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HMP [REDACTED]

Commercial and Contract Management Directorate

SCHEDULE 23:

PARENT COMPANY GUARANTEE



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HMP [REDACTED]

Commercial and Contract Management Directorate

PARENT COMPANY GUARANTEE

BETWEEN

[REDACTED]

as Contractor

[REDACTED]

as Guarantor

and

SECRETARY OF STATE FOR JUSTICE

as Authority

relating to

THE PRISON OPERATION CONTRACT AT HMP [REDACTED]



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[Note to Bidders: The Authority will consider, for each procurement in respect of a Call-Off Contract, appropriate amendments to this Deed to reflect the jurisdiction in which a parent is registered, which may include the requirement for a legal opinion and amendments to reflect legal and/or reporting requirements placed on companies generally in such jurisdiction. The Deed will remain subject to the laws of England and Wales.]

THIS DEED is dated

and made

BETWEEN:

- (1) **[Insert Contractor Name]**, (the "Contractor"), **[Note to Bidders: Insert company registration details and address]**; and;
- (2) **[Insert Guarantor Company Name]**, (the "Guarantor"), **[Note to Bidders: Insert company registration details and address]**; and
- (3) **SECRETARY OF STATE FOR JUSTICE**, acting as a part of the Crown (the "Authority"),

each one a "Party" and together the "Parties".

BACKGROUND:

- (A) The Authority and the Contractor have entered into an agreement for the provision of various services including custodial and property and facilities management services.
- (B) The Contractor is a wholly owned subsidiary of the Guarantor.
- (C) The Guarantor has agreed to enter into this Deed in favour of the Authority.



NOW THIS DEED WITNESSETH as follows:

1. **Definitions And Construction**

1.1 In this Deed, unless defined below or the context requires otherwise, capitalised terms shall have the same meaning as they have for the purpose of the Prison Operation Contract:

"Contracts" means the Prison Operation Contract, the Lease and any Asset and Contract Transfer Contract).

[Note to Bidders: The contracts to be identified here will reflect the ancillary agreements specifically associated with the relevant Prison Operation Contract]

"Prison Operation Contract" means the contract for the provision of custodial and property and facilities management services at HMP [] entered into between the Contractor and the Authority dated [].



"Insolvency Event"

means, in respect of the Contractor or the Guarantor, where any of the following events occurs (or, in the reasonable opinion of the Authority, circumstances exist such that any of the following events is likely to occur) in relation to the Contractor and/or the Guarantor):

- (a) an order is made for its winding-up or a petition or notice is presented or a meeting is convened for the purpose of considering a resolution for its winding-up or any such resolution is passed;
- (b) a receiver (including any administrative receiver) or similar person is appointed in respect of, or an encumbrancer takes possession of, the whole or any part of any of its property, assets or undertaking or any step is taken by any person to enforce any rights under or pursuant to any security interest or encumbrance of any kind over any of its undertaking, property or assets;
- (c) an administrator is appointed (whether by the court or otherwise) or any step is taken (whether in or out of court) for the appointment of an administrator or any notice is given of an intention to appoint an administrator;
- (d) any distress, execution, injunction, sequestration, attachment or other similar legal process or enforcement is levied or applied for in respect of the whole or any part of any of its property, assets or undertaking which is not remedied within fourteen (14) days of the same;
- (e) any composition in satisfaction of its debts or scheme of arrangement of its affairs or compromise or arrangement between it and its creditors generally (or any class of its creditors) and/or its members is proposed, applied for, sanctioned or approved;



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(f) it is unable to pay its debts for the purposes of the Insolvency Act 1986, or becomes insolvent under any applicable law; or

(g) an event analogous to any of the above occurs,

in each case, in any jurisdiction where it carries on business or has assets;

"VAT"

means value added tax as provided for in the Value Added Tax Act 1994 and legislation supplemental thereto or replacing, modify or consolidating it.

1.2 References to any Party include its successors and permitted assigns.

1.3 References to documents include all variations and replacements of such documents and supplements of such documents.

1.4 Any reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees.

1.5 Unless otherwise stated, reference to clause(s) are to clauses of and to this Deed.

1.6 The headings are inserted for convenience only and shall not affect the construction of this Deed.

2. **Guarantee and Indemnity**

2.1 In consideration of the Authority entering into the Contracts with the Contractor, (as the Guarantor hereby acknowledges), the Guarantor, subject to clause 2.2 and clause 3, hereby (subject to the terms of this Deed) unconditionally and irrevocably guarantees to the Authority:

2.1.1 the due and punctual performance and observance by the Contractor of each and all acts, covenants, obligations, representations, warranties, duties and undertakings to be performed or observed by the Contractor under or pursuant to the Contracts when and if the same become due and performable according to the terms of the Contracts; and

2.1.2 the due and punctual payment by the Contractor of all sums payable under or pursuant to the Contracts to the Authority as and when the same fall due (with the intention that any amount not recoverable for any reason from the Guarantor under this Deed on the basis of a guarantee shall nevertheless be recoverable on the basis of an indemnity).



In addition to those obligations set out in clause 2.1, the Guarantor agrees as primary obligor to fully perform and observe or procure the performance and observance of all of the Contractor's acts, covenants, obligations, representations, warranties, duties and undertakings under or pursuant to the Contracts when and to the extent the same shall become due and performable according to the terms of the Contracts.

2.2 Subject to clause 2.3 and clause 3 below, the Guarantor hereby undertakes to keep the Authority fully and effectually indemnified against all losses, damages, costs, claims, expenses or liability whatsoever arising out of or in connection with any failure on the part of the Contractor to perform or observe all or any of the acts, covenants, obligations representations, warranties, duties and undertakings as aforesaid or to effect due and punctual payment of any sum as aforesaid, other than, for the avoidance of doubt, any losses, damages, costs, claims and expenses in respect of which the Authority has already been compensated pursuant to this Deed or by the Contractor under or pursuant to the Contracts.

2.3 Notwithstanding the generality of clause 2.2, the Guarantor shall be entitled in any action or proceedings by the Authority pursuant to this Deed to raise any equivalent rights in defence of liability as the Contractor would have against the Authority under the Contracts so that except in relation to any costs incurred in enforcing this Deed, the liability of the Guarantor shall be no greater than the liability which it would have had if it had been jointly and severally liable with the Contractor to the Authority as a party to the Contracts.

2.4 The guarantee and indemnity contained in this Deed shall be a continuing guarantee and indemnity and shall remain in full force and effect until all monies payable to the Authority by the Contractor under or pursuant to the Contracts shall have been duly paid, all the Contractor's obligations under or pursuant to the Contracts shall have been duly performed and shall not be satisfied, discharged or affected by any intermediate payment or settlement of account or other matter whatsoever.

2.5 The Guarantor warrants and represents that it is a company duly incorporated under the laws of [England and Wales] and has all power and authority to enter into and perform the obligations contained in this Deed to be performed by it and that this Deed constitutes a legal, valid and binding obligation of the Guarantor.

3. **Demand under the Guarantee**

The obligations of the Guarantor under or pursuant to this Deed shall not be discharged except by performance or the procurement of performance by the Guarantor of its obligations under this Deed including without limitation performance of guaranteed acts, covenants, obligations and/or payments that have not been discharged by the Contractor under or pursuant to the Contract. The



Guarantor's obligations shall not be subject to any prior notice to, or demand upon, the Guarantor with regard to any default on the part of the Contractor.

4. Insolvency of the Contractor

If there occurs in respect of the Contractor an Insolvency Event, or where the principal obligations under any of the Contracts are illegal, invalid, void, voidable or unenforceable, this Deed shall, without prejudice to the Contractor's obligations under the Contracts, take effect as if the Guarantor were ab initio the principal obligor to the Authority (and not merely a surety) and liable to the Authority as if the relevant Contract had been entered into directly between the Guarantor and the Authority.

5. Payments

5.1 Each payment to be made by the Guarantor under this Deed shall be made to the Authority, in the appropriate currency in accordance with the terms of the Contracts.

5.2 All such payments shall be calculated without reference to any set-off or counterclaim and shall be made in full and free and clear of, and without any deduction for or on account of, any set-off or counterclaim.

5.3 All payments to be made by the Guarantor to the Authority under this Deed shall be made in full without deduction or withholding of or in respect of any tax, unless the Guarantor is required by law to make any such deduction or withholding.

5.4 If any payment received by the Authority pursuant to the provisions of this Deed or the Contracts shall be avoided or is required to be repaid for any reason in relation to any laws relating to an Insolvency Event, such payment shall not be considered as having discharged or diminished the liability of the Guarantor hereunder; and the liability of the Guarantor hereunder shall continue to apply as if such payment had at all times remained owing by the Contractor, and the Guarantor shall indemnify the Authority in respect thereof.

5.5 All sums payable by the Guarantor under or pursuant to this Deed are exclusive of any VAT.

5.6 If the Guarantor defaults in the payment, when due, of any sum payable by it under this Deed, its liability shall be increased to include interest on such sum from the due date until the date of actual payment (both before and after judgment) at the Prescribed Rate. All such interest shall be calculated on the basis of the actual number of days elapsed, over a 365 day year and compounded monthly. Any such interest paid by the Guarantor shall discharge pro tanto the Contractor's liability to pay interest under the Contracts.



5.7 Notwithstanding any other provision in this Deed, the Guarantor shall not be required to make such part of a payment to the Authority pursuant to this Deed which, in aggregate with all other payments made to the Authority pursuant to this Deed, would exceed the Contractor's liability under the Contracts.

6. **Matters Relating to Leases**

6.1 If the Authority makes a demand under this Deed such that the Guarantor requires access to the Prison and/or Site in order to comply with its obligations, the provisions in this clause 6 shall apply.

6.2 If, in relation to the Prison and/or Site:

6.2.1 the relevant Lease remains in effect; or

6.2.2 the Contractor is in possession of the Prison and/or Site pursuant to **paragraph 5.5 of Schedule 24 (Handover and Exit Management)** of the Prison Operation Contract,

the Contractor shall, in accordance with **clause 3.3 (Parent Company Guarantee)** of the Prison Operation Contract, grant a licence to the Guarantor, and any third parties authorised by it, with such rights to enter the Prison and/or Site as the Guarantor may require in order to comply with its obligations under this Deed.

6.3 If, in relation to the Prison and/or Site:

6.3.1 the relevant Lease has been determined (howsoever caused); and

6.3.2 the Contractor is not in possession of the Prison and/or Site pursuant to **paragraph 5.5 of Schedule 24 (Exit Management)** of the Prison Operation Contract,

if so required by the Authority within six (6) months of the determination of the relevant Lease (howsoever caused) the Guarantor shall (at the Authority's option) at the Guarantor's own cost accept a new lease of the premises demised by the relevant Lease for the residue of the term of the relevant Lease to take effect from the date the relevant Lease was determined and at the same rent and on the same terms mutatis mutandis as the relevant Lease (but as if the relevant Lease(s) had continued so that any outstanding matters are to be determined between the Authority and the Guarantor).



7. **Further Assurance**

The Contractor and Guarantor (at their own cost) agree to do all further acts and things and execute and deliver all instruments as shall be necessary or expedient for the carrying out of the provisions of this Deed.

8. **Waiver and Variation**

The rights of the Authority and the obligations of the Guarantor under or pursuant to this Deed shall not be prejudiced or affected by any arrangement or compromise entered into by the Authority with the Guarantor or any other person, any invalidity, unenforceability, illegality or voidability of any obligation expressed to be assumed or owed by the Guarantor, any extension of time, indulgence, forbearance or concession given to the Contractor, or any assertion of or failure to assert any right or remedy against the Contractor, or by any modification or variation or amendment, or waiver of the provisions of the Contracts, or by any Insolvency Event of the Contractor or the Guarantor, any change in the constitution of the Guarantor, or by the Authority holding or taking any other or further guarantees or securities or by the invalidity of any such guarantees or securities or by the Authority varying, releasing, exchanging, enforcing or omitting or neglecting to enforce any such guarantees or securities, or by any other thing which might otherwise wholly or partially discharge the Guarantor from its obligations under this Deed.

9. **Partial Invalidity**

If any provision of this Deed is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed had been executed with the invalid, illegal or unenforceable provision eliminated.

10. **Assignment**

The Authority may assign the benefit of this Deed at any time to any person to whom the Prison Operation Contract is validly assigned without the Contractor's or the Guarantor's consent, provided that the Guarantor is notified prior to any such assignment.

11. **Counterparts**

This Deed may be executed in counterparts, in which case this Deed will be as effective as if all signatures on the counterparts were in a single copy of this Deed.



12. **Third Party Rights**

No person which is not a Party to this Deed shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

13. **Law and Jurisdiction**

13.1 This Deed and any contractual or non-contractual obligations arising from or connected with it shall be governed by English law and this Deed shall be construed in accordance with English law.

13.2 In relation to any legal action or proceedings arising out of or in connection with this Deed ("**Proceedings**"), each of the Parties irrevocably submits to the exclusive jurisdiction of the English Courts and waives any objection to Proceedings, in such Courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

13.3 Without prejudice to any other mode of service allowed under any relevant law, the Guarantor:

13.3.1 irrevocably appoints the Contractor as its agent for service of process in relation to any proceedings before the English courts in connection with this Deed; and

13.3.2 agrees that failure by the process agent to notify the Guarantor of the process will not invalidate the proceedings concerned.



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IN WITNESS whereof this document is executed as a Deed and is delivered on the date first before written:

EXECUTED AS A DEED by (Insert individual/personnel name) for and on behalf of (Insert Company Name)

.....

.....

Full Name (Director/Attorney)

Signature of Director/Attorney

in the presence of:

.....

Full Name (Witness)

.....

.....

.....

Address

.....

Signature of Witness



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EXECUTED AS A DEED by (Insert individual/personnel name) for and on behalf of (Insert Company Name)

acting by

.....

.....

Full Name (Director/Attorney)

Signature of Director/Attorney

in the presence of:

.....

Full Name (Witness)

.....

.....

.....

Address

.....

Signature of Witness



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Commercial and Contract Management Directorate

THE CORPORATE SEAL of the **SECRETARY
OF STATE FOR JUSTICE** hereunto affixed is
authenticated by:

Authorised by the Secretary of State for Justice

Name