any action or proceeding incident to the Services undertaken. Lessor shall reimburse Lessee for all Lessee's Recoverable Costs in connection with work under this Section 16.4.5 within 10 Business Days after receipt of an invoice for such costs. If Lessee takes action under this Section 16.4.5 and it is later finally determined that Lessee lacked the right to do so because a Lessor Default had not occurred, Lessee's action shall be treated as a Directive Letter for a Lessee Change.

(b) For the purpose of carrying out Lessee's step-in rights under this Section 16.4.5, and subject to the Lenders' Direct Agreement, Lessee shall have the right to take exclusive possession of the Premises and to suspend or revoke Lessor's right to enter the same, and Lessee is also granted a perpetual, irrevocable right of entry for Lessee and its Authorized Representatives, contractors, subcontractors, vendors, and employees to enter onto any other construction, lay down, staging, borrow, and similar areas, exercisable at any time or times without notice. Neither Lessee nor any of its Authorized Representatives, contractors, subcontractors, vendors, and employees shall be liable to Lessor in any manner for any cost, inconvenience, or disturbance arising out of any such exclusion of Lessor from the Premises or its entry onto any construction lay down, staging, borrow, and similar areas in order to perform under this Section 16.4.5. If any Person exercises any right to pay or perform under this Section 16.4.5, it nevertheless shall have no liability to Lessor for the sufficiency or adequacy of any such payment or performance, or for the manner or quality of design, construction, operation, or maintenance, unless caused by the gross negligence, recklessness, willful misconduct, or bad faith of such Person and except as provided in the final sentence of Section 16.4.5(a).

(c) Lessee's rights under this Section 16.4.5 are subject to the right of any surety under any applicable payment and performance bonds to assume performance and completion of all bonded work.

(d) In the case of a Lessor Default, Lessee's rights under this Section 16.4.5 are subject to the Lenders' rights to cure under the Lenders' Direct Agreement.

16.4.6 Suspension of Services

(a) Subject to the Lenders' Direct Agreement, Lessee shall have the right and authority to suspend any applicable Services, including suspension of Improvement Work on any affected portion of the Premises, by order to Lessor upon the occurrence and during the continuation of a Lessor Default for any of the following breaches or failures: (i) material failure to perform the Services in compliance with the Lease Documents; (ii) failure to comply with any applicable Law or Governmental Approval (including failure to implement required environmental mitigation measures in accordance with applicable Laws and Governmental Approvals); (iii) the existence of conditions unsafe for workers on the Property, other Project personnel, or the general public, including failures to comply with Safety Standards or perform Safety Compliance as set forth in Section 8.4 (and in any such case the order of suspension may be issued without awaiting any cure period); (iv) failure to provide proof of required insurance coverage or to obtain and maintain any payment or performance bond, letter of credit, or other security for performance required under the Lease Documents; and (v) material failure to carry out and comply with orders given by Lessee in accordance with the Lease Documents.

(b) If Lessee orders suspension of Services for reasons other than those set forth in subsection (a) above, or it is finally determined that such grounds did not exist, such suspension shall be treated as a Lessee-Caused Delay.

(c) Lessor shall promptly comply with any suspension order under this Section 16.4.6, even if Lessor disputes the grounds for suspension. Lessor shall promptly recommence the Services upon receipt of notice from Lessee directing Lessor to resume work. Lessor shall promptly recommence the Services upon receipt of notice from Lessee directing Lessor to resume. Lessee will lift the suspension order promptly after the applicable breach or failure to perform has been corrected and cured or any other reason for the suspension order ceases to apply.

16.4.7 Damages. Subject to Lessee's duty at Law to mitigate damages, subject to the requirements and limitations set forth in this Lease (including Section 16.4.11) and applicable Law, and without duplicate recovery (including pursuant to Deductions or other liquidated damages expressly provided in this Lease), Lessee shall be entitled to recover any and all actual damages available at Law on account of the occurrence of a Lessor Default, including, to the extent available at Law, (a) loss of any amounts owing to Lessee under this Lease proximately caused by Lessor Default; (b) costs to remedy any defective part of the Services; (c) costs to rectify any breach or failure to perform by Lessor and to bring the condition of the Project to the standard it would have been in if Lessor had complied with its obligations to carry out and complete the Services in accordance with the Lease Documents; (d) costs to Lessee to declare a Pre-Payment Event and replace Lessor with another contractor or service provider or through self-performance in accordance with Article 18; (e) liquidated damages as expressly provided in this Lease (in the established liquidated amounts and not actual damages); and (f) increases in costs to Lessee to complete Improvement Work if not completed. Lessor shall owe any such damages that accrue after the occurrence of Lessor Default and the delivery of notice thereof, if any, required by this Lease regardless of whether Lessor Default is subsequently cured.

16.4.8 Offset Rights. In accordance with the Payment Mechanism (Exhibit 8), and subject to applicable limitations set forth therein and in Section 4.2.1, Lessee may deduct and offset any Lessee Recoverable Costs or damages owing to Lessee from Lessor under the Lease Documents from and against any amounts Lessee may owe Lessor, including as Lease Payment Abatements against the Lease Payments. If the amount of damages owing Lessee is not liquidated or known with certainty at the time a payment is due from Lessee, Lessee may, subject to Section 4.2.1, deduct and offset as a Lease Payment Abatement up to 100% of the amount it reasonably estimates is due (subject to any applicable limitations on Lease Payment Abatements set forth in the Payment Mechanism), which amount (or applicable lesser amount) shall be paid back to Lessor by Lessee if and as directed pursuant to the resolution of the Dispute.

16.4.9 Other Rights and Remedies. Subject to Sections 4.2.1(c), 15.2.2(c), 16.4.11, and 18.6, Lessee shall also be entitled to exercise any other rights and remedies available under this Lease or available at Law or in equity.

16.4.10 Cumulative, Non-Exclusive Remedies. Subject to Sections 4.2.1(c), 15.2.2(c), 16.4.11, and 18.6, and subject to the stipulated remedial measures for the breaches and failures to perform for which Deductions may be assessed, each right and remedy of Lessee hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at Law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lessee of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by Lessee of any or all other such rights or remedies.

16.4.11 Limitation on Consequential Damages. Notwithstanding any other provision of the Lease Documents and except as set forth in this Section 16.4.11, to the extent permitted by Law, Lessor shall not be liable for punitive damages or special, indirect, incidental, or consequential damages, whether arising out of breach of this Lease, tort (including negligence), or any other theory of liability, and Lessee releases Lessor from any such liability. The foregoing limitation on Lessor's liability for consequential damages shall not apply to or limit any right of recovery Lessee may have respecting the following: (a) Losses (including defense costs) to the extent (i) covered by the proceeds of applicable Insurance Policies; or (ii) covered by the proceeds of insurance actually carried by or insuring Lessor under policies solely with respect to the Project Improvements, regardless of whether required to be carried pursuant to Section 12.1; (b) Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional Lessor Default), recklessness, bad faith, or gross negligence on the part of any Lessor Party; (c) Lessor's indemnities set forth in Section 12.2 (for clarity, with respect to amounts asserted by or awarded pursuant to any Third-Party Claim); (d) Lessor's obligation to pay liquidated or stipulated damages in accordance with the Lease Documents; (e) Losses arising out of Lessor Releases of Hazardous Materials; (f) amounts Lessor may owe or be obligated to reimburse Lessee under the express provisions of the Lease Documents, including Lessee Recoverable Costs; (g) interest, late charges, fees, transaction fees and charges, penalties, and similar charges that the Lease Documents expressly state are due from Lessor to Lessee; and (h) any credits, deductions, or offsets that the Lease Documents expressly provide to Lessee against amounts owing Lessor.

16.4.12 Other Limitation on Lessee's Remedies. Lessee's remedies for certain breaches of warranties are limited as provided in Section 5.4.

16.4.13 Lessee-Caused Delay. If Lessee exercises any rights or remedies under this Section 16.4 and it is subsequently determined that that the alleged default underlying such exercise of rights by Lessee did not exist, the impact of such exercise of rights by Lessee shall be treated as a Lessee-Caused Delay for which Lessor may be entitled to relief as a Relief Event under event (p) in Exhibit 13.

16.5 Lessee Defaults. Lessee shall be in breach of this Lease upon the occurrence of an event or circumstance set forth in Exhibit 16, Table 2 and the expiration of any applicable cure period set forth in such table (a "**Lessee Default**").

16.6 Lessor Remedies

16.6.1 Pre-Payment Event. Upon the occurrence of a Pre-Payment Event, Lessor shall have such rights and remedies as are set forth in Article 18.

16.6.2 Treatment as Adjustment Event. If Lessor, in its discretion, elects not to treat an applicable Lessee Default as a Pre-Payment Event under Article 18, then, subject to Section 16.6.5, Lessor may treat the Lessee Default as an Adjustment Event on the terms and conditions set forth in Article 14. Lessor may treat any other Lessee Default as an Adjustment Event on the terms and conditions set forth in Article 14.

16.6.3 Cumulative, Non-Exclusive Remedies. Subject to Sections 16.6.5, 18.1, and 18.7, Lessor also shall be entitled to exercise any other remedies available under this Lease or at Law or in equity, including offset rights to the extent, and only to the extent, available under Section 16.6.4. Subject to Sections 16.6.5, 18.1, and 18.7, each right and remedy of Lessor hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at Law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lessor of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by Lessor of any or all other such rights or remedies.

16.6.4 Offset Rights. Subject to Section 4.2.1 above, Lessor may deduct and offset any damages owing to Lessor from Lessee under the Lease Documents from and against any amounts Lessor may owe Lessee. If the amount of damages owing Lessor is not liquidated or known with certainty at the time a payment is due from Lessor, Lessor may deduct and offset up to 100% of the amount it reasonably estimates is due, which amount (or applicable lesser amount) shall be paid back to Lessee by Lessor if and as directed pursuant to the resolution of the Dispute.

16.6.5 Limitations on Remedies

(a) Notwithstanding any other provision of the Lease Documents and except as set forth in this Section 16.6.5, to the extent permitted by Law, Lessee shall not be liable for punitive damages or special, indirect, incidental, or consequential damages, whether arising out of breach of this Lease, tort (including negligence), or any other theory of liability, and Lessor releases Lessee from any such liability. The foregoing limitation on Lessee's liability for consequential damages shall not apply to or limit any right of recovery Lessor may have respecting the following: (i) Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional Lessee Default), recklessness, bad faith, or gross negligence on the part of Lessee; (ii) Losses arising out of Lessee Releases of Hazardous Materials; (iii) any amounts Lessee may owe or be obligated to reimburse under the express provisions of this Lease for Adjustment Events or Pre-Payments Events; (iv) any other specified amounts Lessee may owe or be obligated to reimburse to Lessor under the express provisions of the Lease Documents; and (v) any credits, deductions, or offsets that the Lease Documents expressly provide to Lessor against amounts owing Lessee.

(b) The payment available to Lessor as set forth in this Lease for any Adjustment Event or any Pre-Payment Event shall constitute the sole and exclusive monetary payment available to Lessor from the State or Lessee arising out of or relating to such event; Lessor irrevocably waives and releases any right to any other payment from the State or Lessee. No award or amount of payment shall be duplicative.

(c) Lessor shall have no right to seek, and irrevocably waives and relinquishes any right to, non-monetary relief against Lessee, except (i) for any sustainable action in mandamus, (ii) for any

sustainable action to stop, restrain, or enjoin use, reproduction, duplication, modification, adaptation, or disclosure of Proprietary Intellectual Property in violation of the licenses granted under Section 20.7, (iii) for declaratory relief pursuant to the Dispute Resolution Procedures declaring the rights and obligations of the Parties under the Lease Documents, or (iv) declaratory relief pursuant to the Dispute Resolution Procedures declaring specific terms and conditions that shall bind the Parties, but only where this Lease expressly calls for such a method of resolving a Dispute.

(d) Without limiting the effect of Section 16.6.5(b), in the event Lessee wrongfully withholds an approval or consent required under this Lease, or wrongfully issues an objection to or disapproval of a submittal or other matter under this Lease, Lessor's sole remedies against Lessee shall be as provided in Article 14.

(e) Without limiting the effect of Section 16.6.5(b), Lessor shall have no right to suspend the Services.

(f) Lessor's remedies for certain breaches of warranties are limited as provided in Section 5.4.

16.7 Cross-Default. Any Lessee Default under event (1) in Exhibit 16, Table 2 of the New Elmore County Facility Lease that is not timely cured in accordance with applicable provisions of such lease, and subject to each Party's respective rights and remedies therein, shall be deemed a breach of this Lease, shall constitute a Lessee Default under event (1) in Exhibit 16, Table 2 of this Lease, and may constitute a Pre-Payment Event under this Lease in accordance with Article 18 as if such default were a default under this Lease. Each Party shall have the same rights and obligations with respect to such a default as are set forth in this Article 16 and Article 18 with respect to, as applicable, a Lessee Default hereunder. In addition, the Parties acknowledge that any Lessee Default under event (1) of Exhibit 16, Table 2 of this Lease that is not timely cured in accordance the Lease Documents will, subject to each Party's respective rights and remedies herein, constitute a Lessee Default, and may be a Pre-Payment Event, under the terms of the New Elmore County Facility Lease.

ARTICLE 17 DISPUTE RESOLUTION

17.1 Partnering

17.1.1 Effect on Dispute Resolution. The provisions of this Section 17.1 are not part of the Dispute Resolution Procedures contemplated under this Lease. Compliance with the provisions of this Section 17.1 is not required as a condition precedent to any Party's right to initiate a claim or seek resolution of any Dispute under the Dispute Resolution Procedures.

17.1.2 Purpose. Lessee and Lessor have developed and intend to continue fostering a cohesive relationship to carry out their respective responsibilities under this Lease through a voluntary, non-binding "partnering" process drawing upon the strengths of each organization to identify and achieve reciprocal goals. The objectives of the partnering process are (a) to identify potential problem areas, issues, and differences of opinion early, (b) to develop and implement procedures for resolving them in order to prevent them from becoming Claims and Disputes, (c) to achieve effective and efficient performance and completion of the Improvement Work and performance of the Services in accordance with the Lease Documents, and (d) to create mutual trust and respect for each Party's respective roles and interests in the Project while recognizing the respective risks inherent in those roles.

17.1.3 Workshop. Within 90 days after the Financial Close Date, Lessee and Lessor shall attend a team-building workshop and through such workshop shall develop mutually agreeable, non-binding procedures, rules, and guidelines for engaging in free and open communications, discussions, and partnering meetings between them, in order to further the goals of the partnering process. Such non-binding rules and guidelines shall include confidentiality obligations and assurances that discussions, communications, and partnering meetings shall not constitute an admission of any fact, shall not be admissible in evidence for any purpose, shall not form the basis for any Dispute or Claim, and shall not limit or restrict a Party's rights or remedies established under this Lease..

17.1.4 Meetings. Under the non-binding procedures, rules, and guidelines developed pursuant to Section 17.1.3, the Parties will address at partnering meetings specific interface issues, oversight interface issues, division of responsibilities, communication channels, application of alternative resolution principles, and other matters. If Lessor and Lessee succeed in resolving a Claim or Dispute through the partnering procedures, they shall memorialize the resolution, including execution of Change Orders or Supplemental Agreements as appropriate, and shall promptly perform their respective obligations in accordance therewith.

17.2 Dispute Resolution Procedures

17.2.1 Disputes Governed by These Procedures. Any Dispute, including any disagreement between the Parties as to whether this Section 17.2 applies to a particular dispute or whether particular procedures apply to a dispute, shall be resolved in accordance with the terms and procedures set forth in this Section 17.2 (the "**Dispute Resolution Procedures**"), except that the Dispute Resolution Procedures shall not apply to (a) any decision or action that the Lease Documents expressly state is final, binding, or not subject to dispute resolution or determined in a Party's discretion; (b) any claim or dispute that does not arise under the Lease Documents; (c) any claim to interplead a Party into an action brought by a third Person against the other Party or by the other Party against a third Person; (d) any claim by a Subcontractor, including any such claim against Lessor that gives rise to an independent but related claim by Lessor against Lessee (but the Dispute Resolution Procedures will apply to any such independent related claim by Lessor against Lessee); or (f) any claim or dispute against an insurance company.

17.2.2 Burden of Proof. The Party bringing a Dispute shall bear the burden of proving the same.

17.2.3 Notice of Dispute; Access to Information. The claiming Party shall give notice of the Dispute to the responding Party. The notice shall include a description of the nature, circumstances, and cause of the Dispute and the claiming Party's desired resolution of the Dispute. The notice shall be signed by the claiming Party's Authorized Representative and shall contain a certification by the claiming Party that (a) the notice of Dispute is served in good faith; (b) except as to specific matters stated in the notice as being unknown or subject to discovery, all supporting information is reasonably believed by the claiming Party to be accurate and complete; (c) the Dispute accurately reflects the amount of money or other right, remedy, or relief to which the claiming Party reasonably believes it is entitled; and (d) the Authorized Representative is duly authorized to execute and deliver the notice and such certification on behalf of the claiming Party. If the responding Party agrees with the claiming Party's desired resolution of the Dispute, the Parties shall memorialize the resolution. The Parties may request the opinion of the Independent Maintenance Inspector or other independent party qualified as to the matter of the Dispute, jointly selected by the Parties. Subject to applicable privileges available at law, upon a Party's request, the Parties shall share or disclose data, documents, and information that pertain to the Dispute and are reasonably available to them. After giving notice of a Dispute, if the claimed amount of a Dispute is less than \$10,000, the Parties may delay further resolution of that Dispute until other Disputes occur for which the total of the claimed amounts (in aggregate) is equal to at least \$10,000; *provided* that the Parties shall not delay resolution of

any Dispute if such delay is reasonably likely to result in or exacerbate an Emergency or to result in a material increase in the cost to resolve the Dispute or to address the matter underlying the Dispute.

17.2.4 Informal Dispute Resolution. Unless the Dispute is earlier resolved, the Chief Executive Officer of Lessor and the Commissioner of the Alabama Department of Corrections, or their respective designees, shall meet within 10 Business Days after the independent expert retained pursuant Section 17.2.3 issues its opinion (or, if the Parties do not seek such an opinion, within 10 Business Days after the notice of Dispute is given to the responding Party) and confer in good faith to seek to resolve the Dispute. If they succeed in resolving the Dispute, the Parties shall memorialize the resolution.

17.2.5 Alternative Dispute Resolution

(a) Should the efforts described in Section 17.2.4 fail, and if the Dispute involves the payment of money to Lessor, Lessor's sole remedy is the filing of a claim with the Board of Adjustment for the State of Alabama. For any and all other Disputes arising under the terms of this Lease that are not resolved by negotiation pursuant to Section 17.2.4, the Parties agree to utilize appropriate forms of non-binding alternative dispute resolution, including mediation, subject, however, at all times to the sovereign immunity of the State. Such dispute resolution shall occur in Montgomery, Alabama, utilizing, where appropriate, mediators selected from the roster of mediators maintained by the Center for Dispute Resolution of the Alabama State Bar.

(b) Nothing in this Lease (including Section 17.2.5(a) above) shall constitute a waiver of, or prevent the exercise of, or otherwise restrain, Lessor's right to injunctive relief, declaratory relief, mandamus relief, and/or other remedies available at Law or in equity. The Parties acknowledge and agree that, to the fullest extent permitted by Law, any matter where such injunctive relief, declaratory relief, mandamus relief, and/or other remedies are available to Lessor at Law or in equity shall be deemed not to be a Dispute that involves the payment of money governed by Section 17.2.5(a) above.

17.2.6 Settlement Negotiations Confidential. All discussions and negotiations described in this Section 17.2 between the Parties to resolve a Dispute, and all documents and other materials furnished to a Party or exchanged between the Parties during any such discussions or negotiations, shall be considered confidential and not subject to disclosure by either Party. The Parties may also request a protective order in any judicial proceeding to prohibit the public disclosure of any other information they believe is confidential.

17.2.7 Continuation of Disputed Work. At all times during Dispute Resolution Procedures, Lessor and all Subcontractors shall continue with the performance of the Services and their obligations, including any disputed Services or obligations, diligently and without delay, in accordance with this Lease, except to the extent enjoined by order of a court or otherwise approved by Lessee in its discretion or in the event of a suspension permitted by this Lease. In turn, Lessee shall continue to make all payments due and owing under this Lease. Lessor acknowledges that it shall be solely responsible for the results of any delaying actions or inactions taken during the pendency of resolution of a Dispute relating to the Services under the Dispute Resolution Procedures even if Lessor's position in connection with the Dispute ultimately prevails. Throughout the course of any Work that is the subject of any Dispute that is the subject of Dispute Resolution Procedures, Lessor shall keep separate and complete records of any extra costs, expenses, and other monetary effects relating to the disputed Work and its resolution under the Dispute Resolution Procedures, and shall permit Lessee access to these and any other records needed for evaluating the Dispute. These records shall be retained for a period of not less than 1 year after the date of resolution of the Dispute pertaining to such disputed Work (or for any longer period required under any other applicable provision of the Lease Documents).

17.2.8 Procedure for Payment on Adjudication. Promptly after any final, non-appealable order or adjudication in favor of Lessor, Lessee shall (a) institute payment procedures as set forth in applicable Law with respect to any amount determined to be payable by Lessee, and (b) use best efforts to obtain from the State Legislature an appropriation for the full amount due, or to perform actions permitted by Law to obtain, designate, or use any other lawfully available funds that are not funds appropriated by the State Legislature. Lessee shall not hinder or oppose Lessor's own efforts to obtain an appropriation for the full amount due.

17.3 Jurisdiction and Venue. With respect to any dispute not subject to the jurisdiction of the Board of Adjustment, the Parties agree that the exclusive jurisdiction and venue for any legal action or proceeding, at Law or in equity, that is permitted to be brought by a Party in court arising out of the Lease Documents shall be in the Circuit Court of Montgomery County, Alabama. Nothing in this Section 17.3 shall be construed to be a waiver of immunity by Lessee.

ARTICLE 18 PRE-PAYMENT EVENTS

18.1 Pre-Payment Events. Each of the following shall be considered a "**Pre-Payment Event**":

18.1.1 A Lessee Default under event (1) of Exhibit 16, Table 2 has occurred and Lessor has provided Lessee with notice that Lessor has elected to treat such occurrence as a Pre-Payment Event (a "**Lessee Non-Payment Event**");

18.1.2 A Persistent Lessee Default has occurred and Lessor has provided Lessee with notice that Lessor has elected to treat such occurrence as a Pre-Payment Event (a "**Persistent Lessee Default Event**");

18.1.3 A Non-Appropriation Event that becomes a Pre-Payment Event in accordance with Section 4.7.1(b) and either Party has provided notice to the other Party that it has elected to treat such occurrence as a Pre-Payment Event;

18.1.4 The issuance of a final, non-appealable order by a court of competent jurisdiction to the effect that the Lease is void or unenforceable or impossible to perform in its entirety (a "**Court Ruling Event**");

18.1.5 A complete or substantial Taking of the Premises described in Section 13.2.1 or Section 14.2.3 has occurred and either (a) Lessee has notified Lessor of Lessee's election to treat such occurrence as a Pre-Payment Event in accordance with Section 13.2.1 or 13.2.3, or (b) Lessor has notified Lessee of Lessor's elected to treat such occurrence as a Pre-Payment Event in accordance with Section 13.2.3 (a "**Taking Event**");

18.1.6 An Extended Relief Event has occurred, and Lessor has notified Lessee that Lessor has elected to treat such occurrence as a Pre-Payment Event; and

18.1.7 A Lessor Default has occurred and, subject to Lenders' rights as set forth in this Lease and in the Lenders' Direct Agreement, either (a) Lessee has notified Lessor that Lessee has elected to treat such Lessor Default as a Pre-Payment Event, or (b) only with respect to a Lessor Default prior to the Occupancy Date, Lessor has notified Lessee that Lessor has elected to treat such Lessor Default as a Pre-Payment Event and the payment obligations of Lessor under the Financing Documents have been accelerated under the terms thereof (a "**Lessor Default Event**").

18.2 Effect of Pre-Payment Events

18.2.1 Rights and Obligations of the Parties. Upon the occurrence of a Pre-Payment Event, and subject to Lenders' rights under the Lenders' Direct Agreement, the Parties shall have the following rights and obligations:

(a) Lessee shall pay to the Lessor the Pre-Payment Amount in the time required pursuant to Section 18.3.3.

(b) Subject to Section 18.2.1(f) and conditioned on Section 18.2.1(c), Lessee shall retain all occupancy rights set forth in this Lease notwithstanding the Pre-Payment Event.

(c) Notwithstanding Section 18.2.1(b),

(i) In the case of a Non-Appropriation Event that becomes a Pre-Payment Event in accordance with Section 4.7.1(b) (subject to cure thereunder), or a non-appropriation of any Pre-Payment Amount, either Party may, in its discretion, terminate Lessee's leasehold interest in the Premises.

(ii) In the event that Lessee fails to pay the Pre-Payment Amount for any Pre-Payment Event in the time required pursuant to Section 18.3.3, Lessor may, in its discretion, terminate Lessee's interest in the Premises.

Any such termination of Lessee's leasehold interest in the Premises pursuant to this Section 18.2.1(c) shall not relieve Lessee of any payment obligations under this Lease arising prior to such leasehold termination date, including with respect to the Pre-Payment Amount. Upon any such termination of Lessee's leasehold interest in the Premises, Lessee shall be required promptly to vacate the Facility and surrender the Premises as set forth in Sections 9.3 and 9.4. Until the conclusion of the Transition Period for Lessee's vacation of the Facility, the Parties shall continue to perform their obligations under the Lease Documents notwithstanding termination of Lessee's leasehold interest in the Premises.

(d) In the event of a Lessor Default, subject to the Lenders' Direct Agreement, Lessee may exercise rights and remedies available to Lessee at Law and in equity, including those expressly provided in Section 16.4 and in this Section 18.2.1(d). If, after the Occupancy Date, a Lessor Default continues and remains uncured following a Lessor Default Pre-Payment Event and applicable periods for rights of Lenders to step-in and cure under the Lenders' Direct Agreement, and such Lessor Default arises from Maintenance Services performance issues, Lessee may require Lessor to enter into a new agreement with a replacement Lead Services Provider for performance of the Maintenance Services under terms consistent with Section 16.4.4.

(e) In the event of a Lessee Default, Lessor may exercise rights and remedies available to Lessor at Law or in equity, including those expressly provided in Article 14 and Section 16.6; *provided, however*, that if a Lessee Default gives rise to a Pre-Payment Event, and Lessee timely pays Lessor the Pre-Payment Amount as described herein, such payment shall constitute Lessor's sole right to monetary relief as the sole and exclusive result of such Lessee Default.

(f)

(i) In the event of a Pre-Payment Event prior to the Occupancy Date, except in the circumstances described in Section 18.2.1(c), the Parties shall enter into a Ground Lease substantially

conforming to the term sheet attached hereto as Exhibit 18, pursuant to which Lessee shall assume all rights of occupancy and Lessor shall be relieved of its obligations to provide the Services going forward.

(ii) In the event of a Pre-Payment Event on or after the Occupancy Date, except in the circumstances described in Section 18.2.1(c), the terms of this Lease related to the Maintenance Services (including Life Cycle Work), and the Parties' obligations related thereto, including Lessee's obligation to make Lease Payments on account of such Maintenance Services in accordance with Exhibit 7, Tables 2 and 3 shall remain in effect during the period of Lessee's continued occupancy rights under Section 18.2.1(b), provided that either Party, in its discretion, may propose, and the Parties shall consider in good faith, amendments to this Lease to take effect after payment of the Project Development Cost Payment by Lessee, including amendments to effect any reduction in the scope of Services that will be provided by Lessor over the remainder of the Lease Term, in which event Lessee shall be responsible for payment of the Reduction of Services Payment to the extent provided in Exhibit 17 as a condition of the amendment taking effect.

18.2.2 Performance After a Pre-Payment Event

(a) Following the occurrence of a Pre-Payment Event, the Parties shall, subject to Sections 18.2.1(c) and 18.2.1(f), continue to perform their obligations hereunder until the scheduled payment date of the Pre-Payment Amount, except to the extent such performance is barred or made impossible by a Court Ruling Event.

(b) Following Lessee's payment of the Pre-Payment Amount, the Parties shall continue to perform their obligations under the Lease Documents, as such may be modified pursuant to Section 18.2.1(f), for the remainder of the Lease Term, except (i) under the circumstances of Section 18.2.1(c), (ii) to the extent such performance is barred or made impossible by a Court Ruling Event, or (iii) in the event this Lease is terminated for an Extended Relief Event as described in Section 13.1.7 or a Taking Event as described Section 13.2.1 or Section 13.2.3.

18.2.3 Effect of Continued Payment. No Lease Payment made by Lessee to Lessor shall affect any notice of Pre-Payment Event given prior to such payment.

18.3 Payment of Pre-Payment Amount

18.3.1 Pre-Payment Amount. Upon the occurrence of a Pre-Payment Event, subject to any applicable cure periods, Lessee shall pay Lessor a Pre-Payment Amount as set forth in Exhibit 17, consisting of two separate payments—the Project Development Cost Payment and, if applicable, the Services Breakage Payment—each as calculated in accordance with such Exhibit 17.

18.3.2 Pre-Payment Calculation Date. The Pre-Payment Amount shall be calculated as soon as reasonably practicable after the occurrence of the Pre-Payment Event, and shall reflect the scheduled payment date under Section 18.3.3.

18.3.3 Payment Due Date. Except with respect to a Services Breakage Payment agreed pursuant to the proviso in Section 18.2.1(f)(ii) (which shall be payable in accordance with such Section and applicable provisions of Exhibit 17), Lessee shall pay Lessor the applicable Pre-Payment Amount by (a) the Non-Appropriation Final Cure Date, in the case of a Non-Appropriation Event or (b) the date that is 180 days after the date of the Pre-Payment Event, in the case of any other Pre-Payment Event.

18.3.4 Access to Information; Pre-Payment Adjustment Credit. Lessor shall share with Lessee all data, documents, and information pertaining to the Pre-Payment Amount, on an Open Book Basis.

18.4 Payment Subject to Appropriation. For the avoidance of doubt, Lessee's obligation to pay the Pre-Payment Amount pursuant to Section 18.3 will be subject to appropriation by the State Legislature. The terms of Section 4.7.1(a) shall apply in all respects with respect to such appropriation. For the avoidance of doubt, Lessee shall be obligated to pay all portions of any such Pre-Payment Amount for which appropriation has been made by the State Legislature and/or for which Lessee has lawfully available funds.

18.5 Liability after Pre-Payment. Lessee's payment to Lessor of any Pre-Payment Amount required under applicable provisions of this Article 18 and Exhibit 17 shall constitute full and final satisfaction of, and upon payment Lessee shall be forever released and discharged from, any and all Claims that Lessor may have against Lessee arising solely and exclusively out of the Pre-Payment Event.

PART F MISCELLANEOUS

ARTICLE 19 ASSIGNMENT AND TRANSFER

19.1 Assignment or Transfer by Lessor. Lessor shall not voluntarily or involuntarily sell, assign, convey, transfer, pledge, or otherwise encumber this Lease or Lessee's leasehold interest hereunder, or any portion thereof, without Lessee's prior approval, except (a) to Lenders for security pursuant to Security Documents complying the requirements of this Lease, so long as, subject to the Lenders' Direct Agreement and the Lenders' rights and remedies under the Security Documents, Lessor retains responsibility for the performance of Lessor's obligations under the Lease Documents; (b) any Substituted Entity, so long as such Substituted Entity assumes in writing full responsibility for performance of the obligations of Lessor under this Lease, the other Lease Documents, and the Principal Project Documents arising from and after the date of assignment and otherwise complies with all requirements set forth in the Lenders' Direct Agreement; or (c) subject to the remainder of this Article 19, any entity that is under the same ultimate management control as Lessor. Lessor shall not sublease or grant any other special occupancy or use of the Premises to any other Person that is not in the ordinary course of Lessor performing the Services, without Lessee's prior approval.

19.2 Restrictions on Equity Transfers

19.2.1 Prior to Second Anniversary of Occupancy Date. Neither Lessor nor any Equity-Related Entity shall voluntarily or involuntarily cause, permit, or suffer any Equity Transfer, other than as provided in Section 19.2.4, at any time prior to the second anniversary of the Occupancy Date without prior approval from Lessee, in its discretion, of such proposed Equity Transfer, which approval is subject to Section 21.3.

19.2.2 After Second Anniversary of Occupancy Date. Neither Lessor nor any Equity-Related Entity shall voluntarily or involuntarily cause, permit, or suffer any Equity Transfer, other than as provided in Section 19.2.4, at any time on or after the second anniversary of the Occupancy Date without Lessee's prior approval of such proposed Equity Transfer, which approval is subject to Section 19.3.

19.2.3 Other Prohibited Equity Transfers. Neither Lessor nor any Equity-Related Entity shall voluntarily or involuntarily cause, permit, or suffer any Equity Transfer at any time after the Financial Close Date until the conclusion of the Lease Term in which any of the transferees or any of a transferee's affiliates is a Prohibited Person or which is otherwise prohibited by Law or would result in a violation of Law.

19.2.4 Permitted Equity Transfers. An Equity Transfer shall not require prior approval pursuant to Sections 19.2.1 and 19.2.2 solely as a direct result of:

(a) The grant or enforcement of security in favor of the Lenders over or in relation to any Equity in Lessor or any Equity-Related Entity pursuant to Security Documents permitted by this Agreement and the Lenders' Direct Agreement;

(b) The grant or enforcement of security in favor of holders of Equity-Related Debt over or in relation to any Equity in an Equity Member or Equity-Related Entity as permitted by this Agreement;

(c) A transfer to the Collateral Agent or trustee or such Person's nominee or transferee as permitted in connection with the exercise of rights and remedies under the Initial Financing Agreements or to a permitted or approved transferee, in each case, in accordance with the Lenders' Direct Agreement;

(d) A change in legal or beneficial ownership of any Equity that is listed on a recognized stock exchange, including such transactions involving any initial public offering;

(e) A transfer of interests between or among Persons that are under common "control" (within the meaning of control contemplated in the definition of Affiliate), including an upstream reorganization or a transfer of direct or indirect interest in Lessor; *provided* that it can be demonstrated to Lessee, for its prior approval (of only the following matters), that such transfer (i) does not affect the direction or control of the management of Lessor and (ii) continues to permit ongoing performance by Lessor under the Lease Documents, and excluding a change in the management or control of a fund that manages or controls Lessor;

(f) A transfer of interests between or among managed funds that are under common ownership, management, or "control" (within the meaning of "control" contemplated in the definition of Affiliate) or that are managed by Persons under common ownership or control; *provided* that it can be demonstrated to Lessee, for its prior approval (of only the following matters) that such transfer (i) does not affect direction or control of the management of Lessor and (ii) continues to permit ongoing performance by Lessor under the Lease Documents, and excluding a change in the management or control of a fund that manages or controls Lessor;

(g) If an ultimate parent entity of an Equity Member is an Equity-Related Entity but does not exercise direction or management of the Equity Member, a bona fide transaction involving securities or beneficial interests in that ultimate parent entity; *provided* that it can be demonstrated to Lessee, for its prior approval (of only the following matter) that such transaction does not affect direction or management of the Equity Member; or

(h) The exercise of preferred or minority equity holder veto or voting rights (whether provided by Law or by Lessor's organizational documents) over major business decisions of Lessor.

19.2.5 Violations. If there occurs any voluntary or involuntary Equity Transfer in violation of this Section 19.2, Lessee, at its option, may, by Initial Lessor Default Notice, declare it to be a Lessor Default under event (6) of Exhibit 16, Table 1.

19.3 Standards and Procedures for Lessee Approval

19.3.1 Submission Requirements. To request approval of a proposed Equity Transfer, Lessor shall provide to Lessee (a) a reasonably detailed description of the proposed transaction, (b) such information, evidence, and supporting documentation as Lessee may request concerning the identity, financial resources, qualifications, experience, and potential conflicts of interest of the proposed transferee and its proposed contractors, and (c) such evidence of organization and authority, and such incumbency certificates, certificates regarding debarment or suspension, and other certificates, representations, and warranties as Lessee may reasonably request.

19.3.2 Lessee Review and Response

(a) A proposed Equity Transfer that is subject to Lessee's approval in its discretion is subject to the discretionary standard set forth in Section 1.4.

(b) A proposed Equity Transfer that is not subject to Lessee's approval in its discretion is, instead, subject to the standard for reasonable approvals set forth in Section 1.4. For any such proposed Equity Transfer, within 30 days after receipt of the request and all supporting information, Lessee will evaluate the identity, financial resources, qualifications, experience, and potential conflicts of interest, taking into account only (i) the financial strength and integrity of the transferee, its direct or indirect beneficial

owners, any proposed managers or operating partners, and each of their respective affiliates (the "**Transferee Parties**"); (ii) the qualifications and experience of the Transferee Parties in performing services similar to the Services to be provided under this Lease; (iii) the background and reputation of the Transferee Parties and their respective officers, directors, and employees, including the absence of criminal, civil, or regulatory claims or actions against any such Person and the quality of any such Person's past or present performance on other projects; (iv) compliance with Lessee's rules, regulations, and adopted written policies regarding organizational conflicts of interests; (v) the relative portion of Lessor's interest in the Property, the Project, or this Lease that is subject to the proposed Equity Transfer; and (vi) the existence of any uncured Lessor Default or any event or circumstance that, with the lapse of time, the giving of notice, or both, would constitute a Lessor Default, unless Lessee receives from the proposed transferee assurances of cure and performance acceptable to Lessee.

19.3.3 Lessee's Recoverable Third-Party Costs. Lessor shall reimburse Lessee for Lessee's Recoverable Third-Party Costs in connection with its review of a proposed Equity Transfer within 30 days after receipt of an invoice for such costs.

19.4 Assignment by Lessee. Lessee may assign all or any portion of its rights, title, and interests in and to the Lease Documents, guarantees, and other security for payment or performance (a) without Lessor's consent, to any other Person that succeeds to the governmental powers and authority of Lessee, *provided* that (i) such Person has the same or equivalent legal authority with respect to the Project and legal authority and financial capacity with respect to satisfying its obligations (including its payment obligations) with respect to the Project as Lessee had as of the Financial Close Date and (ii) such assignment is not prohibited by Law; and (b) to others with the prior consent of Lessor.

19.5 Notice and Assumption. Assignments and transfers permitted under this Article 19 or otherwise approved by Lessee shall be effective only upon the other Party's receipt of notice of the assignment or transfer and, as applicable, a written recordable instrument executed by the transferee, in form and substance acceptable to the Parties, in which the transferee, without condition or reservation, assumes all of transferor's obligations, duties, and liabilities under this Lease and the other Lease Documents then in effect and agrees to perform and observe all provisions thereof applicable to the transferor Party. Any Person who acquires the Lessor's interest in the Project or this Lease pursuant to foreclosure, transfer in lieu of foreclosure, or similar proceeding, shall take such interest subject to, and shall be bound by, the Final Design Documents, the Plans developed in accordance with the FM Specifications (Exhibit 11), the Key Contracts, the Governmental Approvals, and all agreements between the transferor and Governmental Entities with jurisdiction over the Project, the Facility, or the Services, except to the extent otherwise approved by Lessee in its discretion. Except with respect to assignments and transfers pursuant to foreclosure, transfer in lieu of foreclosure, or similar proceeding, or assignments and transfers effected by Law, the transferor and transferee shall give the other Party notice of the assignment not less than 30 days prior to the effective date thereof.

19.6 Change of Organization or Name. Lessor shall not change the legal form of its organization in a manner that adversely affects Lessee's rights, protections, and remedies under the Lease Documents without the prior approval of Lessee, which consent may be granted or withheld in Lessee's discretion. In the event either Party changes its name, such Party agrees to promptly furnish the other Party with notice of change of name and appropriate supporting documentation.

ARTICLE 20

RECORDS, AUDITS, AND INTELLECTUAL PROPERTY

20.1 Maintenance of Records. Unless otherwise specified in the Technical Requirements, Lessor shall keep and maintain at a location in the State, or in another location Lessee approves in its discretion, all Project Records. Lessor shall keep and maintain Project Records in accordance with applicable provisions of the Lease Documents, and in accordance with Good Industry Practice. Lessor shall notify Lessee where Project Records are kept.

20.2 Retention of Records. Lessor shall retain Project Records for a minimum of (a) 10 years from the Occupancy Date, in the case of Project Records pertaining to the Project Improvements, and (b) 10 years from the creation of the record, in the case of all other Project Records; *provided* that if the Lease Documents or applicable Law specify any longer time period for retention of particular records, such time period shall control. Notwithstanding the foregoing, all Project Records which relate to a Claim or Dispute being processed or an action brought under the Dispute Resolution Procedures shall be retained and made available until any later date that such Claim, Dispute, or action is finally resolved.

20.3 Inspection. Lessor shall make all its Project Records available for inspection by Lessee and its Authorized Representatives and legal counsel at Lessor's principal offices in the State at all times during normal business hours, without charge. Lessor shall provide to Lessee copies thereof (a) as and when expressly required by the Lease Documents or (b) for those not expressly required, upon request and at no expense to Lessor. Lessee may conduct any such inspection upon 48 hours' prior notice, or unannounced and without prior notice where there is good faith suspicion of fraud. The right of inspection includes the right to make extracts and take notes. The foregoing notwithstanding, Lessor reserves the right to assert exemptions from disclosure for information that would be exempt under applicable State Law from discovery or introduction into evidence in legal actions.

20.4 Audits

20.4.1 For Compliance. Lessee shall have such rights to review and audit Lessor, its Subcontractors, and their respective Project Records as and when Lessee deems necessary for purposes of verifying compliance with the Lease Documents and applicable Law. Without limiting the foregoing, Lessee shall have the right to audit Lessor's compliance with Design Documents and Plans, including the right to inspect Improvement Work, Services, and activities and to verify the accuracy and adequacy of the Plans and their component parts. Lessee may conduct any such audit of Project Records upon 48 hours' prior notice, or unannounced and without prior notice where there is good faith suspicion of fraud. Lessee's rights of audit include the right to observe the business operations of Lessor and its Subcontractors to confirm the accuracy of Project Records.

20.4.2 For Claims. All Claims filed against Lessee shall be subject to audit at any time following the filing of the Claim. The audit may be performed by employees of Lessee or by an auditor under contract with Lessee. No notice is required before commencing any audit, except that Lessee shall provide 20 days' notice to Lessor, any Subcontractors, or their respective agents before commencing an audit beginning at least 60 days after the expiration of the Lease Term. Lessor, Subcontractors, or their agents shall provide adequate facilities, acceptable to Lessee, for the audit during normal business hours. Lessor, Subcontractors, or their agents shall cooperate with the auditors. Failure of Lessor, Subcontractors, or their agents to maintain and retain sufficient Project Records to allow the auditors to verify all or a portion of the Claim or to permit the auditor access to such Project Records shall constitute a waiver of the Claim (to the extent that all or a portion of the Claim is unable to be verified) and shall bar any recovery thereunder. At a minimum, the auditors shall have available to them the following documents relating to the Claim: (a) daily

time sheets and supervisor's daily reports; (b) union agreements; (c) insurance, welfare, and benefits records; (d) payroll registers; (e) earnings records; (f) payroll tax forms; (g) material invoices and requisitions; (h) material cost distribution work sheet; (i) equipment records (list of company equipment, rates, etc.); (j) Subcontractors' (including Suppliers') invoices; (k) Subcontractors' and agents' payment certificates; (l) cancelled checks (payroll and Suppliers); (m) job cost report; (n) job payroll ledger; (o) general ledger; (p) cash disbursements journal; (q) all documents that relate to each and every Claim together with all documents that support the amount of each Claim; and (r) worksheets used to prepare the Claim establishing (i) the cost components of the Claim, including labor, benefits, insurance, materials, equipment, and Subcontracts; and all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals; and (ii) the lost revenue components of the Claim. Lessee's rights of audit include the right to observe the business operations of Lessor and its Subcontractors to confirm the accuracy of Project Records. Full compliance by Lessor with the provisions of this Section 20.4.2 is a contractual condition precedent to Lessor's right to seek relief on a Claim under Article 14.

20.4.3 No Limit on Federal or State Officials. Nothing in the Lease Documents shall in any way limit the constitutional and statutory powers, duties, and rights of federal officials or elected State officials. Nothing in the Lease Documents shall preclude, and Lessor shall not interfere with, any review or oversight of the Services, the Premises, Facility operations, or Improvement Work plans that any federal official, court, independent monitor appointed by court order, or their respective designees may desire to conduct.

20.4.4 No Audit of Contracted Values in Fixed Prices. It is understood that an audit will not be conducted for the purpose of ascertaining contracted values included in the fixed lump-sum price, except that payroll records and invoices may be subject to audit to verify a Claim made by Lessor or compliance with Law.

20.5 Alabama Open Records Act

20.5.1 Lessee takes its obligations under the Alabama Open Records Act very seriously. Lessor acknowledges and agrees that, except as provided in the Open Records Act, all Project Records in Lessee's possession, including materials submitted by Lessor to Lessee, are subject to the provisions of the Open Records Act. If Lessor believes information or materials submitted to Lessee constitute a trade secret or commercial or financial information that is proprietary or privileged, or information Lessor believes is otherwise protected from disclosure, Lessor shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the header or footer of each affected page, as it determines to be appropriate. Lessor is advised to contact legal counsel concerning such Law and its application to Lessor.

20.5.2 If Lessee receives a request for public disclosure of information marked by Lessor as "CONFIDENTIAL", Lessee will use reasonable efforts to notify Lessor of the request and give Lessor an opportunity to assert, in writing and at its sole expense, a claimed exception under the Alabama Open Records Act, or other applicable Law, within the time period specified in the notice issued by Lessee and allowed under the Open Records Act.

20.5.3 In the event of any proceeding or litigation concerning the disclosure of any material submitted by Lessor to Lessee, Lessor shall be responsible for prosecuting or defending any action concerning the materials at its sole expense and risk; *provided, however*, that Lessee reserves the right, in its discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. Except in the case of Lessee's voluntary intervention or participation in litigation, Lessor shall reimburse Lessee for Lessee's Recoverable Third-Party Costs in connection with providing such support to Lessor within 30 days after receipt of an invoice and reasonable supporting documentation for such costs.

20.5.4 Lessor acknowledges that disclosure of its Proposal materials, or portions thereof, may be required by Law.

20.5.5 Notwithstanding the forgoing, the Parties expressly acknowledge and understand that, given the risk to security relating to certain specifications and plans of a correctional facility, Lessee intends to seek protection of security-related documents and plans by, and have the plans so declared confidential pursuant to, the Alabama Law Enforcement Agency policies and procedures.

20.6 Confidentiality

20.6.1 Care of Confidential Information. Each Party shall use at least the same degree of care to safeguard and prevent the unauthorized disclosure of the other Party's Confidential Information as it employs to avoid unauthorized disclosure of its own information of a similar nature, but in any event not less than reasonable care.

20.6.2 Lessor Obligations to Keep Lessee Confidential Information. From and after the Effective Date, Lessor shall, and shall require each Lessor Party to, hold in confidence (subject to Section 20.6.2) all Confidential Information of Lessee or of any other Lessee Party, Inmate, or Lessee Invitee, and use such information solely for purposes necessary or expressly permitted under the Lease Documents; *provided, however*, that this Section 20.6 will not restrict Lessor from disclosing or granting access to such information to its professional advisors and consultants, but only to the extent necessary to enable Lessor to perform (or to cause to be performed) its obligations or to enforce its rights under the Lease Documents; and *provided further* that Lessor may, subject to obtaining confidentiality commitments similar to those in this Section 20.6:

(a) Provide to the Lenders and other potential lenders, equity providers, underwriters, arrangers, investment dealers, monoline insurers, and their respective professional advisors, such documents and other information as are reasonably required by them in connection with the Financing, raising other financing for the Project, or complying with the terms of the Financing Documents or related agreements; and

(b) Provide to its Subcontractors and their respective professional advisors Confidential Information that is necessary to enable Lessor to perform (or to cause to be performed) its obligations under the Lease Document.

20.6.3 Exceptions. Notwithstanding any restrictions on Confidential Information that are imposed by any Person owning or responsible for the confidentiality or disclosure of such information, the obligations of the Parties to maintain the confidentiality of Confidential Information in accordance with this Section 20.6 does not apply to Confidential Information:

(a) That is or comes into the public domain in a manner other than by or through any disclosure prohibited by Law or the Lease Documents;

(b) To the extent that any Person is required to disclose such Confidential Information by Law (including pursuant to a court order), or that any Governmental Entity requests and is permitted to receive such Confidential Information under Law;

(c) To the extent that disclosure by Lessor to any Subcontractor, or to a consultant or advisor to Lessor, is necessary or appropriate for performance of the Services hereunder;

(d) In connection with the Dispute Resolution Procedures hereunder; or

(e) That either Party may be entitled to receive from the other Party pursuant to the Lease Documents for the purpose of the continued operation, maintenance, or improvement of the Facility or Premises in the event of, or following, a Pre-Payment Event or termination of this Lease.

20.7 Intellectual Property

20.7.1 Ownership of Proprietary Intellectual Property. Proprietary Intellectual Property shall remain exclusively the property of Lessor or its Affiliates or Subcontractors that supply the same, notwithstanding any delivery of copies thereof to Lessee. Lessor shall continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

20.7.2 Lessee's License. Lessee shall have and is hereby granted a nonexclusive, transferable, irrevocable, fully paid up right and license to use, reproduce, modify, adapt, and disclose, and sublicense others to use, reproduce, modify, adapt, and disclose, the Proprietary Intellectual Property of Lessor solely in connection with the Project and the Premises, subject to the following:

(a) Lessee shall not at any time sell any Proprietary Intellectual Property of Lessor or use, reproduce, modify, adapt, and disclose, or allow any party to use, reproduce, modify, adapt, and disclose, any such Proprietary Intellectual Property for any other purpose.

(b) The right to transfer the license is limited to any Governmental Entity that succeeds to the power and authority of Lessee generally or with respect to the Project as set forth in Section 19.4.

(c) The right to sublicense is limited to the Project and to the contractors, subcontractors, employees, attorneys, consultants, and agents that are retained by or on behalf of Lessee in connection with the Project. All such sublicenses shall be subject to subsection (d) below. Sublicensing for other use without retaining releases from the authors of the Proprietary Intellectual Property releases Lessor and all Subcontractors from all claims or causes of actions arising from such uses.

(d) Subject to Sections 20.5 and 20.6, Lessee (i) shall not disclose any Proprietary Intellectual Property of Lessor to any Person other than authorized transferees and sublicensees who agree to be bound by any confidentiality obligations of Lessee relating thereto; (ii) shall enter into a commercially reasonable confidentiality agreement if requested by Lessor with respect to the licensed Proprietary Intellectual Property; and (iii) include (or, where applicable, require the relevant Governmental Entity to include) in the contract with any sublicensee its covenant to employ sound business practices no less diligent than those used for its own confidential information, and no less diligent than required by commercially reasonable standards of confidentiality, to protect all Proprietary Intellectual Property of Lessor and other materials provided under the sublicense against disclosure to third parties not in receipt of a sublicense, and to use the sublicense only for the permitted purposes.

20.7.3 Third-Party Proprietary Intellectual Property. With respect to any Proprietary Intellectual Property owned by a Person other than Lessor, including any Affiliate, and other than Lessee or a Governmental Entity acting as a Subcontractor, Lessor shall obtain for Lessee, concurrently with execution of any contract, subcontract, or purchase order with such Person or with the first use or adaptation of the Proprietary Intellectual Property in connection with the Project, both for Lessor and Lessee, nonexclusive, transferable, irrevocable, fully paid up licenses to use, reproduce, modify, adapt, and disclose such Proprietary Intellectual Property solely in connection with the Project. The foregoing requirement shall not apply, however, to mass-marketed software products (sometimes referred to as "shrink wrap software") owned by such a Person where such a license cannot be extended to Lessee using commercially reasonable

efforts. The limitations on sale, transfer, sublicensing, and disclosure by Lessee set forth in subsections (b) through (d) of Section 20.7.2 shall also apply to Lessee's licenses in such Proprietary Intellectual Property.

20.8 No Lessee Liability for Breach of Confidentiality. Notwithstanding any contrary provision of this Lease, in no event shall Lessee or any of its directors, officers, employees, consultants, or agents be liable to Lessor, any Affiliate or any Subcontractor for any damages, including loss of profit, arising out of breach of the duty of confidentiality set forth in either Section 20.6.1 or Section 20.7.2(d) if such breach is not the result of gross negligence or intentional misconduct. Lessor hereby irrevocably waives all claims to any such damages. The foregoing provisions do not limit Lessor's equitable remedies set forth in Section 16.6.

ARTICLE 21 MISCELLANEOUS

21.1 Taxes. Lessor shall pay, prior to delinquency, all applicable Taxes. Lessee is exempt from State, federal, and local Taxes. Lessee will not be responsible for any Taxes levied on Lessor or any other Lessor Parties as a result of this Lease, except to the extent provided in Section 4.5.

21.1.1 Lessor, acting in cooperation with Lessee, shall use commercially reasonable efforts to obtain exemption from, or abatement or rebate of, State, county, and municipal ad valorem, sales, and/or use Taxes that would otherwise be applicable under existing Law to the Project and materials and equipment incorporated or installed therein, including cooperation with Governmental Entities in which any portion of the Project may be located. Any such reduction in the amount of applicable ad valorem, sales, or use Taxes resulting from such actions shall result in a reduction in the Lease Payments on such basis as the Parties may mutually agree; *provided, however*, that nothing herein shall be deemed to constitute a guarantee by Lessor or Lessee of the achievement of any such exemption from, or abatement or rebate of, such Taxes.

21.1.2 Lessor shall have no right to an Adjustment Event or any other Claim due to its misinterpretations of Laws respecting Taxes or incorrect assumptions regarding the applicability of Taxes.

21.2 Amendments. The Lease Documents may be amended only by a written instrument duly executed by the Parties, except to the extent expressly provided otherwise in this Lease.

21.3 Waiver

21.3.1 No waiver of any term, covenant, or condition of this Lease or the other Lease Documents shall be valid unless signed by the obligee Party. No right conferred on either Party under this Lease or the other Lease Documents shall be deemed waived, and no breach of this Lease or other Lease Documents excused, unless such waiver is signed by the Party claimed to have waived such right. The exercise by a Party of any right or remedy provided under this Lease or the other Lease Documents shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any Party of any right or remedy under this Lease or the other Lease Documents shall be deemed to be a waiver of any other or subsequent right or remedy under this Lease or the other Lease Documents. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

21.3.2 Except as provided otherwise in the Lease Documents, no act, delay or omission done, suffered, or permitted by one Party or its agents shall be deemed to waive, exhaust, or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under this Lease or the other Lease Documents.

21.3.3 Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of the Lease Documents at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition, or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the Parties make and implement any interpretation of the Lease Documents without documenting such interpretation by an instrument signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes.

21.3.4 None of Lessee's review, approval, or acceptance of, or payment for, the Services required under the Lease Documents shall be construed to operate as a waiver of any rights under the Lease Documents or for any cause of action arising out of the performance of the Lease Documents, and Lessor shall be and remain liable to Lessee in accordance with applicable Law for all damages to Lessee as set forth in this Agreement.

21.4 Independent Contractor; No Joint Venture or Partnership

21.4.1 Lessor is an independent contractor, and nothing contained in the Lease Documents shall be construed as constituting any relationship with Lessee other than that of Project developer and independent contractor. Both Parties, in the performance of the Lease Documents, shall act in an individual capacity and not as agents, employees, partners, joint venturers, or associates of one another. Nothing in the Lease Documents is intended or shall be construed to create any partnership, joint venture, or similar relationship between Lessee and Lessor; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture, or similar relationship exists.

21.4.2 In no event shall the relationship between Lessee and Lessor be construed as creating any relationship whatsoever between Lessee and Lessor's employees or agents. Neither Lessor nor any of its employees or agents is or shall be deemed to be an employee or agent of Lessee. Except as otherwise specified in the Lease Documents, Lessor has sole authority and responsibility to employ, discharge, and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors, and for all other Persons that Lessor or any Subcontractor hires to perform or assist in performing the Services.

21.5 Successors and Assigns. The Lease Documents shall be binding upon and inure to the benefit of Lessee and Lessor and each of their permitted successors, assigns, and legal representatives (subject to [Article 19](#) above).

21.6 Designation of Representatives; Cooperation with Representatives. Lessee and Lessor shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to the Lease Documents ("**Authorized Representative**"). [Exhibit 2](#) provides the initial Authorized Representative designations. A Party may change such designations by providing notice to the other Party. Lessor shall cooperate with Lessee and all representatives of Lessee designated as described above.

21.7 Survival. The following shall survive the expiration or earlier termination of this Lease or the completion of the Services: (a) Lessor's and Lessee's representations and warranties; (b) the Dispute Resolution Procedures; (c) the liabilities that have arisen prior to the termination of this Lease in respect of indemnifications, limitations, and releases contained in [Sections 7.5, 12.1.2\(b\), and 12.2\(b\)](#); (d) Lessee's obligations that have arisen prior to the termination of this Lease in respect of a Relief Event or a Pre-Payment Event; (e) Lessee's other payment obligations that have arisen prior to the termination of this Lease; (f) the express obligations of the Parties following termination; (g) [Section 7](#) of [Exhibit 5A](#) hereto; and (h) all other provisions which by their inherent character should survive expiration or earlier termination of this

Lease, delivery of the Project Improvements, or completion of the Services. The provisions of Article 17 shall continue to apply after expiration or earlier termination of this Lease to all Claims and Disputes between the Parties arising out of the Lease Documents.

21.8 Limitation on Third-Party Beneficiaries. It is not intended by any of the provisions of the Lease Documents to create any third-party beneficiary hereunder or to authorize anyone not a Party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions, and the provisions for the protection of certain Lenders under any Lenders' Direct Agreement) identify third parties and state that they are entitled to benefits hereunder, in which case the third party's rights hereunder are limited to only those rights so specified. Except as otherwise provided in this Section 21.8, the duties, obligations, and responsibilities of the Parties to the Lease Documents with respect to third parties shall remain as imposed by Law. The Lease Documents shall not be construed to create a contractual relationship of any kind between Lessee and a Subcontractor or any Person other than Lessor.

21.9 Liability

21.9.1 Lessee's and Lessor's Authorized Representatives are acting solely as agents and representatives of their respective employers when carrying out the provisions of or exercising the power or authority granted to them under this Lease. They shall not be liable either personally or as employees of either Party for actions in their ordinary course of employment.

21.9.2 The Parties agree to provide to each other's Authorized Representative notice of any claim which such Party may receive from any third party relating in any way to the matters addressed in this Lease and shall otherwise provide notice in such form and within such period as is required by Law.

21.9.3 Nothing in this Agreement or the other Lease Documents shall in any way be construed to limit the doctrine of sovereign immunity as applicable to Lessee or the State.

21.10 Governing Law. The Lease Documents shall be governed by and construed in accordance with the laws of the State of Alabama.

21.11 Notices and Communications

21.11.1 Notices under the Lease Documents shall be in writing and (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by email communication followed by a hard copy and with receipt confirmed by telephone.

21.11.2 All notices to Lessor shall be delivered to the address set out in Exhibit 2 or as otherwise directed by Lessor's Authorized Representative. All notices to Lessee shall be marked as regarding the Project and shall be delivered to the address set out in Exhibit 2 or as otherwise directed by Lessee's Authorized Representative. Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier, or other Person making the delivery. Notices sent by email communication shall be deemed received when receipt is confirmed by telephone. Notwithstanding the foregoing, all notices received after 5:00 p.m. shall be deemed received on the first Business Day following delivery. Any technical or other communications pertaining to the Services shall be conducted by Lessor's Authorized Representative and technical representatives designated by Lessee.

21.12 Integration of Lease Documents. Lessee and Lessor agree and expressly intend that, subject to Sections 1.3 and 21.13, this Lease and other Lease Documents constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.

21.13 Severability

21.13.1 If a court having proper jurisdiction issues a final order ruling that any section, clause, or other part of the Lease Documents is invalid or unenforceable, then, after exhausting all rights of appeal, the Parties shall promptly meet and negotiate a substitute for such invalidated section, clause, or other part that, to the greatest extent legally permissible, gives effect to the original intent of the Parties. If, following such efforts, the Parties cannot agree on an interpretation or reformation of the Lease Documents that can be reasonably adopted that would return the Parties to the benefits of their original bargain, the final order shall be treated as a Court Ruling Event pursuant to Section 18.2.

21.13.2 Subject to Section 21.13.1, the invalidity or unenforceability of any such section, clause, or other part shall not affect the validity or enforceability of the balance of the Lease Documents, which shall be construed and enforced as if the Lease Documents did not contain such invalid or unenforceable section, clause, or other part.

21.14 Usury Savings. The Lease Documents are subject to the express condition that at no time shall either Party be obligated or required to pay interest on any amount due the other Party at a rate which could subject the other Party to either civil or criminal liability as a result of being in excess of the maximum non-usurious interest rate permitted by Alabama Law (the "maximum legal rate"), if any. If, by the terms of the Lease Documents, either Party at any time is obligated to pay interest on any amount due in excess of the maximum legal rate, then such interest shall be deemed to be immediately reduced to the maximum legal rate and all previous payments in excess of the maximum legal rate shall be deemed to have been payments in reduction of the principal amount due and not on account of the interest due. All sums paid or agreed to be paid to a Party for the use, forbearance, or detention of the sums due that Party under the Lease Documents shall, to the extent permitted by applicable State Law, be amortized, prorated, allocated, and spread throughout the full period over which the interest accrues until payment in full so that the rate or amount of interest on account of the amount due does not exceed the maximum legal rate in effect from time to time during such period. If after the foregoing adjustments a Party still holds interest payments in excess of the maximum legal rate, it shall promptly refund the excess to the other Party.

21.15 Entire Agreement. The Lease Documents contain the entire understanding of the Parties with respect to the subject matter thereof and supersede all prior agreements, understandings, statements, representations, and negotiations, in each case oral or written, between the Parties with respect to their subject matter.

21.16 Counterparts. This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Signature Page Immediately Follows

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Lease as of the date first written above.

LESSOR:

GOVERNMENT REAL ESTATE SOLUTIONS OF SOUTH ALABAMA LLC

Lucibeth Mayberry
Lucibeth Mayberry
Authorized Signatory
____/____/____
date

APPROVED:

Kay Ivey
Kay Ivey, Governor
State of Alabama
____/____/____
date

Kelly Butler
Kelly Butler, Finance Director
Alabama Department of Finance
____/____/____
date

APPROVED AS TO FORM:

Tamara Pharrams
Tamara Pharrams, Associate Counsel
AL Dept. of Finance, Legal Division
____/____/____
date

Mickey Allen
Mickey Allen, Assistant Finance Director
Real Property Management
____/____/____
date

Tara D. Sallee
Tara D. Sallee, Real Estate Specialist
Division of Leasing Mgmt.
____/____/____
date

LESSEE:

ALABAMA DEPARTMENT OF CORRECTIONS

Jefferson S. Dunn
Jefferson S. Dunn
Commissioner
____/____/____
date

Katherine S. Jessip
Katherine S. Jessip
Assistant Attorney General
____/____/____
date

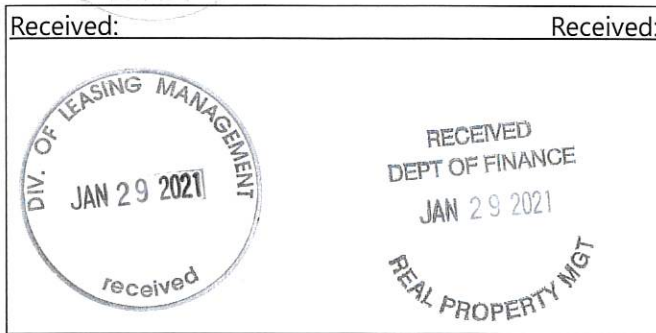


EXHIBIT 1 ABBREVIATIONS AND DEFINITIONS

Unless otherwise specified, wherever the following abbreviations or terms are used in this Lease, they have the meanings set forth below. Any reference in this Exhibit 1 to an article or section, which reference is not preceded by a reference to a particular Lease Document, is a reference to that article or section in the Agreement.

ACA	American Correctional Association
ADA	Americans with Disabilities Act
ADOC	Alabama Department of Corrections
CFR	Code of Federal Regulations
CMMS	Computerized Maintenance Management System
CPI	Consumer Price Index
D&C	Design and Construction
FEMA	Federal Emergency Management Agency
FF&E	Furniture, Fixtures, and Equipment
GAAP	U.S. Generally Accepted Accounting Principles
HVAC	Heating, Ventilation, and Air Conditioning
IRR	Internal Rate of Return
IRS	Internal Revenue Service
ISO	Insurance Services Office, Inc.
LP	Monthly Lease Payment
MALP	Maximum Annual Lease Payment
MLP	Maximum Monthly Lease Payment
PREA	Prison Rape Elimination Act
RFI	Request for Information
RFP	Request for Proposals
RID	Reference Information Document
SF	Square Feet
STAARS	State of Alabama Accounting and Resource System
US	United States
U.S.C.	United States Code

"ADA" means the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, and the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701 *et seq.*, and the rules and regulations promulgated thereunder.

"Abatement" or **"Lease Payment Abatement"** means an amount that may be applied by Lessee as a deduction to reduce the amount of the Lease Payments owed by Lessee under this Lease, whether in respect of assessed Deductions as set forth in Exhibit 15 or as otherwise expressly provided in this Lease, subject to Section 4.2.1.

"Account Balances" means all amounts standing to the credit of any bank account held by or on behalf of Lessor, or the value of any letter of credit issued in lieu of any bank account held or required to be held by or on behalf of Lessee as of the date the Pre-Payment Amount payment is made, including the balance of the Debt Service Reserve Fund as of such date, but excluding the balance of the Major Maintenance Reserve Fund (or equivalent reserve fund or account) and any Available Insurance Amounts.

"Adjustment Amount" means the amount, if any, owing to Lessor under Article 14 and Section 4.3 on account of occurrence of an Adjustment Event.

"Adjustment Date" has the meaning set forth in Section 14.4.3(b)(i)(C).

"Adjustment Event" means a Relief Event for which "Yes" is indicated in Exhibit 13 across from the description of that Relief Event under the column titled "Adjustment Event".

"Adjustment Trigger Date" has the meaning set forth in Section 14.4.3(b)(i)(B).

"Affiliate" means, with respect to any Person ("Person A"): (a) any shareholder, member, partner, or joint venture member of Person A; (b) any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, Person A or any of its respective shareholders, members, partners, or joint venture members; or (c) any Person for which 10% or more of the equity interest therein is held directly or indirectly, beneficially, or of record by (i) Person A (ii) any shareholders, members, partners, or joint venture members of Person A, or (iv) any other Affiliate of Person A under clause (b) of this definition. For purposes of this definition the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship, or otherwise.

"Affiliated" means having the status of an Affiliate.

"Affordability Limit" has the meaning set forth in the Basic Lease Terms.

"Agreement" has the meaning set forth in the Preamble.

"Alabama Ethics Act" means Section 36-25-1 *et seq.* of the Code of Alabama.

"Alteration" has the meaning set forth in Section 10.5.1.

"Annual Service Plan" has the meaning set forth in Exhibit 11, Section 3.9.

"Appropriation Certification" has the meaning set forth in Section 4.7.1(b).

"Authorized Representative" has the meaning set forth in Section 21.6.

"Available Insurance Amounts" means any and all insurance proceeds available under applicable Insurance Policies, or amounts expressly deemed to be self-insured by Lessor due to Lessor's failure to maintain Insurance Policies as required hereunder.

"Base Case Equity IRR" means the Equity IRR in the Base Case Financial Model.

"Base Case Financial Model" means the Financial Model updated at Financial Close in accordance with Sections 3.5 and 3.7 and Exhibit 5.

"Basic Lease Terms" refers to the summary of the terms of this Lease provided after the Recitals, before Article 1.

"Braggs Litigation" has the meaning set forth in Section 11.6.

"Business Day" means any weekday (i.e., Monday through Friday) except for those weekdays on which banks are not required or authorized by Law to be open in the State.

"Change in Law" means:

- (a) The enactment, adoption, or promulgation of any new Law; *provided* that such new Law is not a codification, re-codification, or re-promulgation of an existing Law then in full force and effect;
- (b) A change or amendment to, or the repeal, revocation, or replacement of, a Law; *provided* that such change or amendment is not a codification, re-codification, re-promulgation, or reorganization of an existing Law then in full force and effect; or
- (c) A change in the interpretation or application of a Law by a Governmental Entity responsible for enforcement or administration thereof, including any such change agreed by Lessee pursuant to a federal consent decree applicable to the Project;

excluding, however,

- (i) Any change in or new Law of the State pending, passed, or adopted, but not yet effective, as of the Setting Date;
- (ii) Any change in State labor Laws;
- (iii) Any change in State Tax Laws of general application (it being understood that any change in State Tax laws shall not be deemed of general application if it is solely directed at and the effect of which is solely borne by Lessor or private operators of correctional facilities similar to the Facility); and
- (iv) Any new or change in Law, or change in the interpretation or application thereof, that sets out requirements or establishes standards for modernization or replacement of, or upgrades, improvements, alterations, or other modification to an element included in the Project, which requirements or standards are not mandatory for the Project (e.g., because of a 'grandfather' clause or exclusion) as of the date the Lessor submits a Relief Request pursuant to Article 14.

For clarity, it will be considered a Lessee Change pursuant to Section 10.4, and not a Change in Law, if Lessee requires a change in the Project pursuant to a Directive Letter under Section 10.4, in order to conform (x) to changes in Standards (including Safety Standards) or (y) to changes in Laws that are not, under the terms of the Law, mandatory for the Project at the time of the Directive Letter is issued. If Lessor elects, in accordance with Section 6.6, to implement a change in the Project to conform to a change in Standards, or to a change in Law before the Law comes into force or requires such implementation with respect to the Project, the implementation of such change will be at Lessor's sole cost and risk, except as otherwise agreed by the Parties.

For further clarity, to the extent that a Change in Law (subject to the foregoing exclusions) necessitates modification, supplementation, or replacement of applicable Technical Requirements in order to conform to such Change in Law, such modification, supplement, or replacement shall be treated as a Change in Law, rather than as a Lessee Change.

"Change Order" means a written order, which may be in the form of a Supplemental Agreement, issued by Lessee to Lessor (a) delineating changes in the Project Improvements or the Services within the general scope of the Lease Documents, including the terms and conditions of Exhibits 10 and 11 and (b) establishing, if appropriate, an adjustment to the Project Schedule or to the amount of any payments owed to Lessor under this Lease.

"Change Proposal" has the meaning set forth in Section 10.2.2.

"Change Proposal Request" has the meaning set forth in Section 10.2.1.

"Change Request" means a written request from Lessor seeking to change the character, quantity, quality, description, scope, or location of any part of the Project Improvements or Services, or to modify or deviate from the requirements of the Lease Documents.

"Chief Executive Officer of Lessor" means the chief executive officer, president, or other senior officer of Lessor, or the governing body of Lessor, in each case having authority to negotiate and resolve a Dispute with Lessee and bind Lessor by his, her, or its decision in regard to such Dispute.

"Claim" means (a) a demand by Lessor, which is disputed by Lessee, for a time extension under the Lease Documents, payment of money or damages from Lessee to Lessor, or for payment from Lessee of an Adjustment Amount or Pre-Payment Amount, or (b) a demand by Lessee, which is disputed by Lessor, for payment of money or damages from Lessor to Lessee.

"CMMS" means the computerized maintenance management system for the Project provided in accordance with Exhibit 11, Part 6.

"Collateral Agent" means the Person listed or otherwise designated to act as trustee and/or agent on behalf of or at the direction of the Lenders in the Security Documents, or the Person designated to act as trustee or agent on behalf of or at the direction of the Lenders in an intercreditor agreement or other document executed by all Lenders to whom Security Documents are outstanding at the time of execution of such document, a copy of which shall be delivered by Lessor to Lessee.

"Committed Investment" means, collectively, (a) Equity Investment and (b) Deferred Equity Amounts.

"Compensable Work Order" means a written work order, generated through the CMMS, setting forth specific Maintenance Services to be performed by Lessor that are within the general scope of the Lease Documents (and not as a change in the Services), but for which Lessor is entitled to reimbursement of Direct Costs or other payment from Lessee in accordance with Exhibit 11 (for example, costs for Repair of Vandalism that are the responsibility of Lessee pursuant to Exhibit 11, Part 4).

"Confidential Information" means: (a) personal information of or related to Lessee Persons, Lessor Persons, Lessee Invitees, and Inmates, which may be collected, acquired, or obtained by a Lessor Party or Lessee Party in relation to or in the course performing obligations under the Lease Documents, including any information about an identifiable individual, such as the person's name, title, telephone number, address, email address, identification number, criminal or disciplinary record, employment record, or health information, and also including the nature of any relationship between any such persons; (b) information concerning the correctional, custodial, security, or other operations or activities of Lessee; or (c) any other information that a Party has designated as confidential and which is supplied, or to which access is granted,

to or on behalf of a Party (whether before or after the Effective Date), whether or not in writing, pursuant to discussions with the other Party concerning the Project, this Lease, or the Financing, including all models, analyses, studies, reports, and other documents that contain or otherwise reflect or are derived from such designated information.

"Construction Documents" means all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports, and samples necessary or desirable for construction of the Project Improvements, in accordance with the Lease Documents and Good Industry Practice.

"Construction Work" means all work and services required to be furnished and provided by Lessor under the Lease Documents to build or construct, reconstruct, rehabilitate, make, form, manufacture, furnish, install, integrate, supply, deliver, or equip the Project, whether required before or after the Occupancy Date, and including all labor, materials, equipment, and other items necessary therefor. The **"Construction Work"** includes all such work, services, and items necessary to: (a) deliver the Project Improvements for occupancy, use, and operations by Lessee in accordance with the Lease Documents, particularly Exhibit 10; (b) perform Life Cycle Work during the Occupancy Period in accordance with the Lease Documents, particularly Exhibit 11; (c) execute any Alterations and other changes in the Project Improvements pursuant to Article 10; and (d) furnish any Reinstatement Works required pursuant to Section 13.1. The **"Construction Work"** excludes those efforts that the Lease Documents expressly specify will be furnished by persons other than Lessor or otherwise expressly exclude from the scope of Lessor's obligations.

"Consumer Price Index" (CPI) means the Consumer Price Index for All Urban Consumers (CPI-U), South region, All items, Not Seasonally Adjusted (BES Series ID: CUUR0300SA0), as published by the United States Department of Labor, Bureau of Labor Statistics, for which the base period is 1982-84 = 100, or if such publication ceases to be in existence, a comparable index selected by Lessee and approved by Lessor, acting reasonably. If such index is revised so that the base year differs from that set forth above, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau of Labor Statistics otherwise alters its method of calculating such index, the Parties shall mutually determine appropriate adjustments in the affected index.

"Contingency/Crisis Management Plan" means the Facility contingency/crisis management plan established jointly by the Lessor and Lessee pursuant to Exhibit 11, Section 3.14.

"Contributed Unreturned Equity" means the Equity Investment or Equity Member Debt contributed or advanced to Lessor by Affiliates, Equity Members, Equity-Related Entities, or other equity investors in Lessor, *minus* the amount of any such (a) Equity Investment previously returned by Lessor to such contributing Person (as opposed to a return on such Equity Investment), and (b) principal of Equity Member Debt previously repaid by Lessor to such advancing Persons, in each case through Distributions or otherwise, as of the date the Project Development Cost Payment is made.

"County" means Escambia County, Alabama.

"Court Ruling Event" has the meaning set forth in Section 18.1.4.

"Critical Event" means an Event that (a) if not corrected, is likely to deteriorate into an Emergency Event; (b) is causing, or is likely to cause, Lessee significant operational problems; (c) is, or results in, a material breach of binding regulatory requirements or standards (unless such Event is an Emergency Event); or (d) may deteriorate, if not corrected in the time required, into an Event described in clause (b) or (c) of this definition.

"Critical Path" means the longest chain, in terms of time, of logically connected activities on the Project Schedule ending with Occupancy Readiness. Any delay along a Critical Path will affect the Occupancy Date.

"Day" or **"day"** means calendar day unless otherwise expressly specified.

"D&C Contract" means that certain agreement between Lessor and the D&C Contractor of even date herewith for the design and construction of the Project Improvements.

"D&C Contractor" means the Key Contractor(s) retained by Lessor for the design and construction of the Project Improvements pursuant to the D&C Contract, which, as of the Effective Date, is Caddell Construction Co. (DE), LLC, a Delaware limited liability company.

"Debarment Regulations" means (a) Federal Executive Order no. 12549 (Feb. 18, 1986), (b) Federal Executive Order no. 12689 (Aug. 16, 1989), (c) 31 U.S.C. § 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327), and (d) 49 CFR Part 29 "Government wide Debarment and Suspension (Nonprocurement)".

"Debt Service Reserve Fund" means a reserve fund established to support obligations of Lessor with respect to Project Debt.

"Deduction" means a deduction from the otherwise applicable Lease Payment(s) that Lessee is permitted to assess on account of a specified Noncompliance Event under Exhibit 15, which such Deduction may be applied by Lessee as a Lease Payment Abatement in accordance therewith.

"Defect" means a defect, whether by construction, installation, damage, or wear (other than normal or ordinary wear and tear or obsolescence), affecting the condition, use, functionality, or operation of any Maintained Element of the Project, which would cause or have the potential to cause one or more of the following:

- (a) A hazard, nuisance, or other risk to public or worker health or safety, including the health and safety of Users;
- (b) A structural deterioration of the affected Maintained Element or any other part of the Project;
- (c) Damage to a third party or a third party's property or equipment;
- (d) Damage to the Environment; or
- (e) Failure of a Maintained Element to meet a Performance Requirement.

"Defective" means the quality of having a Defect.

"Deferred Equity Amounts" means, on any date, any amount of unfunded equity that has been committed to Lessor (including commitments to provide an Equity Investment or Equity Member Debt) and is shown to be available for use in the Base Case Financial Model prior to the commencement of the Occupancy Period.

"Deferred Payment" means Lessee's payment of Direct Costs, with the written consent of Lessor in accordance with Section 4.3.3(e), through any one of the following or a combination thereof: (a) extension of the Lease Term; (b) adjustment of the Maximum Annual Lease Payments; or (c) periodic payments over the term of the Agreement (but progress payments for Improvement Work as it is completed or Services as they are performed as described in subsections (b)-(d) of Section 4.3.3, including pursuant to Section 4.3.4, shall not be considered Deferred Payment).

“Demand Maintenance” means any *ad hoc* or responsive Maintenance that is not Scheduled Maintenance, including maintenance relating to repair of systems or equipment to bring it back to appropriate operating condition after malfunction, breakdown, or wear and tear.

“Demand Requisition” means any request for service, report of a Service Failure, Equipment Failure, or Noncompliance Event, or any other report or inquiry made by Lessee to the Help Desk or Lessor. If, pursuant to Exhibit 11, Lessor is entitled to reimbursement of Direct Costs or other additional payment from Lessee for Services otherwise included in the general scope of the Lease Documents, the relevant Demand Requisition may be treated as a Compensable Work Order in accordance with Exhibit 11.

“Design Criteria” or **“Design Criteria Documents”** means Exhibit 10C, as such may be modified by Exhibit 10E or otherwise by agreement of the Parties.

“Design Documents” means all drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details, and diagrams), specifications, reports, studies, calculations, electronic files, records, and submittals necessary for, or related to, the design of the Project Improvements.

“Design Package(s)” shall have the meaning set forth in Exhibit 10A, Section 2.3.2.

“Design Requirements” means all requirements in respect of the Design Work and the Design Documents, including Lessee-approved Deviations, as set forth in the Lease Documents, including Section 6.3.1 and Exhibit 10.

“Design Work” means all work and services required to be furnished and provided by Lessor under the Lease Documents for design, engineering, or architecture for the Project, whether required before or after the Occupancy Date, and including all professional services, labor, materials, equipment, and other items necessary therefor. The **“Design Work”** includes all such work, services, and items necessary to: (a) deliver the Project Improvements prior to Occupancy in accordance with the Lease Documents, particularly Exhibit 10; (b) perform Life Cycle Work during the Occupancy Period in accordance with the Lease Documents, particularly Exhibit 11; (c) execute any Alterations and other changes in the Project Improvements pursuant to Article 10; and (d) furnish any Reinstatement Works required pursuant to Section 13.1. The **“Design Work”** excludes those efforts that the Lease Documents expressly specify will be furnished by persons other than Lessor or otherwise expressly exclude from Lessor’s obligations.

“Deviation” means any proposed or actual change, deviation, modification, alteration, or exception from the Technical Requirements with respect to the Project Improvements as set forth in Exhibit 10 and with respect to the Maintenance Services as set forth in Exhibit 11.

“Direct Costs” has the meaning set forth in Exhibit 15.

“Directive Letter” means the letter described in Section 10.4.

“Discriminatory Action” means:

- (a) Materially more onerous application to Lessor or the Project of changes or additions to Technical Requirements than the application thereof to other comparable State correctional facilities; or
- (b) Selective application of changes or additions to Technical Requirements to Lessor or the Project and not to other comparable State correctional facilities;

in each case, however, excluding the following:

- (i) Any such application in response to any act or omission by or on behalf of a Lessor Party in violation of Law, Safety Standards, or Good Industry Practice;

- (ii) Any such application in response to any willful or negligent noncompliance with or disregard of requirements of the Lease Documents by a Lessor Party;
- (iii) Any Safety Compliance Order or other actions necessary to address potential safety concerns arising from a specific condition or feature peculiar to the Project.

"Dispute" means any Claim, dispute, disagreement, or controversy between Lessee and Lessor concerning their respective rights and obligations under the Lease Documents, including concerning any alleged breach or failure to perform and remedies.

"Dispute Resolution Procedures" means the procedures for resolving Disputes set forth in Section 17.2.

"Distribution" means, whether in cash or in kind, both made and projected to be made, from Lessor to any Equity Member, Equity-Related Entity, or Affiliate thereof, or other equity investors in Lessor, any:

- (a) Dividend or other distribution in respect to share or other equity capital;
- (b) Payment or other distributions resulting from reduction of capital, redemption or purchase of shares, or any other reorganization or variation to share capital;
- (c) Payments (whether of principal, interest, breakage costs or otherwise) made by Lessor to any of the above-referenced Persons in respect of Equity Member Debt;
- (d) Payment, loan, contractual arrangement, or transfer of assets or rights, to the extent (in each case) that it is neither in the ordinary course of business, nor on reasonable commercial terms; and
- (e) Receipt of any other benefit that is not received in the ordinary course of business and not on reasonable commercial terms.

Such dividends, distributions payments, or other benefits include any such dividends, distributions, payments, or other benefits made using the proceeds of any Refinancing.

"Effective Date" means the date as of which this Agreement is entered into and made effective, as set forth in the preamble to this Agreement.

"Element" means an individual component, system, or subsystem of the Project.

"Emergency" means

- (a) For purposes of Exhibit 11, an Emergency Event; and
- (b) For all purposes of the Lease Documents, any unforeseen event affecting, directly or indirectly, the Project that (i) presents a clear and present threat to human life, safety, security, or irreparable damage or destruction of building elements, equipment systems, other Elements of the Project or to any Lessee or third-party asset; (ii) causes, or has the immediate or imminent potential to cause, material disruption to the Facility or any of the material operations undertaken therein; (iii) is an immediate or imminent threat to the physical integrity of any part of the Facility, to the Environment, or to the Property or other real property adjacent thereto; or (iv) is recognized or declared by Lessee or a Governmental Entity as an emergency.

"Emergency Event" means an Event that (a) presents a clear and present threat to human life, safety, security, or irreparable damage or destruction of building elements, equipment systems, other Project components, or any Lessee or third-party asset; (b) materially restricts or impedes the ability of Lessee to perform its legal obligations with respect to the care and custody of Inmates; or (c) may deteriorate, if not corrected in the time required, into an Event described in clause (a) or (b) of this definition.

"Employee Termination & Subcontractor Breakage Costs" means:

- (a) The payment of all wages earned, accrued unused vacation time, and any other payments required to be made by Lessor to its employees in accordance with Law or under the terms and conditions of Lessor's employment agreements with its employees as a direct result of the reduction in Services or termination of this Lease or Lessee's leasehold interest under the Lease;
- (b) Costs and expenses that have been or will be reasonably and properly incurred by Lessor under a Key Contract as a direct result of the reduction in Services or termination of this Lease or Lessee's leasehold interest under the Lease (and which shall not include lost profit or lost opportunity), but only to the extent that:
 - (i) Such costs and expenses are incurred in connection with the Project and in respect of the Services that were required to be provided or carried out, including (A) any materials or goods ordered or Subcontracts placed that cannot be cancelled without such costs and expenses being incurred; (B) any expenditure incurred in anticipation of the provision of the Services in the future; and (C) the cost of demobilization, including the cost of any relocation of equipment used in connection with the Project;
 - (ii) Such costs and expenses are incurred under Subcontracts that are consistent with terms that have been entered into in the ordinary course of business and on an arm's length basis; and
 - (iii) Lessor and any relevant Key Contractor have each used their reasonable efforts to mitigate such costs and expenses.

"Energy Management Plan" means the Plan established by Lessor pursuant to Exhibit 11, Section 3.13.

"Energy Utilities" means electricity, natural gas, chilled water, steam, and any other external energy source used at the Facility.

"Environment" means air, soils, submerged lands, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, biological resources, including endangered, threatened, and sensitive species, natural systems, including ecosystems, and historic, archeological, and paleontological resources.

"Environmental Approvals" means all Governmental Approvals arising from or required by any Environmental Law in connection with construction, use, or operation of the Project.

"Environmental Law" means any Law applicable to the Project, the Project Improvements, the Services, or the Premises, requiring consideration of environmental impacts or addressing, regulating, or imposing liability, actions, or standards of conduct that pertains to the Environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, and any lawful requirements and standards that pertain to the Environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, set forth in any permits, licenses, approvals, plans, rules, regulations, ordinances, or Governmental Approvals adopted, or other criteria and guidelines promulgated, pursuant to applicable Laws, as such have been or are amended, modified, or supplemented from time to time, including those relating to:

- (a) Manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, and transportation of Hazardous Materials;
- (b) Air, soil, surface, and subsurface strata, stream sediments, surface water, and groundwater;

- (c) Releases of Hazardous Materials;
- (d) Protection of wildlife, Threatened or Endangered Species, sensitive species, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, and natural resources;
- (e) Operation and closure of underground storage tanks;
- (f) Health safety of employees and other persons; and
- (g) Notification, documentation and record keeping requirements relating to the foregoing.

Without limiting the above, the term "**Environmental Law**" shall also include the following, as amended: (i) The National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*); (ii) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 *et seq.*); (iii) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*); (iv) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. § 11001 *et seq.*); (v) The Clean Air Act (42 U.S.C. § 7401 *et seq.*); (vi) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. § 1251 *et seq.*); (vii) The Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*); (viii) The Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*); (ix) The Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq.*); (x) The Oil Pollution Act (33 U.S.C. § 2701 *et seq.*); (xi) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 *et seq.*); (xii) The Federal Safe Drinking Water Act (42 U.S.C. § 300 *et seq.*); (xiii) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. § 7401 *et seq.*); (xiv) The Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*); (xv) The Endangered Species Act (16 U.S.C. § 1531 *et seq.*); (xvi) The Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*); (xvii) The National Historic Preservation Act (16 U.S.C. § 470 *et seq.*); (xviii) The Coastal Zone Management Act (33 U.S.C. § 1451 *et seq.*); (xix) The Alabama Water Pollution Control Act (Ala. Code § 22-22-1 *et seq.*); (xx) The Alabama Solid Wastes and Recyclable Materials Management Act (Ala. Code § 22-27-1 *et seq.*); (xxi) The Alabama Air Pollution Control Act (Ala. Code § 22-28-1 *et seq.*); (xxii) The Alabama Hazardous Wastes Management and Minimization Act (Ala. Code § 22-30-1 *et seq.*); and (xxiii) any other State and local Laws and lawful requirements and Standards applicable to the Project or the Services that pertain to the Environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters.

"**Environmental Management Plan**" means the Plan prepared pursuant to Exhibit 11, Section 3.12 regarding Hazardous Materials Management, compliance with Environmental Laws and Environmental Approvals, and other management of Environmental conditions and risks.

"**Environmental Management System**" means the system developed by Lessor pursuant to Exhibit 11, Section 3.12.2.

"**Equity Investment**" means (a) any form of direct investment by Equity Members, including the purchase of newly created limited liability company interests in, and the provision of Equity Member Debt to, Lessor, and (b) any draws by or on behalf of Lessor, as applicable, of any letter of credit that may have been issued for the account of an Equity Member to support its commitment to provide Deferred Equity Amounts. Equity Investment does not include any Deferred Equity Amounts that have not been contributed, except as provided in clause (b) above.

"**Equity IRR**" means the discount rate that, when applied to the equity cash flows calculated as of the relevant date, results in a net present value of zero. The Equity IRR as of the date of Financial Close is equal to the Base Case Equity IRR. The application of the Equity IRR will produce the nominal post-Tax internal rate of return on the total amount of Equity Investments made and projected in the Financial Model, as of

such date, to be made from and after the Financial Close Date and continuing over the full Lease Term (excluding potential early terminations or extensions of the Lease Term). For purposes of this definition:

- (a) The phrase "post-Tax" refers only to U.S. federal and state income tax liability of Lessor or its Equity Members, calculated at no greater than the maximum rate charged to domestic corporations and taking into account the deductibility of state and local taxes for federal purposes, and specifically excludes (i) any foreign income tax and other tax of any kind, and (ii) any withholding tax for federal, state, or local purposes, including any tax that Lessor or an Equity Member is obligated to withhold on Distributions (whether actual or constructive) or other payments or allocations to Equity Members or holders of debt of or equity interests in an Equity Member under 26 U.S.C. §§ 1441 – 1446, notwithstanding 26 U.S.C. § 1461; and
- (b) The phrase "equity cash flows" refers to (i) the total amount of Distributions that, as of the date of calculation, have been made and are projected to be made prior to expiration of the Lease Term, *minus* (ii) the total amount of Equity Investments that, as of the date of calculation, have been made and are projected to be made prior to expiration of the Lease Term.

"Equity Member" means any Person with a direct equity interest in Lessor (whether as a member, partner, joint venture member, or otherwise), which, as of the Effective Date, refers to Government Real Estate Solutions of Alabama Holdings LLC.

"Equity Member Debt" means any obligations created, issued or incurred by Lessor for borrowed money that (a) is owed to any Equity Member, Equity-Related Entity, or any Affiliate thereof or of Lessor, as applicable, and (b) is subordinated in priority of payment and security to all Project Debt held by Persons who are not Equity Members, other than any mezzanine debt that is provided by a party referred to in clause (a) on an arm's length basis.

"Equity Member Financing Agreements" means any loan agreement, credit agreement or other similar financing agreement providing for or evidencing Equity Member Debt.

"Equity-Related Entity" means CoreCivic, Inc., a Maryland corporation, as the sole member of Equity Member of Government Real Estate Solutions of Alabama Holdings LLC.

"Equity Return" means the amount of all Distributions anticipated in the Base Case Financial Model to be paid on Equity Investment (but not as a return of such Equity Investment) between the date the Project Development Cost Payment is made until the date of expiration of the Lease Term, each amount discounted back for Equity Investment at the Base Case Equity IRR, with the discounting in each case to be from the date on which such amount is shown to be payable in the Base Case Financial Model to the date the Project Development Cost Payment is made.

"Equity Transfer" means any assignment, mortgage, encumbrance, conveyance, sale, or other transfer of equity interest in Lessor.

"Event" means an incident or state of affairs materially, negatively affecting the condition of the Facility or Site or the ability of the Facility to function as intended, or requiring Services to be performed, or both, and which may lead to a Service Failure and/or Noncompliance Event.

"Extended Relief Event" means occurrence of a Relief Event, other than an Adjustment Event, (a) if, prior to the Occupancy Date, the Critical Path of the Initial Improvement Work has been delayed, and is continuing to be delayed, by at least 180 consecutive days due to reasons directly attributable to the Relief Event; or (b) if, on or after the Occupancy Date, such Relief Event results in (i) the complete or substantial destruction of the Facility, for which insurance or other amounts available to cover costs of repair, replacement,

restoration, or reconstruction are insufficient as described in Section 13.1.7, or (ii) the continuing inoperability of any material portion of the Facility for a period of at least 180 consecutive days, and such inoperability has a substantial impact on the economic viability of the Project for reasons directly attributable to the Relief Event.

"Extended Term Works" means additional Life Cycle Work required pursuant to a negotiated extension of the Lease Term pursuant to Sections 9.1 and 9.2 or otherwise required prior to the expiration of the Lease Term pursuant to Section 9.2.1(b) or Section 9.2.2.

"E-Verify Program" means the federal program (or, if applicable, the equivalent or similar State program, as designated by Lessee from time to time) established by U.S. government to enable employers to verify the eligibility of their employees and independent contractors to work in the United States in accordance with Laws, available as of the Effective Date as a web-based system at www.e-verify.gov, or any successor program thereto.

"Facility" has the meaning set forth in the Basic Lease Terms.

"Facility Condition Report" has the meaning set forth in Exhibit 11, Section 2.3.2.

"Facility Manager" means the Key Individual designated by Lessor in Exhibit 2, who will serve as Lessor's lead manager and supervisor of the Maintenance Services provided by Lessor under the FM Specifications (Exhibit 11), and who will have full authority to act on behalf of and bind Lessor with respect to such Services.

"Facility Systems" includes mechanical, electrical, plumbing, heating, ventilation, air conditioning, fire protection and life safety, security, building automation, energy management, electronic and communications systems, equipment, and associated components of the Facility, as more particularly described in Exhibit 10.

"Final Design Documents" means the final 100% complete Construction Documents, confirmed as conforming to the requirements of the Lease Documents in accordance with Exhibit 10A, Section 2.3, including drawings, plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams, specifications, reports, studies, calculations, electronic files, records and submittals, and all other such documents as are necessary for construction and maintenance of the Project or any portion thereof.

"Financial Close" means satisfaction or waiver of all of the conditions precedent thereto agreed by the Parties in accordance with Exhibit 5A.

"Financial Close Date" means the date on which the Parties agree that Financial Close has occurred in accordance with Exhibit 5A.

"Financial Model" means the electronic financial model, including the related output, assumptions, and information used by or incorporated in the Financial Model, that is delivered by Lessor to Lessee in connection with Financial Close in accordance with Section 3.5 and updated from time to time in accordance with Section 3.6 and that is used for the purpose of calculating, among other things, the Base Case Equity IRR and Maximum Annual Lease Payments.

"Financing" has the meaning set forth in Exhibit 5A, Section 1.

"Financing Agreement" means:

- (a) Each of the Initial Financing Agreements;

- (b) Any other loan or credit agreement, trust indenture, hedging agreement, interest rate swap agreement or other agreement by, with or in favor of any Lender pertaining to Project Debt (including any Refinancing), other than Security Documents;
- (c) Any note, bond or other negotiable or non-negotiable instrument evidencing the indebtedness of Lessor for Project Debt (including any Refinancing); and
- (d) Any amendment, supplement, variation, or waiver of any of the foregoing agreements or instruments.

"Financing Documents" means the Financing Agreements and the Security Documents.

"Financing Plan" means Lessor's plan for financing the Project as set forth in Exhibit 5B.

"Fiscal Year" means the consecutive 12-month period starting on October 1 and ending on September 30.

"Five-Year Maintenance Plan" has the meaning set forth in Exhibit 11, Section 3.10.

"FM Specifications" refers to Exhibit 11.

"Force Majeure Event" means any of the following events that adversely affects performance of Lessor's obligations:

- (a) War (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover occurring within, or affecting, the United States;
- (b) Any act of terrorism, riot, insurrection, civil commotion, or sabotage that causes direct physical damage to the Project or otherwise directly causes delay or interruption in the Services or causes direct Losses to Lessor (*provided, however, that acts of Vandalism shall be considered a Relief Event under event (n) and not event (a) (Force Majeure Event) in Exhibit 13*);
- (c) Embargoes, or unavailability or shortages of materials;
- (d) Nuclear, chemical, or biological explosion, contamination, or emission, or ionizing radiation, in each case occurring within, or affecting, the State;
- (e) Epidemics, pandemics, or quarantine, or health alerts issued by a Governmental Entity relating thereto, but only to the extent adversely impacting the availability of personnel, requiring compliance with quarantine requirements, requiring substitution of personnel, or requiring the undertaking of materially different or more onerous health and safety prevention activities;
- (f) Any government-declared Emergency, except one consisting of or arising out of traffic accidents; or
- (g) Fire, explosion, earthquake, hurricane, wind storm, storm surge, flood, tornado, sinkhole, or landslide, or any other weather condition that affected the geographic area around the Project Site that is not comparable to another weather condition that affected the geographic area around the Project Site in length or severity in the 10 years prior to the Setting Date, that (i) if prior to the Occupancy Date, causes direct physical damage to temporary Project works or permanent Project Improvements or otherwise directly adversely impacts Lessor's ability to perform or sequence the Improvement Work, or (ii) if after the Occupancy Date, exceeds the Design Requirements and causes direct physical damage to the Premises or has a direct adverse impact on Lessor's ability to perform the Services.

"Force Majeure Event Delay" means a Relief Event Delay with respect to a Force Majeure Event.

"Functional Area" means a room or space in the Facility that is specified as a "Functional Area" in Exhibit 15, Section 2.

"Functional Area Charge" means the charge for Unavailability of a Functional Area during a Lessor-Caused Unavailability Event.

"Furniture, Fixtures, and Equipment" (FF&E) means the furniture, fixtures, and equipment required for the Project, to be procured, delivered, and installed by Lessor for the Project in accordance with Exhibit 7.

"General Conditions" refers to Exhibit 10B.

"Good Industry Practice" means the exercise of the degree of skill, diligence, prudence, and foresight that would reasonably and ordinarily be expected from time to time from a skilled and experienced professional designer, engineer, constructor, operator, maintenance provider, or other consultant or contractor seeking in good faith to comply with its contractual obligations, complying with all applicable Laws and Governmental Approvals, using accepted design, construction, and maintenance standards and criteria normally used on similar projects in the State, and engaged in the same type of undertaking in the United States under similar circumstances and conditions as those applicable to the Services, including similar environmental conditions.

"Governmental Approval" means any registration, permit, license, consent, concession, grant, franchise, authorization, waiver, variance or other approval, guidance, protocol, mitigation agreement, or memoranda of agreement/understanding, and any amendment or modification of any of them provided or issued by Governmental Entities including state, local, or federal regulatory agencies, agents, or employees, which authorize or pertain to the Project, the Project Improvements, the Premises, or the Services.

"Governmental Entity" means any federal, state, or local government, any political subdivision of the foregoing, or any governmental, quasi-governmental, judicial, public, or statutory instrumentality, administrative agency, authority, body, or entity, other than Lessee.

"Hazardous Materials" means any element, chemical, compound, material, or substance, whether solid, liquid, or gaseous, which at any time is defined, listed, classified, or otherwise regulated in any way under any Environmental Law, or any other such substances or conditions (including mold and other mycotoxins or fungi) which may create any unsafe or hazardous condition, or pose any threat to human health and safety. "Hazardous Materials" includes the following: (a) hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances or related materials, whether solid, liquid, or gas, including substances defined as or included in the definition of "hazardous substance", "hazardous waste", "hazardous material", "extremely hazardous waste", "acutely hazardous waste", "radioactive waste", "radioactive materials", "bio-hazardous waste", "pollutant", "toxic pollutant", "contaminant", "restricted hazardous waste", "infectious waste", "toxic substance", "toxic waste", "toxic material", or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety, or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "TCLP toxicity" or "EP toxicity", or words of similar import under any applicable Environmental Laws); (b) any petroleum, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof or other petroleum derived substance; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto; (c) any drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources; (d) any flammable substances or explosives; (e) any radioactive materials; (f) any asbestos or asbestos-containing materials; (g)

any lead and lead-based paint; (h) any radon or radon gas; (i) any methane gas or similar gaseous materials; (j) any urea formaldehyde foam insulation; (k) electrical equipment which contains any oil or dielectric fluid containing regulated levels of polychlorinated biphenyls; (l) pesticides; (m) polyfluoroalkyl compounds, including perfluorooctane sulfonate and perfluorooctanic acid; (n) any other chemical, material, or substance, exposure to which is prohibited, limited, or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety of Lessor Parties, Lessee Parties, Inmates, Lessee Invitees, or any Persons using or in the vicinity of the Project, or to the indoor or outdoor Environment; and (o) soil, or surface water, or ground water contaminated with Hazardous Materials as defined above.

"Hazardous Materials Management" means procedures, practices, and activities to address and comply with Environmental Laws and Environmental Approvals with respect to Hazardous Materials and Recognized Environmental Conditions encountered, impacted, disturbed, released, caused by, or occurring in connection with the Project, the Premises, or the Services, as well as investigation, characterization, and remediation of such Hazardous Materials and Recognized Environmental Conditions. Hazardous Materials Management may include sampling, handling, stock-piling, storing, backfilling in place, asphalt batching, recycling, dewatering, treating, cleaning up, excavating, removing, remediating, transporting, and/or disposing off-site of Hazardous Materials, and otherwise managing Recognized Environmental Conditions, whichever approach required by Law, or if applicable Law does not require a particular approach, whichever approach is permitted by Law and is effective and most cost-efficient.

"Help Desk" means the contact point to be established by Lessor in respect of Help Desk Services, Demand Requisitions, Service and Equipment Failures, Noncompliance Events, and other matters arising in relation to the day-to-day provision of Services.

"Help Desk Services" means the services and requirements described in Exhibit 11, Appendix F.

"Improvement Work" means the Design Work and Construction Work.

"Improvement Work Commencement Date" means the date, as set forth in the Basic Lease Terms, for commencement of Construction Work in connection with the Initial Improvement Work.

"Indemnified Parties" means Lessee, the State, and each of their respective officeholders, officers, directors, officials, employees, representatives, agents, consultants, and contractors, in each case, as an indemnified party under the Lease Documents.

"Independent Maintenance Inspector" means each Independent Maintenance Inspector retained by the Parties pursuant to Section 7.7.

"Index Linked" means, with respect to any amount of money, that the amount is adjusted at the start of each Lease Year by:

- (a) Multiplying it by the Consumer Price Index as at the immediately preceding January; and
- (b) Dividing it by the Consumer Price Index as at the Financial Close Date.

"Informational Questions" has the meaning set forth in Exhibit 11, Section 5.11.1.2.

"Initial Financial Model" means the preliminary Financial Model as of the Financial Close Date, updated in connection with the Financing and at Financial Close in accordance with Section 3.5 and Exhibit 5.

"Initial Financing Agreements" means the Financing Agreements specifically identified in Exhibit 5C as of Financial Close.

"Initial Improvement Work" means the Improvement Work necessary to furnish and deliver the Project Improvements prior to Occupancy in accordance with the Lease Documents.

"Initial Lessor Default Notice" means notice given by Lessee to Lessor of a circumstance or event that would constitute a Lessor Default upon the expiration of the applicable Lessor Default Cure Period (if any).

"Initial Project Debt" means the Project Debt to originally finance the Project (including delivery of the Initial Improvement Work and performance of the Services), evidenced by the Initial Financing Agreements and secured by the Initial Security Documents.

"Initial Security Documents" means the Security Documents specifically identified in Exhibit 5C as of Financial Close.

"Inmate" means an individual incarcerated at the Facility.

"Insurance Policies" means all of the insurance policies required pursuant to Section 12.1 and Exhibit 12.

"Intellectual Property" means all current and future legal and/or equitable rights and interests in know-how, patents (including applications), copyrights (including moral rights), trade marks (registered and unregistered), service marks, trade secrets, designs (registered and unregistered), utility models, circuit layouts, plant varieties, business and domain names, inventions, solutions embodied in technology, and other intellectual activity, and applications of or for any of the foregoing, subsisting in or relating to the Project or Project design data. Intellectual Property includes software, source code, and source code documentation used in connection with the Project. Intellectual Property also includes the Financial Model. Intellectual Property is distinguished from physical construction and equipment itself and from drawings, plans, specifications, layouts, depictions, manuals and other documentation that disclose Intellectual Property.

"Joint Technical Review" has the meaning set forth in Exhibit 11, Section 2.3.1.

"Key Contract" means any one of the following Subcontracts for Work Lessor causes to be performed:

- (a) (i) The D&C Contract and (ii) any other Prime Subcontract for Construction Work totaling \$5,000,000 or more;
- (b) (i) The Subcontract with the Lead Design Firm and (ii) any other Prime Subcontract for Design Work totaling \$1,000,000 or more per year;
- (c) (i) The Lead Services Contract and (ii) any other Services Subcontract totaling 25% or more of the then-current annual budget for the Maintenance Services; and
- (d) Any other Prime Subcontract with a single Subcontractor (or a single Subcontractor and its Affiliates) totaling, individually or in the aggregate with other Subcontracts with that same Subcontractor or its Affiliates, \$1,000,000 or more per year.

"Key Contractor" means the Subcontractor under any Key Contract.

"Key Individuals" means those individuals appointed by Lessor and approved by Lessee from time to time to fill the "Key Individual" positions identified in Exhibit 2. The specific individuals appointed by Lessor and approved by Lessee to initially fill certain of the Key Personnel positions are identified in Exhibit 2.

"Landscaping" means all Services related to the landscaping of the Facility that Lessor is required to provide under the Technical Requirements including associated irrigation.

"Last Financial Close Date" means the last date for achieving Financial Close in accordance with Exhibit 5, as such date is set forth in the Basic Lease Terms and may be modified in accordance with Section 3.5 and Exhibit 5A.

"Law" or **"Laws"** means (a) any statute, law, code, regulation, ordinance, rule, or common law, (b) any binding judgment (other than regarding a Claim or Dispute), (c) any binding judicial or administrative order or decree (other than regarding a Claim or Dispute), including any consent decree, (d) any written directive, guideline, policy requirement, or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by Lessee within the scope of its administration of the Lease Documents), or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Entity; in each case which is applicable to, or has an impact on, the Project, the Premises, or the Property, whether taking effect before or after the Effective Date; and including Environmental Laws. "Laws," however, excludes Governmental Approvals.

"Lead Design Firm" means DLR Group Inc., an Alabama corporation.

"Lead Services Contract" means that certain agreement between Lessor and the Lead Services Provider of even date herewith for the maintenance of the Project.

"Lead Services Provider" means CoreCivic of Tennessee, LLC, a Tennessee limited liability company.

"Lease" means that certain Lease Agreement, to which this Exhibit 1 is attached, executed by Lessee and Lessor, including any and all Exhibits and amendments thereto.

"Lease Documents" has the meaning set forth in Section 1.2.

"Lease Month" means each calendar month of the Lease Year.

"Lease Payment" means each payment payable to Lessor by Lessee on account of the Maximum Annual Lease Payments, as Lessee's obligations to make such payments are further described in Article 4 and Exhibits 7 and 8.

"Lease Term" has the meaning set forth in Section 2.4.

"Lease Year" means each twelve-month period following the Occupancy Date until expiration of the Lease Term, with the first Lease Year commencing on the Occupancy Date and ending on the day prior to the first anniversary of the Occupancy Date, the second Lease Year commencing on the first anniversary of the Occupancy Date and ending on the day prior to the second anniversary of the Occupancy Date, and so on.

"Lender" means each of the holders and beneficial owners of Project Debt and the holders and beneficiaries of Security Documents and their respective successors, assigns, participating parties, trustees, and agents, including the Collateral Agent.

"Lenders' Direct Agreement" means the agreement, which shall be in a form agreed by the parties thereto and attached as Exhibit 6 in connection with Financial Close, by and among Lessee, Lessor, and the Lenders (or the Collateral Agent on behalf of the Lenders).

"Lessee" means the Alabama Department of Corrections, its duly appointed designees, and any entity succeeding to the powers, authorities, and responsibilities of Lessee invoked by or under the Lease Documents.

"Lessee-Caused Delays" means any of the following events, to the extent they result in a delay or interruption in performance of any material Lessor obligation under the Lease:

- (a) Failure of Lessee to issue a certificate of Occupancy Readiness or a notice setting forth the reasons why Occupancy Readiness has not been achieved, in either case within the 5 Business Day period set forth in Exhibit 10A, Section 3.2.5, if applicable;
- (b) Failure of Lessee to provide responses to proposed Design Documents, Plans, and other submittals and matters, in each case for which a Lessee response is required as an express prerequisite to Lessor's right to proceed or act, within the time periods (if any) indicated in the Lease Documents, or if no time period is indicated, within a reasonable time, taking into consideration (i) the nature, importance, complexity, completeness, and quality of the submittal or matter and (ii) the number of submittals then pending for Lessee's response, following delivery of notice from Lessor requesting such action in accordance with the terms and requirements of the Lease Documents;
- (c) Suspension of Services orders issued by Lessee for reasons other than those specified Section 16.4.6(a); and
- (d) Excluding Lessee's issuance of a Safety Compliance Order pursuant to Section 8.4 or undertaking of an Emergency Action pursuant to Section 8.5, which actions shall be governed by and subject to the terms of such sections, Lessee's exercise of its rights to step-in, increase Monitoring, or other cure rights or remedies for an alleged failure or breach of Lessor hereunder (including a Persistent Lessor Breach), if it is later finally determined that no such breach existed.

"Lessee Change" means (a) any material change in the Project Improvements or the scope of the Services initiated by Lessee that the Parties agree Lessor will perform through a Change Order in accordance with Exhibit 10, Part 10 or Article 10, as applicable; (b) any material change in the Project Improvements or the scope of the Services directed by Lessee pursuant a Directive Letter in accordance with Section 10.4; and (c) any other event that the Lease Documents expressly state shall be treated as a "Lessee Change."

"Lessee Default" has the meaning set forth in Section 16.5.

"Lessee FF&E" has the meaning set forth in Section 7.3.

"Lessee FM Services" means the services performed by Lessee as described in Exhibit 11, Part 7.

"Lessee-Furnished IT Equipment" means information technology equipment furnished by Lessee for use in the Facility, including such equipment to be furnished by Lessee as delineated in the room data sheets set forth in Exhibit 10C (Design Criteria Documents). "Lessee-Furnished IT Equipment" does not include, and Lessor shall be responsible for, all any wiring and backbone infrastructure within the Facility needed to support Lessee-Furnished IT Equipment, and (b) any information technology equipment needed by Lessor for its operations.

"Lessee Invitees" means Persons, other than Lessee Parties, Lessor Parties, and Inmates, that Lessee has given access to or permitted to occupy or use the Facility or the Premises, including Governmental Entity officials and employees, attorneys, legal observers, and Inmate visitors.

"Lessee Non-Payment Event" has the meaning set forth in Section 18.1.1.

"Lessee Party" means Lessee, its officials, employees, and representatives, and its consultants, contractors subcontractors, and agents when acting in that capacity (other than a Lessor Party).

"Lessee Person" means individual natural persons employed, retained, or engaged by Lessee or another Lessee Party in Lessee's operations at or in connection with the Facility, including employees, agents,

officers, directors, representatives, and consultants of Lessor Parties that are so employed, retained, or engaged.

"Lessee Policies and Procedures" means Lessee's policies and procedures (or portions thereof, where only a portion is referenced or otherwise indicated), as applicable to the Project or the Services, with respect to:

- (a) Facility access, security, safety, and operational conditions;
- (b) Critical incident response, emergencies, and evacuations;
- (c) Personnel identification, badges, and criminal history; and
- (d) Alcohol, tobacco, and drug use;

as such policies and procedures are set forth in the Administrative Regulations issued by Lessee as of the Setting Date, as they may be amended from time to time.

"Lessee Property" has the meaning set forth in Section 7.3.1.

"Lessee-Related Release of Hazardous Material" means (a) a Release of Hazardous Material directly attributable to the acts or omissions of a Lessee Party or Inmate; (b) Release of Hazardous Materials arranged to be brought onto the Property by a Lessee Party or Inmate, except if a Lessor Release of Hazardous Materials; or (c) use, containment, storage, management, handling, remediation, transport, removal, and disposal of any Hazardous Materials by any Lessee Party or Inmate. For the avoidance of doubt, Lessee-Related Release of Hazardous Material excludes any Hazardous Materials previously existing at the Project Site, or brought to or released on the Project Site by any Person other than a Lessee Party prior to the Occupancy Date.

"Lessee Recoverable Costs" means (a) Lessee's Recoverable Third-Party Costs; *plus* (b) without duplicating any costs included as Lessee's Recoverable Third-Party Costs, all other costs of or incurred by Lessee for assistance or work undertaken on behalf of Lessor or for which Lessor is liable to reimburse Lessee under the terms of the Lease Documents, including reasonably allocated wages, salaries, compensation, and overhead of employees of Lessee and other State agencies, as applicable.

"Lessee Recoverable Third-Party Costs" means costs incurred by Lessee for charges, fees, and other amounts payable to third parties (including architects, engineers, attorneys, courts and court clerks, expert witnesses, financial advisors, insurance brokers and advisors, investigators, risk management consultants, and other consultants and advisors, if actually charged to Lessee) for assistance or Work undertaken by Lessee on behalf of Lessor or for which Lessor is liable to reimburse under the terms of the Lease Documents, including litigation-related fees.

"Lessee Satisfaction Report" has the meaning set forth in Exhibit 11, Section 5.11.2.2.

"Lessee Satisfaction System" has the meaning set forth in Exhibit 11, Section 5.11.

"Lessor" means Government Real Estate Solutions of South Alabama LLC, a limited liability company organized under the laws of Delaware, and its permitted successors and assigns.

"Lessor-Caused Unavailability Event" has the meaning set forth in Exhibit 15, Section 2.1.2.

"Lessor Default" has the meaning set forth in Section 16.1.

"Lessor Default Cure Period" means, with respect to a Lessor Default, the applicable cure period (if any) across from the description of that Lessor Default in the column titled "Lessor Default Cure Period" in Exhibit 16, Table 1.

"Lessor Default Event" has the meaning set forth in Section 18.1.7.

"Lessor FF&E" has the meaning set forth in Section 7.3.

"Lessor Outstanding Breakage Amounts" means any prepayment premiums or penalties, make-whole payments or other prepayment amounts, that Lessor must pay, if any, under any Financing Document or otherwise as a result of the payment, redemption, acceleration, or reduction of all or any portion of the principal amount of Lessor Outstanding Debt prior to its scheduled payment date.

"Lessor Outstanding Debt" means (a) all amounts outstanding, including principal, interest, and default interest accrued and payable by Lessor to the Lenders under the Financing Documents or to any Affiliate of Lessor providing debt on terms consistent with terms that would reasonably be expected from a non-Affiliate lender acting in good faith, *provided* that the principal amount thereof shall not exceed the corresponding principal amount reflected in the Base Case Financial Model at the time of payment of the Project Development Cost Payment and, *provided further* that default interest will not include any increased interest, fees, or penalty amounts payable by Lessor for any reason other than a failure by Lessor to pay any amount when due, *plus* (b) all other fees, costs and expenses for which Lessor is responsible under the Financing Documents, including any Lessor Outstanding Breakage Amounts.

"Lessor Party" means any of (a) Lessor, (b) Lessor's Equity Members, (c) Subcontractors (including Suppliers), (d) any other Persons (except Lessee) for whom Lessor may be legally or contractually responsible, and (e) the employees, agents, officers, directors, representatives, and consultants of any of the foregoing.

"Lessor Person" means individual, natural persons performing or engaged in the delivery of the Services, including employees, agents, officers, directors, representatives, and consultants of the Lessor Parties that are performing or engaged in the delivery of Services.

"Lessor Release of Hazardous Material" means (a) a Release of Hazardous Material directly attributable to the acts or omissions of Lessor or any other Lessor Party; (b) Release of Hazardous Materials arranged to be brought onto the Property by any Lessor Party, except to the extent constituting a Lessee-Related Release of Hazardous Materials; or (c) use, containment, storage, management, handling, transport, and disposal of any Hazardous Materials by any Lessor Party.

"Life Cycle Plan" means the asset lifecycle and rehabilitation plan for the Maintained Elements prepared by Lessor in accordance with Exhibit 11, Section 3.11.

"Life Cycle Requirements" means the terms, conditions, requirements, and procedures of the Lease Documents governing the provision of Life Cycle Work and the condition in which Lessor is to keep the Maintained Elements pursuant to, or to ensure compliance with, the Life Cycle Plan and Schedule, the Performance Requirements for the Project for the duration of the Lease Term, and other applicable requirements of the Lease Documents.

"Life Cycle Schedule" has the meaning set forth in Exhibit 11, Section 3.7.

"Life Cycle Work" means maintenance, repair, restoration, renewal, refurbishment, or replacement of any Maintained Element of the Project that is not normally included as an annually recurring cost in maintenance and repair budgets for prison facilities of similar natures and in similar environments as the Project, including Design and Construction Work in connection therewith.

"Long Stop Date" means the outside deadline for achieving Occupancy Readiness set forth in the Basic Lease Terms, as such deadline may be extended for Relief Events from time to time pursuant to the Lease.

"Losses" means any loss, damage, injury, liability, obligation, cost, response cost, expense (including court costs and attorneys', accountants', and expert witnesses' fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of this Lease)), fee, charge, judgment, penalty, fine, or Third-Party Claims. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources.

"Maintained Elements" means all Elements of the Premises required to be constructed or installed by Lessor pursuant to the Lease Documents, including building systems, equipment, fixtures, and fittings, but excluding Lessee Property.

"Maintenance" means commissioning, testing, servicing, maintenance, repair, refurbishment, or replacement of Maintained Elements.

"Maintenance Services" means any and all Services, including Improvement Work, (a) required to be furnished and provided by Lessor for the Project by the FM Specifications (Exhibit 11), including all administration, planning, management, monitoring, reporting, maintenance, repair, preservation, cleaning, waste management, modification, reconstruction, rehabilitation, restoration, refurbishment, and replacement for the Project required thereunder, and (b) in connection with Scheduled Maintenance, Demand Maintenance, Repairs, Responses, Rectifications, Life Cycle Requirements, and any other Maintenance and Improvement Work required under the Lease Documents (whether in Exhibit 11 or elsewhere) to be performed or provided by Lessor during the Occupancy Period. The **"Maintenance Services"** excludes those efforts that the Lease Documents expressly specify will be furnished by persons other than Lessor or otherwise expressly exclude from Lessor's obligations. For the avoidance of doubt, the **"Maintenance Services"** include those categories of Services identified in Exhibit 11, Section 1.1.

"Maintenance Supervisor" means the person designated by Lessor pursuant to Exhibit 11, Section 1.8, who will be an assistant lead for the Lead Services Provider under the Facility Manager.

"Major Maintenance Reserve Fund" means a reserve fund established for the payment of costs to perform major Life Cycle Work and other major capital Maintenance and Improvement Work required under the Lease Documents after the Occupancy Date.

"MALP Breakdown" means the annualized breakdown of amortized costs of the Initial Improvement Work (as debt service costs), costs of Life Cycle Work, costs of Scheduled Maintenance and budgeted costs of Demand Maintenance (other than Life Cycle Work), and other costs that the Parties agree are included in the Maximum Annual Lease Payments as described in Section 4.1 and which will be set forth in Exhibit 7 upon Financial Close.

"Maximum Annual Lease Payment" (MALP) means the maximum Lease Payments that Lessor may be entitled to in a given Lease Year, reflecting Lessee's obligation to pay Lessor as described in Section 4.1. A schedule of MALPs payable for each Lease Year of the Lease Term, calculated as of the Financial Close Date, will be set forth in Exhibit 7 upon Financial Close.

"Maximum Lease Payment" (MLP) means the maximum Monthly Lease Payment that Lessor may be entitled to, calculated as 1/12th of the Maximum Annual Lease Payment for the applicable Lease Year.

"Missed Lease Payment Costs" means the costs for which Lessor is entitled to Adjustment Amounts pursuant to Section 14.4.3(b).

"Monitoring" means monitoring, inspecting, sampling, measuring, spot checking, attending, observing, testing, investigating, and conducting any other oversight respecting any part or aspect of the Project or the Services, including all the activities described in Section 8.3.

"Monthly Lease Payment" means the sum payable by Lessee to Lessor as the Lease Payment for the applicable Lease Month, as further described in Section 4.2 and calculated in accordance with the Payment Mechanism (Exhibit 8).

"Net Lease Payments Due" means (a) Lease Payments payable by Lessee to Lessor pursuant to Article 4 as of the date a Pre-Payment Amount payment is made, which payments remain unpaid as of such date; *minus* (b) Deductions and Lease Payment Abatement amounts to which Lessee is entitled in accordance with Article 15, but which Lessee has not yet applied against Lease Payments made to Lessor prior to the date the Pre-Payment Amount payment is made; which net amount may be a negative number.

"New Elmore County Facility Lease" has the meaning set forth in the Recital I.

"New Elmore County Facility Project" has the meaning set forth in the Recital E.

"Non-Appropriation Event" has the meaning set forth in Section 4.7.1(b).

"Non-Appropriation Final Cure Date" has the meaning set forth in Section 4.7.1(b).

"Noncompliance Event" any Lessee breach or failure in performance of its obligations under the Lease Documents (including Service Failures and Lessor-Caused Unavailability Events) for which a Deduction may accrue in accordance with Exhibit 15.

"Nonconforming Work" means Improvement Work that does not conform to (and does not exceed) the requirements of the Lease Documents (including the Technical Requirements), the Governmental Approvals, Law, the Design Documents, or the Construction Documents.

"Occupancy" means, depending on the context, the Occupancy Period, or Lessee's occupancy of the Premises during the Occupancy Period.

"Occupancy Date" has the meaning set forth in the Basic Lease Terms.

"Occupancy Deadline" means the deadline for achieving Occupancy Readiness, as such date is identified in the Basic Lease Terms, and as such deadline may be extended for Relief Events from time to time pursuant to this Lease.

"Occupancy Period" means the period starting on the Occupancy Date and ending at the end of the Lease Term.

"Occupancy Period Joint Committee" has the meaning set forth in Exhibit 11, Section 2.2.1.

"Occupancy Period Plans" means the Plans described in Exhibit 11, Part 3.

"Occupancy Period Representative" has the meaning set forth in Exhibit 11, Section 2.1.

"Occupancy Period Submittals" has the meaning set forth in Exhibit 11, Appendix I, Part 2.

"Occupancy Period Submittal Schedule" has the meaning set forth in Exhibit 11, Appendix I, Part 1.

"Occupancy Readiness" means satisfaction of the all the conditions for Occupancy Readiness as set forth in Exhibit 10A, Section 3.2, as and when confirmed by Lessee's issuance of a certificate in accordance with the procedures set forth in Exhibit 10A, Section 3.2.5.

"Open Book Basis" means allowing Lessee to review all underlying assumptions, data, documents, and information associated with the Financial Model, each Financial Model update, pricing or compensation or adjustments thereto, costs of Improvement Work, Direct Costs, Adjustment Amount claims under

Section 14.4.3, schedule, composition of equipment spreads, equipment rates (including rental rates), labor rates and benefits, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, swap and hedge rates, insurance rates, bonding rates, letter of credit fees, overhead, profit, traffic volumes, and other items reasonably required by Lessee to satisfy itself as to validity or reasonableness.

"Open Records Act" means the Alabama Open Records Act, Code of Alabama Section 36-12-40.

"Other Demand Maintenance Event" means an Event, other than a Performance Failure or Vandalism, requiring Demand Maintenance.

"Party" means Lessor or Lessee, as the context may require, and **"Parties"** means Lessor and Lessee, collectively.

"Payment Mechanism" refers to Exhibit 8 and the procedures, calculations, and other terms and conditions set forth therein.

"Performance Failure" means a Service Failure that constitutes a failure to satisfy a Performance Indicator.

"Performance Indicators" means those indicators set forth in the FM Specifications in Exhibit 11, Section 1.2 and Exhibit 11, Appendix E.

"Performance Monitoring Program" has the meaning set forth in Exhibit 11, Section 5.1.1.

"Performance Monitoring Report" has the meaning set forth in Exhibit 11, Section 5.2.1.

"Performance Requirements" means, for each Maintained Element of the Premises during the Occupancy Period, the performance specifications and standards set forth in the Technical Requirements.

"Permitted Encumbrances" means (a) all land-use and zoning regulations, restrictions, rules, and ordinances affecting the Property; (b) any restrictions on use of the Property, or construction or operations thereon, imposed pursuant to a Governmental Approval or otherwise adopted by a Governmental Entity having jurisdiction over the Property or the Project, whether before or after the Effective Date; or (c) any other conditions, restrictions, easements, or encumbrances affecting the Property and filed of record in Escambia County, Alabama as of the Occupancy Date; each as set forth in Exhibit 3C to the extent known as of the Effective Date.

"Permitted Uses" has the meaning set forth in the Basic Lease Terms.

"Persistent Lessee Default" means a Lessee Default, other than a Lessee Default under event (1) of Exhibit 16, Table 2, that recurs, under substantially the same circumstances of default, three or more times and results in Adjustment Amounts, whether previously paid or remaining payable at the time of the Persistent Lessee Default, that exceed \$350,000 cumulatively over any 12 consecutive Lease Months.

"Persistent Lessee Default Event" has the meaning set forth in Section 18.1.2.

"Persistent Lessor Breach" has the meaning set forth in Section 15.4.

"Person" means any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization, or Governmental Entity.

"Plans" means (only where capitalized) the Occupancy Period Plans and other plans required to be developed pursuant to the FM Specifications (Exhibit 11).

"Preconstruction Conference" has the meaning set forth in Exhibit 10B, Section 2.4.3.

"Premises" has the meaning set forth in the Basic Lease Terms.

"Pre-Payment Amount" means the amount payable by Lessee to Lessor on the occurrence of a Pre-Payment Event in accordance with Section 18.3 and Exhibit 17.

"Pre-Payment Event" has the meaning set forth in Section 18.1.

"Prime Subcontract" means a Subcontract between Lessor and a Subcontractor.

"Principal Project Documents" means the D&C Contract, the Lead Services Contract, and any Lenders' Direct Agreement.

"Prison Rape Elimination Act" has the meaning set forth in Section 11.12.

"Prohibited Person" means any Person who is:

- (a) Debarred, suspended, proposed for debarment with a final determination still pending, declared ineligible, or voluntarily excluded (as such terms are defined in any of the Debarment Regulations) from participating in procurement or non-procurement transactions with the United States federal government or any department, agency, or instrumentality thereof pursuant to any of the Debarment Regulations;
- (b) Indicted, convicted, or had a civil or administrative judgment rendered against such Person for any of the offenses listed in any of the Debarment Regulations and no event has occurred and no condition exists that is likely to result in the debarment or suspension of such Person from contracting with the United States federal government or any department, agency, or instrumentality thereof;
- (c) Listed on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs" issued by the US General Services Administration;
- (d) Located within, or doing business or operating from, a country or other territory subject to a general embargo administered by the United States Office of Foreign Assets Control (OFAC);
- (e) Designated on the OFAC list of "Specially Designated Nationals";
- (f) Otherwise targeted under economic or financial sanctions administered by the United Nations, OFAC, or any other U.S. federal economic sanctions authority or any divestment or sanctions program of the State;
- (g) A banking institution chartered or licensed in a jurisdiction against which the United States Secretary of the Treasury has imposed special measures under Section 311 of the USA PATRIOT Act (Section 311);
- (h) Located within or is operating from a jurisdiction that has been designated as non-cooperative with international anti-money laundering principles by the Financial Action Task Force on Money Laundering;
- (i) A financial institution against which the United States Secretary of the Treasury has imposed special measures under Section 311;
- (j) A "senior foreign political figure" or a prohibited "foreign shell bank" within the meaning of 31 CFR Section 103.175; or

- (k) Any Person with whom Lessee is engaged in litigation relating to performance of contract or business practices (unless Lessee has first waived (in Lessee's discretion) by notice to the transferring equity holder, with a copy to Lessor, the prohibition on a transfer to such Person during the continuance of the relevant litigation).

"Project" has the meaning set forth in the Basic Lease Terms.

"Project Debt" means all obligations created, issued, or incurred by or on behalf of Lessor, excluding any Equity Member Debt, (a) for borrowed money (whether by loan or the issuance and sale of debt instruments) or (b) in respect of letters of credit or similar instruments issued or accepted by banks and other financial institutions for the account of Lessor, in each case as outstanding from time to time pursuant to the Financing Documents.

"Project Development Cost Payment" means the payment calculated in accordance with Exhibit 17, which comprises a portion of the Pre-Payment Amount.

"Project Improvements" has the meaning set forth in the Basic Lease Terms.

"Project Management System" has the meaning set forth in Exhibit 10B, Section 2.2.

"Project Record Documents" shall mean the Project closeout and record documents described in Exhibit 10B, Part 7.

"Project Records" means any and all documents, books, records, papers, or other information relating to the Project, the Project Site, the Project Improvements, the FF&E, or the Services, including Design Packages, Design Documents, and Construction Documents (including the Final Design Documents), Project Record Documents, the Financial Model, CMMS records, documentation of Direct Costs and Missed Lease Payment Costs, and such other supporting documents, records, and papers reasonably necessary to ensure compliance with the Lease Documents.

"Project Schedule" means the logic-based critical path schedules for all Initial Improvement Work leading up to and including Occupancy Readiness, and for tracking the performance of such Improvement Work, as the same may be revised and updated from time to time in accordance with Exhibit 10A, Section 1.2 and Exhibit 10B, Section 6.3.

"Project Site" means any real property (which term is inclusive of all estates, easements, leases, and other interests in real property, whether temporary or permanent), improvements, and fixtures within the outside limits (both horizontal and, where specified, vertical) of the Property. These limits are depicted on Exhibit 3A.

"Project Specifications" means Exhibit 10D, as such may be modified by Exhibit 10E or otherwise by agreement of the Parties.

"Property" has the meaning set forth in the Basic Lease Terms.

"Proposal" has the meaning set forth in the Recital E.

"Proprietary Intellectual Property" means Intellectual Property created, used, applied, or reduced to practice in connection with the Project or the Services (including delivery of the Project Improvements) that derives commercial value from its protection as a trade secret under Law or from its protection under patent law.

"Quality Control Plan" means the Plan described in Exhibit 10B, Section 4.4.

"Rated Questions" has the meaning set forth in Exhibit 11, Section 5.11.1.2.

"Recognized Environmental Condition" means the presence or likely presence of any Hazardous Materials or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any Hazardous Materials or petroleum products into structures, on the property or into the ground, groundwater, or surface water of the property.

"Record Drawings" means construction drawings and related documentation revised to show significant changes made to the Project during the construction process or during the Occupancy Period, usually based on marked-up Final Design Documents furnished by Lessor; also known as as-built plans.

"Rectification" or **"Rectify"** has the meaning set forth in Exhibit 15, Appendix A.

"Rectification Period" means the amount of time specified as such for the applicable Event in Exhibit 15, App. A, Table 1, during which Lessor must Rectify the Event, measured in accordance with Exhibit 15, App. A, Section 1.3.2.

"Reference Rate" means, as determined by Lessee and approved by Lessor:

- (a) The London Interbank Offered Rate (LIBOR) per annum (rounded up to the next highest one one-thousandth of one percent (0.001%)) for deposits in U.S. dollars for a one-month period which appears on the Telerate Page 3750 at approximately 11:00 A.M., London time, on the date of determination, or if such date is not a date on which dealings in U.S. dollars are transacted in the London interbank market, then on the next preceding day on which such dealings were transacted in such market; or
- (b) The alternative reference rate produced by the Federal Reserve Bank of New York intended to be a replacement for the rate described in clause (a) above.

All interest shall be calculated on the basis of a 360-day year for the actual days elapsed.

"Refinancing" means any refinancing of the Project Debt that is not prohibited by the terms and conditions of the Lease Documents.

"Reinstatement Plan" has the meaning set forth in Section 13.1.3(d).

"Reinstatement Works" has the meaning set forth in Section 13.1.2.

"Release of Hazardous Materials" or **"Release"** means any spill, leak, emission, release, discharge, injection, escape, leaching, dumping, or disposal of Hazardous Materials into the soil, air, surface water, groundwater, submerged lands, or Environment, including any exacerbation of an existing release or condition of Hazardous Materials contamination.

"Relief Event" has the meaning set forth in Exhibit 13.

"Relief Event Delay" has the meaning set forth in Section 14.4.2.

"Relief Event Determination" means the determination by Lessee in respect of a Relief Request made pursuant to Section 14.4.

"Relief Event Notice" has the meaning set forth in Section 14.1.

"Relief Request" has the meaning set forth in Section 14.2.

"Remediation Plan" means a plan to remedy a delay in the Initial Project Improvements, any deficiencies identified in a Facility Condition Report, a Persistent Lessor Breach, or a Lessor Default, or to otherwise improve Lessor's performance of its obligations under the Lease Documents as described in Section 15.5.

"Repair" means a repair to the Facility or Site undertaken at any time after the Occupancy Date, other than punch list items and other than pursuant to the Life Cycle Requirements.

"Repair Estimate" has the meaning set forth in Exhibit 11, Section 4.4.1.

"Reporting Error" has the meaning set forth in Exhibit 11, Section 5.6.

"Request for Proposals" or **"RFP"** has the meaning set forth in Recital D.

"Response" or **"Respond"** has the meaning set forth in Exhibit 15, Appendix A.

"Response Time" means the amount of time specified as such for the applicable Event in Exhibit 15, Appendix A, Table 1, during which Lessor must Respond, in each case calculated from the earlier of the time that the Event (a) is reported to the Help Desk, (b) is otherwise reported to or discovered by Lessor, or (c) in accordance with the Professional Standard, ought to have been reported or discovered by Lessor.

"Routine Event" means an Event that is not an Emergency Event or Critical Event and is not likely, even if not corrected, to deteriorate into an Emergency Event or Critical Event.

"Safety Compliance" means any improvement, repair, reconstruction, rehabilitation, restoration, renewal, replacement, or change in configuration or procedures respecting the Project, including a change in the performance of the Maintenance Services, to correct, mitigate, or otherwise address any condition at the Project that Lessee or a Governmental Entity has reasonably determined presents a risk to health, safety, or security.

"Safety Compliance Order" means a written order or directive from Lessee to Lessor to implement Safety Compliance.

"Safety Standards" means those provisions of Exhibits 10 and 11 that exist to protect public safety, worker safety, or the safety of property. As a matter of clarification, provisions of Exhibit 10 and 11 primarily directed at durability of materials or equipment, where the durability is primarily a matter of lifecycle cost rather than protecting public or worker safety, are not Safety Standards. A "Safety Standard" need not be a "Standard" as that term is defined in this Exhibit 1.

"Scheduled Maintenance" means planned and preventative Maintenance, including Maintenance intended to prevent breakdowns and failures of systems and equipment.

"Scheduled Maintenance Failure" has the meaning set forth in Exhibit 15, Section 1.2.2.

"Scope Optimization Fee" has the meaning set forth in Exhibit 5A, Section 7.

"Scope Optimization Fee Agreement" has the meaning set forth in Exhibit 5A, Section 7.

"Security Document" means any mortgage, deed of trust, pledge, lien, security agreement, collateral agency agreement, indenture, trust agreement, hypothecation, assignment, collateral assignment, financing statement under the Uniform Commercial Code of any jurisdiction, security instrument or other charge or encumbrance of any kind, including any lease in the nature of a security instrument, given to any Lender as security for Project Debt or Lessor's obligations pertaining to Project Debt, and encumbering Lessor's interest or the interest of any Equity Member in the Project or this Lease.

"Service" or **"Services"** (a) except when used in the FM Specifications, means any and all Improvement Work and Maintenance Services, as well as any and all other work, services, and items required to be furnished and provided by Lessor for the Project under the Lease Documents, including all administrative, planning, design, engineering, construction, financing, facility management, lifecycle and routine

maintenance, and refurbishment necessary to deliver and maintain the Premises (including the Project Improvements) for occupancy, use, and operations by Lessee in accordance with the Lease Documents, and including all professional services, labor, materials, equipment, and other items necessary therefor, and (b) when used in the FM Specifications, refers only to the Maintenance Services. The "**Services**" excludes those efforts that the Lease Documents expressly specify will be furnished by persons other than the Lessor or otherwise expressly excludes from the scope of Lessor's obligations.

"**Service Failure**" means any failure by Lessor to provide the Maintenance Services in accordance with the FM Specifications, including failure to satisfy any Performance Indicator, except to the extent that such failure is caused by Scheduled Maintenance approved by Lessee that is scheduled and performed in accordance with the FM Specifications.

"**Service Records**" means all data in connection with the Services, including (a) all inspection and inventory records, whether generated by Lessor or a third party, (b) any communication to and/or from Lessee or a third party, and (c) any information system (as may be introduced or amended by Lessee from time to time) in connection with the Services that Lessee requires Lessor to use, implement or operate.

"**Services Breakage Payment**" means the payment calculated in accordance with Exhibit 17, which, if applicable, comprises a portion of the Pre-Payment Amount.

"**Services Subcontract**" means any Subcontract between Lessor or an Affiliate and a third party (i.e., a Person other than Lessee) for management, direction, supervision, or performance of the Services or any portion thereof. There may be more than one Services Subcontract concurrently in effect. The term "Services Subcontract" includes the "Lead Services Contract."

"**Services Provider**" means the Subcontractor under any Services Subcontract. There may be more than one Services Provider concurrently performing the Services.

"**Setting Date**" means [●].¹

"**Standard**" means a standard, standard specification, manual, guideline, or other similar publication referenced in, or otherwise made applicable by, the Lease Documents, that (a) does not have the force of Law and is not otherwise binding on the Facility, the Premises, or the Project, (b) is issued or published by Lessee, the ACA, or a Governmental Entity (including federal agencies and local governments) or is applicable as a matter of Good Industry Practice, and (c) is not specific to the Project or the Facility.

"**Start-up Plan**" has the meaning set forth in Exhibit 11, Section 3.8.

"**State**" means the State of Alabama, and such term includes the State's authorized representatives.

"**State Merit System**" means the merit system utilized by the State Personnel Board, or any successor entity, for the qualification, selection, and advancement of State employees.

"**Subcontract**" means any agreement, at any tier, entered into by Lessor or a Subcontractor for the performance to perform any part of the Services (including Improvement Work) or to provide any materials, equipment, or supplies in connection therewith, other than this Agreement or any other agreement with Lessee. For the avoidance of doubt, "Subcontract" includes the D&C Contract, Lead Services Contract, and all Services Subcontracts.

¹ Note: To be determined prior to Financial Close.

"Subcontractor" means any Person with whom the Lessor or a Subcontractor, at any tier, has entered into a Subcontract, including Suppliers. For the avoidance of doubt, Subcontractor includes the D&C Contractor, the Lead Services Provider, and all other Service Providers.

"Substituted Entity" means any person or entity selected by Lenders and approved by Lessee in accordance with the Lenders' Direct Agreement to perform Lessor's obligations and succeed to Lessor's rights hereunder after any such Lender has acquired the Lessor's interest in the Project, this Lease, or the Property by foreclosure or other lawful means or has otherwise assumed possession and control of the Project.

"Supplemental Agreement" means an agreement between Lessor and Lessee to give effect to a Change Order, Relief Event Determination, or other matter related to the Project called for by the Lease Documents, which agreement is supplemental to this Agreement and made a part of this Lease. A Supplemental Agreement shall stipulate the amounts due and owing to Lessor thereunder. The Parties shall mutually acknowledge and agree in a Supplemental Agreement that the stipulated amount: (a) is the price agreed to be paid by Lessee for the value of improvements and services received by Lessee from Lessor thereunder; (b) is a liquidated sum certain and represents a fair and reasonable approximation of such value; and (c) was fully known to and freely accepted by Lessee prior to entering into the Supplemental Agreement.

"Supplier" means any Person not performing Services or work at or on the Project Site that supplies machinery, equipment, materials, hardware, software, systems, or any other appurtenance to the Project to Lessor or to any Subcontractor in connection with the performance of the Services. Persons who merely transport, pick up, deliver, or carry materials, personnel, parts, or equipment, or any other items or persons to or from the Project Site shall not be deemed to be performing Services at the Project Site.

"Surveyed Element" has the meaning set forth in Exhibit 11, Section 5.11.1.1.

"Taken" and **"Taking"** have the meanings set forth in Section 13.2.

"Taking Event" has the meaning set forth in Section 18.1.5.

"Taxes" means federal, State, local, or foreign income, margin, gross receipts, sales, use, excise, transfer, consumer, license, payroll, employment, severance, stamp, business, occupation, premium, windfall profits, environmental, customs, permit, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, registration, value added, alternative or add-on minimum, estimated, or other taxes, levies, imposts, duties, fees, or charges imposed, levied, collected, withheld, or assessed at any time, whether direct or indirect, relating to, or incurred in connection with, the Project, acquisition of the Property, delivery of the Project Improvements, performance of the Services, Lease Payments, other compensation hereunder, or act, business, status, or transaction of Lessor, including any interest, penalty, or addition thereto, and including utility rates or rents, in all cases whether disputed or undisputed.

"Technical Requirements" means the set of documents providing Lessee's technical requirements impacting the Services, including the General Conditions, Design Criteria, Project Specifications, and the other parts of Exhibit 10 and the FM Specifications set forth in Exhibit 11.

"Third-Party Claims" means any and all claims, disputes, disagreements, causes of action, demands, suits, actions, judgments, investigations, legal or administrative proceedings, and Losses, in each case if asserted or brought by a Person that is not a Party (a "Party" including, for this purpose, the Lessor Parties, Lessee Parties, and Indemnified Parties, except insofar as such a Person is acting as a natural person bringing a non-contractual claim (such as an employee bringing a workers' compensation claim)) with respect to damages, injuries, liabilities, obligations, Losses, costs, penalties, fines or expenses (including attorneys' fees and expenses) sustained or incurred by, or awarded to, such Person.

"Third-Party Release of Hazardous Material" means a Release of Hazardous Material that is not a Lessee-Related Release of Hazardous Material or a Lessor Release of Hazardous Material.

"Threatened or Endangered Species" means any species listed by the USFWS as threatened or endangered pursuant to the Endangered Species Act, as amended, 16 U.S.C. §§ 1531, *et seq.* or any species listed as threatened or endangered pursuant to any other Law.

"Total Unavailability" has the meaning set forth in Exhibit 15, Section 3.4.

"Transferee Parties" has the meaning set forth in Section 19.3.2(b).

"Transition Period" has the meaning set forth in Section 9.4.1 and refers to the time allowed for Lessee's complete vacation of the Facility in accordance with the Transition Plan.

"Transition Plan" means the plan, developed as described in Section 9.4, for the orderly transfer of Inmates, Lessee's vacation of the Facility and surrender of the Premises, Lessor demobilization, and transfer of Maintenance Services, as applicable, and establishing the Transition Period for such activities.

"Unavailable" or **"Unavailability"** has the meaning set forth in Exhibit 15, Section 2.1.3.

"Uncovered Amount" has the meaning set forth in Section 13.1.7.

"Uninsured Force Majeure Event" means any of the events set forth in event (a), event (b), event (d), or event (g) of the definition of Force Majeure Event, but only to the extent that (a) insurance coverage with respect to such events is or becomes unavailable as described in Section 12.1.5 or (b) Lessor is not required under the terms of Exhibit 12 to maintain insurance coverage with respect to such events.

"User" means the intended and permissible users of the Premises (including the Facility and FF&E), including Lessor Persons and other Lessor Parties performing Services on the Premises, Lessee Parties, Inmates, and Lessee Invitees.

"Utility Owner" means the operator of any utility, including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies.

"Vandalism" means any damage to, or destruction of, the Facility, or any part thereof, that requires Repair and that is caused by the malicious, intentional, willful, or careless conduct, or negligent act or omission of a Lessee Party, Inmate, or other Lessee Invitee, except to the extent that such damage arises, directly or indirectly, from the breach, malicious, intentional, willful, or careless conduct, or negligent act or omission of a Lessor Party.

**EXHIBIT 2
INITIAL AUTHORIZED REPRESENTATIVES,
NOTICE ADDRESSES AND KEY INDIVIDUALS**

AUTHORIZED REPRESENTATIVES AND NOTICE ADDRESSES

For Lessor:

Authorized Representative(s)	Lucibeth Mayberry, Executive Vice President
Address(es) for notice	5501 Virginia Way, Suite 110, Brentwood, Tennessee 37027
In the case of any Claim or Dispute, with copy to	Cole Carter, General Counsel <i>(at the address above)</i>

For Lessee:

Authorized Representative(s)	Commissioner Jefferson S. Dunn
Address(es) for notice	301 S. Ripley St., Montgomery, Alabama 36104
In the case of any Claim or Dispute, with copy to	General Counsel Carrie E. McCollum <i>(at the address above)</i>

KEY INDIVIDUALS

Position	Individual	Required to Be Full Time
Team Lead	Steven Gorackowski (CoreCivic)	No
Corrections Advisor	Tim Aebie and Dan Strebel (CoreCivic)	No
Construction Project Lead	B.E. "Eddie" Stewart (Caddell)	No
Design and Construction Project Lead	B.E. "Eddie" Stewart (Caddell)	No
Design Lead	Martin Berglund (DLR)	No
Construction Lead	B.E. "Eddie" Stewart (Caddell)	No
Designer's Technology Lead	Frank Niedzwiedz (R&N Systems Design)	No
Facility Manager	Scott Whitson (CoreCivic)	No

**EXHIBIT 3
PROJECT SITE AND PREMISES**

Exhibit 3A Legal Description of Property for Project Site

Exhibit 3B Site Plan and Outline of Premises

Exhibit 3C Permitted Encumbrances

EXHIBIT 3A
LEGAL DESCRIPTION OF PROPERTY FOR PROJECT SITE

PARCEL "A"

Beginning at the Southwest corner of Section 27, Township 2 North, Range 6 East, Escambia County, Alabama; thence run N-00°35'43"-W, 5034.80 feet to a point on the East right-of-way of Interstate 65 marked by a 5/8" capped rebar (CA-0026); thence run Northeasterly along said East right-of-way and a curve to the left having a radius of 11609.16 feet, a chord of which bears N-62°09'27"-E, 581.67 feet, an arc distance of 581.73 feet to a 6"x6" concrete monument. thence run N-89°08'00"-E leaving said East right-of-way, 3454.33 feet to a 5/8" capped rebar (Thompson); thence run S-00°35'25"-E, 5298.66 feet to a 5/8" capped rebar (Thompson); thence run S-89°08'00"-W, 3971.00 feet to the Point of Beginning, containing 481.46 acres, more or less.

PARCEL "B"

Beginning at the Northwest corner of Section 34, Township 2 North, Range 6 East, Escambia County, Alabama, marked by a 4" open top iron pipe filled with concrete; thence un N-89°08'00"-E, 3971.00 feet to a 5/8" capped rebar (Thompson); thence run S-00°09'06"-W, 1536.95 feet to a point on the centerline of Bell Fork Road (Public Road with 40 foot prescriptive right-of-way); thence run along said centerline of Bell Fork Road the following: S-79°55'40"-W, 36.22 feet; a curve to the left having a radius of 5570.00 feet, a chord of which bears S-76°42'01"-W, 627.14 feet, an arc distance of 627.48 feet; S-73°28'23"-W, 1702.69 feet; a curve to the right having a radius of 1817.00 feet, a chord of which bears S-78°58'18"-W, 349.26 feet, an arc distance of 349.80 feet; S-84°30'13"-W, 239.69 feet; a curve to the right having a radius of 1968.00 feet, a chord of bears N-86°03'36"-, 645.32 feet, an arc distance of 648.25 feet; N-76°37'25"-W, 469.07 feet; thence run N-00°11'03"-W leaving said centerline of Bell Fork Road, 2048.67 feet to the Point of Beginning, containing 179.37 acres, more or less.

EXHIBIT 3B
SITE PLAN AND OUTLINE OF PREMISES

[Site plan is subject scope optimization process prior to Financial Close]

Confidential

EXHIBIT 3C
PERMITTED ENCUMBRANCES

[To be agreed prior to Financial Close]

**EXHIBIT 4
STATE CERTIFICATES AND FORMS**

Exhibit 4A Lessor Business Entity Record

Exhibit 4B State of Alabama Disclosure Statement

EXHIBIT 4A
LESSOR BUSINESS ENTITY RECORD

[See attached]



STATE OF ALABAMA

FOREIGN LIMITED LIABILITY COMPANY (LLC) APPLICATION FOR REGISTRATION

Alabama					
Sec. Of State	823-907	FLL			
	Date	12/09/2020			
	Time	11:05:00			
	File	\$150.00			
	Exp	\$0.00			
	Total				\$150.00

1. NAME OF THE FOREIGN ENTITY AS RECORDED IN THE JURISDICTION IN WHICH IT WAS FORMED/ORGANIZED

GOVERNMENT REAL ESTATE SOLUTIONS OF SOUTH ALABAMA LLC

2. NAME OF THE FOREIGN ENTITY FOR USE IN ALABAMA ONLY IF DIFFERENT FROM LEGAL NAME*

*A FICTITIOUS NAME MAY BE USED ONLY IF THE LEGAL NAME IS NOT AVAILABLE FOR USE IN ALABAMA OR THE NAME DOES NOT CONTAIN THE WORDS "LIMITED LIABILITY COMPANY" OR THE ABBREVIATION "L.L.C" OR "LLC" (10A-1-5.06)

3. IF A FICTITIOUS NAME IS USED THE UNDERSIGNED CERTIFIES THE RESOLUTION OF THE LLC'S GOVERNING AUTHORITY TO ADOPT THE FICTITIOUS NAME FOR USE IN ALABAMA AND AFFIRMS THE AUTHORITY TO MAKE SUCH A CERTIFICATION UNDER 10A-1-7.07

4. A COPY OF THE NAME RESERVATION ALREADY SUBMITTED TO THE SECRETARY OF STATE IS ATTACHED AT THE END OF THIS DOCUMENT

5. ENTITY'S JURISDICTION OF FORMATION

Delaware

6. DATE OF ENTITY'S FORMATION IN THE STATE/COUNTRY OF JURISDICTION

12/04/2020

7. THE UNDERSIGNED CERTIFIES THAT THE FOREIGN ENTITY EXISTS AS A VALID LIMITED LIABILITY COMPANY UNDER THE LAWS OF THE ENTITY'S JURISDICTION OF FORMATION.

8. THE FOREIGN ENTITY WILL BEGIN OR BEGAN TRANSACTING BUSINESS IN ALABAMA

01/01/2021

9. ADDRESS OF PRINCIPAL OFFICE

**5501 Virginia Way
Brentwood, TN 37027-7680**

MAILING ADDRESS

**5501 Virginia Way
Brentwood, TN 37027-7680**

10. NAME AND ADDRESS OF REGISTERED AGENT FOR SERVICE OF PROCESS

**C T Corporation System
2 North Jackson Street, STE 605
Montgomery, AL 36104**

12/09/2020

Stephen Hargraves Authorized Person

DATE

ELECTRONIC SIGNATURE & TITLE

John H. Merrill
Secretary of State

P.O. Box 5616
Montgomery, AL 36103-5616

STATE OF ALABAMA

I, John H. Merrill, Secretary of State of Alabama, having custody of the Great and Principal Seal of said State, do hereby certify that

pursuant to the provisions of Title 10A, Chapter 1, Article 5, Code of Alabama 1975, and upon an examination of the entity records on file in this office, the following entity name is reserved as available:

**GOVERNMENT REAL ESTATE SOLUTIONS OF SOUTH ALABAMA
LLC**

This name reservation is for the exclusive use of Butler Snow LLP, 1819 5th Avenue North, Suite 1000, Birmingham, AL 35203 for a period of one year beginning December 09, 2020 and expiring December 09, 2021

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol, in the city of Montgomery, on this day.



RES919010

December 09, 2020

Date

John H. Merrill

Secretary of State

Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "GOVERNMENT REAL ESTATE SOLUTIONS OF SOUTH ALABAMA LLC", FILED IN THIS OFFICE ON THE FOURTH DAY OF DECEMBER, A.D. 2020, AT 3:40 O`CLOCK P.M.




Jeffrey W. Bullock, Secretary of State

4342812 8100
SR# 20208564356

Authentication: 204241619
Date: 12-07-20

You may verify this certificate online at corp.delaware.gov/authver.shtml

**CERTIFICATE OF FORMATION
OF
GOVERNMENT REAL ESTATE SOLUTIONS
OF SOUTH ALABAMA LLC**

This Certificate of Formation of Government Real Estate Solutions of South Alabama LLC is to be filed with the Secretary of State of the State of Delaware pursuant to Section 18-201 of the Delaware Limited Liability Company Act.

1. The name of the limited liability company is Government Real Estate Solutions of South Alabama LLC.
2. The name and street and mailing address of the initial registered office and the registered agent for service of process of the limited liability company in the State of Delaware is as follows: The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

Dated as of this 4th day of December, 2020.



Stephen D. Hargraves, Authorized Person

EXHIBIT 4B
STATE OF ALABAMA DISCLOSURE STATEMENT

[See attached]



State of Alabama Disclosure Statement

(Required by Act 2001-955)

<small>ENTITY COMPLETING FORM</small>	CoreCivic, Inc.		
<small>ADDRESS</small>	5501 Virginia Way, Suite 110		
<small>CITY, STATE, ZIP</small>	Brentwood, TN 37027	<small>TELEPHONE NUMBER</small>	(615) 263-3000

<small>STATE AGENCY/DEPARTMENT THAT WILL RECEIVE GOODS, SERVICES, OR IS RESPONSIBLE FOR GRANT AWARD</small>			
Alabama Department of Corrections			
<small>ADDRESS</small>			
301 South Ripley Street			
<small>CITY, STATE, ZIP</small>	Montgomery, AL 36104	<small>TELEPHONE NUMBER</small>	(855) 937-2362

This form is provided with:

- Contract
 Proposal
 Request for Proposal
 Invitation to Bid
 Grant Proposal

Have you or any of your partners, divisions, or any related business units previously performed work or provided goods to any State Agency/Department in the current or last fiscal year?

- Yes
 No

If yes, identify below the State Agency/Department that received the goods or services, the type(s) of goods or services previously provided, and the amount received for the provision of such goods or services.

STATE AGENCY/DEPARTMENT	TYPE OF GOODS/SERVICES	AMOUNT RECEIVED

Have you or any of your partners, divisions, or any related business units previously applied and received any grants from any State Agency/Department in the current or last fiscal year?

- Yes
 No

If yes, identify the State Agency/Department that awarded the grant, the date such grant was awarded, and the amount of the grant.

STATE AGENCY/DEPARTMENT	DATE GRANT AWARDED	AMOUNT OF GRANT

1. List below the name(s) and address(es) of all public officials/public employees with whom you, members of your immediate family, or any of your employees have a family relationship and who may directly personally benefit financially from the proposed transaction. Identify the State Department/Agency for which the public officials/public employees work. (Attach additional sheets if necessary.)

NAME OF PUBLIC OFFICIAL/EMPLOYEE	ADDRESS	STATE DEPARTMENT/AGENCY
N/A		

2. List below the name(s) and address(es) of all family members of public officials/public employees with whom you, members of your immediate family, or any of your employees have a family relationship and who may directly personally benefit financially from the proposed transaction. Identify the public officials/public employees and State Department/Agency for which the public officials/public employees work. (Attach additional sheets if necessary.)

NAME OF FAMILY MEMBER	ADDRESS	NAME OF PUBLIC OFFICIAL/ PUBLIC EMPLOYEE	STATE DEPARTMENT/ AGENCY WHERE EMPLOYED
N/A			

If you identified individuals in items one and/or two above, describe in detail below the direct financial benefit to be gained by the public officials, public employees, and/or their family members as the result of the contract, proposal, request for proposal, invitation to bid, or grant proposal. (Attach additional sheets if necessary.)

N/A

Describe in detail below any indirect financial benefits to be gained by any public official, public employee, and/or family members of the public official or public employee as the result of the contract, proposal, request for proposal, invitation to bid, or grant proposal. (Attach additional sheets if necessary.)

N/A

List below the name(s) and address(es) of all paid consultants and/or lobbyists utilized to obtain the contract, proposal, request for proposal, invitation to bid, or grant proposal:

NAME OF PAID CONSULTANT/LOBBYIST	ADDRESS
Toby Roth, Capitol Resources, LLC.	2 N. Jackson Street, Suite 602, Montgomery, AL 36104

By signing below, I certify under oath and penalty of perjury that all statements on or attached to this form are true and correct to the best of my knowledge. I further understand that a civil penalty of ten percent (10%) of the amount of the transaction, not to exceed \$10,000.00, is applied for knowingly providing incorrect or misleading information.

Signature: *[Handwritten Signature]* Date: 1/20/21

Notary's Signature: *[Handwritten Signature]* Date: 1/20/21 Date Notary Expires: 10/2024



Act 2001-955 requires the disclosure statement to be completed and filed with all proposals, bids, contracts, or grant proposals to the State of Alabama in excess of \$5,000.

**EXHIBIT 5
FINANCING APPROACH**

- Exhibit 5A Parties' Financing Efforts**
- Exhibit 5B Lessor's Initial Financing Plan**
- Exhibit 5C Initial Financing Documents**

EXHIBIT 5A PARTIES' FINANCING EFFORTS

1. Lessor's Financing Efforts. Lessor agrees to use commercially reasonable efforts from and after the Effective Date to arrange financing for the Project and the New Elmore County Facility Project (the "**Financing**") with respect to Lessor's obligations under the Lease Documents, seeking to achieve Financial Close (a) with a Maximum Annual Lease Payment for the initial Lease Year that is not in excess of the Affordability Limit and (b) as promptly as possible and in no event later than the Last Financial Close Date. Such efforts are anticipated to include conducting or continuing a timely process to obtain commitments for the Financing, and conducting or continuing negotiations with potential lenders or other secured parties to enter into commitments for the Financing, *provided, however*, that any material deviations from the terms and conditions of Lessor's Initial Financing Plan as outlined in Exhibit 5B may be accepted by Lessor only with Lessee's approval. Any such negotiations or other process shall have the key objective of obtaining Financing at the optimal cost and terms commercially available as of the debt pricing date, given the terms of the Lease Documents and other key credit considerations arising from the Project, and on terms and conditions otherwise reasonably acceptable to the Parties. Lessor provides no assurances that Financial Close can be achieved with a Maximum Annual Lease Payment for the initial Lease Year that is not in excess of the Affordability Limit.

2. Lessee's Financing Efforts. Lessee agrees to use commercially reasonable efforts from and after the Effective Date to assist Lessor's Financing efforts outlined in Section 1 above. Such efforts by Lessee are anticipated to include: assisting Lessor in timely completion and documentation of the Financing (including review and negotiation of a customary lenders' remedies agreement, subordination and nondisturbance agreement, or lenders' direct agreement, the form of which will be set forth in Exhibit 6 once agreed, as well as legal opinion and certifications), reviewing and commenting on offering documents or memos, and participating in due diligence sessions at times to be agreed; *provided, however*, that (a) at no point shall Lessee be required to take any action or enter into any agreement that is in not within its existing statutory authority or mandate; and (b) none of the State of Alabama, Lessee, any other department, agency, or subdivision of the State of Alabama, or any trustee, director, official, officer, employee, agent, or representative of any of them, shall have any: (i) obligation to pay debt service on any debt issued or incurred in connection with the Financing or the Lease Documents; (ii) obligation to join in, execute, or guarantee any note or other evidence of indebtedness incurred in connection with the Financing or the Lease Documents; (iii) liability whatsoever for payment of the principal sum of any debt incurred in connection with the Financing or the Lease Documents, any other obligations issued or incurred by any person in connection with the Financing or the Lease Documents, or any interest accrued thereon or any other sum secured by or accruing under any documents related to the Financing; or (iv) obligation to any lender or other secured party under the Financing, except as may be expressly set forth in any instrument or agreement signed by Lessee in favor of such lender or other secured party.

3. Scope Optimization. Concurrent with the Financing process, prior to Financial Close, the Parties will use commercially reasonable efforts to collaboratively optimize and refine the Project scope in furtherance of the Parties' objectives for the Project, including those related to the Financing, cost, schedule, function, and performance. Pursuant to the scope optimization process, the Parties may agree, by amendment, to appropriate modifications to the Technical Requirements or other relevant terms of the Lease Documents. Any such modifications will be subject to mutual agreement of the Parties, each in their respective good faith discretion.

4. Affordability Limit. If, despite the efforts of the Parties outlined in Sections 1, 2, and 3 above, a Financing substantially consistent with the Lease Documents (as they may be modified by agreement

pursuant to Section 3 of this Exhibit), with the Maximum Annual Lease Payment for the initial Lease Year not in excess of the Affordability Limit, is not available on commercially reasonable terms, then the Parties agree to negotiate in good faith to make such modifications to the Lease Documents as may be necessary or appropriate in order to continue to attempt to make such a Financing available on terms that do not require a Maximum Annual Lease Payment for the initial Lease Year in excess of the Affordability Limit. Lessor provides no assurances that Financial Close can be achieved with a Maximum Annual Lease Payment for the initial Lease Year that is not in excess of the Affordability Limit. Any request to Lessee to increase the Maximum Annual Lease Payments in excess of the Affordability Limit may be accepted or rejected by Lessee in its discretion.

5. Financial Close. In connection with the Financing, the Parties will establish agreed conditions precedent to Financial Close, which may be outlined in a Financing schedule and closing checklist agreed by the Parties. For the purposes of this Lease, Financial Close shall be achieved, and the Financial Close Date shall be deemed to occur, only as and on the date agreed by each of the Parties, which agreement to closing may be subject shall be subject to the conditions precedent agreed by the Parties.

6. Financial Close Documentation. Prior to, as of, or promptly after the Financial Close Date, as agreed by the Parties, the Parties shall make appropriate amendments to this Lease to document the Financing, Financial Close, and the agreement of the Parties with respect thereto, including: (a) revising Exhibit 5B to the extent appropriate to reflect Lessor's Financing Plan; (b) completing Exhibit 5C, identifying the Initial Financing Agreements; (c) filling in blanks in the Basic Lease Terms and completing Exhibit 7, which shall establish the schedule and breakdown of the Maximum Annual Lease Payments payable in each Lease Year as described in Lease Section 4.1 of this Agreement; (d) appending the form of Lenders' Direct Agreement to the Lease as Exhibit 6; (e) amending Exhibit 12 as may be agreed by the Parties; (f) appending the agreed Ground Lease Term Sheet to the Lease as Exhibit 18; and (g) filling in such other blanks, forms, tables, and exhibits in the Lease Documents as are contemplated hereunder to be completed as of Financial Close. Promptly following the Financial Close Date, Lessor shall deliver to Lessee the Base Case Financial Model, updated to incorporate any changes to the Initial Financial Model agreed by the Parties between the Effective Date and such date of delivery, including the final pricing of the Initial Project Debt.

7. Scope Optimization Fee

(a) If Lessor has complied with its obligations under Sections 1 and 3 of this Exhibit, and a termination of this Agreement occurs pursuant to Lease Section 3.5.2 that is not due to Lessor's failure to comply with such obligations, Lessee shall enter into an agreement with Lessor (the "**Scope Optimization Fee Agreement**") with Lessor, the form of which shall be agreed by the Parties within 10 days after the Effective Date, pursuant to which Lessee will pay Lessor a fee in the amount of \$1,000,000 (the "**Scope Optimization Fee**") for its efforts in respect of both the Project and the New Elmore County Facility Project. For the avoidance of doubt, the total fee payable by Lessee under this Exhibit 5A, Section 7 and under Exhibit 5A, Section 7 of the New Elmore County Facility Lease shall not exceed \$1,000,000 in aggregate.

(b) In consideration for Lessor's provision of services under Sections 1 and 3 of this Exhibit, Lessee will pay Lessor the Scope Optimization Fee for services performed by, or on behalf of, Lessor under this Exhibit 5A in respect of Lessor's efforts, from and after the Effective Date, to achieve Financial Close (including with respect to financing structuring/modeling) and for acquisition of certain design materials produced, or caused to be produced, by Lessor pursuant to Section 3 of this Exhibit. Lessee acknowledges that Lessor is relying on the terms of this Exhibit 5A, Section 7 in providing the services under Sections 1 and 3 of this Exhibit. Lessee agrees to make all reasonable efforts to enter into the Scope Optimization Fee Agreement as soon as reasonably practicable after the date that the Lease is terminated. Lessee's payment

of any such Scope Optimization Fee shall be subject to appropriation by the State Legislature. Any dispute related to the Scope Optimization Fee shall be subject to the Dispute Resolution Procedures.

EXHIBIT 5B
LESSOR'S INITIAL FINANCING PLAN

[See attached]

Confidential

**EXHIBIT 5C
INITIAL FINANCING DOCUMENTS**

[To be completed at Financial Close]

Initial Financing Agreements

Document	Parties
<i>[Insert]</i>	<i>[Insert]</i>

Initial Security Documents

Document	Parties
<i>[Insert]</i>	<i>[Insert]</i>

EXHIBIT 6
FORM OF LENDERS' DIRECT AGREEMENT

[To be agreed as a condition to Financial Close]

EXHIBIT 7
MAXIMUM ANNUAL LEASE PAYMENTS AND BREAKDOWN

[Schedules to be agreed as a condition to, and completed at, Financial Close]

TABLE 1
Maximum Annual Lease Payment Schedule

Lease Year	Maximum Annual Lease Payment (in Occupancy Date Prices)
1	\$
2	\$
3	\$
4	\$
5	\$
6	\$
7	\$
8	\$
9	\$
10	\$
11	\$
12	\$
13	\$
14	\$
15	\$
16	\$
17	\$
18	\$
19	\$
20	\$
21	\$
22	\$
23	\$
24	\$
25	\$
26	\$
27	\$
28	\$
30	\$
Total	\$

Note: To be completed at Financial Close. Schedule can be modified at mutual agreement of the Parties.

Table 2
Annual Schedule of Life Cycle Payments

Lease Year	Annual Payment for Life Cycle Work <i>(in Occupancy Date Prices)</i>
1	\$
2	\$
3	\$
4	\$
5	\$
6	\$
7	\$
8	\$
9	\$
10	\$
11	\$
12	\$
13	\$
14	\$
15	\$
16	\$
17	\$
18	\$
19	\$
20	\$
21	\$
22	\$
23	\$
24	\$
25	\$
26	\$
27	\$
28	\$
30	\$
Total	\$

Note: To be completed at Financial Close and updated in accordance with applicable provisions of the Lease.

Table 3
Annual Schedule of Maintenance Services Payments

Lease Year	Annual Payment for Other Maintenance Services <i>(in Occupancy Date Prices)</i>
1	\$
2	\$
3	\$
4	\$
5	\$
6	\$
7	\$
8	\$
9	\$
10	\$
11	\$
12	\$
13	\$
14	\$
15	\$
16	\$
17	\$
18	\$
19	\$
20	\$
21	\$
22	\$
23	\$
24	\$
25	\$
26	\$
27	\$
28	\$
30	\$
Total	\$

Note: To be completed at Financial Close and updated in accordance with applicable provisions of the Lease.

Table 4
Annual Lessor Debt Service Schedule

Lease Year	Principal Payments	Interest Payments
1	\$	\$
2	\$	\$
3	\$	\$
4	\$	\$
5	\$	\$
6	\$	\$
7	\$	\$
8	\$	\$
9	\$	\$
10	\$	\$
11	\$	\$
12	\$	\$
13	\$	\$
14	\$	\$
15	\$	\$
16	\$	\$
17	\$	\$
18	\$	\$
19	\$	\$
20	\$	\$
21	\$	\$
22	\$	\$
23	\$	\$
24	\$	\$
25	\$	\$
26	\$	\$
27	\$	\$
28	\$	\$
30	\$	\$
Total	\$	\$

Note: To be completed at Financial Close based on the Initial Project Debt under the Initial Financing Agreements and updated only as agreed by the Parties.

EXHIBIT 8 PAYMENT MECHANISM

SECTION 1 GENERAL

1.1 Lease Payments. Lessee shall be obligated to make Lease Payments under this Lease only from the Occupancy Date until the expiration of the Lease Term. Except as expressly provided in the Lease (including under Articles 4, 14, 16 and 20 of the Agreement), Lessor shall have no right to any further payment from Lessee in connection with this Lease or otherwise in connection with the Facility. All Monthly Lease Payments will take into account certain deductions and adjustments, which are determined and applied in arrears, as described in this Exhibit 8.

1.2 Abbreviations Used in Equations. Within the equations used in this Exhibit 8:

CPI is as defined in Exhibit 1.

CPI_i is the initial year CPI which is equal to the CPI as of the Occupancy Date.

CPI_y is equal to the CPI as of the Occupancy Date, or the anniversary of the Occupancy Date in each Lease Year "y". For illustration purposes only, CPI_y (or CPI₁) for first Lease Year is equal to CPI_i which is the CPI as of Occupancy Date. In subsequent years, CPI_y will be equal to CPI on the anniversary date of the Occupancy Date.

i refers to the first or initial numbered Lease Year during which a Maximum Annual Lease Payment is determined and owing in accordance with this Lease. That year occurs during Lease Year "1".

MALP is as defined in Exhibit 1.

MALP_i is the Maximum Annual Lease Payment for the first Lease Year, where MALP_y=MALP₁.

MALP_m is the Maximum Annual Lease Payment for a calendar month "m".

MALP_y is the Maximum Annual Lease Payment for the Lease Year "y".

y refers to the numbered Lease Year during which a Maximum Annual Lease Payment is determined and paid. That year occurs during Lease Year "y".

SECTION 2 MAXIMUM ANNUAL LEASE PAYMENT

2.1 Calculation of Total Annual MALP. The Maximum Annual Lease Payment for the first Lease Year (MALP_i) is equal to \$[●] as set forth in Exhibit 7. For each Lease Year thereafter, the Maximum Annual Lease Payment is equal to annual payment for that year set forth in Exhibit 7, adjusted in accordance with the following formula:²

² Note: The first Lease Year MALP (MALP_i) and formula are to be agreed prior to Financial Close consistent with the structuring of the financing and lease payments.

$$MALP_y = ([X]\% \times MALP_1) + \left([X]\% \times MALP_1 \times \left(\frac{CPI_y}{CPI_1} \right) \right)$$

SECTION 3 MAXIMUM MONTHLY LEASE PAYMENT

3.1 Calculation of Monthly Payments. Maximum Annual Lease Payments shall be paid monthly (each a “**Monthly Lease Payment**”). Generally, but subject to the specific provisions of this Exhibit 8, each Monthly Lease Payment is equal to a portion of the Maximum Annual Lease Payment for that Lease Month, less any Abatements applied as described in Section 4 of this Exhibit and subject to other adjustments as set forth in Section 5 of this Exhibit (as such are limited in accordance with Section 4.2 of this Exhibit and Lease Section 4.2.1).

The Maximum Monthly Lease Payment for a full calendar Lease Month ($MALP_m$) is equal to:

$$MALP_m = \left(MALP_y \times \left(\frac{1}{12} \right) \right)$$

SECTION 4 DEDUCTIONS AND ABATEMENTS

4.1 Deductions and Abatements. Monthly Lease Payments are subject to deduction and abatement pursuant to Article 15 of the Agreement and Exhibit 15. Exhibit 15 provides for assessment of Deductions upon the occurrence of Noncompliance Events, which Deductions will be calculated and, once accrued, may be applied by Lessee as Lease Payment Abatements to reduce applicable Monthly Lease Payments in accordance with Exhibit 15 (subject to any applicable limitations set forth therein and in Section 4.2 of this Exhibit and Lease Section 4.2.1).

4.2 Limit on Abatements and Offsets. The aggregate amount of Deductions that may be applied as Lease Payment Abatements pursuant to Exhibit 15, together with any other Abatements or offsets permitted to be applied under the Lease Documents, against any given Monthly Lease Payment shall in no event exceed the difference between the applicable Maximum Monthly Lease Payment and the coupon amount included in the applicable monthly coupon invoice pursuant to Lease Section 4.2.1.

4.3 Bedding-In Period. During the first 30-day period after the Occupancy Date, no Deductions may be assessed and no Lease Payment Abatements may be applied in respect of Noncompliance Events. During the second 30-day period after the Occupancy Date, the amount of any Deductions assessed in respect of Noncompliance Events occurring during such period shall be reduced by 75%. During the third 30-day period after the Occupancy Date, the amount of any Deductions in respect of Noncompliance Events occurring during such period shall be reduced by 50%. During the fourth 30-day period after the Occupancy Date, the amount of any Deductions assessed in respect of Noncompliance Events occurring during such period shall be reduced by 25%.

4.4 Deductions and Abatements After Pre-Payment Event. Notwithstanding any provision of the Lease Documents to the contrary, no Deductions will be assessed, and no Lease Payment Abatements will be applied, from and after the occurrence of a Pre-Payment Event, unless the Parties agree to the contrary pursuant to Lease Section 18.2.1(f)(ii) or in the event of a Pre-Payment Event for a Lessor Default.

SECTION 5 ADJUSTMENTS

5.1 General. All Monthly Lease Payments are subject to adjustments referenced as such in the Lease Documents, including pursuant to Articles 10 and 14 and Sections 4.3, 16.4.8, 21.1. and 21.14 of the Agreement, subject to the limitation on Abatements and offsets against the Monthly Lease Payment set forth in Section 4.2 of this Exhibit and Lease Section 4.2.1.

5.2 Adjustments at End of Term. Lessor shall be liable for payment of Deductions accrued during the Lease Term that have not yet been deducted from Maximum Monthly Lease Payments, which total amount is referred to as the "final adjustment amount." Lessee, in consultation with Lessor, may determine a reasonable estimate of the final adjustment amount and, during the final three months prior to expiration of the Lease Term, withhold the estimated final adjustment amount in one or more installments from one or more Monthly Lease Payments. If the actual amount of the final adjustment amount is greater than the estimated final adjustment amount, Lessee may deduct such balance from the remaining Maximum Monthly Lease Payments in accordance with the terms of the Lease (including this Exhibit 8). If the actual amount of the final adjustment amount is less than the estimated final adjustment amount, Lessee shall remit payment of the difference to Lessor within 30 days after determination thereof. Any deduction under this Section 5.2 shall be subject to the limitations set forth in Section 4.2 of this Exhibit and Lease Section 4.2.1.

5.3 Annual Settlement Process. Within 60 days after the end of each Lease Year, Lessor shall provide to Lessee an annual settlement statement (the "**Annual Settlement Statement**") setting forth the actual aggregate Lease Payments payable with respect to such Lease Year in accordance with the terms of this Lease, and a reconciliation of such amount with the amounts actually paid by Lessee with respect to such Lease Year. If such Annual Settlement Statement shows an overpayment of the aggregate Lease Payments, Lessee may deduct such balance from future Maximum Monthly Lease Payments (on a schedule to be agreed with Lessor) in accordance with the terms of the Lease (including this Exhibit 8). If such Annual Settlement Statement shows an underpayment of the aggregate Lease Payments, Lessor shall pay such amount within 60 days after receipt or delivery of the Annual Settlement Statement. If any amount is then in dispute, or is for other reasons not definitely known at the time the Annual Settlement Statement is due, the Annual Settlement Statement shall identify the subject matter and reasons for such dispute or uncertainty and, in cases of uncertainty, shall include a good faith estimate by Lessor of the amount in question. When the dispute is resolved or the amount otherwise finally determined, Lessor shall file with Lessee an amended Annual Settlement Statement, which shall, in all other respects, be subject to this Section 5. Any deduction under this Section 5.3 shall be subject to the limitations set forth in Section 4.2 of this Exhibit and Lease Section 4.2.1.

**EXHIBIT 9
FORM OF APPROPRIATION CERTIFICATION**

Appropriation Certification

This certificate is being delivered pursuant to Section 4.7.1(b) of that certain Lease Agreement dated _____, 20__ (the "New Escambia County Correctional Facility Lease" or the "Lease") by and between _____ ("Lessor") and the Alabama Department of Corrections ("Lessee") relating to the Facility. Capitalized terms not otherwise defined herein shall have the meaning assigned in the Lease.

Lessee hereby certifies to Lessor that the State Legislature has appropriated funds sufficient to permit Lessee to satisfy its obligations under the New Escambia County Correctional Facility Lease to pay the full amount of all Lease Payments and other amounts reasonably anticipated to be payable by Lessee under the Lease during the Fiscal Year beginning October 1, 20__ and ending September 30, 20__.

Dated: _____, 20__.

ALABAMA DEPARTMENT OF CORRECTIONS

By: _____
Authorized Representative

**EXHIBIT 10
PROJECT IMPROVEMENTS**

- Exhibit 10A Lessor's Obligations for Project Improvements**
- Exhibit 10B General Conditions**
- Exhibit 10C Design Criteria Documents**
- Exhibit 10D Project Specifications**
- Exhibit 10E Lessor's Design**
- Exhibit 10F Project Schedule**
- Exhibit 10G Lease Provisions Applicable to Initial Improvement Work**

EXHIBIT 10A LESSOR'S OBLIGATIONS FOR PROJECT IMPROVEMENTS

ARTICLE 1 GENERAL

1.1 Initial Improvement Work Scope. As noted in Lease Section 7.1, Lessor has agreed to furnish, prior to Lessee's Occupancy, the Project Improvements and all other Initial Improvement Work in accordance with the applicable standards set forth in Article 6 of the Lease and with the requirements of this Exhibit 10, including provisions of this Lease specifically identified in Exhibit 10G as applicable to the Initial Improvement Work. Such obligation of Lessor includes the obligation to furnish all Design Work and Construction Work (including provision of all necessary or required materials, equipment, FF&E and labor) to design and construct the Project Improvements in accordance with Law, requirements of this Exhibit 10 and of Exhibit 11 and applicable Governmental Approvals, and Good Industry Practice so as to achieve Occupancy Readiness by the Occupancy Readiness Deadline.

1.2 Project Schedule. As a material consideration for entering into this Lease, Lessor hereby commits, and Lessee is relying upon Lessor's commitment, to perform the Initial Improvement Work and achieve Occupancy Readiness by the Occupancy Deadline, subject only to delays caused by Relief Events as specifically provided in Lease Article 14 and Exhibit 13. Except where the Lease Documents expressly provide for extension of time due to a Relief Event, the time limitations set forth in the Lease Documents (namely the Improvement Work Commencement Date, the Occupancy Deadline, and the Long Stop Date) for the performance of the Initial Improvement Work are of the essence. Lessor's Project Schedule as of the Setting Date will be set forth as Exhibit 10E. Lessor hereby represents and warrants that such Project Schedule is consistent with the Occupancy Deadline. The Parties shall use the Project Schedule, as it may be updated from time to time, for planning and monitoring the progress of the Initial Improvement Work in accordance with Part 6 of the General Conditions (Exhibit 10B).

1.3 Project Site Conditions. Subject to the specific relief available to Lessor for applicable Relief Events under Lease Article 14 and Exhibit 13, Lessor shall bear the risk of all conditions occurring on, under, or at the Project Site, including risk of any incorrect or incomplete review, examination, and investigation by Lessor of the Project Site and surrounding locations (even if Lessor conducted a reasonable investigation of the Project Site).

1.4 Governmental Approvals and Third-Party Agreements

1.4.1 Compliance with Approvals. Lessor shall comply with all conditions imposed by, and undertake all actions required by and necessary to maintain in full force and effect, all Governmental Approvals required for the Project Improvements, except to the extent that responsibility for performance is expressly assigned to Lessee in the Lease Documents.

1.4.2 Responsibility. Lessor shall be responsible to obtain all Governmental Approvals and, except to the extent that the Lease Documents expressly provide that Lessee is responsible therefor, all third-party approvals and agreements required in connection with the Project Improvements, the Initial Improvement Work, and the Project Site, including any required in connection with a Relief Event. Lessor shall deliver to Lessee true and complete copies of all new or amended material Governmental Approvals.

1.4.3 Lessee Assistance. At Lessor's request and expense, Lessee shall reasonably assist and cooperate with Lessor in obtaining Governmental Approvals and third-party approvals and agreements

required for the Project as described in Section 1.4.2 of this Exhibit. To the extent that the cost of Lessee's assistance is Lessor's, and not Lessee's, responsibility under the Lease Documents, Lessee and Lessor shall jointly establish a scope of work and budget for any Lessee Recoverable Third-Party Costs necessitated by the assistance and cooperation that Lessor has requested that Lessee provide.

1.4.4 No Agreement on Behalf of Lessee. Lessor has no power or authority to enter into any agreement with a third party in the name of or on behalf of Lessee. Moreover, Lessor shall not make any commitment on behalf of Lessee in connection with a Governmental Approval (including any Environmental Approval), or enter into any agreement with any Governmental Entity, Utility Owner, property owner, or other third party having regulatory jurisdiction over any aspect of the Project, or having any property interest affected by the Project, that in any way purports to obligate Lessee, or states or implies that Lessee has an obligation, to the third party or under the Governmental Approval before, during, or after the end of the Lease Term, unless Lessee otherwise consents (it being understood that Lessee will cooperate with Lessor for the transfer of utility accounts from Lessor to Lessee on Occupancy as described in Lease Section 7.4).

1.5 Lessee Right to Access Project Site. After the Financial Close Date (or Lessor's acquisition of the Property, if later) and prior to the Occupancy Date, Lessee and its authorized representatives and agents shall have the right and license to enter onto the Project Site in accordance with this Exhibit 10 solely for the purpose of monitoring the development of the Project and Lessor's satisfaction of its obligations hereunder with respect thereto; *provided, however*, that such access shall not interfere materially with Lessor's performance of the Initial Improvement Work and shall otherwise be in compliance with Lessor's safety rules and regulations.

1.5.1 From and after commencement of the Construction Work through Occupancy Readiness, Lessee's representatives (including its authorized consultants) who are badged in accordance with Lessor's safety and security protocols shall have 24-hour/7-day access to the Project Site and full access to the Project Improvements and Initial Improvement Work for review of the progress of Construction Work at the Project Site or at locations away from the site for observation of materials and equipment being procured for the Project, subject to such persons' compliance with applicable safety rules and regulations, recognizing Lessor's responsibility for Project Site safety and security in accordance with Lease Section 8.1 and Exhibit 10B, Part 3.

1.5.2 On the condition that Lessee provides reasonable advance notice to Lessor, Lessor shall also provide reasonable access (in scope and frequency) to the Project Site during business hours to un-badged Lessee representatives, consultants, agents, and invitees, including governmental officials, subject to such persons' compliance with Lessor's safety rules and regulations and the proviso in this Section 1.5 above that such access shall not materially interfere with Lessor's performance of the Initial Improvement Work.

1.5.3 Subject to this Section 1.5, Lessee's site access prior to the Occupancy Date includes the right to mobilize job trailers and all-terrain vehicles, and the use of Lessor's utilities and parking at the Project Site. Temporary facilities at the site for Lessee's use may be provided by Lessor, or by Lessee in compliance with Lessor's reasonable requirements therefor, as agreed by the Parties.

ARTICLE 2 DESIGN DEVELOPMENT

2.1 Lessor Responsibility for Design. Lessor shall prepare, for acceptance by Lessee, Design Documents to further develop Lessor's design of the Project Improvements reflected in Exhibit 10E, based

on the Design Criteria Documents (Exhibit 10C) and Project Specifications (Exhibit 10D) and other applicable Technical Requirements, as such are modified by Exhibit 10E. The Design Documents shall include all drawings, specifications, schedules, diagrams, and plans, and such content and detail, as is necessary to obtain appropriate Government Approvals and to properly deliver the Project Improvements and complete the Initial Improvement Work. Lessor covenants and agrees that the Design Documents shall be accurate and free from material errors or omissions and shall be in material compliance with applicable Laws.

2.2 Review of Technical Requirements and Site Conditions. Prior to the Setting Date, Lessor reviewed, compared, and familiarized itself with the Technical Requirements, became familiar with the conditions and applicable Laws under which the Initial Improvement Work is to be performed, and correlated its observations with the Technical Requirements. In the event that Lessor discovers any error, omission, mistake, discrepancy, or defect, or any variance in the Technical Requirements from applicable Laws, in Exhibits 10C, 10D, 10E, or 11, Lessor shall promptly report the same to Lessee, and the Parties shall agree to a resolution of the same. Lessor represents that it has taken steps reasonably necessary to ascertain the nature and location of the Initial Improvement Work, and that it has investigated and familiarized itself as to the general and local conditions of the Project Site that can affect the Project or the performance of the Initial Improvement Work.

2.3 Design Development and Review. Lessor will, consistent with the Project Schedule and the submittal schedule prepared by Lessor in accordance with Exhibit 10B, Part 5, submit Design Documents to Lessee as follows: (a) 65% complete Design Documents for Lessee's review and comment, which will be submitted by Lessor in multiple packages from time to time, and Lessee will review and comment within 5 Business Days after receipt of each package; (b) 90% complete Construction Documents for Lessee's review and comment, which will be submitted by Lessor in multiple packages from time to time, and Lessee will review and comment within 15 Business Days after receipt of each package; and (c) 100% complete Construction Documents for Lessee's review, comment, and confirmation of compliance in accordance with Section 2.3.2, which will be submitted by Lessor in multiple packages from time to time, and Lessee will review and confirm within 10 Business Days after receipt of each package. Any Construction Work necessitating 100% complete Construction Documents prior to Lessee's confirmation in accordance with Section 2.3.2 shall be at Lessor's risk until the conclusion of the 10-Business Day period for Lessee's review referenced in the preceding sentence, after which the 100% complete Construction Documents will be deemed confirmed by Lessee for purposes of Lessor's ability to proceed with the applicable Construction Work. Although Lessor retains responsibility for the compliance of the Initial Improvement Work with the requirements of the Lease Documents, and Lessee may require that Lessor conform to such requirements at any time, any delayed objection by Lessee to the 100% complete Construction Documents after the 10-Business Day period for Lessee's review, if such delay has an adverse impact on Lessor's performance of the Initial Improvement Work, Lessor may be entitled to relief pursuant to Lease Article 14 and Exhibit 13.

2.3.1 Development of Design from Criteria. All Design Documents must be consistent with, and develop in detail, the intent of the Design Criteria Documents (Exhibit 10C) and other applicable Technical Requirements, except as such are modified by Exhibit 10E or as may be agreed by the Parties. Lessee will reasonably consider Deviations from the Technical Requirements requested by Lessor, but Lessee may elect to treat such a request for Deviation, if material, as a Lessor Change Request under Exhibit 10B, Part 10, and no such Deviation shall be effective until approved or accepted by Lessee in writing.

2.3.2 Lessee Review. Review, comment, and (as applicable) confirmation of Design Document submittals (referred to as "**Design Packages**" hereunder) by Lessee is for the purpose of mutually establishing a conformed set of Final Design Documents compatible with the Technical Requirements, which may be modified as agreed by the Parties. No Design Documents will be subject to Lessee's approval—only the 100% Construction Documents will require Lessee's confirmation on a 'reviewed for conformity' basis

(within the 10 Business Days period set forth in Section 2.3 above). Upon the conclusion of Lessee's review of the 100% Construction Documents and confirmation that such Construction Documents conform to the requirements of the Lease Documents, Lessee will stamp such documents as "reviewed for Design Basis conformance." No review or comment on, or confirmation or acceptance of, any Design Packages or Design Documents by Lessee or any other State agency or official shall be deemed to transfer any design liability from Lessor to Lessee or the State.

2.3.3 Design Package Development

(a) Based on Exhibits 10C, 10D, and 10E, as well as any applicable requirements of Exhibit 11, Lessor has or will prepare, for review and comment by Lessee, 65% Design Documents. Such documents are expected to consist of drawings and other documents describing the Project design objectives, staffing, space and FF&E requirements, and functional relationships, and illustrating the scale and relationship of Facility components. In preparing the 65% Design Documents, Lessor will verify Facility dimensions and field conditions at the proposed Project Site.

(b) Based on the 65% Design Development Documents, Lessor will prepare, for review and comment by Lessee, 90% complete Construction Documents. Based on the 90% complete Construction Documents, Lessor will prepare, for review, comment, and confirmation by Lessee in accordance with Sections 2.3 and 2.3.2 of this Exhibit, 100% complete Construction Documents. The Construction Documents are expected to consist of drawings and other documents that fix and describe the size and character of the Facility as to architectural, structural, mechanical, plumbing and electrical systems, materials, and such other elements as may be appropriate. The Construction Documents will include all drawings and specifications, and such content and detail, as is necessary to obtain required Governmental Approvals and will provide information customarily necessary for the use of such documents by those in the building trades. Such documents are expected to include: site plans for all disciplines (e.g., landscape, civil, electrical/lighting, telecommunications), floor plans for all disciplines (e.g., architectural, civil, structural, plumbing, mechanical, electrical/lighting, fire alarm, fire protection, information communications, A/V, security electronics, and FF&E), roof plans, interior elevations, building sections, wall sections, details, and finish schedule, as well as details, diagrams, and schedules for all engineering disciplines, maintenance of traffic plans (if applicable for the Project Site), and a project manual including material and systems specifications. Building information modeling (BIM) shall be prepared in accordance with the General Conditions.

(c) The Construction Documents will be deemed 100% complete once they have been stamped "issued for permit" or "issued for construction" by Lessor's appropriately licensed and qualified design personnel or consultant. Once issued by Lessor and confirmed by Lessee in accordance with Section 2.3.2 of this Exhibit, or deemed confirmed under Section 2.3 hereof, the 100% complete Construction Documents will constitute Final Design Documents and will be a Lease Document, and Lessor may not materially modify, alter, or change any of such documents except in accordance with this Exhibit 10 or as contemplated by other applicable provisions of Lease Documents, or otherwise with the consent of Lessee.

(d) To the extent not prohibited by Law, the Construction Documents will be prepared and submitted in successive Design Packages, which may address separate construction trades applicable to the Project, in order to allow for Design Work and Construction Work to proceed in phases in accordance with the Project Schedule. Notwithstanding the foregoing, Lessor shall be responsible to prepare complete Final Design Documents for the Project Improvements as a whole. Lessor shall prepare and submit to Lessee a complete reference set of the Construction Documents and to keep such complete set accessible at all times during construction of the Project Improvements in accordance with the General Conditions.

2.3.4 Lessor and Lessee Cooperation. Throughout the preparation of the Design Documents, Lessor shall confer on a regular basis with Lessee (and such other stakeholders in the Project that Lessee may reasonably identify) in order to review and discuss the documents then in the process of being prepared. On or about the time of the scheduled submission of each Design Package, Lessor and Lessee will meet and confer on the applicable Design Package, with Lessor identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from Exhibit 10C, 10D, or 10E, or, if applicable, previously submitted Design Packages.

ARTICLE 3 CONSTRUCTION COMPLETION

3.1 Commencement of Construction Work. Except with the prior consent of Lessee, Lessor shall not commence any Construction Work on the Project Improvements, or any portion thereof, until the Improvement Work Commencement Date. Any Construction Work performed prior to Lessee's confirmation as to the conformity of the 100% complete Construction Documents therefor in accordance with Section 2.3 of this Exhibit (whether timely provided by Lessee or deemed to be provided by Lessee thereunder) shall be at Lessor's risk as to its compliance with the requirements of the Lease Documents.

3.2 Occupancy Readiness and Acceptance

3.2.1 Conditions Precedent to Occupancy Readiness. Occupancy Readiness shall occur upon satisfaction of the conditions set forth in Table 1 below.

**TABLE 1
CONDITIONS PRECEDENT TO OCCUPANCY READINESS**

No.	Condition Precedent
(1)	Lessor has completed the Initial Improvement Work in accordance with the Lease Documents, including installation of all Lessor FF&E, and completion of all punch list items in accordance with <u>Exhibit 10B, Section 9.4</u> .
(2)	Lessor has prepared and submitted to Lessee all Project Record Documents required pursuant to <u>Exhibit 10B, Part 7</u> .
(3)	All Facility systems comply with all applicable Laws in all respects, are operational and functional and have passed all tests and inspections required under the Lease Documents, and have been fully commissioned required pursuant to <u>Exhibit 10B, Part 8</u> , and Lessor has delivered to Lessee all reports, data, and documentation relating to such inspections, tests, and commissioning.
(4)	All pre-Occupancy review procedures have been completed and other requirements for construction closeout and achievement of Occupancy Readiness set forth in <u>Exhibit 10B, Part 9</u> have been met.
(5)	The Premises are ready for occupancy and use consistent with Permitted Uses, taking into account: (i) the requirements of the Lease Documents; (ii) the ability of Users to access the Facility and conduct activities therein without risk of injury, hazard, or nuisance; (iii) the proper installation and functionality of all Lessor FF&E; and (iv) such other functional requirements and considerations as a reasonable Person of ordinary prudence would take into account in determining whether the Premises are suitable for the purposes of performing activities typically performed in facilities similar to the Facility.

(6)	Lessor has received, and paid all associated fees due and owing for, all applicable Governmental Approvals and other third-party approvals required for use and operation of the Facility, and there exists no uncured violation of the terms and conditions of any such Governmental Approval or other third-party approvals.
(7)	Lessor has submitted, and, if required by the Lease Documents, Lessee has marked as "REVIEWED", all Plans and any other manuals, reports, or other documents related to the Maintenance Services that are required under the FM Specifications (particularly <u>Exhibit 11, Part 3</u> and <u>Exhibit 11, Appendix I</u>) as a condition to Occupancy Readiness or prior to the Occupancy Date.
(8)	The Computerized Maintenance Management System (CMMS) is commissioned and full operational in accordance with <u>Exhibit 11, Part 6</u> and all related activities required as a condition of Occupancy pursuant to <u>Exhibit 11</u> , including all activities described in <u>Exhibit 11, Section 6.3</u> , have been completed.
(9)	Lessor has delivered to Lessee a certificate, in form acceptable to Lessee (acting reasonably) and signed by Lessor, that Lessor has completed training of operations and maintenance personnel sufficient to perform the Maintenance Services at the Facility in accordance with <u>Exhibit 11</u> and the applicable Plans required thereunder.
(10)	All Governmental Approvals necessary to begin the Maintenance Services at the Facility have been obtained, and Lessor has furnished to Lessee fully executed copies of such Governmental Approvals.
(11)	All other submittals required by the Lease Documents to be submitted to Lessee as condition precedent to Occupancy Readiness, or otherwise prior to the Occupancy Date, have been submitted in the form and content required by the Lease Documents and, to the extent expressly required under the Lease Documents, reviewed, accepted, confirmed, or approved by Lessee.

3.2.2 Phased Completion and Preliminary Occupancy Readiness. At Lessor's option, Lessor may develop and submit for Lessee's review and comment a phased approach for completion and achievement of preliminary Occupancy Readiness of buildings, areas, and other components of the Project Improvements. In accordance with Lessor's phased approach, Lessor may request that Lessee acknowledge the Occupancy Readiness of complete buildings and other complete structures comprising part of the Project Improvements on a preliminary basis only, subject to Lessee's final acceptance in accordance with Section 3.2.3 below. For preliminary Occupancy Readiness in accordance with this Section 3.2.2, Lessee may agree, in its discretion, to defer satisfaction of conditions (7), (8), (9), and (10) in Table 1 to final acceptance, to allow for later completion of punch list items referenced in condition (1), and/or to waive or defer any other requirements or conditions precedent to Occupancy Readiness. No determination of Lessee as to the preliminary Occupancy Readiness of any portion of the Premises under this Section 3.2.2 shall constitute a certification or determination as to the Occupancy Date or obligate Lessee to make Lease Payments under the Lease.

(a) **Punch List Items.** To the extent that any Initial Improvement Work will be completed after a determination of preliminary Occupancy Readiness hereunder, Lessor will prepare, in coordination with Lessee, a punch list of such incomplete items in accordance with Exhibit 10B, Part 9. Lessor shall complete all such punch list items not later than 30 days prior to the scheduled Occupancy Date and, in any event, in a timely manner allowing Lessee to acknowledge completion prior to final acceptance and final determination of Occupancy Readiness prior to the scheduled Occupancy Date in accordance with Section 3.2.3 below.

(b) **Lessor Retention of Responsibility.** A determination of preliminary Occupancy Readiness or acknowledgment of completion of punch list items by Lessee shall in no way relieve Lessor of

its obligation for care, custody, and control of the Premises until the Occupancy Date, including for maintenance of the Premises and safety and security of the Project Site.

3.2.3 Final Acceptance and Security Sweep. Except as expressly waived by Lessee in its discretion, Lessor shall demonstrate satisfaction of all conditions precedent to Occupancy Readiness set forth in Table 1 above prior to the Occupancy Date, which may include confirmation of the continued satisfaction of conditions that were previously deemed satisfied pursuant to a preliminary Occupancy Readiness determination in accordance with Section 3.2.2 above. Lessor acknowledges that final acceptance by Lessee and a final determination of Occupancy Readiness will require Lessee's completion of a security sweep of the entirety of the Premises, for which Lessor shall reserve a period of 30 days immediately prior to the Occupancy Date. The purpose of such security sweep is for each building or area comprising a portion of the Premises to be designated as "secure and restricted from any traffic" until Occupancy by Lessee. Reasonably in advance of the 30-day period for the security sweep prior to the scheduled Occupancy Date, Lessee shall develop a plan for the sweep, including a schedule, description of activities, and plan for coordination with Lessor, for Lessor's reasonable acceptance. After completion of a security sweep of a building comprising part of the Premises, any building that is designated by Lessee as "secure and restricted from any traffic" will only be accessed by mutual agreement of Lessor and Lessee, with representatives of both Parties present during entrance and closing of the building. Lessee shall have no obligation to perform any security sweep, whether requested prior to or as part of a preliminary Occupancy Readiness determination or otherwise, at any time prior to the date that is 30 days prior to the scheduled Occupancy Date for the entire Premises.

3.2.4 Notice of Anticipated Occupancy Date; Inspection. When Lessor anticipates achieving Occupancy Readiness of the entire Premises in the next 180 days, or preliminary Occupancy Readiness of a portion of the Premises in accordance with a phased completion in the next 90 days, Lessor shall apprise Lessee of the status of the Project and Lessor's plans for commissioning and pre-Occupancy review procedures in accordance with this Section 3 and Exhibit 10B. In addition, Lessor shall provide to Lessee at least 60 days' prior notice of the date on which Lessor reasonably expects that it will achieve Occupancy Readiness of the Premises, or a portion thereof. During such 60-day period, the Parties shall meet and confer and exchange information on a regular, cooperative basis and complete the closeout procedures set forth in Exhibit 10B, Part 9, and Lessee shall inspect the Project Improvements, or applicable portion thereof, and conduct such other investigation as may be necessary to evaluate whether Occupancy Readiness (preliminary or final) is achieved.

3.2.5 Notice of Achievement; Certificate. Upon or after the expiration of the 60-day period under Section 3.2.4 above, Lessor shall provide to Lessee, applicable, (a) notice that Lessor has achieved preliminary Occupancy Readiness of a portion of the Premises in accordance with Section 3.2.2 above or (b) notice that Lessor has achieved Occupancy Readiness of the entire Premises and final acceptance in accordance with Section 3.2.3 above. Within five Business Days after receipt of such notice, Lessee shall issue, as applicable, an acknowledgement of preliminary Occupancy Readiness, or a certificate of final acceptance and Occupancy Readiness for the entirety of the Premises, which such acknowledgement or certificate shall indicate the actual date on which Lessor achieved (preliminary or final) Occupancy Readiness, or Lessor shall notify Lessor in writing as to why such Occupancy Readiness has not been achieved. If Lessee and Lessor cannot agree as achievement of Occupancy Readiness or the Occupancy Date, such Dispute shall be resolved according to the Dispute Resolution Procedures.

ARTICLE 4 LESSEE CONTINGENCY

4.1 Lessee Contingency. The Parties acknowledge and agree that the Project Development Costs included in the Maximum Annual Lease Payments for the Project include a “**Lessee Contingency**” in the amount of \$3,000,000 to be used at Lessee’s direction in connection with the Initial Improvement Work. As of the Financial Close Date, Lessor shall establish a pool of funds or account for the Lessee Contingency (in accordance with any applicable requirements of the Financing Documents) in the foregoing amount. Amounts on deposit in the account or allocated in Lessor’s funds for the Lessee Contingency shall be used only at the direction of Lessee (a) to pay the cost of any Lessee Changes that Lessee may direct in accordance with Section 4.2 below and Exhibit 10B, Part 10 and/or (b) to cover Direct Costs incurred by Lessor as the result of an Adjustment Event prior to the Occupancy Date and/or Missed Lease Payment Costs incurred by Lessor as a result of a Relief Event Delay, for which costs Lessee would otherwise be responsible under Lease Article 14, Lease Section 4.3, and Exhibit 13.

4.2 Lessee Changes. Lessee shall have the right, but not the obligation, to make Lessee Changes to the design of the Project Improvements funded from the Lessee Contingency; *provided, however*, that Lessee has no right to require or request any change that (a) is not in compliance with Laws; (b) would (i) require issuance of a new Governmental Approval that Lessor, using reasonable efforts, could not obtain or (ii) contravene or cause the revocation of an existing Governmental Approval and such contravention or revocation could not, using reasonable efforts, be corrected by the issuance of a further or revised Governmental Approval; (c) constitutes a material change in the nature of the Project or a material modification to the Permitted Uses; (d) would cause a material insured risk to become uninsurable or would cause Lessor to assume a material new risk that is not insurable, unless Lessee agrees to self-insure the risk in a manner satisfactory to Lessor, in its discretion; (e) is not technically feasible to design or construct, or would cause performance of the Initial Improvement Work to not be technically feasible; (f) Lessor would not, using reasonable efforts, be able to implement within the time specified; (g) would materially adversely affect the health and safety of Users of the Premises; or (h) would have an adverse effect on Lessor’s ability to comply with its obligations under the Financing Documents in a manner that could give rise to a default thereunder. Any related operation, maintenance, repair, or replacement cost expected to be incurred or realized as a result of a Lessee Change funded by Lessee Contingency pursuant to this Article 4 shall be at Lessee’s cost through an equitable adjustment to the Maximum Annual Lease Payments in accordance with the terms of the Lease.

4.3 Unused Lessee Contingency. On or after the Occupancy Date, any amounts remaining in the account or pool of funds allocated to the Lessee Contingency, including any interest accrued on any account balance, shall be applied from time to time, at the direction of Lessee, as a credit on Monthly Lease Payments in the form of Lease Payment Abatements (but subject to the limitations on Abatements set forth in Lease Section 4.2.1 and Exhibit 8, Section 4.2) or for payment of Direct Costs of Adjustment Events or any other cost or expense for which Lessee is responsible under the Lease Documents.

**EXHIBIT 10B
GENERAL CONDITIONS**

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GENERAL CONDITIONS

PART 1. GENERAL

These General Conditions apply to the Initial Improvement Work, including development, design, engineering, construction, procurement, commissioning, closeout, and turnover, and all labor, materials, equipment, and other items necessary to deliver the Project Improvements and achieve Occupancy in accordance with the Lease Documents.

PART 2. PROJECT MANAGEMENT AND COORDINATION

2.1 General. This Part 2 is intended to provide guidelines for project management and coordination between Lessor and Lessee during the Initial Improvement Work. All guidelines herein are intended to provide Lessee updates on progress of design and construction and opportunity to review project documentation. However, Lessee's review, comment, confirmation, acceptance, or approval of any Lessor submittal shall not be deemed to transfer any design liability from Lessor to Lessee, nor shall it operate to relieve Lessor of its responsibility and liability for performance under the Lease Documents or for the accuracy and adequacy of plans, drawings, and other documents that are Lessor's responsibility under the Lease Documents.

This Part 2 includes administrative provisions for review of documents and interaction between Lessee and Lessor during the Initial Improvement Work, including the following:

- (a) Project Management System;
- (b) Administrative and Project Management Documents;
- (c) Project Meetings; and
- (d) Requests for Information (RFIs).

2.2 Project Management System. Lessor shall use the web-based project management system specified by Lessee (the "**Project Management System**") for management, storage, transmission, and receipt of electronic data, files, and communications. Lessor and Lessee shall use the Project Management System during all phases of design and construction through completion, achievement of Occupancy Readiness, and final acceptance of the Premises.

2.2.1 The purpose of the Project Management System is to (1) improve project work efforts by promoting timely communications between Lessor and Lessee and (2) reduce the exchange of paper documents while providing improved recordkeeping by creation of electronic document files readily accessible by Lessee. By specifying the Project Management System, Lessee does not intend to manage the flow of information amongst Lessor, the D&C Contractor, and its Subcontractors, and the Project Management System is not intended to supplant Lessor's own system for managing and communicating with its design and construction Subcontractors and employees.

2.2.2 As of the Effective Date, Lessee has specified Procore as the preferred software solution for the Project Management System. Lessor may propose an alternative software solution for the Project Management System for Lessee's approval, *provided* that such solution provides to Lessee as ready access and archive of Project Records, available to Lessee from the Financial Close Date and continuing throughout the Lease Term, as Lessee would have using Procore. Any use of an alternative software solution for the Project Management System shall be subject to Lessee's approval, in its discretion.

2.3 Administrative and Project Management Documents

2.3.1 Schedules and Meeting Documents. In accordance with a schedule agreed by the Parties prior to commencement of Construction Work at the Project Site, Lessor shall prepare, update, and keep current, and provide to Lessee for review, the documents listed below, in a form and with such detail as is reasonably acceptable to Lessee.

- (a) Lessor's Project Schedule;
- (b) Lessor's Submittal Schedule;
- (c) Weekly Coordination Meeting Agendas and Minutes;
- (d) Preconstruction Conference Agenda and Minutes;
- (e) Monthly Project Status Review Meeting Agendas and Minutes; and
- (f) Quarterly Program Status Review Meeting Agendas and Minutes.

2.3.2 Subcontractor/Vendor List. Prior to receiving notice to proceed, Lessor shall have provided Lessee with a complete list of its design and construction Subcontractors at any tier. Lessor shall update the Subcontractor list on a monthly basis (with respect to each Subcontract with a value in excess of \$50,000) until the Occupancy Date.

2.3.3 Closeout and Startup Documents. In accordance with a schedule agreed by the Parties prior to the commencement of such activities, Lessee shall prepare, update, and keep current the below-listed documents during the course of construction completion, commissioning, closeout, and startup, to enable Lessee to monitor the progress of such activities.

- (a) Closeout inspection and punch list preparation documents;
- (b) Project closeout activities summary; and
- (c) Startup and adjustment of systems summary.

2.3.4 Other Lists, Logs, and Progress Documents. During the progress of Improvement Work, other logs, lists, or other documents may be needed to track project status. Lessor will provide such additional progress documents as are reasonably requested by Lessee to enable Lessee to monitor the overall progress of the Initial Improvement Work, delivery of the Facility and other Project Improvements in accordance with the Lease Documents, and achievement of the Occupancy Date.

2.3.5 Updates. Lessor shall provide updates of the documents required by this [Section 2.3](#) to Lessee (a) at least once per month prior to the Occupancy Date (or more frequently if specified in these General Conditions or otherwise agreed by the Parties) and (b) reasonably promptly after any material modification.

2.4 Project Meetings. Lessor shall schedule and conduct coordination, safety, training, and progress conferences at the Project Site, unless otherwise agreed by the Parties. Lessee reserves the right to attend any such meeting and be provided, for Lessee's reference only, associated meeting materials.

2.4.1 General Requirements

2.4.1.1 Attendees. Lessor shall inform the Lead Design Firm, the D&C Contractor, other relevant Subcontractors, specific individuals whose presence is required, and others reasonably implicated or impacted by the topic of the meeting, of the date, time, and subject(s) of each meeting. Lessor shall notify Lessee of all scheduled meeting dates and times.

2.4.1.2 Agenda. Lessor shall prepare the meeting agenda and submit to Lessee no later than one Business Day prior to each meeting.

2.4.1.3 Minutes. Lessor shall provide minutes of each meeting to Lessee not later than three Business Days after the date of such meeting. Such minutes shall record significant discussions and agreements reached. The meeting attendees will have the opportunity to respond to Lessor's minutes with any recommended changes.

2.4.2 Weekly Coordination Meetings. Lessor is expected to schedule and conduct coordination meetings with the D&C Contractor and all appropriate Subcontractors at least weekly during construction.

2.4.3 Preconstruction Conference. Prior to the scheduled Improvement Work Commencement Date, Lessor will schedule and conduct a "**Preconstruction Conference.**" The conference date, time, and location shall be specified by Lessor, providing reasonable accommodation to Lessee to facilitate Lessee's attendance. Lessor will conduct the meeting to review responsibilities and personnel assignments for Construction Work.

2.4.3.1 Attendees. Authorized representatives of Lessor, Lessee, and their consultants, as well as the D&C Contractor and representatives of major Subcontractors, shall attend the conference. All participants at the conference shall be familiar with Project and authorized to decide matters relating to the Initial Improvement Work.

2.4.3.2 Agenda. Responsible parties shall discuss items of significance that could affect the performance or progress of the Improvement Work. Such topics are anticipated to include: (a) the Lessor's Project Schedule, particularly focusing on the construction schedule, and including preliminary network diagram, critical work sequencing, and long-lead items; (b) Change Order, Relief Event, and administrative procedures; (c) procedures for processing Subcontractor submittals and for making field decisions; (d) procedures for testing and inspections; (e) preparation of Project Record Documents; (f) Lessor's Safety Plan, first-aid, and Project and site security; (g) Lessor's Quality Control Plan; (h) Lessor's Environmental Protection Plan; and (i) use of the Project Site, including temporary facilities, work areas, office and storage areas, and parking. To the extent that the foregoing topics are not discussed at the Preconstruction Conference including Lessee, Lessor shall inform Lessee of the date and time of the meeting(s) at which such topics will be discussed, and Lessee shall have the right to attend any such meeting and shall be provided, for Lessee's reference only, materials provided in connection with such meeting.

2.4.4 Monthly Project Status Review Meeting. Lessor shall schedule and conduct meetings on a monthly basis during the Improvement Work to provide Lessee a comprehensive updates on the progress of the Initial Improvement Work. This meeting will be held during the last week of each month, unless otherwise agreed by the Parties. The Parties agree to reserve one full Business Day each month to conduct this meeting with appropriate representatives from each Party.

2.4.4.1 Attendees. Lessor and Lessee and their associated representatives and consultants.

2.4.4.2 Agenda. Lessor shall provide comprehensive review of the status of the Improvement Work, project documentation, finances, schedule, and any issues that could affect project quality or time, including timely achievement of Occupancy Readiness. The review shall include the following: (a) sequence of operations; (b) status of submittals and RFIs; (c) status of correction of Nonconforming Work or otherwise defective Improvement Work or other deficient items; (d) field observations; (e) pending changes in the Initial Improvement Work and status of Change Orders and Change Requests; and (f) pending Relief Event Determinations, Claims, and Disputes.

2.4.5 Quarterly Program Status Review Meeting. Lessee will schedule and conduct a meeting once per quarter during the Improvement Work to provide Lessee comprehensive updates on the Initial Improvement Work. This meeting will be held during the last week of each month, unless otherwise agreed by the Parties, and may be held in conjunction with the monthly project status review meeting. Lessor shall reserve two to three Business Days to conduct this meeting.

2.4.5.1 Attendees. Lessor and Lessee and their associated representatives and consultants.

2.4.5.2 Agenda. Responsible parties shall discuss items of significance that could affect the performance and progress of the Improvement Work and timely completion and delivery of the Premises to Lessee, including: (a) Lessor's Project Schedule and the projected Occupancy Date; (b) Lessor's schedules for plan review, inspections, and commissioning; (c) Lessor's Quality Control Plan; (d) Project and site safety and security; (e) Project risks and mitigation efforts; (f) Lessee's plans and schedule for transition of operations to the Facility; (g) FF&E procurement and operations plans; and (h) public relations and media communications.

2.5 Requests for Information. Lessor will provide to Lessee, for Lessee's information only, copies of Subcontractor requests for information ("RFIs"). If, by chance, an RFI requires response or action from Lessee, Lessor will submit such RFI to Lessee with sufficient supporting documentation to enable Lessee to respond appropriately, including a description of any expected change in the Design or Construction Documents or other impact to the Lease Documents.

PART 3. SAFETY DOCUMENTATION

3.1 General. Lessor shall be fully and solely responsible for all safety at the Project Site prior to the Occupancy Date and at all times during Initial Improvement Work, including responsibility for initiating and executing all safety plans and precautions in connection with Lessor's construction of the Project in accordance with Law, Good Industry Practice, and the requirements of the Lease Documents. The inclusion of this Part 3 in these General Conditions is intended only to encourage safety in the Improvement Work performed prior to the Occupancy Date and does not relieve Lessor of its responsibility for safety on site and for compliance with applicable safety Laws. It is acknowledged that the requirements of this Part 3 are in no way comprehensive of Lessor's obligations with respect to safety on the Project. Prior to the Occupancy Date, during which period Lessor is in care, custody, and control of the Project Site, Lessee assumes no responsibility or liability for the safety or security of the Project Site or any improvements thereon, except to the extent that Lessor expressly does so in connection with applicable Relief Events in accordance with the Lease Documents. Lessee shall neither have control over nor charge of safety plans and precautions undertaken in connection with the Construction Work, and Lessee assumes no responsibility or liability with respect to initiation, implementation, and enforcement of Lessor's safety plans and practices, and in no event shall any possession, review, comment, acceptance, or approval by Lessee of any of Lessor's safety plans or submittals be construed to create such a responsibility or liability on Lessee, nor shall any such possession, review, comment, acceptance, or approval operate to relieve Lessor of its responsibility and liability for safety hereunder.

3.2 Project Safety. Lessor shall supervise and direct the Initial Improvement Work. Lessor shall be solely responsible for, and shall have control over, all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Initial Improvement Work in accordance with the Lease Documents. Lessee shall have no control over or charge of, and shall not be responsible for, construction means, methods, techniques, sequences, or procedures in connection with the Initial Improvement Work.

3.2.1 Safety. Lessor and all Subcontractors working at the Project site shall be responsible for implementing and maintaining their own Safety and Health Program in accordance with Occupational Safety and Health Act (OSHA) and applicable State and local Laws.

3.2.2 Implementation. Lessor shall be responsible for initiating the safety program, ensuring that jobsite safety requirements and procedures are being executed, conducting safety inspections of work being performed, conducting (at a minimum) a weekly safety meeting with trade Subcontractors and employees, and compiling a weekly report documenting safety activities. Lessor will also be responsible for a continuing survey of its operations, to ensure that the probable causes of injury or accident are controlled, and that operating equipment, tools, and facilities are used, inspected, and maintained as required by applicable Laws as they pertain to public or worker health and safety, safety programs, and the prevention of accidents.

3.2.3 Reports. As requested by Lessee, Lessor will provide, within 24 hours, a copy of all reports relating to any jobsite accident or injury during Lessor's performance of the Initial Improvement Work that Lessor has provided to Governmental Entities having jurisdiction over the Project or to insurance companies in respect of applicable Insurance Policies.

3.2.4 Hazardous Materials. Lessor shall comply with and give notices required by applicable Law (including under OSHA) with respect to Hazardous Materials.

3.2.5 OSHA Permits and Programs. Lessor shall initiate and maintain such permits and programs as may be necessary to comply with requirements under OSHA and other similar applicable Laws. A copy of all such permits shall be available to Lessee upon request.

3.3 Construction Safety. Lessor shall provide, institute, and/or implement the following:

3.3.1 Security Program. Lessor is responsible for the security of its workers, tools, materials, and equipment on (and to and from) the jobsite prior to the Occupancy Date. During the course of any Improvement Work performed while Lessee is onsite for inspection and commissioning activities, all small tools and construction equipment belonging to Lessor should be clearly identified as such. Tools, including personal tools, are subject to inspection by Lessee during the Improvement Work. Except to the extent expressly provided otherwise in the Lease Documents with respect to the acts and omissions of Lessee Parties, Lessee disclaims any and all responsibility for the security of Lessor's tools, materials, and equipment on (and to and from) the jobsite.

3.3.2 Construction Area Limits. Lessor will designate the boundary limits of access roads, parking areas, storage areas, and construction areas.

3.3.3 Clean up. Lessor shall provide adequate trash receptacles and shall maintain and keep the areas clean and free of trash and debris (construction or otherwise).

3.4 Crisis Management and Communication Plan. Lessor shall develop and maintain a Crisis Management and Communications Plan with respect to the Initial Improvement Work. Such a plan must address at least the following:

- (a) Protection of life and property;
- (b) Damage survey;
- (c) Event responses;
- (d) Emergency communication protocol;

- (e) Media relations in coordination with Lessee's Public Information Office; and
- (f) Crisis preparedness.

PART 4. QUALITY GUIDELINES

4.1 General. This Part 4 includes administrative and procedural guidelines for quality assurance and quality control for the Improvement Work. Specific quality assurance and quality control programs and measures for individual construction activities are the responsibility of Lessor to maintain and administer. Lessee reserves the right to review any documentation thereof, but shall in no way be held responsible or liable for the creation and implementation of said quality measures.

4.2 Quality Control System. Lessor shall establish and maintain a system for documenting, monitoring, inspecting, verifying, and testing of the Improvement Work (including work performed by Subcontractors) to ensure that all applicable requirements of the Lease Documents are met. Lessor shall be diligent to ensure that the quality of workmanship is satisfactory, that the installation meets all manufacturer requirements, that dimensional requirements are met, that defective materials are not used, and that all required protection and control and laboratory testing procedures are effected.

4.3 Testing and Inspections. Testing and inspecting services, including review by the State Department of Finance Division of Construction Management, may be required to verify compliance with requirements specified or indicated in the Lease Documents. Tests and inspections are Lessor's responsibility.

4.3.1 Specified Tests and Inspections. Specific test and inspection requirements are not specified in this Part 4, but may be required pursuant to the Design Criteria, Project Specifications, or Construction Documents. Tests, inspections, and related actions specified in the Lease Documents do not limit Lessor's responsibility for other quality assurance and quality control procedures that facilitate compliance with the requirements of the Lease Documents.

4.3.2 Other Testing. Where specific testing procedures are not stipulated, Lessor shall establish and conduct a test procedure to ensure adherence to specified quality.

4.4 Lessor's Quality Control Plan

4.4.1 General. Lessor shall submit to Lessee quality control plan as described in this Section 4.4 (the "**Quality Control Plan**") not later than 10 days prior to commencement of Construction Work, and not later than five days prior to the scheduled date of the Preconstruction Conference. Such plan shall identify personnel, procedures, controls, instructions, tests, records, and forms to be used to carry out Lessor's quality assurance and quality control responsibilities. Lessor's Quality Control Plan shall be coordinated with Lessor's Project Schedule.

4.4.2 Testing and Inspection. In the Quality Control Plan, Lessor shall include a comprehensive schedule of Construction Work requiring testing or inspection, including the following:

4.4.2.1 Tests and inspections to be performed or furnished by Lessor, including Subcontractor-performed tests and inspections. The plan shall identify both required and Lessor-elected tests and inspections.

4.4.2.2 Special inspections required by Governmental Entities having jurisdiction over the Improvement Work.

4.4.3 Monitoring and Documentation. Lessor shall maintain (and Lessor's Quality Control Plan shall include requirements for) testing and inspection reports, including a log of approved and rejected results. Such documentation shall indicate corrective actions taken to bring Nonconforming Work into compliance with requirements. Lessor shall provide copies of such documentation to Lessee as requested by Lessee. Lessor's monitoring activities and documentation shall comply with all requirements of Governmental Entities having jurisdiction over the Improvement Work.

4.5 Lessor's Responsibility for Quality Control. Lessor shall perform, or cause to be performed, such additional quality control activities as are necessary or appropriate to verify that the Initial Improvement Work complies with the requirements in the Lease Documents and of Governmental Entities having jurisdiction over the Improvement Work.

PART 5. SUBMITTAL PROCEDURES

5.1 General

5.1.1 Lessor Submittals. Lessor shall submit to Lessee the design submittals required pursuant to Exhibit 10A, Article 2 in compliance therewith. In addition, Lessor shall submit to the Lessee, for information only, any of the following (including any updates to the same) as requested by Lessee:

- (a) Project layouts;
- (b) Detail schedules;
- (c) Shop drawings;
- (d) Setting or erection drawings for installation of materials;
- (e) Product data; and
- (f) Testing reports.

5.1.2 Subcontractor Submittals. Lessor shall be responsible to Lessee for the accuracy and completeness of submittals prepared by Subcontractors. Lessor shall carefully review and check Subcontractors' shop drawings and other submittals for accuracy, to see that work contiguous with and having bearing on work is properly indicated on shop drawings, and to confirm that such shop drawings are dated, numbered consecutively, show working and erection dimensions and other necessary details, and include complete information for connecting to other Work.

5.2 Lessee Review of Informational Submittals. Except for submittals that are expressly identified in the Lease Documents as being subject to Lessee's approval, acceptance, or confirmation, Lessee's review of submittals is intended for Lessee's reference and information only.

5.2.1 It is intended that Lessee be provided access to *most* submittals only for Lessee's information, and Lessee not be placed in the Critical Path by requiring Lessee pre-approval or other Lessee action on submittals, in order to prevent any potential delay to Lessor's completion of the Initial Improvement Work and delivery of the Project Improvements. Lessee may recommend or request corrections or revisions to submittals, and Lessor may elect to provide in its submittal schedule for additional time to incorporate corrections or revisions that are agreed by Lessor or required for conformance with the requirements of the Lease Documents. In the event that Lessor needs to present a submittal to Lessee that requires action from Lessee, such submittal shall be labeled as such and shall be separately submitted to Lessee accompanied by documentation explaining the requested action.

5.2.2 Lessor at all times shall have an independent duty and obligation to fulfill the requirements of the Lease Documents. Lessee is not responsible to review submittals for accuracy or field measurement verification, completeness, compliance, or otherwise. No review or comment by Lessee, or lack thereof, shall relieve Lessor of such responsibility, nor shall it operate to waive any right or remedy Lessee may have under the Lease Documents, at Law, or in equity, for Nonconforming Work or otherwise.

5.2.3 No review, comment, confirmation, or approval by Lessee shall be construed as review, comment, confirmation, or approval by any Governmental Entity (other than Lessee) having jurisdiction over the Project. Commentary and input by the State Department of Finance Division of Construction Management may be submitted by Lessee to Lessor.

5.3 Submittal Process

5.3.1 Submittal Schedule. Lessor shall submit to Lessee a schedule of submittals (both design submittals pursuant to Exhibit 10A, Article 2 and informational submittals as required pursuant to Section 5.1 hereof), arranged in chronological order by the relevant dates in Lessor's Project Schedule, and coordinated with its construction schedule and Subcontracts. Such schedule, in establishing submittal dates, shall include time required for Lessor internal review and allowed for Lessee review, as well as any time necessary for ordering, manufacturing, fabrication, and delivery in relation to the submittal. The submittal schedule shall be submitted to Lessee as follows:

5.3.1.1 Initial Draft Submittal Schedule. Submit concurrently with startup construction schedule prior to the Improvement Work Commencement Date. Include submittals required during the first 60 days of construction. List those submittals required to maintain orderly progress of the Construction Work and those required early because of long lead time for manufacture or fabrication.

5.3.1.2 Final Submittal Schedule. Submit concurrently with the first complete submittal of Lessor's construction schedule (as a detailed component of the Project Schedule).

5.3.1.3 Submittal Schedule Revisions. Submit a revised submittal schedule periodically, no less frequently than monthly, to reflect changes in current status and timing for submittals.

5.3.1.4 Format. Arrange the following information in a tabular format:

- (a) Scheduled date for first submittal;
- (b) Specification Section number and title;
- (c) Submittal category: Action; informational;
- (d) Name of Subcontractor;
- (e) Description of the work covered;
- (f) Scheduled date for any Lessee action required or requested by Lessor;
- (g) Scheduled date of fabrication;
- (h) Scheduled dates for purchasing;
- (i) Scheduled dates for installation; and
- (j) Activity or event number.

5.3.2 Electronic Submittals. All electronic submittals shall be provided to Lessee through Lessee's Project Management System. Each electronic submittal file shall comply with the following requirements:

5.3.2.1 Assemble each complete submittal package into a single, indexed file incorporating the submittal requirements of each applicable specification and any applicable transmittal form, with links enabling navigation to each item.

5.3.2.2 Name file with submittal number or other unique identifier, including revision identifier.

PART 6. PROGRESS DOCUMENTATION

6.1 General. This Part 6 includes administrative and procedural requirements for documenting the progress of the Initial Improvement Work, which shall include weekly and monthly progress reports and scheduling.

6.2 Weekly and Monthly Progress Reports. Lessor shall provide weekly and monthly progress reports, in a form specified or otherwise reasonably acceptable to Lessee, covering or including the following: (a) risk management; (b) achievements; (c) progress photos; (d) quality reports; (e) progress schedule updates; and (f) other topics as may be requested by Lessee. Weekly reports shall be provided by noon on each Thursday. Monthly reports shall be provided for each month on or before close of business on the fifth day of the following month.

6.3 Lessor Progress Schedules

6.3.1 Project Schedule Development

6.3.1.1 Lessor shall plan and schedule the Initial Improvement Work and report progress to Lessee using a project schedule covering design, construction, procurement, commissioning, closeout, and turnover activities (the "**Project Schedule**"). The Project Schedule shall use the critical path method and shall provide a practicable baseline informing Lessee of the order in which Lessor plans to carry out the Initial Improvement Work in order to achieve Occupancy Readiness by the Occupancy Deadline. Lessor's Project Schedule as of the Setting Date, as accepted by Lessee, will be set forth as Exhibit 10E.

6.3.1.2 Lessor shall periodically submit updates to the Project Schedule to Lessee for Lessee's review and comments. Lessee's comment on the Project Schedule is not required for continuation of performance of the Initial Improvement Work but shall be primarily for the purpose of confirming that Occupancy Readiness can be achieved by the Occupancy Deadline, reviewing the Critical Path analysis, and evaluating whether the Project Schedule provides an appropriate baseline for monitoring the progress of the Initial Improvement Work and a reasonable path to the achievement of interim milestones on the Critical Path. Lessee's review of Lessor's Project Schedule shall not be construed as a representation of Lessee's acceptance of any schedule (whether initial, baseline, update, or revised), and Lessee's acceptance of the Project Schedule shall not, by itself and in the absence of a Change Order or Relief Event Determination, modify the requirements of the Lease, including the schedule commitments therein, or constitute an endorsement or validation by Lessee of Lessor's schedule logic, activity durations, or assumptions in creating the schedule. If Lessee promptly reports to Lessor, or Lessee otherwise discovers, errors in the Project Schedule after the schedule has been reviewed by Lessee, Lessor shall correct the error in the next Project Schedule update. Lessee, upon review of any schedules submitted by the Lessor, reserves the right to request that additional activities, events, detail, or information to be included in future schedule updates.

6.3.2 General Schedule Requirements

6.3.2.1 The Project Schedule, and each update thereto, shall be submitted to Lessee both electronically in P6 format and in hardcopy.

6.3.2.2 The Project Schedule shall show all activities required by all parties to complete the Improvement Work prior to Occupancy, including design, construction, procurement (including FF&E procurement), commissioning, closeout, turnover, etc. Lessor shall use activity descriptions that ensure the work is easily identifiable. Activities shall be broken down in enough detail to facilitate monitoring of the schedule on a weekly basis. This information shall include activity durations, manpower/crew size, material lead time, and key predecessors for each activity.

6.3.2.3 The Project Schedule shall include subcontracted work, delivery dates for critical material, submittal and review periods, Governmental Approvals and permits, milestone requirements, utility work by others, and any no-work periods.

6.3.3 Project Schedule Updates

6.3.3.1 Lessor shall update the Project Schedule on a regular basis and provide a copy of updates to Lessee. An updated schedule shall be provided to Lessee at least once monthly, unless requested more frequently by Lessee.

6.3.3.2 Lessor will update the schedule with remaining durations, actual start and finish dates, future planned work, and any other information necessary to accurately reflect Improvement Work already completed and Improvement Work remaining.

6.3.4 Recovery Schedule. In updating process the Project Schedule, if Lessor is behind on critical path activities that could materially impact the overall completion of the Initial Improvement Work and achievement of agreed schedule commitments, including the Occupancy Date, Lessor shall prepare and submit to Lessee for Lessee's review and acceptance a recovery schedule and recovery plan outlining the efforts that Lessor will employ (e.g., additional shifts and/or manpower, overtime) to overcome the delays and bring the Initial Improvement Work back on schedule to achieve the Occupancy Date and any other milestone commitments by the deadline(s) for the same.

PART 7. PROJECT RECORD DOCUMENTS

7.1 General. This Part 7 includes administrative and procedural requirements for Project closeout and the Project Record Documents, including the following:

- (a) Record Drawings;
- (b) Record Specifications;
- (c) Record BIM model; and
- (d) Miscellaneous record submittals.

7.2 Submittals

7.2.1 Record Drawings. Lessor shall prepare and submit to Lessee: (a) three hardcopy sets of marked-up, as-built record prints and (b) three hardcopies and annotated PDF electronic files of complete Project Record Drawings for the Project Improvements.

7.2.2 Record Specifications. Lessor shall submit to Lessee three hardcopies and annotated PDF electronic files of the final Project specifications, including any addenda and modifications thereto.

7.2.3 Record Product Data. Lessor shall submit to Lessee three hardcopies and annotated PDF electronic files and directories of each record product data submittal.

7.2.4 Reports. From and after the Improvement Work Commencement Date until the Occupancy Date, on a weekly basis, Lessor shall submit to Lessee a written report indicating those items incorporated into Project Record Documents concurrent with progress of the Improvement Work, including revisions, concealed conditions, field changes, product selections, and other notations incorporated.

7.3 Record Drawings/Prints. Lessor shall maintain one set of marked-up paper copies of the Final Design Documents, including 100% complete Construction Documents drawings, and shop drawings, incorporating new and revised drawings as modifications are issued. Record prints shall be marked to show the actual installation where installation varies from that shown originally. Lessor shall require the person who obtained the record data (including all applicable Subcontractors) to provide information for preparation of corresponding marked-up record prints.

7.4 Record Specifications. Specifications shall be marked to indicate the actual product installation where installation varies from that indicated in the specifications (including any addenda or modifications thereto).

7.5 Record BIM Model. Lessor shall maintain a current as-built BIM model, incorporating new and revised drawings as modifications are issued.

7.5.1 Preparation. The model shall be updated as appropriate to show the actual installation where installation varies from that shown originally. Lessor shall require the person who obtained record data (including all applicable Subcontractors) to provide information for preparation of corresponding updates.

7.5.2 Content. Types of items required to be included and updated include:

- (a) Dimensional changes to drawings;
- (b) Revisions to details shown on drawings;
- (c) Depths of foundations below first floor;
- (d) Locations and depths of underground utilities;
- (e) Revisions to routing of piping and conduits;
- (f) Revisions to electrical circuitry;
- (g) Actual equipment locations;
- (h) Duct size and routing;
- (i) Locations of concealed internal utilities;
- (j) Field records for variable and concealed conditions; and
- (k) Record information on the Project Improvements that is shown only schematically.

7.5.3 Equipment. Lessor shall input all equipment into a BIM model using a Level of Development (LOD) 5 that is compatible with software and nomenclature used to produce the design BIM

model and interface with the CMMS. Upon completing input of all equipment nameplate data in a manner acceptable to Lessee, Lessor shall download the information into an Excel spreadsheet format acceptable to Lessee and compatible with the CMMS.

7.5.4 Revisions. Modifications and additions to the Project Improvements and Initial Improvement Work shall be incorporated into a revised record BIM model promptly upon the completion of said modification or addition (but in any event no later than 30 days after completion). The revised record BIM model will be submitted to Lessee promptly after incorporation of any modifications or additions.

7.6 Miscellaneous Record Submittals. Lessor shall prepare and assemble such miscellaneous records as may be required by the Project Specifications, Facilities Management Specifications, or other Lease Documents for miscellaneous record keeping and submittal in connection with actual performance of the Improvement Work. Miscellaneous record submittals shall also be submitted to Lessee as PDF electronic files, unless otherwise required Lessor shall file miscellaneous records in the Project Management System and identify each, so that such records are readily available for continued use and reference.

7.7 Record Document Directory. In filing the various record drawings, specifications, model, and other miscellaneous record submittals, Lessor shall prepare and provide to Lessee a directory of all Project Record Documents, organized by Project Specifications section number and title (or other appropriate cross-reference). Such directory shall provide electronic links enabling navigation to each record document item.

PART 8. COMMISSIONING

8.1 General. This Part 8 includes general requirements that apply to implementation of commissioning without regard to systems, sub-systems, and equipment being commissioned and is intended to form the basis for Lessee's involvement in construction phase commissioning processes and procedures. The commissioning activities described in this Part 8 have been developed to support delivery of the Project Improvements and achievement of performance requirements in accordance with the Technical Requirements.

8.2 Commissioning Description

8.2.1 Where individual testing, adjusting, or related services are required in the Project Specifications (Exhibit 10D) and not specifically required by this Part 8, the specified services shall be provided by Lessor, and copies of documentation, as required by those Project Specifications, shall be submitted to Lessee to be indexed for future reference.

8.2.2 Where training or educational services for Lessee are required and specified in the Project Specifications or elsewhere in the Technical Requirements, these services are intended to be provided in addition to the training and educational services specified herein.

8.2.3 Commissioning is a systematic process of verifying that the building systems perform interactively according to the Final Design Documents and Lessee's operational needs. The commissioning process shall encompass and coordinate the system documentation, equipment startup, control system calibration, testing and balancing, performance testing and training. Commissioning during the construction, acceptance, and warranty phases is intended to achieve the following specific objectives according to the Lease Documents:

8.2.3.1 Verify that the applicable equipment and systems are installed in accordance with the Lease Documents and according to the manufacturer's recommendations;

8.2.3.2 Verify and document proper integrated performance of equipment and systems;

8.2.3.3 Verify that operation and maintenance documentation is complete;

8.2.3.4 Verify that all components requiring servicing can be accessed, serviced and removed without disturbing nearby components including ducts, piping, cabling, or wiring;

8.2.3.5 Verify that Lessee's operating personnel are adequately trained; and

8.2.3.6 Document the successful achievement of the commissioning objectives listed above.

8.2.4 The commissioning process does not take away from or reduce the responsibility of the Lessor to provide a finished and fully functioning product.

8.3 Systems to be Commissioned

8.3.1 Commissioning of a system or systems specified for this Project is part of the construction process and is the sole responsibility of Lessor. Lessor shall provide for documentation and testing of these systems, as well as training of Lessee's personnel, in cooperation with Lessee.

8.3.2 At a minimum, the following systems will be commissioned as part of the Project Improvements, *provided* that these systems are included in Lessor's final design of the Facility as memorialized in the 100% complete Construction Documents confirmed by Lessee in accordance with Exhibit 10A, Section 2.3.

Table 8-1

Commissioned Systems	
System	Equipment/Sub-Systems
Plumbing Systems	
Domestic To Water System	Domestic Water Heaters and Recirculation Pumps
	Instantaneous Hot Water Heaters
HVAC Systems	
Direct Digital Control Systems	Direct-Digital Control Systems Operators' Workstations
	Operating Sequences
	Alarms and Trending
	Software
	Graphics
	DDC Control Panels
Chilled Water Systems	Building Interconnection to Facility Chilled Water System
Heating Hot Water Systems	Building Interconnection to Facility Heating Hot Water System
HVAC Air Distribution	Indoor Air Handling Units
	Energy Recovery Air Handling Units

Commissioned Systems	
System	Equipment/Sub-Systems
	Supply/Return Fans
	Hot-Water/Chilled-Water Coils
	Air Filtration
	Humidifiers
	Associated Variable Frequency Drives
	Associated Controls
Air Terminal Units	Variable Air Volume Terminal Units
	Associated Controls
Decentralized HVAC Systems	Fan Coil Units
	Building Exhaust Fans
	Computer Room Air Conditioners
	Associated Variable Frequency Drives
	Associated Controls
Electrical Systems	
Lighting & Controls	Occupancy Sensor Systems
	Daylight Control Systems
	Interior Lighting
	Exterior Lighting
	Conference Room / Auditorium Lighting Controls (including Interface with Audio-Visual Systems)
	Architectural Dimming Systems
Security Systems	
Fire Alarm System	
Computerized Maintenance Management System (CMMS)	

8.4 Final Commissioning Report Submittal. Lessor will submit two hard copies and two electronic copies of the final commissioning report to Lessee for Lessee's review and information.

8.5 Coordination and Scheduling. Lessor shall work with Lessee to schedule the commissioning activities, providing Lessee notice of such activities with sufficient advance notice to reasonably enable Lessor to observe or participate in such activities as appropriate. Lessor shall integrate all commissioning activities into the Project Schedule. All parties will address scheduling problems and make necessary notifications in a timely manner in order to expedite the commissioning process.

PART 9. CONSTRUCTION PHASE CLOSEOUT PROCEDURES

9.1 General. This Part 9 includes administrative and procedural requirements for construction closeout and achievement of Occupancy Readiness including:

- (a) Pre-Occupancy review procedures;
- (b) Punch list; and
- (c) Warranties.

9.2 Submittals. Submittals required for construction closeout include:

- (a) Certificates of release or equivalent from governmental authorities having jurisdiction; and
- (b) Field reports, for pest control inspection.

9.3 Pre-Occupancy Review Procedures

9.3.1 Lessor's Punch List. Lessor shall prepare and submit a punch list of items to be completed and corrected prior to Occupancy Readiness, unless Lessee agrees to the contrary in its discretion (see punch list requirements in Section 9.4 below).

9.3.2 Pre-Occupancy Review Submittals. Prior to the Occupancy Date, Lessor shall prepare a list of those items below that are incomplete. Submission of all required closeout documentation shall be a condition of achieving Occupancy Readiness, unless Lessee agrees to the contrary in its discretion.

9.3.2.1 Lessor shall obtain and submit to Lessee certificates of release from Governmental Entities having jurisdiction over the Project that will permit Lessee unrestricted use of the Premises in accordance with the Permitted Uses. These include occupancy permits, operating certificates, and similar releases where applicable and obtainable.

9.3.2.2 Submit closeout submittals required pursuant to these General Conditions, including Project Record Documents, operation and maintenance manuals, final completion construction photographic documentation, damage or settlement surveys, property surveys, as-built drawings and BIM models, and similar final record information.

9.3.2.3 Submit any closeout submittals specified in individual Project Specifications or other parts of the Lease Documents, including any specific warranties, workmanship bonds, maintenance service agreements, final certifications, and similar documents.

9.3.2.4 Submit test/adjust/balance records.

9.3.3 Procedures Prior to Occupancy. Lessor shall complete the below procedures a minimum of 10 days prior to requesting inspection for determining Occupancy Readiness. In Lessor's request for inspection, Lessor shall list any items below that are incomplete at time of Lessor's request.

9.3.3.1 Completion of startup and testing of systems and equipment;

9.3.3.2 Instruction of Lessee's personnel in operation, adjustment, and maintenance of products, equipment, and systems, and submission of demonstration and training video recordings; and

9.3.3.3 Completion of any inspection or walkthrough required by local governmental authorities, with Lessee provided reasonable opportunity to be present during any such inspection or walkthrough.

9.4 Punch List. Lessor's punch list shall include the name and identification of each space and area affected by construction operations for incomplete items and items needing correction, including, if necessary, areas disturbed by Lessor that are outside the limits of construction. Lessor's punch list shall conform to the following requirements:

9.4.1 The list of relevant spaces is organized in sequential order;

9.4.2 Punch list items applying to each space are organized by major element, including categories for ceiling, individual walls, floors, equipment, and building systems.

9.4.3 Align punch list with the requirements in Start Up Plan in accordance with Section 3.8 of the FM Specifications (Exhibit 11).

9.5 Submittal of Project Warranties. Manufacturer, and other warranties required pursuant to the Lease Documents shall be collected, retained, organized by Lessor into an orderly sequence based on the table of contents of Project Manual. Complete warranty and bond submittal packages shall be assembled into a single indexed electronic PDF file, including a bookmarked table of contents, with links enabling navigation to each individual warranty and bond, and uploaded to the Project Management System. Lessor shall provide also additional copies of each warranty to include in operation and maintenance manuals as requested by Lessee.

PART 10. CHANGES IN THE WORK

10.1 General. This Part 10 includes administrative and procedural requirements for handling and processing changes in the Initial Improvement Work, and potential modifications to the requirements of the Lease Documents in relation to such changes, by Change Order.

10.2 Lessee-Initiated Change Orders. Lessee will issue a detailed description of proposed changes in the Initial Improvement Work that may require adjustment to the Lease Documents. If necessary, the description will include, or request proposals for, supplemental or revised Drawings and Specifications.

10.2.1 Requests for proposals for changes in the Initial Improvement Work issued by Lessee (each a "**Change Proposal Request**") are not instructions either to stop work in progress or to execute the proposed change.

10.2.2 Within 14 days after Lessor's receipt of a Change Proposal Request, Lessor shall submit to Lessee a quotation estimating the cost of the work and services necessary to execute the change (a "**Change Proposal**"), to include the following:

- (a) A list of quantities of products required or eliminated and unit costs, with total amount of purchases and credits to be made. If requested, furnish survey data to substantiate quantities.
- (b) Costs of labor and supervision directly attributable to the change.
- (c) Additional details associated with the change in the Initial Improvement Work.
- (d) An updated Project Schedule that indicates the effect of the change, including changes in activity duration, start and finish times, and activity relationship.

10.2.3 If a Change Proposal or detailed written objection to the Change Proposal Request is not submitted by Lessor within 14 days after receipt, Lessee may direct that the changes be performed as set forth in Lessee's initial Change Proposal Request with available Lessee Contingency funds at such cost and

other modifications to the requirements of the Lease Documents, if any, as Lessee may reasonably determine (which such costs shall reflect Lessee's reasonable estimate of the Direct Costs attributable to the change). Lessee reserves the right to extend or waive the 14-day deadline for Lessor's Change Proposal, or may otherwise adjust such deadline with the agreement of Lessor.

10.2.4 If Lessee does not agree with Lessor's submitted Change Proposal, Lessee reserves the right to reject it and decline to pursue the change, or to continue to negotiate the Change Proposal with Lessor.

10.3 Lessor-Initiated Proposals. If Lessor wishes to request a change in the Initial Improvement Work and related modifications to the Lease Documents, Lessor may initiate a proposal by submitting a request for a change to the Lessee (a "**Change Request**") as follows:

10.3.1 Include a statement outlining reasons for the proposed change and the effect of the change on the Project Improvements and Initial Improvement Work. Provide a complete description of the proposed change. Indicate the effect of the proposed change on the Lease Documents.

10.3.2 Include a list of quantities of products required or eliminated and unit costs, with total amount of purchases and credits to be made. If requested, furnish survey data to substantiate quantities.

10.3.3 Include any cost impacts, schedule risks, or other factors that differ from the underlying assumptions or otherwise change the original intent of the Lease Documents.

10.3.4 Include an updated Project Schedule that indicates the effect of the proposed change, including changes in activity duration, start and finish times, and activity relationship.

10.3.5 Subject to the terms of the Lease regarding Relief Events, if Lessee does not agree with Lessor's Change Request, Lessee reserves the right to reject such Change Request or negotiate a mutually agreeable change in the Initial Improvement Work with Lessor.

10.4 Relief Events. The Parties' rights and responsibilities with respect to Relief Events, including those occurring prior to the Occupancy Date, shall be as set forth in the Lease, including Lease Article 14, Lease Section 4.3, and Exhibit 13. Lessee's obligations with respect to Relief Events under the Lease constitute Lessor's sole right to schedule and cost relief during the Initial Improvement Work, and Lessee's sole obligation with respect thereto.

EXHIBIT 10C
DESIGN CRITERIA DOCUMENTS

[See attached electronic files]

Confidential

EXHIBIT 10D
PROJECT SPECIFICATIONS

[See attached electronic files]

Confidential

**EXHIBIT 10E
LESSOR'S DESIGN**

[Design is subject to scope optimization process prior to Financial Close]

Confidential

**EXHIBIT 10F
PROJECT SCHEDULE**

[Schedule to be agreed as part of scope optimization process prior to Financial Close]

EXHIBIT 10G
LEASE PROVISIONS APPLICABLE TO INITIAL IMPROVEMENT WORK

[To be agreed prior to Financial Close]

EXHIBIT 11
FACILITY MANAGEMENT SPECIFICATIONS

Confidential

Appendix A
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[Schedule to be agreed pursuant to scope optimization process]

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EXHIBIT 12
INSURANCE REQUIREMENTS

[To be agreed prior to Financial Close]

EXHIBIT 13 RELIEF EVENTS

“Relief Event” means the occurrence of an event described in the table set forth immediately below, but only to the extent that (x) the event results in a delay or interruption in the performance of any obligation under the Lease Documents, or, in the case of an Adjustment Event, results in an adverse economic impact on Lessor, (y) the event is beyond Lessor’s control and is not due to any act, omission, negligence, recklessness, willful misconduct, breach of contract or Law, or violation of a Governmental Approval by any Lessor Party, and (z) the event or the effects of the event could not have been avoided by the reasonable exercise of caution or diligence or by reasonable efforts by Lessor.

Event	Adjustment Event	Special Adjustment Amount Rules
(a) Force Majeure Event. The occurrence of a Force Majeure Event.	Yes	Missed Lease Payment Costs only.
(b) National or Statewide Strike. The occurrence of a national or statewide (i.e., State of Alabama) strike or lockout or other labor action that has a direct adverse impact on Lessor’s ability to obtain materials, equipment, or labor for the Project, but excluding any strike or other such labor action affecting only the employees of any Lessor Party.	Yes	Missed Lease Payment Costs only.
(c) Injunction. Issuance of a temporary restraining order or other form of injunction or interlocutory relief by a court of competent jurisdiction or Governmental Entity that materially and adversely impacts Lessor’s ability to perform its obligations under the Lease Documents.	Yes	None
(d) Unknown Conditions. Discovery at, on, or under the Project Site of: (i) Any hidden or undetected subsurface conditions that are unusual for the area of the Project and materially inconsistent with any surveys or investigations undertaken prior to the Setting Date; (ii) Any archeological, paleontological, or cultural resources; (iii) Any Threatened or Endangered Species (regardless of whether the species is listed as threatened or endangered as of the Setting Date); or (iv) Hazardous Materials, excluding Lessor Releases of Hazardous Materials and other Releases of Hazardous Materials described in <u>events (e), (f), and (g)</u> ;	No	(Not Applicable)

Event	Adjustment Event	Special Adjustment Amount Rules
In each case, excluding any such condition that was known to Lessor prior to the Setting Date or that would have become known to Lessor by undertaking reasonable investigation of the Project Site prior to the Setting Date.		
(e) Lessee-Related Releases of Hazardous Materials. The occurrence of a Lessee-Related Release of Hazardous Materials.	Yes	None
(f) Third-Party Release of Hazardous Materials. The occurrence of a Third-Party Release of Hazardous Material that (i) occurs after the Occupancy Date, (ii) occurs on the Premises, and (iii) either (A) is required as a matter of Law to be removed, remediated, and/or reported to a Governmental Entity or (B) renders use of the Premises unsafe or potentially unsafe absent assessment, containment, removal, or remediation.	Yes	Direct Costs only.
(g) Other Third-Party Release of Hazardous Materials. The occurrence of a Third-Party Release of Hazardous Material that (i) occurs after the Setting Date, (ii) occurs at, on, under, or adjacent to the Project Site or otherwise impacts the Property, (iii) is not a Release described in <u>event (f)</u> , and (iv) either (A) is required as a matter of Law to be removed, remediated, and/or reported to a Governmental Entity or (B) renders use of the Project Site unsafe or potentially unsafe absent assessment, containment, removal, or remediation.	No	(Not Applicable)
(h) Uncooperative Utility Owner. Failure or delay by a Utility Owner having operational jurisdiction in the area in which the Project is located to provide and maintain Utilities to the Project that are required to perform the Services. For clarity, failure by Lessee to provide (or arrange to provide) and maintain Utilities during the Occupancy Period agreed in the Lease Documents may be considered a Relief Event for Lessee breach under <u>event (q)</u> in accordance with the terms and conditions applicable thereto.	No	(Not Applicable)
(i) Change in Law. The occurrence of a Change in Law.	Yes	None
(j) Discriminatory Action. The occurrence of a Discriminatory Action.	Yes	None

Event	Adjustment Event	Special Adjustment Amount Rules
<p>(k) Compliance with Public Order. Compliance by Lessor with an order or direction by police, fire officials, or any comparable Governmental Entity having police power, which such persons or entities have the legal authority to make such order or give such direction, including an ordered closure, due to accident, construction, or otherwise, of a road necessary for direct access to the Project.</p> <p>For clarity, to the extent that any such order or direction results directly from any of the events or circumstances described under <u>events (e), (f), (m), (n), (o), or (q)</u>, such order or direction may be considered a Relief Event for Lessee breach under such clause in accordance with the terms and conditions applicable thereto.</p>	No	(Not Applicable)
<p>(l) Condemnation or Taking. The preemption, confiscation, diversion, destruction, or other interference in possession or performance of materials or services by a Governmental Entity in connection with any condemnation or other taking by eminent domain of any material portion of the Project Site or Premises.</p>	Yes	To the extent that Lessor or Lessee declares a Pre-Payment Event for a Taking, <u>Lease Section 13.2</u> and <u>Lease Article 18</u> will apply in lieu of an Adjustment Event (and a Pre-Payment Amount will be owing in lieu of an Adjustment Amount).
<p>(m) Alterations and Other Works. Performance of Alterations or other physical works by a Lessee Party on the Premises that directly and materially disrupts the Services or damages the Project Improvements.</p>	Yes	None
<p>(n) Vandalism. The occurrence of Vandalism, subject to <u>FM Specifications, Part 4</u> and Lessor's compliance with its obligations thereunder.</p>	Yes	See <u>Exhibit 11, Part 4</u> .
<p>(o) Lessee Change. The occurrence of a Lessee Change.</p>	Yes	None
<p>(p) Lessee-Caused Delay. The occurrence of a Lessee-Caused Delay.</p>	Yes	None
<p>(q) Lessee Breach. Lessee fails to observe or perform in a material respect any material covenant, agreement, obligation, term, or condition required to be observed or performed by Lessee under the Lease Documents, including the occurrence of a Lessee Default.</p>	Yes	To the extent that Lessor declares a Pre-Payment Event for a Lessee Default, <u>Lease Article 18</u> will apply in lieu of an Adjustment Event (and a Pre-Payment Amount will be owed in lieu of an Adjustment Amount).

Event	Adjustment Event	Special Adjustment Amount Rules
(r) Protest Actions. Protest actions, or the presence of trespassers, at or in the vicinity of the Project Site that materially interfere with the ability of Lessor to access the Project Site or perform the Services, excluding any action undertaken by employees of any Lessor Party.	No	(Not Applicable)

EXHIBIT 14 DIRECT COSTS

1. Direct Costs. As used in this Lease, "**Direct Costs**" means the sum of (a) the Base Direct Cost as defined in Section 2 hereof (subject to Section 3 hereof), and (b) the Mark-up permitted in respect of certain Base Direct Costs in accordance with Section 4 hereof. "**Extra Work**" means any Services in the nature of additional, altered, or deleted work or services that are directly attributable to a Relief Event and, absent the Relief Event, would not be required by the Lease Documents.

2. Base Direct Costs. Subject to Section 3 hereof, the "**Base Direct Cost**" means the cumulative total, without duplication, of only the following amounts, as actually paid or incurred by Lessor, its Key Contractors, or its other Subcontractors, as applicable, to the extent that such costs specifically relate to, and are solely attributable to, an Adjustment Event:

- (a) Personnel expenses as follows:
 - (i) Wages or salaries paid to personnel of Lessor, its Key Contractors, and/or Subcontractors for the performance of the Extra Work at the Project Site or at fabrication sites off the Project Site, or at shops or on the road in expediting the production or transportation of materials or equipment for the Extra Work;
 - (ii) Fringe benefits and payroll taxes for the labor described in clause (i) above;
- (b) Costs of equipment, materials, and consumable items that are furnished and incorporated into the Project in the performance of the Extra Work, including transportation and maintenance thereof;
- (c) Sales taxes on the costs of equipment, materials, and consumable items that are incorporated into and used in the performance of the Extra Work pursuant to clause (b) above;
- (d) Rental charges for necessary machinery and equipment (exclusive of hand tools having a retail value of \$500 or less) used directly in the performance of the Extra Work, which charges shall cease when the use thereof is no longer necessary for the Extra Work, and reduced by the salvage value, if any, of surplus materials and other consumable items not consumed in the Extra Work; *provided* that Base Direct Costs shall not include charges for machinery or equipment rented from Lessor, a Key Contractor, or Affiliates of the foregoing except with the prior consent of Lessee at agreed rental rates;
- (e) An agreed lump-sum amount or actual out-of-pocket costs for professional design and engineering services necessary to perform the Extra Work;
- (f) Actual out-of-pocket costs of third-party quality assurance services necessary to perform the Extra Work;
- (g) Costs of obtaining all Governmental Approvals required as a direct result of the Extra Work;
- (h) The cost of any additional insurance or performance security required as a direct result of the Extra Work, or as otherwise approved by Lessee;
- (i) Reasonable travel and subsistence expenses of personnel described in clause (a) above, incurred as a result of the performance of Extra Work, to the extent such Extra Work relates to Improvement Work during the Occupancy Period;

(j) The cost to competitively tender any contract in relation to the Extra Work, to the extent such competitive tendering is required pursuant to the Lease; and

(k) Without duplication of amounts described in clauses (a) through (j) above, the net increase or decrease in costs of performing the Maintenance Services.

3. Limitations. The Base Direct Cost shall be subject to and limited by the following:

(a) The Base Direct Cost shall be net of all discounts, rebates, and refunds on Base Direct Costs that are enjoyed by Lessor or its Key Contractors, the benefit of which shall accrue to Lessee;

(b) The amount paid for equipment, materials, and consumable items incorporated into the Project, and for rental charges paid for machinery and equipment used in the performance of the Extra Work shall not exceed competitive costs or rates obtainable at an arm's length from other subcontractors, suppliers, manufacturers, or distributors in the area of the Project Site;

(c) The Base Direct Cost shall exclude include federal, state, or local business income and franchise taxes or any other taxes relating to any business or activity other than those related to, and conducted for, the purposes of the Extra Work;

(d) The Base Direct Cost excludes overhead and profit (which are intended to be covered by the Mark-ups permitted pursuant to Section 4 hereof);

(e) Costs of supervision, superintendent(s), assistant superintendent(s), project manager(s), scheduler(s), estimator(s), or similar personnel, to the extent that they were otherwise available to the Project, shall not be chargeable as a Base Direct Cost; and

(f) For the avoidance of doubt, the Base Direct Cost shall not include any cost due to the failure of Lessor or a Key Contractor to adhere to the Professional Standard or to exercise reasonable care and diligence in mitigating the impact of a Relief Event or performing the Extra Work.

4. Mark-up

(a) The total mark-up for overhead and profit, as a percentage of the Base Direct Costs (the "**Mark-up**") described in Section 2(a) and (b) hereof shall not exceed the limits set forth below:

(i) For Maintenance Services:

(A) 10% of the cost of that portion of the Extra Work performed by Lessor with its own forces;

(B) 10% of the cost of that portion of the Extra Work performed by the Lead Services Provider or another first-tier Service Provider, plus 5% for Lessor, not to exceed 15% combined; and

(C) 10% of the cost of that portion of the Extra Work to be performed by a second-tier or lower-tier Service Provider, plus 5% for the intermediate-tier Service Provider(s) (including the Lead Services Provider), plus 5% for Lessor, not to exceed 20% combined.

(ii) For Improvement Work:

(A) 15% of the cost of that portion of the Extra Work performed by Lessor with its own forces;

(B) 15% of the cost of that portion of the Extra Work performed by the D&C Contractor or another first-tier Subcontractor, plus 5% for Lessor, not to exceed 20% combined; and

(C) 15% of the cost of that portion of the Extra Work to be performed by a second-tier or lower-tier Subcontractor, plus 5 for the intermediate-tier Subcontractor(s) (including the D&C Contractor), plus 5% for Lessor, not to exceed 25% combined.

(b) The Mark-up for Base Direct Costs described in Sections 2(e), (f), and (j) hereof shall not exceed 5%.

(c) The Mark-up for Base Direct Costs described in Section 2(k) hereof shall not exceed 15%. Such Mark-up shall apply with respect to the cost of performing the additional Services, prior to netting against any savings in costs of performing the Services.

(d) No Mark-up is permitted for any other Base Direct Costs (i.e., those described in Sections 2(c), (d), (g), (h), and (i) hereof).

(e) In calculating any Mark-up amount, the Mark-up amount is a percentage of the cost before adding any other Mark-up—there shall be no Mark-up on Mark-up.

(f) In support of any claim by Lessor for Direct Costs under the Lease, Lessor shall specify the applicable Mark-up (in the aggregate and per tier) in relation to each category of Base Direct Costs.

EXHIBIT 15 NONCOMPLIANCE EVENTS AND DEDUCTIONS

1. Deductions and Abatements for Service Failures

Deductions will be assessed for Service Failures on an annual or monthly basis, as applicable, and applied as Lease Payment Abatements monthly in arrears.

1.1 Noncompliance Events. Noncompliance Events for Service Failures are categorized as set forth in Table 1.

**Table 1
Noncompliance Events for Service Failures**

Category No.	Event Type
1	Scheduled Maintenance Failure
2	Performance Failure
	Vandalism
	Other Demand Maintenance Events
3	Administrative Service Failure
4	Life Cycle Maintenance Failure

1.2 Annual Assessments for Category 1 Noncompliance Events (Scheduled Maintenance)

1.2.1 At the end of Lease Year, commencing with the first anniversary of the Occupancy Date, Lessor's performance of Scheduled Maintenance will be evaluated against the requirements of Lessor's Annual Service Plan and Five-Year Maintenance Plan. It is acknowledged and agreed that Lessee has contracted for, and the Maximum Annual Lease Payment amounts reflect, Lessor's performance of *all* Scheduled Maintenance required in accordance with the FM Specifications (Lease Exhibit 11).

1.2.2 A Service Failure and Noncompliance Event shall occur if, at the end of the Lease Year, Lessor has not performed at least 95% of Scheduled Maintenance activities (a "**Scheduled Maintenance Failure**") required pursuant to the Annual Service Plan, measured as a percentage of the Scheduled Maintenance work orders scheduled to be completed during the Lease Year that are completed on time. For such Noncompliance Event, a Deduction in the amount of \$20,000 will be assessed (a) upon the anniversary of the Occupancy Date and (b) every week thereafter until Lessor has performed 95% of the Scheduled Maintenance activities required for the Lease Year.

1.2.3 Deductions assessed pursuant to this Section 1.2 will be aggregated and applied as Lease Payment Abatements deducted from the Maximum Monthly Lease Payment payable (a) for the second month of the following Lease Year, for Deductions assessed on the anniversary of the Occupancy Date and (b) for the second month following the month in which the Deduction was assessed, for Deductions assessed every week thereafter.

1.2.4 The Noncompliance Event and Deductions assessed pursuant to this Section 1.2 are subject to modification based on the approved Annual Service Plan and Five Year Maintenance Plan, as such may be updated in accordance with Exhibit 11.

1.3 Monthly Assessments for Category 2 Noncompliance Events (Demand Maintenance)

1.3.1 A Service Failure and Noncompliance Event shall occur if Lessee fails to Respond to or Rectify a Performance Failure, Vandalism, or Other Demand Maintenance Event. The applicable Deduction for a Category 2 Noncompliance Events is based on the type and classification of the Event.

1.3.2 Whenever a Category 2 Noncompliance Event has occurred, a Deduction will be assessed: (a) upon expiration of the required Response Time, unless Lessor has Responded to such Event prior to such expiration, and (b) until Lessor has Responded to such Event, upon the expiration of each successive Response Time period thereafter. Table 2 sets forth the Deduction amounts for failure to Respond to a Category 2 Noncompliance Event, per Response Time period.

Table 2
Demand Maintenance – Response Deductions

Event Type	Classification	Response Time	Deduction
Any Category 2 Noncompliance Event	Emergency	1 hour	\$500
	Critical	4 hours	\$250
	Routine	12 hours	\$200

1.3.3 Additionally, whenever a Category 2 Noncompliance Event has occurred, a Deduction will be assessed: (a) upon expiration of the Rectification Period, unless Lessor has Rectified the Event prior to such expiration, and (b) until Lessor has Rectified the Event, upon the expiration of each successive Rectification Period thereafter. Table 3 sets forth the Deduction amounts for failure to Rectify a Category 2 Noncompliance Event, per Rectification Period.

Table 3
Demand Maintenance – Rectification Deductions

Event Type	Classification	Rectification Period	Deduction
Performance Failure	Emergency	4 hours	\$750
	Critical	6 hours	\$750
	Routine	4 days	\$250
Vandalism	Emergency	See <u>Table 2-3-4</u> .	\$750
	Critical		\$750
	Routine		\$250
Other Demand Maintenance Event (Lessee cost)	Emergency	8 hours	\$1000
	Critical	12 hours	\$750
	Routine	8 days	\$250
Other Demand Maintenance Event (Lessor cost)	Emergency	4 hours	\$750
	Critical	6 hours	\$750
	Routine	4 days	\$250

1.3.4 The Rectification Periods for Vandalism shall be as set forth in Table 4 below (including the notes thereto). For the avoidance of doubt, Response Times for Vandalism remain as set forth in Table 2.)

Table 4
Vandalism Repair and Rectification

Classification	Cost Estimate	Repair Time ¹	Rectification Period
Emergency	N/A	See <u>Exhibit 11, Section 4.6</u>	4 hours
Critical ²	≤ \$2000 ⁴	48 hours	6 hours
	> \$2000 ⁴	As directed by Lessee	6 hours
Routine ³	≤ \$2000 ⁴	48 hours	48 hours
	> \$2000 ⁴	As directed by Lessee	4 Business Days

Notes:

1. See Exhibit 11, Sections 4.5 and 4.6. Note that the time permitted for Repair pursuant to Exhibit 11, Part 4 may be shorter or longer than the Rectification Period, as further described in these Notes.
2. For Critical Events of Vandalism, temporary rectification (e.g., temporarily covering or painting over graffiti) will qualify as Rectification for purposes of determining a Service Failure and Noncompliance Event until any longer time allowed for full Repair pursuant to Exhibit 11, Section 4.5 expires, at which point the Vandalism must be fully and permanently Repaired in order to be considered Rectified.
3. For Routine Events of Vandalism where the Lessor estimates the cost to Repair to be greater than \$2,000 (Index Linked), the Rectification Period will be measured from 8 a.m. on the Business Day immediately following the day on which Lessee directs Lessor to Repair the Vandalism. For such Events, Lessee may direct that temporary rectification qualify as Rectification for purposes of determining a Service Failure and Noncompliance Event until the expiration of any longer time for allowed by Lessee for full Repair pursuant to Exhibit 11, Section 4.5.
4. Dollar amounts are Index Linked.

1.3.5 For Other Demand Maintenance Events for which Lessee may be fully or partially responsible for the cost of Rectification or Repair pursuant to the Lease Documents (as agreed by the Parties), notwithstanding Section 1.3 of Appendix A to this Exhibit, the time for the Rectification Period shall be measured (a) from the time the Parties agree on a method for determining the cost amount, or (b) without Lessor's agreement, from the time Lessee directs Lessor to proceed with Rectification, subject to Lessee's obligation to pay Lessor's Direct Costs for which Lessee is responsible under Exhibit 11, Part 4 and the Dispute Resolution Procedures.

1.3.6 Deductions assessed pursuant to this Section 1.3 will be aggregated and applied as Lease Payment Abatements deducted from the Maximum Monthly Lease Payment that is payable for the second month following the month in which the Deduction was assessed.

1.4 Monthly Assessments for Category 3 Noncompliance Events (Administrative)

1.4.1 Failure to respond or cure a failure within the time frames identified in Table 5 will constitute a Service Failure and Noncompliance Event and result in assessment of Deductions as and to the extent provided in Table 5. If the failure remains un-cured at the end of the reassessment period set out in Table 5 (under "Reassessment Frequency"), it will be assessed as another Noncompliance Event.

1.4.2 The Deduction amounts for Category 3 Noncompliance Events is as set forth in Table 5 below.

Table 5
Administrative Service Failure Deductions

	Event	Cure Period	Deduction	Reassessment Frequency
1	Failure to timely deliver draft Life Cycle Schedule or required revisions thereto (<u>Exhibit 11, Appendix I, Part 6</u>)	N/A	\$250	Daily Amount increases to \$500 daily for initial draft if not submitted 150 days before the Occupancy Deadline
2	Failure to timely deliver draft Start-up Plan or required revisions thereto (<u>Exhibit 11, Appendix I, Part 6</u>)	N/A	\$1000	Daily Amount increases to \$500 daily for initial draft if not submitted 150 days before the Occupancy Deadline
3	Failure to deliver Life Cycle Schedule or Start-up Plan acceptable to Lessee prior to Occupancy Deadline (<u>Exhibit 11, Appendix I, Part 6</u>)	Until Occupancy Date	\$250	Daily after expiration of cure period
4	Failure to timely deliver other Occupancy Period Plans and other Occupancy Period Submittals required prior to the Occupancy Deadline, or to timely respond to comments to same (<u>Exhibit 11, Section 3.6 and Appendix I</u>)	N/A	\$250	Daily
5	Failure to provide access to Project Records or to timely deliver submittals with respect to Improvement Work, or timely respond to comments to same (<u>Exhibits 10A and 10B</u>)	5 Business Days	\$250	Daily
6	Failure to timely deliver the Operating Period Submittals required annually pursuant to <u>Exhibit 11, Section 3.6.1.4.</u>	N/A	\$250	Daily
7	Failure to timely deliver the monthly Performance Monitoring Report required pursuant to <u>Exhibit 11, Part 5.</u>	N/A	\$250	Daily
8	Failure to maintain accurate and current CMMS records and to make such records available for review by Lessee at all times (<u>Exhibit 11, Part 6</u>)	Response: 30 minutes Cure: 48 hours	\$1000	Weekly after expiration of the applicable cure period

1.4.3 Deductions assessed pursuant to this Section 1.4 will be aggregated and applied as Lease Payment Abatements deducted from the Maximum Lease Payment that is payable for the month following the month in which the Deduction was assessed.

1.4.4 Notwithstanding Section 1.4.3 above, any Lease Payment Abatements assessed for Noncompliance Events occurring prior to the Occupancy Date will be deducted from the Maximum Monthly Lease Payment payable for the first month of the Occupancy Period.

1.5 Monthly Assessments for Category 4 Noncompliance Events (Life Cycle Maintenance)

1.5.1 Lessor's performance of asset lifecycle and rehabilitative Maintenance will be evaluated against the requirements of Lessor's Life Cycle Plan. A Service Failure and Noncompliance Event shall occur if the Lessor has not completed a lifecycle project or performed other lifecycle-related Scheduled Maintenance required pursuant to the Life Cycle Plan within the calendar month (or such other time period specified in the Life Cycle Plan) that such Maintenance is scheduled to be completed or performed. For such Noncompliance Event, Deductions will be assessed as set forth in [Table 6](#).

Table 6
Life Cycle Maintenance Failure Deductions

Event	Cure Period	Deduction	Reassessment Frequency
Failure to timely perform lifecycle Maintenance required pursuant to the Life Cycle Plan (Lease Exhibit 11, Part 3 and Appendix C)	30 days	\$1000	Weekly after expiration of the cure period

1.5.2 Deductions assessed pursuant to this [Section 1.5](#) will be aggregated and applied as Lease Payment Abatements deducted from the Maximum Monthly Lease Payment payable for the second month following the month in which the Deduction was assessed.

1.5.3 The Noncompliance Event and Deductions assessed pursuant to this [Section 1.5](#) are subject to modification based on the approved Life Cycle Plan and Five Year Maintenance Plan, as such may be updated in accordance with [Exhibit 11](#).

2. Deductions and Abatements for Lessor-Caused Unavailability Events

2.1 Lessor-Caused Unavailability Events

2.1.1 In the event that the Facility and/or any Functional Areas are Unavailable for any period of time, [Section 1](#) of this [Exhibit 15](#) shall not apply with respect to the impacted areas during such period and instead the terms of this [Section 2](#) shall apply.

2.1.2 A "**Lessor-Caused Unavailability Event**" and Noncompliance Event shall occur if, due to or arising directly out of an act or omission of a Lessor Party, the Facility and one or more Functional Areas is Unavailable.

2.1.3 The Facility and/or Functional Areas will be considered "**Unavailable**" for purposes of this [Exhibit 15](#) to the extent that, at any time after the Occupancy Date, a Functional Area, and/or normal access routes thereto, is in a state or condition that does not provide, for a continuous period of over 24 hours:

- (a) Safe and convenient access to all applicable Users of the Facility and Functional Areas; and
- (b) Functional Areas that are substantially complete, operational, safe, functional, and fit for their intended use(s) as contemplated in the Technical Requirements and meeting all other applicable requirements of the Lease Documents.

2.1.4 A Lessor-Caused Unavailability Event shall not occur if Lessor is completing Scheduled Maintenance as scheduled or regularly performed or Demand Maintenance for which Lessor has provided

advance notice to Lessee of such maintenance activity and its impact on availability of the Facility and/or Functional Areas for a reasonable amount of time agreed by Lessee.

2.1.5 Notwithstanding Section 2.1.1 of this Exhibit, to the extent that Deductions could have been assessed under Section 1 of this Exhibit for Service Failures for the Unavailability of the Functional Areas, Lessor may present to Lessee an alternate calculation of Deductions under such Section 1 based on such Service Failures. Provided that Lessor demonstrates to Lessee's reasonable satisfaction that such Service Failure Deductions could (but for Section 2.1.1 of this Exhibit) have been assessed under Section 1 of this Exhibit in lieu of the Lessor-Caused Unavailability Event Deduction(s), the maximum amount of Deductions that Lessee will be entitled to assess for such Unavailability will be the lesser of (x) the total amount of such Service Failure Deductions under such Section 1 or (y) the total amount of possible Lessor-Caused Unavailability Event Deductions under this Section 2.

2.2 Deductions for Lessor-Caused Unavailability Events

2.2.1 If a Lessor-Caused Unavailability Event occurs, and if there are two or more Functional Areas that are Unavailable due to such Event, Lessee will be entitled to assess Deductions in respect of that Lessor-Caused Unavailability Event in accordance with this Section 2.

2.2.2 The Deduction amount in respect of each Lessor-Caused Unavailability Event will be the aggregate daily Functional Area Charge amounts, as applicable, assessed for all Functional Areas made Unavailable as a result of the Lessor-Caused Unavailability Event in accordance with Sections 2.3 and 2.4 of this Exhibit.

2.2.3 Deductions assessed pursuant to this Section 2 will be aggregated and applied as Lease Payment Abatements deducted from the Maximum Monthly Lease Payment payable for the second month following the month in which the Deduction was assessed.

2.3 Functional Areas. A Functional Area Charge for each Functional Area that is Unavailable for each day of the Lessor-Caused Unavailability Event will be determined using the below tables.

2.3.1 **Housing Functional Areas.** Housing Functional Areas will incur a Functional Area Charge in accordance with Table 7 below for each such Functional Area that is Unavailable for each day during a Lessor-Caused Unavailability Event. For example, if only Facility Codes 611 and 612 are unavailable, a Functional Area Charge of \$6,000 per day will be incurred. However, if the entire Unit 1 (Facility Code 600) is unavailable, it will incur a Functional Area Charge of \$15,000 per day.

Table 7
Housing Functional Areas

Facility Code	Housing Functional Areas	Daily Functional Area Charge
600	Unit 1 Total	\$15,000
602	Restricted Housing	\$3,000
611	Minimum In	\$3,000
612	Minimum In	\$3,000
613	Minimum In	\$3,000
614	Minimum In	\$3,000
700	Unit 2 Total	\$12,000

Facility Code	Housing Functional Areas	Daily Functional Area Charge
702	Close Custody Housing	\$3,000
703	Close Custody Housing	\$3,000
704	Close Custody Housing	\$3,000
705	Close Custody Housing	\$3,000
900	Unit 4 Total	\$12,000
902	Medium Custody Housing	\$3,000
903	Medium Custody Housing	\$3,000
904	Medium Custody Housing	\$3,000
905	Medium Custody Housing	\$3,000
1000	Unit 5 Total	\$6,000
1001	Minimum Out	\$3,000
1002	Minimum Out	\$3,000
Total Housing Functional Areas		\$45,000 (Maximum)

Note: If Unit 3 (Facility Code 800) opens, a total Daily Functional Area Charge of \$12,000 per day will be applicable for the entire Unit, causing the Housing Functional Area Total Daily Functional Area Charge to be \$57,000.

2.3.2 **Critical Facility Functional Areas.** Critical Facility Functional Areas will incur a Functional Area Charge in accordance with [Table 8](#) below for each such Functional Area that is Unavailable for each day during a Lessor-Caused Unavailability Event.

Table 8
Critical Facility Functional Areas

Facility Code	Critical Facility Functional Areas	Daily Functional Area Charge
304	Outpatient Clinic/Dental/Medication Distribution	\$6,000
305	Emergency Treatment	\$6,000
406	Vehicle Sallyport	\$6,000
407	Central Plant	\$6,000
501	Food Service	\$6,000
	Perimeter Security System (completely out of commission)	\$20,000
	Electronic Surveillance and Communication System (both completely out of commission)	\$20,000
Total Critical Facility Functional Areas		\$70,000 (Maximum)

2.3.3 **Facility Support and Administrative Functional Areas.** Facility Support and Administration Functional Areas will incur a Functional Area Charge in accordance with [Table 9](#) below for each such Functional Area that is Unavailable for each day during a Lessor-Caused Unavailability Event. If one or more Functional Area(s) within each Facility Code grouping (e.g., Facility Code 100 includes 101, 103, and 104 Functional Areas), then a Functional Area Charge of \$1,500 per day will be incurred for each

impacted Facility Code grouping (100, 200, 300, 400, 500, and Housing Support and Administration). At no time will any Functional Area Charge for Facility Support and Administration Functional Areas be greater than \$9,000 per day.

**Table 9
Facility Support and Administration Functional Areas**

Facility Code	Facility Support and Administration Functional Areas	Daily Functional Area Charge
100	Outside Complex Security	\$1,500
101	Kennel	
103	Range	
104	Parking	
200	Complex Admin (Outside)	\$1,500
201	Public Access to Visiting	
202	Staff Entry	
203	Business Center	
204	Intelligence & Investigation	
205	Complex Central Control	
206	Records Office	
207	Executive Admin Area	
208	Staff Services/Training	
209	Armory	
300	Complex Core	\$1,500
301	Complex Operations	
302	Staff Dining Area	
303	Health Care Administration	
306	Central Health Records	
400	Outside Complex Support	\$1,500
401	Warehouse Support	
402	Mail	
403	Canteen/ Commissary	
404	Motor Pool	
405	Information Technology	
408	Industries Warehouse	
500	Inside Complex Support	\$1,500
502	Laundry	
503	Maintenance Shops	

Facility Code	Facility Support and Administration Functional Areas	Daily Functional Area Charge
504	Vocational Education	
505	Correctional Industries	
506	Inmate Work Crew Change/Check	
Housing Support and Administration		\$1,500
601	Housing Core Administration	
603	Restricted Housing Support	
610	Minimum In Housing Admin	
615	Minimum In Housing Support	
701	Housing Core Administration	
706	Close Custody Housing Unit Support	
901	Housing Core Administration	
906	Medium Custody Housing Unit Support	
1003	Minimum Out Housing Unit Support	
Total Facility Support and Administration Functional Areas		\$9,000 (Maximum)

2.3.4 The "Total Daily Functional Area Charges" will be the aggregate of the daily Functional Area Charges for each day of the Lessor-Caused Unavailability Event.

2.4 Calculation of Deduction. The calculation to determine the Deduction amount assessable by Lessee on a daily and/or monthly basis, as applicable, for a Lessor-Caused Unavailability Event shall be made as follows:

- (a) Daily Unavailability Deduction = Total Daily Functional Area Charges per Tables 7, 8, and 9 of this Section 2
- (b) Monthly Unavailability Deduction = Sum of each Daily Unavailability Deduction for each full day during each Lessor-Caused Unavailability Event

2.5 The Noncompliance Event and Deductions assessed pursuant to this Section 2 are subject to modification, as such may be updated in accordance with this Lease (with the consent of the Parties).

3. Escalation of Deduction Amounts. The dollar amounts for Deductions provided in this Exhibit 15 are provided in US Dollars as of the Occupancy Date. Such amounts are Index Linked (will be adjusted at the start of each Lease Year based on the Consumer Price Index).

4. Limitations. The Deductions that may be assessed in a given Lease Year or Lease Month, and the aggregate Lease Payment Abatements applied and deducted from the Maximum Annual Lease Payment or any given Monthly Lease Payment (versus spread over several Monthly Lease Payments), will be subject to the limitations set forth in Lease Section 4.2.1 and Exhibit 8, Section 4.2. (For the avoidance of doubt, any Deductions that have been assessed pursuant to this Exhibit 15, but that have not yet been fully applied against prior Monthly Lease Payments because of the limitations referenced in this Section 4, will "roll over" and may be applied by Lessee to subsequent Monthly Lease Payments, subject to the aforementioned limitations.)

5. Temporary Relief from Deductions. Lessor will be eligible for relief from Relief Times, Rectification Periods, assessment of Deductions, and/or application of Lease Payment Abatements on account of Relief Events in accordance with Lease Section 14 and Exhibit 13.

Appendix A RESPONSE AND RECTIFICATION REQUIREMENTS

PART 1. RESPONSE AND RECTIFICATION REQUIREMENTS

1.1 General Requirements

1.1.1 24 hours 7 days a week Response and Rectification to physical plant problems arising at the Facility; and

1.1.2 Record and document Response and Rectification times and details of same as they arise.

1.2 Scope of Services

1.2.2 **"Response"** or **"Respond"** means:

(a) With respect to all Services, the appropriate Lessor Party attending the location of the Event, making the location, and all affected locations safe, in accordance with Good Industry Practice, and providing a plan acceptable to the Lessee, acting reasonably, for the Rectification of the Event; and

(b) With respect to routine matters for all Services, means either the foregoing or a verbal or electronic response from the Help Desk confirming the details of the Event and providing a plan acceptable to the Lessee, acting reasonably, for the Rectification of the Event.

1.2.3 **"Rectification"** or **"Rectify"** means, following the occurrence of an Event, making good the Event so that the subject matter of the Event complies with the levels of performance required pursuant to the Lease Documents, including (a) restoring all functional capability and (b) ensuring that all affected areas or components of the Facility are returned back to a fully functioning state or such other condition as may be specifically required by Lease Exhibit 11.

1.3 Measurement of Rectification Periods

The time for the Rectification Period shall be measured as follows:

1.3.1 In the case of a Routine Event, the time shall be measured from 8:00 a.m. on the Business Day immediately following the day on which the Event is reported to the Help Desk or is otherwise reported to or discovered by the Lessor.

1.3.2 In the case of a Critical or Emergency Event, the time shall be measured from the time of day that the Event is reported to the Help Desk or is otherwise reported to or discovered by the Lessor.

1.3.3 In the case of an Event that has not been Rectified within one or more prior Rectification Periods, the time shall be measured from the end of the immediately preceding Rectification Period.

EXHIBIT 16 EVENTS OF DEFAULT

TABLE 1 LESSOR DEFAULTS

Event or Circumstance	Lessor Default Cure Period
<p>(1) Failure to Commence Construction Work. Lessor fails to commence Construction Work on the Initial Project Improvements by the Improvement Work Commencement Date, and either:</p> <p>(a) Lessor fails to deliver to Lessee a Remediation Plan meeting the requirements for approval set forth in <u>Lease Section 15.5</u> within 30 days after such date; or</p> <p>(b) Lessor fails to fully comply with the schedule or specific elements of, or actions required under, the approved Remediation Plan.</p> <p>For purposes of this <u>event (1)</u>, commencement of works at the Project Site under the early site civil works package shall constitute commencement of Construction Work on the Initial Project Improvements.</p>	<p>In the case of <u>clause (a)</u>, 5 Business Days after the Initial Lessor Default Notice.</p> <p>In the case of <u>clause (b)</u>, 30 days after the Initial Lessor Default Notice.</p>
<p>(2) Occupancy Readiness Deadline. Lessor fails to achieve Occupancy Readiness by the Occupancy Readiness Deadline, and either:</p> <p>(a) Lessor fails to deliver to Lessee a Remediation Plan meeting the requirements for approval set forth in <u>Lease Section 15.5</u> within 30 days after such date; or</p> <p>(b) Lessor fails to fully comply with the schedule or specific elements of, or actions required under, the approved Remediation Plan, and Occupancy Readiness is not achieved by such deadline as is agreed by the Parties in the approved Remediation Plan; or</p> <p>(c) Lessor fails to achieve Occupancy Readiness by the Long Stop Date.</p>	<p>In the case of <u>clause (a)</u>, 5 Business Days after the Initial Lessor Default Notice.</p> <p>In the case of <u>clause (b)</u>, 30 days after the Initial Lessor Default Notice.</p> <p>In the case of <u>clause (c)</u>, none.</p>

Event or Circumstance	Lessor Default Cure Period
<p>(3) Abandonment. If either:</p> <p>(a) No significant Initial Improvement Work, or a material part thereof, is performed on the Project for a continuous period of more than 30 days after the Improvement Work Commencement Date, other than where such nonperformance is consistent with the Project Schedule; or</p> <p>(b) Lessor fails to perform a material part of the Maintenance Services for a continuous period in excess of 30 days, where such failure is not consistent with the FM Specifications and the Occupancy Period Plans developed thereunder;</p> <p>in each case, except as expressly excused or permitted by the terms of the Lease, including in connection with the occurrence of a Relief Event or the exercise of Lessor's right to suspend performance or terminate.</p>	30 days after the Initial Lessor Default Notice.
<p>(4) Improper Use of Facility or Project. There occurs any use of the Facility or Project or any portion thereof by any Lessor Party in violation of this Lease, Governmental Approvals, or applicable Laws.</p>	30 days after the Initial Lessor Default Notice.
<p>(5) Non-payment. Lessor:</p> <p>(a) Fails to make any payment of any amount due and owing to Lessee under this Lease by the date due, which amount is not being disputed in good faith; or</p> <p>(b) Fails to deposit funds to any reserve or account, or to post or deliver a letter of credit, bond, or other form of security, in the amount and within the time period required by the Lease Documents; or</p> <p>(c) Uses, or permits or suffers the use by any Lessor Party of, amounts in any reserve or account required pursuant to this Lease for any purpose other than as permitted herein.</p>	10 Business Days after the Initial Lessor Default Notice.
<p>(6) Insurance and Performance Security. Lessor:</p> <p>(a) Fails to obtain, provide, and maintain any insurance, bonds, guarantees, letters of credit, or other performance security, as and when required under the Lease Documents for the benefit of relevant parties; or</p> <p>(b) Fails to comply with any requirement of this Lease pertaining to the amount, terms, or coverage of the same.</p>	30 days after the Initial Lessor Default Notice.

Event or Circumstance	Lessor Default Cure Period
<p>(7) Assignment and Change in Equity Ownership</p> <p>(a) Lessor makes or suffers a voluntary or involuntary sale, assignment, conveyance, transfer, pledge, or encumbrance of all or any portion of this Lease or Lessee's leasehold interest hereunder in violation of <u>Lease Article 19</u>; or</p> <p>(b) There occurs an Equity Transfer in violation of <u>Lease Article 19</u>.</p>	<p>15 days after the Initial Lessor Default Notice.</p>
<p>(8) False or Misleading Information</p> <p>(a) Any material representation or warranty made by Lessor in this Lease (other than in <u>Lease Section 5.1.15</u>), or any certificate, schedule, report, instrument, or other document delivered by or on behalf of Lessor to Lessee pursuant to the Lease Documents, is false or materially misleading or materially inaccurate when made, or omits material information when made; or</p> <p>(b) The representation and warranty in <u>Lease Section 5.1.15</u> is false.</p>	<p>In the case of a failure described in <u>clause (a)</u>, 30 days after the Initial Lessor Default Notice; <i>provided</i> that, if such breach is of a nature that the cure cannot with diligence be completed within such 30-day period, such period shall be extended by such additional time, not to exceed an additional 90 days, as is reasonably necessary to diligently effect cure. A cure will be regarded as complete when the adverse effects of the breach are cured.</p> <p>In the case of a failure described in <u>clause (b)</u>, none.</p>

Event or Circumstance	Lessor Default Cure Period
<p>(9) Material Nonperformance or Breach. Lessor fails to timely observe or perform, or cause to be observed or performed, or breaches or causes to be breached, in any material respect any material covenant, agreement, obligation, term, or condition required to be observed or performed by Lessor under the Lease Documents and not otherwise expressly covered by this <u>Exhibit 16, Table 1</u>, including material failure to perform the Improvement Work, the Maintenance Services, or any material portion thereof, in accordance with the Lease Documents, the consequence of which is:</p> <ul style="list-style-type: none"> (a) A material risk to the health or safety of Users, workers, or the public; (b) A risk of material liability of Lessee to third Persons; (c) An adverse effect on the performance of the Improvement Work or the Maintenance Services, to the extent that Lessee is reasonably likely to be materially deprived of the benefit of this Lease; or (d) Any material provision of this Lease being unenforceable against Lessor. <p>Any Lessor breach specifically identified in this Lease as a material breach which constitutes, or which may result in, a Lessor Default, but which is not otherwise included in another Lessor Default event in this <u>Exhibit 16, Table 1</u>, shall, if not cured within any cure period specified for such breach, constitute a Lessor Default under this <u>event (9)</u>, regardless of whether any of the consequences listed above is applicable. Lessor's failure to meet the deadlines set forth in Project Schedule, in and of itself, shall not be considered a Lessor Default hereunder.</p>	<p>30 days after the Initial Lessor Default Notice; <i>provided</i> that, if such failure is of a nature that the cure cannot with diligence be completed within such 30-day period, such period shall be extended by such additional time, not to exceed an additional 90 days, as is reasonably necessary to diligently effect cure.</p>
<p>(10) Persistent Lessor Breach. There occurs any Persistent Lessor Breach, of which Lessee has given notice to Lessor, and either:</p> <ul style="list-style-type: none"> (a) Lessor fails to deliver to Lessee a Remediation Plan meeting the requirements for approval set forth in <u>Lease Section 15.5</u> within 45 days after receiving such notice; or (b) Lessor fails to fully comply with the schedule or specific elements of, or actions required under, the approved Remediation Plan. 	<p>In the case of <u>clause (a)</u>, 5 Business Days after the Initial Lessor Default Notice.</p> <p>In the case of <u>clause (b)</u>, 30 days after the Initial Lessor Default Notice.</p>
<p>(11) Failure to Suspend Work. Lessor fails to comply with Lessee's written suspension of Services order issued in accordance with <u>Lease Section 16.4.6</u> within the time reasonably allowed in such order.</p>	<p>None.</p>

Event or Circumstance	Lessor Default Cure Period
<p>(12) Failure to Comply with Safety Compliance Order or Take Emergency Action. Lessor fails to comply with Lessee's Safety Compliance Order validly issued in accordance with <u>Lease Section 8.2</u>, or to timely perform Safety Compliance thereunder, within the time reasonably allowed in such order, or otherwise fails to take appropriate timely action following receipt of notice from Lessee that an Emergency exists or is threatened due to Lessor's failure to implement or comply with Safety Standards or otherwise satisfy its obligations under this Lease in any material respect.</p>	<p>5 Business Days after Initial Lessor Default Notice, to commence compliance</p> <p>30 days after Initial Lessor Default Notice to complete cure; <i>provided</i> that, if such cure is of a nature that it cannot with diligence be completed within such 30-day period, such period shall be extended by such additional time, not to exceed an additional 90 days, as is reasonably necessary to diligently effect cure.</p>
<p>(13) Failure to Perform Reinstatement Works. Lessor fails to comply with its obligations under <u>Lease Section 13.1</u> to repair, replace, reconstruct, or restore the Project following damage or destruction (subject to the limitations on such obligations set forth in <u>Lease Section 13.1</u>).</p>	<p>30 days after Initial Lessor Default Notice</p>
<p>(14) Voluntary Liquidation. Lessor commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect, seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; becomes insolvent, or generally does not pay its debts as they become due or admits in writing its inability to pay its debts (other than: (i) debts that are otherwise paid by an Equity Member; (ii) Project Debt that is otherwise paid by a financial guarantor that is a Lender to the holders thereof under its financial guaranty; or (iii) debt otherwise owing to a financial guarantor); makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing; or any of the foregoing acts or events shall occur with respect to: (a) any Equity Member with a material financial obligation owing to Lessor for Committed Investment; or (b) any guarantor of material Lessor obligations owed to Lessee under the Lease Documents; <i>provided</i> that such actions shall not be considered a Lessor Default if they are the sole and direct result of Lessee's breach of its obligation to make payments to Lessor.</p>	<p>None.</p>

Event or Circumstance	Lessor Default Cure Period
<p>(15) Involuntary Liquidation. An involuntary case is commenced against Lessor seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to Lessor or Lessor's debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of Lessor or any substantial part of Lessor's assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief; or any such involuntary case, or any of the foregoing acts or events, shall occur with respect to: (a) any Equity Member with a material financial obligation owing to Lessor for Committed Investment; or (b) any guarantor of material Lessor obligations owed to Lessee under the Lease Documents; <i>provided</i> that such actions shall not be considered a Lessor Default if they are the sole and direct result of Lessee's breach of its obligation to make payments to Lessor.</p>	<p>60 days after commencement of such proceeding.</p>
<p>(16) Rejection of Lease in Bankruptcy. In any voluntary or involuntary case seeking liquidation, reorganization, or other relief with respect to Lessor or its debts under any U.S. or foreign bankruptcy, insolvency, or other similar Law now or hereafter in effect, this Lease or any of the other Lease Documents is rejected, including a rejection pursuant to 11 U.S.C. § 365 or any successor statute.</p>	<p>In the case of a voluntary case seeking liquidation, reorganization, or other relief, none.</p> <p>In the case of an involuntary case seeking liquidation, reorganization, or other relief, 60 days after the commencement of such proceeding.</p>

**TABLE 2
LESSEE DEFAULTS**

Event or Circumstance		Lessee Default Cure Period
(1)	Non-Payment. Subject to <u>Lease Section 4.7</u> , Lessee fails to make any payment of any amount due and owing to Lessor under this Lease by the date due, which amount is not being disputed in good faith in accordance with the terms of this Lease.	30 days after Lessor gives notice of such failure to Lessee.
(2)	Representations and Warranties. Any material representation or warranty made by Lessee in this Lease is false or materially misleading or inaccurate when made, or omits material information when made.	60 days after Lessor gives notice of such failure to Lessee; <i>provided</i> that, if such breach is of a nature that the cure cannot with diligence be completed within such 60-day period, such period shall be extended by such additional time, not to exceed an additional 120 days, as is reasonably necessary to diligently effect cure; and <i>provided</i> that cure will be regarded as complete when the adverse effects of the breach are cured.
(3)	Lessee Breach. Lessee fails to observe or perform in a material respect any other material covenant, agreement, obligation, term, or condition required to be observed or performed by Lessee under the Lease Documents or any Principal Project Document to which Lessee is a party, in each case which has a material adverse effect on Lessor (or, in the case of the Lenders' Direct Agreement, the Lenders).	60 days after Lessor gives notice of such failure to Lessee; <i>provided</i> that, if such failure is of a nature that it can be cured but the cure cannot with diligence be completed within such 60-day period, such period shall be extended by such additional time, not to exceed an additional 120 days, as is reasonably necessary to diligently effect cure.

EXHIBIT 17 PRE-PAYMENT AMOUNT

1. Lessee-Related Pre-Payment Event

In the event of any of the following Pre-Payment Events as described in Lease Section 18.1, the Pre-Payment Amount shall equal (x) the Project Development Cost Payment; *plus* (y) if applicable, the Services Breakage Payment; in each case calculated in accordance with this Section 1, and each without double-counting any amount included in any of the calculations pursuant to this Section 1 (or the defined terms used herein):

- (a) A Lessee Non-Payment Event (Lease Section 18.1.1);
- (b) A Persistent Lessee Default Event (Lease Section 18.1.2);
- (c) A Non-Appropriation Event that becomes a Pre-Payment Event in accordance with Lease Section 4.7.1(b) (Lease Section 18.1.3);
- (d) A Taking Event (Lease Section 18.1.5), in the case of a Taking (i) by the State or (ii) that is caused by, or arises directly out of, the negligent act, negligent omission, recklessness, willful misconduct, bad faith, or fraud of a Lessee Party; or
- (e) An Extended Relief Event (Lease Section 18.1.6), to the extent such event is caused by, or arises directly out of, an act or omission of a Lessee Party.

1.1 Project Development Cost Payment

- (a) Prior to Occupancy. If and only if the Pre-Payment Event occurred prior to the Occupancy Date, the Project Development Cost Payment amount shall equal:
 - (i) The Lessor Outstanding Debt amount; *plus*
 - (ii) Contributed Unreturned Equity; *plus*
 - (iii) Equity Return; *plus*
 - (iv) Net Adjustment Amounts Due; *plus*
 - (v) All other amounts accrued but unpaid amounts, if any, due and owing from Lessee to Lessor pursuant to this Lease as of the date the Project Development Cost Payment is made; *minus*
 - (vi) Account Balances; *minus*
 - (vii) The balance of the Major Maintenance Reserve Fund (or equivalent reserve fund or account), if any; *minus*
 - (viii) Available Insurance Amounts; *minus*
 - (ix) In the case of a Taking, all proceeds from the Taking, if any, received by Lessor; *minus*
 - (x) All offsets, if any, to which Lessee is entitled under this Lease in accordance Section 5 below.

- (b) During Occupancy Period. If and only if the Pre-Payment Event occurred on or after the Occupancy Date, the Project Development Cost Payment amount shall equal:
- (i) The Lessor Outstanding Debt amount; *plus*
 - (ii) Contributed Unreturned Equity; *plus*
 - (iii) Equity Return; *plus*
 - (iv) Net Lease Payments Due; *plus*
 - (v) Net Adjustment Amounts Due; *plus*
 - (vi) All other amounts accrued but unpaid amounts, if any, due and owing from Lessee to Lessor pursuant to this Lease as of the date the Project Development Cost Payment is made; *minus*
 - (vii) Account Balances (excluding, in the event of the continued occupancy of the Premises by Lessee, amounts in the maintenance account, in which case such amounts shall be used in relation to such continued occupancy); *minus*
 - (viii) The balance of the Major Maintenance Reserve Fund (or equivalent reserve fund or account), if any, except in the event of the continued occupancy of the Premises by Lessee, in which case such balance shall be used in relation to such continued occupancy; *minus*
 - (ix) Available Insurance Amounts, except in the event of the continued occupancy of the Premises by Lessee, in which case such amounts shall be used in relation to such continued occupancy; *minus*
 - (x) In the case of a Taking, all proceeds from the Taking, if any, received by Lessor; *minus*
 - (xi) All offsets, if any, to which Lessee is entitled under this Lease in accordance Section 5 below.

1.2 Services Breakage Payment

- (a) Prior to Occupancy. If and only if the Pre-Payment Event occurred prior to the Occupancy Date, Lessee shall pay Lessor a Services Breakage Payment in an amount equal to Employee Termination & Subcontractor Breakage Costs.
- (b) Vacation of the Facility. If and only if the Pre-Payment Event occurred on or after the Occupancy Date, in the event of a vacation of the Facility as described in Lease Section 18.2.1(c), Lessee shall pay Lessor a Services Breakage Payment in an amount equal to Employee Termination & Subcontractor Breakage Costs.
- (c) Termination or Reduction of Services. If and only if the Pre-Payment Event occurred on or after the Occupancy Date, in the event that this Lease is terminated pursuant to Lease Section 13.1.7 or Lease Section 13.2 or the Parties agree to a reduction of services pursuant to the proviso in Lease Section 18.2.1(f)(ii), Lessee shall pay Lessor a Services Breakage Payment equal to Employee Termination & Subcontractor Breakage Costs for such termination or to the extent of such reduction of services. In the case of a reduction of services pursuant to the proviso in Lease Section 18.2.1(f)(ii), Lessee shall pay Lessor the

Services Breakage Payment as a condition precedent to the amendment effectuating the reduction as described in the proviso in Lease Section 18.2.1(f)(ii).

2. No Fault Taking Event

In the event of a Taking Event under Lease Section 18.1.5 to which Section 1(d) above does not apply, the Pre-Payment Amount shall equal (x) the Project Development Cost Payment; *plus* (y) if applicable, the Services Breakage Payment; in each case calculated in accordance with this Section 2, and each without double-counting any amount included in any of the calculations pursuant to this Section 2 (or the defined terms used herein).

2.1 Project Development Cost Payment

- (a) Prior to Occupancy. If and only if the Pre-Payment Event occurred prior to the Occupancy Date, the Project Development Cost Payment amount shall equal:
- (i) The Lessor Outstanding Debt amount; *plus*
 - (ii) Contributed Unreturned Equity; *plus*
 - (iii) 50% of the Equity Return; *plus*
 - (iv) Net Adjustment Amounts Due; *plus*
 - (v) All other amounts accrued but unpaid amounts, if any, due and owing from Lessee to Lessor pursuant to this Lease as of the date the Project Development Cost Payment is made; *minus*
 - (vi) Account Balances; *minus*
 - (vii) The balance of the Major Maintenance Reserve Fund (or equivalent reserve fund or account), if any; *minus*
 - (viii) Available Insurance Amounts; *minus*
 - (ix) All proceeds from the Taking, if any, received by Lessor; *minus*
 - (x) All offsets, if any, to which Lessee is entitled under this Lease in accordance Section 5 below.
- (b) During Occupancy Period. If and only if the Pre-Payment Event occurred on or after the Occupancy Date, the Project Development Cost Payment amount shall equal:
- (i) The Lessor Outstanding Debt amount; *plus*
 - (ii) Contributed Unreturned Equity; *plus*
 - (iii) 50% of the Equity Return; *plus*
 - (iv) Net Lease Payments Due; *plus*
 - (v) Net Adjustment Amounts Due; *plus*
 - (vi) All other amounts accrued but unpaid amounts, if any, due and owing from Lessee to Lessor pursuant to this Lease as of the date the Project Development Cost Payment is made; *minus*

- (vii) Account Balances (excluding, in the event of the continued occupancy of the Premises by Lessee, amounts in the maintenance account, in which case such amounts shall be used in relation to such continued occupancy); *minus*
- (viii) The balance of the Major Maintenance Reserve Fund (or equivalent reserve fund or account), if any, except in the event of the continued occupancy of the Premises by Lessee, in which case such balance shall be used in relation to such continued occupancy; *minus*
- (ix) Available Insurance Amounts, except in the event of the continued occupancy of the Premises by Lessee, in which case such amounts shall be used in relation to such continued occupancy; *minus*
- (x) All proceeds from the Taking, if any, received by Lessor; *minus*
- (xi) All offsets, if any, to which Lessee is entitled under this Lease in accordance Section 5 below.

2.2 Services Breakage Payment

- (a) Prior to Occupancy. If and only if the Pre-Payment Event occurred prior to the Occupancy Date, Lessee shall pay Lessor a Services Breakage Payment in an amount equal to Employee Termination & Subcontractor Breakage Costs.
- (b) Termination or Reduction of Services. If and only if the Pre-Payment Event occurred on or after the Occupancy Date, in the event that this Lease is terminated pursuant to Lease Section 13.2 or the Parties agree to a reduction of services pursuant to the proviso in Lease Section 18.2.1(f)(ii), Lessee shall pay Lessor a Services Breakage Payment equal to Employee Termination & Subcontractor Breakage Costs for such termination or to the extent of such reduction of services. In the case of a reduction of services pursuant to the proviso in Lease Section 18.2.1(f)(ii), Lessee shall pay Lessor the Services Breakage Payment as a condition precedent to the amendment effectuating the reduction as described in the proviso in Lease Section 18.2.1(f)(ii).

3. Court Ruling Event or No Fault Extended Relief Event

In the event of any of the following Pre-Payment Events as described in Lease Section 18.1, the Pre-Payment Amount shall equal (x) the Project Development Cost Payment; *plus* (y) if applicable, the Services Breakage Payment; in each case calculated in accordance with this Section 3, and each without double-counting any amount included in any of the calculations pursuant to this Section 3 (or the defined terms used herein):

- (a) A Court Ruling Event (Lease Section 18.1.4); or
- (b) An Extended Relief Event that is a Pre-Payment Event under Lease Section 18.1.6 to which Section 1(e) above does not apply.

3.1 Project Development Cost Payment

- (a) Prior to Occupancy. If and only if the Pre-Payment Event occurred prior to the Occupancy Date, the Project Development Cost Payment amount shall equal:
 - (i) The Lessor Outstanding Debt amount; *plus*
 - (ii) Contributed Unreturned Equity; *plus*

- (iii) Net Adjustment Amounts Due; *plus*
 - (iv) All other amounts accrued but unpaid amounts, if any, due and owing from Lessee to Lessor pursuant to this Lease as of the date the Project Development Cost Payment is made; *minus*
 - (v) Account Balances; *minus*
 - (vi) The balance of the Major Maintenance Reserve Fund (or equivalent reserve fund or account), if any; *minus*
 - (vii) Available Insurance Amounts; *minus*
 - (viii) All offsets, if any, to which Lessee is entitled under this Lease in accordance Section 5 below.
- (b) During Occupancy Period. If and only if the Pre-Payment Event occurred on or after the Occupancy Date, the Project Development Cost Payment amount shall equal:
- (i) The Lessor Outstanding Debt amount; *plus*
 - (ii) Contributed Unreturned Equity; *plus*
 - (iii) Net Lease Payments Due; *plus*
 - (iv) Net Adjustment Amounts Due; *plus*
 - (v) All other amounts accrued but unpaid amounts, if any, due and owing from Lessee to Lessor pursuant to this Lease as of the date the Project Development Cost Payment is made; *minus*
 - (vi) Account Balances (excluding, in the event of the continued occupancy of the Premises by Lessee, amounts in the maintenance account, in which case such amounts shall be used in relation to such continued occupancy); *minus*
 - (vii) The balance of the Major Maintenance Reserve Fund (or equivalent reserve fund or account), if any, except in the event of the continued occupancy of the Premises by Lessee, in which case such balance shall be used in relation to such continued occupancy; *minus*
 - (viii) Available Insurance Amounts, except in the event of the continued occupancy of the Premises by Lessee, in which case such amounts shall be used in relation to such continued occupancy; *minus*
 - (ix) All offsets, if any, to which Lessee is entitled under this Lease in accordance Section 5 below.

3.2 Services Breakage Payment

- (a) Prior to Occupancy. If and only if the Pre-Payment Event occurred prior to the Occupancy Date, Lessee shall pay Lessor a Services Breakage Payment in an amount equal to Employee Termination & Subcontractor Breakage Costs.
- (b) Termination or Reduction of Services. If and only if the Pre-Payment Event occurred on or after the Occupancy Date, in the event that this Lease is terminated pursuant to

Lease Section 13.1.7 or the Parties agree to a reduction of services pursuant to the proviso in Lease Section 18.2.1(f)(ii), Lessee shall pay Lessor a Services Breakage Payment equal to Employee Termination & Subcontractor Breakage Costs for such termination or to the extent of such reduction of services. In the case of a reduction of services pursuant to the proviso in Lease Section 18.2.1(f)(ii), Lessee shall pay Lessor the Services Breakage Payment as a condition precedent to the amendment effectuating the reduction as described in the proviso in Lease Section 18.2.1(f)(ii).

4. Lessor-Related Pre-Payment Event

In the event of a Lessor Default Event under Lease Section 18.1.7, the Pre-Payment Amount shall be the Project Development Cost Payment calculated in accordance with this Section 4, without double-counting any amount included in any of the calculations hereunder (or the defined terms used herein), and under no circumstances shall a Services Breakage Payment be due from Lessee to Lessor.

4.1 Prior to Occupancy

If and only if the Pre-Payment Event occurred prior to the Occupancy Date, the Project Development Cost Payment amount shall equal:

- (a) The Lessor Outstanding Debt amount; *plus*
- (b) Net Adjustment Amounts Due; *plus*
- (c) All other amounts accrued but unpaid amounts, if any, due and owing from Lessee to Lessor pursuant to this Lease as of the date the Project Development Cost Payment is made; *minus*
- (d) Account Balances; *minus*
- (e) The balance of the Major Maintenance Reserve Fund (or equivalent reserve fund or account), if any; *minus*
- (f) Available Insurance Amounts;
- (g) All offsets, if any, to which Lessee is entitled under this Lease in accordance Section 5 below.

4.2 During Occupancy Period

If and only if the Pre-Payment Event occurred on or after the Occupancy Date, the Project Development Cost Payment amount shall equal:

- (a) The Lessor Outstanding Debt amount; *plus*
- (b) Net Lease Payments Due; *plus*
- (c) Net Adjustment Amounts Due; *plus*
- (d) All other amounts accrued but unpaid amounts, if any, due and owing from Lessee to Lessor pursuant to this Lease as of the date the Project Development Cost Payment is made; *minus*
- (d) Account Balances (excluding, in the event of the continued occupancy of the Premises by Lessee, amounts in the maintenance account, in which case such amounts shall be used in relation to such continued occupancy); *minus*

- (e) The balance of the Major Maintenance Reserve Fund (or equivalent reserve fund or account), except in the event of the continued occupancy of the Premises by Lessee, in which case such balance shall be used in relation to such continued occupancy; *minus*
- (f) Available Insurance Amounts, except in the event of the continued occupancy of the Premises by Lessee, in which case such amounts shall be used in relation to such continued occupancy; *minus*
- (g) All offsets, if any, to which Lessee is entitled under this Lease in accordance Section 5 below.

5. Offsets. Lessee is entitled to set off any amount due and owing from Lessor to Lessee pursuant to this Lease against any Pre-Payment Amount owing under this Exhibit 17, except that no such offset shall reduce the Pre-Payment Amount below the Lessor Outstanding Debt amount that is included in the Project Development Cost Payment amount under this Exhibit 17.

6. Use of Insurance Proceeds. In the event that the full amount of Available Insurance Amounts has not been deducted from a Project Development Cost Payment in accordance with applicable provisions of this Exhibit 17, based on Lessor's commitment to use available insurance proceeds in the fulfillment of Lessor's obligations under this Lease following receipt of the Project Development Cost Payment, Lessor shall (if such available insurance proceeds exceed \$50,000) provide a monthly report to Lessee on Lessor's use of such proceeds until all such proceeds have been expended. If Lessor does not fully expend such proceeds in the fulfillment of its obligations under this Lease within a reasonable time following Lessor's receipt of such proceeds, or if Lessor fails to undertake commercially reasonable efforts to collect such proceeds on a timely basis from the insurer, in each case taking into account the circumstances giving rise to the insurance claim and the intended use of the proceeds, then Lessee may offset the amount of any such proceeds not so used or collected from any payments thereafter due and owing from Lessee to Lessor pursuant to this Lease.

EXHIBIT 18
GROUND LEASE TERM SHEET

[To be agreed prior to Financial Close]