

CONTRACT

FOR THE PROVISION OF FACILITIES AND DETAINEE SERVICES

**The Commonwealth of Australia represented by the Department of
Home Affairs**
ABN 33 380 054 835
(the 'Department')

Secure Journeys Pty Ltd
[Click here to enter text.](#) ACN 665 235 549, ABN 31 665 235 549
(the 'Service Provider', 'Facilities Detention Services Provider' or
'FDSP')

Released by Department of Home Affairs
under the Freedom of Information Act 1982

CONTENTS

Operative Provisions	7
1. Commencement and Term	7
1.1. Commencement	7
1.2. Extensions to the Term	7
2. Provision of Services	7
2.1. Principal obligations of Service Provider	7
2.2. Responsibility of Service Provider	8
2.3. [Not used]	8
2.4. Work Health and Safety	8
2.5. Transition In	9
2.6. Plans	9
2.7. Change management	10
2.8. Changes to Commonwealth Policy	11
2.9. Cost associated with changes to Required Standards	11
3. Contract Management	12
3.1. Collaboration with all Department Personnel	12
3.2. The Department's Contract Management Representatives	13
3.3. Service Provider Contract Management Representatives	13
3.4. Liaison with the Contract Administrator and Contract Authority	13
3.5. General	14
3.6. Facility Management	14
3.7. Executive Directions	14
3.8. Public statements	15
4. Personnel	16
4.1. Key Personnel	16
4.2. Service Provider Personnel	17
4.3. Illegal Workers	18
4.4. Authorisation and Accountability	18
4.5. Documentation Relating to Authorisations or Delegations	19
4.6. Accountability of Service Provider Personnel	19
5. Subcontractors	20
5.1. Terms and conditions of subcontracts	20
5.2. Extension of provisions to Subcontractors and Personnel	20
5.3. Core Subcontractors	21
5.4. Copies of subcontracts	22
5.5. Service Provider Liability and Obligations	22
5.6. Subcontractor Warranty	22
5.7. Service Provider to be the Department's Sole Point of Contact	23

6.	Facilities and Equipment	23
6.1.	Facilities Access Licence	23
6.2.	Service Provider Covenants in Relation to the Facilities and Assets	24
6.3.	Modification of the Facilities and Assets	25
6.4.	Residential Accommodation	27
6.5.	Access	28
6.6.	Utilities	28
7.	Performance	29
7.1.	Performance Measures	29
7.2.	Review of Performance	29
7.3.	Audit and access	29
8.	Additional Services	30
8.1.	Additional Services Requests	30
8.2.	Additional Services proposed by the Service Provider	31
9.	Fees, allowances and assistance	31
9.1.	Service Fee	31
9.2.	Submission and approval of invoices	31
9.3.	Taxes, duties and government charges	32
9.4.	Service Provider's obligation to pay PT PCP Subcontractors	33
10.	Intellectual Property	36
10.1.	Use of Department Material	36
10.2.	Rights in Contract Material	36
10.3.	IP register	37
10.4.	Accuracy of Material markings and descriptions	38
10.5.	Knowledge transfer and other assistance	38
10.6.	Moral Rights	38
11.	Digital service requirements	39
11.1.	Cyber security	39
11.2.	Harmful code	39
11.3.	The Department's data	40
11.4.	Information security	41
11.5.	Transferring data off-shore	42
12.	Confidential information and security obligations	42
12.1.	Confidential Information of Service Provider	42
12.2.	Confidentiality of Official Information	43
12.3.	Other security obligations of Service Provider	44
13.	Recordkeeping	46
13.1.	Records	46
13.2.	Commonwealth records	47

13.3.	Existing Detainee Records	48
13.4.	Due Diligence	48
14.	Dealing with Copies and Access to Documents	48
14.1.	Interpretation	48
14.2.	Actions at end of contract	48
14.3.	Access to documents	49
14.4.	Cooperation with investigations	49
15.	Privacy	49
15.1.	Obligations of Service Provider in relation to privacy	49
15.2.	Eligible Data Breach	50
16.	Force Majeure	51
16.1.	Force Majeure Event	51
16.2.	Best endeavours to be used to overcome Force Majeure Event	51
16.3.	Rights of the non-affected party	51
17.	Indemnity, liability and insurance	52
17.1.	Indemnity	52
17.2.	Liability	53
17.3.	Proportionate liability regimes excluded	54
17.4.	Insurance	54
17.5.	Limitation of liability	54
17.6.	Liability allocation between the parties	55
18.	Default, cure and step-in	55
18.1.	Department rights	55
18.2.	Default Rectification	55
18.3.	Step-in	56
19.	Termination or reduction in scope of Services	57
19.1.	Termination for default	57
19.2.	Termination consequences	58
19.3.	Termination for convenience	59
20.	Dispute resolution	60
20.1.	Procedure for dispute resolution	60
20.2.	Costs	61
20.3.	Continued performance	61
20.4.	Exemption	61
21.	Transition out	61
21.1.	Transition Out Plan	61
21.2.	Compliance with Transition Out Plan	62
21.3.	Transition of Services Removed from Scope	62

21.4.	Fees for Transition Out Services	63
21.5.	Service Provider Must Not Hinder Transition	63
22.	Service Provider representations and warranties	63
22.1.	Warranties	63
22.2.	Repetition of Representations and Warranties	65
22.3.	Reliance on Representations and Warranties	65
22.4.	No Representations by the Department	65
23.	Service Provider performance and financial security	65
23.1.	Provision of financial undertaking	65
23.2.	Replacement of financial undertaking	66
23.3.	Performance Guarantee	66
23.4.	Right of Department to recover money	67
23.5.	Change of Control to the Service Provider or the Guarantor	67
24.	Notices	68
24.1.	Format, addressing and delivery	68
24.2.	When effective	69
25.	Commonwealth requirements	69
25.1.	[Not used]	69
25.2.	Shadow Economy	69
25.3.	Workplace Gender Equality	70
25.4.	Fraud	70
25.5.	Modern Slavery	71
25.6.	Indigenous Procurement	72
25.7.	Multicultural Access and Equity Policy	73
25.8.	Child safety/working with vulnerable people	74
25.9.	Conflict of interest	76
25.10.	Notification of Significant Event	77
25.11.	National Anti-Corruption Commission Act 2022 (Cth) Requirements	78
25.12.	Public Interest Disclosure	78
25.13.	Compliance with the Commonwealth Service Provider Code of Conduct	78
26.	Interpretation and general provisions	79
26.1.	Interpretation	79
26.2.	Guidance on construction of contract	81
26.3.	Precedence of Documents	81
26.4.	Relationship of parties	81
26.5.	Waiver	82
26.6.	Assignment and novation	82
26.7.	Survival	82
26.8.	Applicable law	82
26.9.	Variation	82

26.10.Counterparts	83
Signature page	84
SCHEDULE 1 – CONTRACT DETAILS	
SCHEDULE 2 – GLOSSARY	
SCHEDULE 3 – STATEMENT OF WORK	
SCHEDULE 4 – PRICE SCHEDULE	
SCHEDULE 5 – TRANSITION IN PLAN	
SCHEDULE 6 – NOT USED	
SCHEDULE 7 – PERFORMANCE MANAGEMENT FRAMEWORK	
SCHEDULE 8 – CONFIDENTIALITY DEED POLL FOR NATURAL PERSONS	
SCHEDULE 9 – CONFIDENTIALITY DEED POLL FOR CORPORATE AND OTHER ENTITIES	
SCHEDULE 10 – FINANCIAL UNDERTAKING	
SCHEDULE 11 – PERFORMANCE GUARANTEE	
SCHEDULE 12 – LEGISLATION AND COMMONWEALTH POLICIES	

CONTRACT

FOR THE PROVISION OF FACILITIES AND DETAINEE SERVICES

Date

This Contract is made on the day it is signed by the parties, or if signed on different days on the day it is signed by the first party to do so.

Parties

This Contract is made between and binds the following parties:

1. **The Commonwealth of Australia represented by the Department of Home Affairs** ABN 33 380 054 835
6 Chan Street, Belconnen ACT 2617
(the Department)
and
2. **Secure Journeys Pty Ltd** ACN 665 235 549, ABN 31 665 235 549
Level 3, 6 Yoga Way, Springfield Central QLD 4300
(the Service Provider).

Context

This Contract is made in the following context:

- A. The Department is responsible for administering the Australian Government's mandatory immigration detention policy that applies to unlawful non-citizens.
- B. In order to implement the immigration detention, the Department requires a contractor to provide facilities and detainee services for the provision of garrison, facilities management, security, transport and escort, welfare and engagement, and business services in accordance with the terms and conditions of this contract.
- C. The Service Provider has fully informed itself about the requirements of this Contract.
- D. The Department wishes to engage the Service Provider to provide the services, and the parties have agreed to enter into this Contract to set out their respective rights and obligations in relation to the services to be performed under it.

Released by Department of Home Affairs
under the Freedom of Information Act 1982

Operative Provisions

1. Commencement and Term

1.1. Commencement

- 1.1.1. The terms and conditions of this Contract apply on and from the Commencement Date and continue in full force and effect for the Term, unless terminated earlier in accordance with this Contract or any Law.

1.2. Extensions to the Term

- 1.2.1. The Initial Term of this Contract is as specified in Item 2.3 of Schedule 1.
- 1.2.2. The Department may extend this Contract by up to two (2) additional periods each of up to two (2) years each (each an '**Extension Option**'). In order to exercise an Extension Option the Department will provide no less than 90 days' written notice (or any shorter notice period agreed by the Service Provider) to the Service Provider before the end of the then applicable End Date.
- 1.2.3. The Department is not obliged to extend this Contract or to enter any further agreement with the Service Provider on different provisions.

2. Provision of Services

2.1. Principal obligations of Service Provider

- 2.1.1. The Service Provider agrees to:
- a. perform the Services as specified within Schedule 3 (Statement of Work), including:
 - i. in accordance with all relevant Plans; and
 - ii. in a manner that achieves all applicable Performance Measures;
 - b. adopt relevant best practice and comply with, and ensure all Service Provider Personnel comply with:
 - i. all applicable Laws, including those specified in Schedule 12 (Legislation and Commonwealth Policies);
 - ii. all applicable Australian standards, industry standards and guidelines; and
 - iii. all Department Policies or any other applicable Commonwealth policies, standards or guidelines specified in the SOW, Item 1 of Schedule 1 and such new or changed policies that the Contractor is required to comply with as a result of the processes set out in clauses 2.8 and 2.9 (collectively, the '**Commonwealth Policies**');
- (collectively '**Required Standards**');

- c. exercise the standard of skill, care and diligence in the provision of the Services that would be expected of an expert provider of services similar to the Services;
- d. promptly advise the Department in writing of any circumstance that materially adversely affects the ability of the Service Provider to perform the Services on the terms set out in this Contract;
- e. work collaboratively and cooperatively with the Department and other service providers to the Department, the Commonwealth and Stakeholder organisations servicing the Immigration Detention Network, to ensure the integrated and efficient operation and management of the Immigration Detention Network and the holistic management of Detainees. This includes providing such reasonable assistance to other service providers as the Department may reasonably request, or in accordance with this Contract; and
- f. ensure that all relevant information is shared with the Department and at the Departments request, or in accordance with this Contract, the Department's other service providers.

2.2. Responsibility of Service Provider

2.2.1. The Service Provider is fully responsible for the performance of the Services and for ensuring compliance with the requirements of this Contract, and will not be relieved of that responsibility because of any:

- a. involvement by the Department in the performance of the Services or the approval of any Plan;
- b. any act or omission of any other service provider that is providing services related to this Contract (whether directly contracted by the Department or otherwise);
- c. subcontracting of the Services;
- d. acceptance by the Department of Key Personnel; or
- e. payment made to the Service Provider on account of the Services.

2.3. [Not used]

2.4. Work Health and Safety

2.4.1. The Service Provider agrees, in carrying out this Contract, to comply with:

- a. all relevant Legislation, codes of practice and national standards relating to Work Health and Safety, including in relation to consultation, representation and participation; and
- b. all applicable policies and procedures relating to work health and safety,

including those that apply to the Department's premises when using those premises.

- 2.4.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 2.4.1, the Service Provider must comply with those policies and procedures that produce the highest level of health and safety.

2.5. Transition In

- 2.5.1. The Service Provider must fully complete Transition In, in accordance with Schedule 5 (Transition In Plan) and all requirements of this Contract to the Department's satisfaction, by no later than the Transition In Completion Due Date.

- 2.5.2. Without limiting clause 2.5.1, the Service Provider must:

- a. implement and comply with the requirements in Schedule 5 (Transition In Plan);
- b. take all action that is necessary or convenient, and ensure its Service Provider Personnel do the same, to ensure that the Service Provider has all required processes, personnel, experience and qualifications to commence work;
- c. ensure all Personnel that require access to Security Classified Resources have obtained the appropriate security clearance;
- d. cooperate with the Department and the Incumbent Service Provider for the purpose of facilitating the smooth transition of the provision of the Services to the Service Provider; and
- e. do all other things necessary and convenient, including executing documents and making its Service Provider Personnel available for briefings,

to enable a smooth and orderly Transition In and full provision of the Services by the Transition In Completion Due Date.

2.6. Plans

- 2.6.1. The Service Provider must prepare, update and submit to the Department for approval the Plans specified in Schedule 3 (Statement of Work). The Service Provider must ensure that each relevant Plan meets the requirements of this Contract and is provided to the Department by no later than the date specified in this Contract for the provision of the relevant Plan.

- 2.6.2. The Department will notify the Services Provider whether it has approved or rejected a Plan. If the Department rejects a Plan, the Service Provider must revise and resubmit the Plan to address any issues identified in the

Department's notice promptly and without delay and otherwise in accordance with the Department's required timeframes.

- 2.6.3. The Service Provider must review all Plans in accordance with Schedule 3 (Statement of Work) or as reasonably directed by the Department. In undertaking a review, the Service Provider must consider whether the Plan remains current and relevant, taking into account:
- a. any changes to the Services;
 - b. changes in Required Standards;
 - c. any matter raised by the Department; and
 - d. any other changes in circumstances or in industry practices.
- 2.6.4. Following the completion of the review conducted under clause 2.6.3, the Service Provider must provide an updated Plan to the Department for approval. Clause 2.6.2 will apply to any proposed updated Plan. Once approved, the updated Plan will replace the then current Plan previously approved on the date specified in the Department's approval notice.
- 2.6.5. The Department's approval of a Plan does not:
- a. release the Service Provider from any obligation under this Contract; or
 - b. imply any assumption by the Department of any responsibility or liability as to the adequacy or suitability of the approved Plan to meet the Service Provider's obligations under this Contract.

2.7. Change management

- 2.7.1. Either party may propose a variation to this Contract. Variations shall only be effected in accordance with clause 26.9.
- 2.7.2. If the Contract Administrator proposes a variation to this Contract, the Contract Administrator will:
- a. notify the Service Provider and the Service Provider shall submit a Contract Change Proposal to the Department within 30 days after receipt of such notice or such other period as agreed in writing; or
 - b. provide a Contract Change Proposal to the Service Provider and the Service Provider shall, within 30 days after receipt, notify the Contract Administrator if the Contract Change Proposal is acceptable and, in the case it is not acceptable, any changes it proposes to the Contract Change Proposal to make it acceptable to the Service Provider.
- 2.7.3. Unless otherwise agreed in writing, the Contract Administrator shall within 30 days after receipt, either approve the Contract Change Proposal or reject the Contract Change Proposal giving reasons for such rejection. A Contract

Change Proposal that has been approved takes effect when executed by both parties unless otherwise set out in the Contract Change Proposal.

- 2.7.4. Each party shall bear its own costs associated with any variation to the Contract including any preparation or negotiation of any Contract Change Proposal.
- 2.7.5. The Department will be responsible for the preparation of new pages or a new version of this Contract (as the case may be) incorporating the effects of a variation.

2.8. Changes to Commonwealth Policy

- 2.8.1. The Department may give the Service Provider notice of a new or changed Commonwealth Policy (a **Policy Change Notice**).
- 2.8.2. Subject to clause 2.8.3, the Service Provider must comply with any Policy Change Notice and ensure all Service Provider Personnel do the same on and from the date Department's notice without any increase in the Service Fees.
- 2.8.3. If the Service Provider receives a Policy Change Notice that the Service Provider considers will give rise to a Cost Impact Standards Change, the Service Provider must not act on the Policy Change Notice to the extent it gives rise to a Cost Impact Standards Change for which the Service Provider wishes to seek an increase to the Service Fee under clause 2.9.1, unless:
 - a. the relevant change to the Commonwealth Policy and an appropriate increase to the Service Fee payable in respect to that change has been agreed by the parties in writing, in accordance with clause 2.9 or otherwise; or
 - b. the Policy Change Notice is confirmed by the Contract Administrator through an Executive Direction, in which case if the Executive Direction results in a Cost Impact Standards Change any increase to the Service Fee payable in respect of the Service Provider's compliance with the Executive Direction will be determined in accordance with clause 2.9.

2.9. Cost associated with changes to Required Standards

- 2.9.1. If the Service Provider wishes to propose an increase to the Service Fee to address a Cost Impact Standards Change, the Service Provider must:
 - a. in the case of a Policy Change Notice, no later than 15 Business Days after receiving the Policy Change Notice; or
 - b. in the case of any other change to a Required Standard, as soon as reasonably practicable after the Service Provider becomes aware of the relevant change to the Required Standard and in all cases no later than 25 Business Days after the relevant change to the Required Standard takes effect,provide to the Department:

- c. all relevant details of the Cost Impact Standards Change, including such supporting evidence as reasonably required by the Department; and
- d. a proposed Contract Change Proposal in accordance with clause 2.7 to:
 - i. increase to the Service Fee to account for the Net Standards Cost Increase; and
 - ii. require the Service Provider to comply with the relevant Required Standard and ensure all Service Provider Personnel do the same to the extent not already required under the Contract.

2.9.2. Provided that:

- a. the Service Provider has complied with the relevant timeframe specified in clause 2.9.1.a or 2.9.1.b (as applicable); and
- b. the Department is satisfied (acting reasonably) that the Service Provider:
 - i. has demonstrated that there is a Cost Impact Standards Change;
 - ii. has proposed a Contract Change Proposal which complies with clauses 2.9.1.d; and
 - iii. used all reasonable endeavours to mitigate the cost impacts of the relevant Cost Impact Standards Change,

the Department will:

- c. agree to vary the Service Fee to account for the Net Standards Cost Increase; or
- d. agree to modify or vary the way in which the Required Standard (other than a Law) is to be complied with or the Services are provided, to avoid a Cost Impact Standards Change or reduce the Net Standards Cost Increase (in which case the Department will agree to vary the Service Fee to account for any residual Net Standards Cost Increase).

3. Contract Management

3.1. Collaboration with all Department Personnel

- 3.1.1. The Service Provider will work collaboratively with the Department Personnel, including the DHSP and the Department's other contractors, and use its best endeavours to ensure that any issues or concerns in connection with the performance of this Contract at an operational level, including in respect to access to Detainees or the way Facilities are being operated, are raised with and addressed at the lowest level of authority reasonably possible with the relevant Department Personnel and escalated to the Department's Facility Superintendent, Contract Administrator and Contract Authority where appropriate.

Released by Department of Home Affairs
under the Freedom of Information Act 1982

3.2. The Department's Contract Management Representatives

- 3.2.1. The Department will appoint a Contract Authority and a Contract Administrator, who will each be the duly authorised representatives of the Department in accordance with this Contract.
- a. The Contract Administrator will act as the Department's primary contact for matters concerning the administration of this Contract, and has the authority to represent the Department in respect to this Contract.
 - b. The Contract Authority will provide senior direction on behalf of the Department in respect to this Contract, and may provide any direction or give any notice which the Contract Administrator may give.
- 3.2.2. The Department may at any time replace the Contract Authority and/or Contract Administrator (or other Department representative). The Department will give written notice to the Service Provider of any replacement Contract Authority or Contract Administrator.
- 3.2.3. The Department may, by providing written notice to the Service Provider, delegate (in whole or in part) the Contract Administrator's or the Contract Authority's responsibilities under this Contract to any other Department Personnel.

3.3. Service Provider Contract Management Representatives

- 3.3.1. The Service Provider must appoint a Service Authority and a Service Administrator, who must each be the duly authorised representatives of the Service Provider in accordance with this Contract.
- a. The Service Administrator will act as the Service Provider's primary contact for matters concerning the administration of this Contract, and has the authority to represent the Service Provider in respect to this Contract.
 - b. The Service Authority is the Service Provider's appointed senior executive responsible to the Department for the performance this Contract, and is a point for escalation of issues that cannot be satisfactorily resolved with the Service Administrator.

3.4. Liaison with the Contract Administrator and Contract Authority

- 3.4.1. The Service Provider agrees to:
- a. liaise with the Contract Administrator and Contract Authority as reasonably required; and
 - b. comply with directions of the Contract Administrator and Contract Authority that are consistent with this Contract.
- 3.4.2. The Service Provider must ensure that the Service Authority and Service Administrator are available for and attend all meetings, provide all information, advice and assistance required by the Department and discuss and facilitate

any matter related to this Contract at all reasonable times required by the Department.

3.5. General

- 3.5.1. Subject to clause 4.1, each party may at any time vary or revoke the appointment of any of its representatives appointed under this clause 3 by written notice to the other party. The Service Provider shall endeavour to ensure that it provides the Department with at least one weeks' written notice prior to the replacement of the Service Authority or Service Administrator.
- 3.5.2. The powers, duties, discretions and authority of a party's representative may be exercised or discharged by any relevant superior officer of that Representative.
- 3.5.3. Notwithstanding any other provision of this Contract, an instruction, advice or notice given to any Service Provider Representative is deemed to be given to the Service Provider.

3.6. Facility Management

- 3.6.1. The Department may appoint a Facility Superintendent for each Facility.
- 3.6.2. Each Facility Superintendent may provide oversight and direction on the operational performance of the Service Provider in respect to its provision of Services at or in relation to the relevant Facility on behalf of the Department, including by providing directions with respect to the manner in which the Services are to be delivered.
- 3.6.3. The Service Provider acknowledges that the Facility Superintendents are not authorised to commit the Department to the payment of additional funds, whether through a direction in respect to Additional Services or otherwise. If the Service Provider receives a direction from a Facility Superintendent that would, if implemented, impact the fees payable under this Contract, the Service Provider must:
 - a. raise this with the Facility Superintendent and the Contract Administrator; and
 - b. not act on such direction unless approved by the Contract Administrator as an Executive Direction.

3.7. Executive Directions

- 3.7.1. The Contract Administrator may give an Executive Direction to the Service Provider with respect to the following:
 - a. the manner in which the Services are to be delivered; or
 - b. requiring Additional Services in accordance with the procedure in clause 8.
- 3.7.2. The Contract Administrator is not authorised to give an Executive Direction that is inconsistent with the terms and conditions of this Contract (and if the Contract

Administrator purports to give such a direction, that direction shall not under any circumstances be taken to be a direction given by the Department under this clause 3.7 or otherwise under this Contract).

3.7.3. All Executive Directions must be given to the Service Provider in writing, or if given orally, recorded in writing within 24 hours and a copy of the Executive Direction provided to the Service Provider.

3.7.4. Subject to clause 2.9, the Service Provider must comply with and implement any Executive Direction within such period as may be specified by the Executive Direction within the Service Fee (unless the Department agrees that the Executive Direction requires the Service Provider to perform Additional Services).

3.7.5. Any Disputes in relation to an Executive Direction pursuant to this clause 3.7 will be resolved in accordance with the dispute resolution procedure in clause 20.

3.8. Public statements

3.8.1. Subject to clause 3.8.3, the Service Provider must not, and must ensure the Service Provider Personnel do not, make any Public Statements.

3.8.2. For the purpose of this Contract, '**Public Statement**' means:

- a. any public statement, including to the media; and
- b. any publication, distribution or otherwise making available any information or Material to third parties,

that concerns or is related to or which might reasonably be expected to affect:

- c. the Department or its Department Personnel;
- d. the Services;
- e. the relationship between the parties; or
- f. any other matter directly or indirectly related to this Contract, including the award, performance or termination of this Contract.

3.8.3. Clause 3.8.1 does not prevent the Service Provider from making a Public Statement to the extent the Service Provider:

- a. publishes a short factual description of this Contract (which may include the Department's name) in a list of reference projects, proposals to third parties or its annual report;
- b. directs a third-party that makes an inquiry to address their inquiry to the Department, without commenting on the substance of the inquiry;
- c. makes a Public Statement that is specifically authorised under this Contract or required the Law; or

- d. makes a Public Statement that has been specifically authorised in writing by the Department before it is made.

4. Personnel

4.1. Key Personnel

- 4.1.1. Except as otherwise specifically agreed in writing by the Department, where any Key Personnel are identified to perform part of the Services, that part of the Services must be performed exclusively by the Key Personnel.
- 4.1.2. If any Key Personnel is unavailable for any reason, the Service Provider must promptly notify the Department and take all reasonable action to minimise any potential adverse impact for the Department and the Service Provider's performance of the Services. The Service Provider must at all times have in place plans and procedures to minimise any potential adverse impact of any Key Personnel being unavailable or replaced.
- 4.1.3. Without limiting the Service Provider's other obligations under this clause 4.1 and this Contract in general, where any Key Personnel will be permanently unavailable or unavailable for a period not acceptable to the Department or is required to be replaced under this Contract, the Service Provider must:
 - a. as soon as possible identify suitably skilled, experienced and qualified potential replacements;
 - b. prior to engaging any persons to replace the unavailable Key Personnel, provide full details of the potential replacements to the Department in writing;
 - c. where requested by the Department, arrange for relevant potential replacements to attend interviews with the Department or take such other action or provide such information as the Department may require to assist in its consideration of the potential replacement; and
 - d. where the Department confirms in writing that a relevant potential replacement is acceptable, immediately retain that person and provide them as the relevant substituted Key Personnel.
- 4.1.4. The Service Provider must use its best efforts to ensure that turnover of Key Personnel is kept to a minimum.
- 4.1.5. If the Service Provider is unable to provide replacement Key Personnel acceptable to the Department (acting reasonably) within three months of their ceasing work in respect of this Contract, the Department may, at its discretion, terminate this Contract in whole or in part in accordance with clause 19.1.1.i.

4.2. Service Provider Personnel

- 4.2.1. The Service Provider must only involve persons or organisations to perform or support the Services who:
- a. are properly qualified and adequately experienced to perform the duties allocated to them;
 - b. exhibit a degree of professional skill, care, diligence and timeliness which may reasonably be expected of a skilled professional person suitably qualified and experienced in the performance of services similar to the Services; and
 - c. are of known reliability and integrity and may be reasonably relied upon not to breach the terms and conditions of this Contract, including those terms and conditions relating to confidentiality, privacy, security, and work health and safety.
- 4.2.2. The Service Provider must ensure that its Service Provider Personnel are aware of all requirements under this Contract that relate to their duties in respect of the performance of the Services, and must take all reasonable action to ensure that all Service Provider Personnel strictly comply with those requirements.
- 4.2.3. The Service Provider must actively manage the performance of its Service Provider Personnel at all times, including by ensuring that all Personnel:
- a. are, and remain, of good character and good conduct;
 - b. comply with all lawful directions of the Department relevant to this Contract;
 - c. are considered suitable by the Department having regard to any issues identified in an Australian Federal Police background check and brought to the attention of the Department in accordance with the requirements of Schedule 3 (Statement of Work);
 - d. do not represent in any way that they are employees of the Department or the Australian Government;
 - e. behave with integrity and in an ethical manner;
 - f. are aware of, and comply with, the FDSP Code of Conduct at all times; and
 - g. while on the Department or other Australian Government premises, carry and display at all times appropriate company and/or Department identification and be easily visually identifiable as the Service Provider Personnel through the way in which that identification is displayed or through such other methods as may be agreed between the parties.
- 4.2.4. The Service Provider is responsible for all wages, salaries and other payments to its Service Provider Personnel and must fully comply with all relevant Laws or

other Government requirements in relation to its Service Provider Personnel including labour and industrial relations Laws and those relating to working conditions, salary, wages, the payment of any relevant tax, superannuation, levy, 'pay as you go' or other income tax remissions, and any other amounts, remissions allowances including those under any industrial awards or agreements relevant to this Contract. Upon request, the Service Provider must provide such evidence as the Department may require and otherwise demonstrate to the Department that it has complied with these obligations.

4.2.5. The Service Provider must ensure that all Service Provider Personnel that are to carry out work or perform duties under this Contract have properly completed, signed and returned to the Department a Confidentiality Deed Poll in accordance with clause 12.2.3, prior to commencing work or performing duties under this Contract.

4.2.6. The Department may, in its absolute discretion, give notice requiring the Service Provider to remove any natural person (including any natural person engaged by any Subcontractor) ('**Identified Personnel**'), from work in respect of the Services or performance of any duties or functions under this Contract. The Service Provider must promptly arrange for the removal of such Identified Personnel and replace them with Service Provider Personnel acceptable to the Department at no additional cost to the Department. If the Department accepts the replacement of Key Personnel, the parties will effect a variation of Item 6 of Schedule 1 to reflect that change.

4.3. Illegal Workers

4.3.1. The Service Provider must ensure that its Service Provider Personnel do not include any Illegal Workers and must notify the Department immediately if it becomes aware of any of its Service Provider Personnel being an Illegal Worker.

4.4. Authorisation and Accountability

4.4.1. The parties acknowledge that certain Service Provider Personnel will be required to be authorised as "Officers" or "Authorised Officers" (as defined in the Migration Act) in order to carry out their roles and responsibilities.

4.4.2. Without limiting clause 4.1.1, the Service Provider must ensure that only Service Provider Personnel who are authorised as "Officers" or "Authorised Officers" perform the functions which are conferred on "Officers" and "Authorised Officers" under the Migration Act, and that those Service Provider Personnel meet any requirements contained in the Authorisation.

4.4.3. The Service Provider must, within a reasonable time, advise the Department of any:

- a. Service Provider Personnel that require a relevant Authorisation or Delegation for the provision of Services; or

- b. Service Provider Personnel who have been granted powers under a relevant Authorisation or Delegation but no longer require the Authorisation or Delegation for any reason.

4.4.4. The Department may arrange for the Service Provider Personnel to be granted powers under a relevant Authorisation or Delegation in order to provide the Services.

4.4.5. The Service Provider must maintain a complete and up-to-date register of the details of all Service Provider Personnel who have been granted powers under a relevant Authorisation or Delegation, including the details of the relevant Authorisation or Delegation that currently or previously applied to each current and former Service Provider Personnel the qualifications of such persons at the time they held the Authorisation or Delegation.

4.5. Documentation Relating to Authorisations or Delegations

4.5.1. The Department undertakes to provide the Service Provider with copies of all Delegations or Authorisations relevant to the provision of the Services.

4.5.2. The Department undertakes to notify the Service Provider and provide copies of amendments to Delegations or Authorisations relevant to the provision of Services within 10 Business Days after the change has been approved by the relevant delegate.

4.6. Accountability of Service Provider Personnel

4.6.1. The Service Provider must ensure that any Service Provider Personnel, when exercising a power granted under an Authorisation or Delegation:

- a. have regard to and comply with Department Policy;
- b. without limiting any other requirement of this clause 4 (Personnel), comply with all administrative law obligations that apply to the Authorisation or Delegation;
- c. be objective, impartial, fair, reasonable and consistent; and
- d. make decisions promptly and provide reasons for their decisions as required by the Required Standards.

4.6.2. The Service Provider acknowledges that the exercise of powers under the Migration Act by Service Provider Personnel will, as far as possible, attract and be subject to the same regulatory and accountability requirements as if exercised by Department Personnel and will, without limitation, be subject to the *Ombudsman Act 1976* (Cth), the *Administrative Decisions (Judicial Review) Act 1977* (Cth), the *Archives Act*, the *Privacy Act*, the *Freedom of Information Act 1982* (Cth) and the acts administered by the Australian Human Rights Commission. The Service Provider must inform itself of all relevant requirements under these acts.

5. Subcontractors

5.1. Terms and conditions of subcontracts

- 5.1.1. The Service Provider agrees not to subcontract the performance of any part of the Services without the Department's prior written approval. The Service Provider agrees to provide a copy of the proposed subcontract to the Department prior to the Department providing its approval.
- 5.1.2. The Department may impose any conditions it considers appropriate when giving its approval under clause 5.1.1.
- 5.1.3. The Department has approved the subcontracting of the performance of the parts of the Services to the persons, and subject to the conditions (if any), specified in Item 5 of Schedule 1.
- 5.1.4. The Service Provider acknowledges, and must inform all Subcontractors that, the Department may publicly disclose the names of any Subcontractors engaged in the performance of the Services.

5.2. Extension of provisions to Subcontractors and Personnel

- 5.2.1. In this clause 5.2:

Requirement means an obligation, condition, restriction or prohibition binding on the Service Provider under this Contract.

- 5.2.2. The Service Provider agrees to ensure that:

- a. its Subcontractors and Personnel comply with all relevant Requirements; and
- b. any subcontract entered into in connection with this Contract:
 - i. imposes all relevant Requirements on the relevant Subcontractor;
 - ii. contains a description of the Services that the relevant Subcontractor has agreed to provide;
 - iii. is signed and in effect between the Service Provider and the relevant Subcontractor before that Subcontractor commences delivery of any Services;
 - iv. allows the Service Provider to immediately terminate the relevant subcontract in the event of:
 - A. any equivalent event or circumstance to those specified in clause 19.1.1, as if the relevant references to Service Provider or its Service Provider Personnel in clause 19.1.1 were read to be a reference to the Subcontractor or Subcontractor Personnel as applicable;

- B. the Subcontractor is considered by the Service Provider to no longer represent Value for Money for the Services provided to Detainees; or
 - C. a change or reduction in the scope of Services of the subcontractor agreement in the event of termination of this Contract;
 - v. includes a right for the Service Provider to novate or assign the subcontract to the Department or its nominee, and the Service Provider must as directed by the Department exercise such right so as to legally effect an assignment or novation of the relevant subcontract to the Department at no additional charge to the Department in accordance with clause 18.3.3.b or clause 19.2.1.d;
 - vi. reserves a right of variation or termination to take account of the Department's right to terminate or reduce the scope of the Services under clause 19, and the Service Provider must where appropriate make use of such rights to mitigate losses in the event of termination or variation by the Department;
 - vii. requires the Subcontractor to participate in and co-operate with any investigation requested by the Department; and
 - viii. effect and maintain the insurance policies as required under this Contract, as is appropriate given the nature of the work to be performed by each such Subcontractor.
- 5.2.3. Subject to clause 5.2.4, the Service Provider agrees to exercise any rights it may have against any of its Subcontractors, other Service Provider Personnel or third parties in connection with a Requirement in accordance with any direction by the Department.
- 5.2.4. The obligation under clause 5.2.3 does not extend to commencing formal legal proceedings in a court or other dispute resolution body unless the Service Provider determines it is necessary and in its commercial interests to do so.
- 5.3. Core Subcontractors**
- 5.3.1. In this Contract, a "**Core Subcontractor**" means:
- a. an approved Subcontractor identified in Item 5 of Schedule 1 as a Core Subcontractor; and
 - b. any other Subcontractor which the Department approves under clause 5.1.1 on the condition that the Subcontractor is a "Core Subcontractor".

5.4. Copies of subcontracts

5.4.1. The Service Provider must:

- a. maintain a record of each of the Subcontractors and the Services being performed by each of them; and
- b. promptly provide details of any Subcontractor and copies of any subcontracts to the Department at the request of the Contract Administrator.

5.5. Service Provider Liability and Obligations

5.5.1. The Service Provider will be liable to the Department for the acts, omissions, defaults and neglect of any Subcontractor or any representative of the Subcontractor engaged in the performance of the Services as fully as if they were the acts, omissions, defaults or neglect of the Service Provider.

5.5.2. The Service Provider must ensure that:

- a. the work performed by each Subcontractor meets the requirements of this Contract; and
- b. no Subcontractor further subcontracts any work without the prior written approval of the Department if:
 - i. under the subcontract, the Subcontractor will or is reasonably expected to undertake any work at any of the Facilities;
 - ii. under the subcontract the Subcontractor will or is reasonably expected to provide any Garrison Services, Security Services, Welfare or Engagement Services or Transport or Escort Services; or
 - iii. the subcontract is, or is part of a series of related subcontracts that are, valued at \$4,000,000 or more.

5.6. Subcontractor Warranty

5.6.1. The Service Provider warrants that each Subcontractor:

- a. is suitable to carry out the work under the subcontract and is accredited or qualified in accordance with relevant Laws, Australian Standards and Commonwealth requirements;
- b. where applicable, meets the requirements of this Contract and Laws; and
- c. will exercise the standard of skill, care and diligence that would be expected of an expert professional provider of services similar to the Services being provided by the Subcontractor.

5.7. Service Provider to be the Department's Sole Point of Contact

- 5.7.1. The Service Provider acknowledges that the Department may, in its absolute discretion, contact any Subcontractor directly as and when required in order to obtain information regarding the Services provided by that Subcontractor.
- 5.7.2. Except as provided in clause 5.7.1 or otherwise agreed by the parties in writing, the Service Provider will be the Department's sole point of contact regarding the Services, and the Service Provider is solely responsible for the engagement and management of Subcontractors including with respect to payment.

6. Facilities and Equipment

6.1. Facilities Access Licence

- 6.1.1. The Department grants, and the Service Provider accepts, a fee-free, non-exclusive revocable licence to occupy and use the Facilities and to access and use the Department Assets and Loose Assets for the sole purpose of complying with its obligations under this Contract during the Term on the terms and conditions contained in this clause 6.
- 6.1.2. The Service Provider acknowledges and agrees that the licences to occupy and use granted by this clause 6 are personal to the Service Provider and any and all of the rights of the Service Provider rest in contract alone and may not be assigned. The Service Provider agrees that it has no tenancy, estate or leasehold interest in the Facilities, Department Assets or Loose Assets. The Service Provider acknowledges that the Facilities, Department Assets and Loose Assets remain the property of the Department.
- 6.1.3. The Service Provider shall not prevent or hinder the Department or any person claiming through the Department from exercising the Department's rights as owner of the Facilities, Department Assets or Loose Assets and shall not act in a manner inconsistent with the Department's property or rights.
- 6.1.4. To the extent permitted by Law:
- a. the Department provides no warranty as to the actual condition of the Facilities, Department Assets and Loose Assets; and
 - b. the Service Provider waives, releases and renounces any warranty, condition, representation and terms which would or might otherwise be implied by Law in respect of the condition, suitability or fitness for purpose of the Facilities, Department Assets and Loose Assets.

6.2. Service Provider Covenants in Relation to the Facilities and Assets

6.2.1. The Service Provider, for itself, and its Service Provider Personnel and their any approved Service Provider invitees who are approved to attend the Facilities, covenants and agrees with the Department to:

- a. not assign, transfer possession or in any way dispose of any interest in the licence granted under this clause (including by way of any Security Interest) or allow any other person to use the Facilities, Department Assets or Loose Assets without the prior consent in writing of the Department;
- b. maintain the security of the Facilities, Department Assets and Loose Assets, and keep them in clean, tidy and good order and condition in accordance with the requirements of Schedule 3 (Statement of Work);
- c. use the Facilities, Department Assets and Loose Assets skilfully and properly, complying with the requirements set out in the relevant operating manuals or other written instructions from the Department or, in the absence of such manuals or instructions, in accordance with industry best practice;
- d. comply with the Department's reasonable instructions and directions relating to the safety of any part of the Facilities and the health and safety of any person in or adjacent to the Facilities;
- e. take all reasonable precautions to prevent any damage to any part of the Facilities, Department Assets or Loose Assets, or any nuisance, damage, obstruction, annoyance or inconveniences to the Department or any occupier of adjoining land;
- f. notify the Department in writing of any loss, destruction, damage to, or defect in, the Facilities, Department Assets or Loose Assets (or any part thereof) in accordance with the reporting requirements for Incidents in Schedule 3 (Statement of Work);
- g. comply at its own expense with all Laws, orders, directions and demands given by or on behalf of any authority having jurisdiction over the Facilities (including but not limited to those relating to, disability discrimination, the environment, fire precautions, insurance and fire alarms);
- h. not make any modification, alterations, addition, removal or other changes (structural or non- structural) to the Facilities or Department Assets, or to erect any partitions or carry out any building or works whatsoever in or to the Facilities without the prior consent of the Department; and
- i. allow the Department to affix or cause to be affixed to the Facilities such signage or other markings as the Department may think fit indicating that the Facility is the property of the Department, and the Service Provider shall not remove or deliberately obliterate, deface or cover such signage or markings.

Released by Department of Home Affairs
under the Freedom of Information Act 1982

6.3. Modification of the Facilities and Assets

Notice of Modification to Facilities and Assets

6.3.1. The Department may on written notice to the Service Provider Modify the Facilities, Department Assets or Loose Assets to take into account the Department's changing requirements.

6.3.2. Subject to clause 6.3.3, if the Service Provider receives notice from the Department of a Modification to any Facility, Department Asset or Loose Asset under clause 6.3.1, the Service Provider must, without any increase in the Service Fees except as agreed by the Department under clause 6.3.5, promptly and without delay ensure that it appropriately alters the way the Services are performed in order to:

- a. enable the Department to complete the relevant Modification; and
- b. take into account the relevant Modification, while it is being undertaken and once it has been completed.

Costs associated with a Modification to a Facility

6.3.3. If the Service Provider receives notice under clause 6.3.1 that a Facility is or will be Modified ('**Facility Modification Notice**') that the Service Provider considers will give rise to a Cost Impact Facility Modification, the Service Provider must not act on the Facility Modification Notice to the extent it gives rise to a Cost Impact Facility Modification for which the Service Provider wishes to seek an increase to the Service Fee under clause 6.3.4, unless:

- a. the relevant Modification to the Facility and an appropriate increase to the Service Fee payable in respect to that change has been agreed by the parties in writing, in accordance with clause 6.3.5 or otherwise; or
- b. the Facility Modification Notice is confirmed by the Contract Administrator through an Executive Direction, in which case if the Executive Direction results in a Cost Impact Facility Modification any increase to the Service Fee payable in respect of the Service Provider's compliance with the Executive Direction will be determined in accordance with clause 6.3.5.

6.3.4. If the Service Provider wishes to propose an increase to the Service Fee to address a Cost Impact Facility Modification, the Service Provider must, no later than 10 Business Days after receiving the Facility Modification Notice, provide to the Department:

- a. all relevant details of the Cost Impact Facility Modification, including such supporting evidence as reasonably required by the Department; and
- b. a proposed Contract Change Proposal in accordance with clause 2.7 to:
 - i. increase to the Service Fee to account for the Net Facility Cost Increase; and

- ii. require the Service Provider ensure that it appropriately alters the way the Services are performed in order to:
 - A. enable the Department to complete the relevant Modification; and
 - B. take into account the relevant Modification, while it is being undertaken and once it has been completed.

6.3.5. Provided that the:

- a. the Service Provider has complied with the relevant timeframe specified in clause 6.3.4; and
- b. the Department is satisfied (acting reasonably) that the Service Provider:
 - i. has demonstrated that there is a Cost Impact Facility Modification;
 - ii. has proposed a Contract Change Proposal which complies with clauses 6.3.3.b; and
 - iii. used all reasonable endeavours to mitigate the cost of impacts of the relevant Cost Impact Facility Modification,

the Department will:

- c. agree to vary the Service Fee to account for the Net Facility Cost Increase; or
- d. agree to alter or withdraw the Facility Modification Notice in order to avoid a Cost Impact Facility Modification or reduce the Net Facility Cost Increase (in which case the Department will agree to vary the Service Fee to account for the residual Net Facility Cost Increase).

Proposed Facility Modifications

- 6.3.6. The Service Provider must not make any Modification to any Facility except with the Department's prior written consent.
- 6.3.7. Where the Service Provider seeks a Modification to a Facility, the Service Provider must (at its cost) submit a proposal for the Modification works to the Department for its approval.
- 6.3.8. The Department may approve or not approve the Modification works in its absolute discretion. The Department may grant its approval subject to conditions, including:
 - a. that the Modification works be undertaken by the Department or Subcontractors approved by the Department; and
 - b. that the Modification works be undertaken at the cost of the Service Provider.

Released by Department of Home Affairs
under the Freedom of Information Act 1982

- 6.3.9. Where the Department approves a Modification to a Facility subject to a condition that the Modification works be undertaken at the cost of the Service Provider, the Service Provider will not be obliged to carry out the Modification.
- 6.3.10. The Service Provider must repair, at its cost, any damage caused by the installation or removal of a Modification to a Facility by the Service Provider or its Subcontractors.

Ownership of works

- 6.3.11. Any Modification works carried out pursuant to this clause 6.3 will be owned by the Department unless otherwise agreed by the parties in writing.

Definitions

- 6.3.12. In this clause 6.3 a '**Modification**':
- a. of a Facility includes a modification, alteration or addition to a Facility, the removal of a Facility or part of it, or other change (whether structural or non-structural) to a Facility; and
 - b. of an Asset, includes a change to the Asset or part of the Asset, but not an addition of or removal of the Asset,
- and the term 'Modify' has a corresponding meaning.

6.4. Residential Accommodation

- 6.4.1. Subject to this clause, the Service Provider is solely responsible for arranging and managing accommodation for its Service Provider Personnel in order to deliver the Services under this Contract.
- 6.4.2. The Department may, in certain circumstances, provide prior written notification to the Service Provider that it will reimburse the Service Provider (as a Pass Through Cost) for specific Service Provider Personnel accommodation. The Department will notify the Service Provider of the specific period that it will reimburse the Service Provider for Service Provider Personnel accommodation. The Service Provider must provide a proportional reduction in the Service Fees otherwise payable by the Department, to address the reimbursed cost for its Service Provider Personnel accommodation (for the specific period of the reimbursement arrangement).
- 6.4.3. Where possible, the Department will provide the Service Provider with accommodation for certain Service Provider Personnel, Departmental Personnel and Visitors as directed by the Department ('**Eligible Personnel**') on Christmas Island and Cocos Island for use as Staff Accommodation. Where the Department provides such accommodation, the Department grants to the Service Provider a licence to permit Eligible Personnel to occupy the relevant Department provided accommodation.

- 6.4.4. The Service Provider is not liable for fair use and reasonable wear and tear of Department provided accommodation used by the Eligible Personnel.
- 6.4.5. Where the Department provided accommodation is not available for the use of Eligible Personnel, the Department and the Service Provider will agree alternative arrangements for the accommodation of Eligible Personnel on Christmas Island and Cocos Island, with the Service Provider entitled to recover costs incurred, in an open book manner, as a Pass Through Cost.

6.5. Access

- 6.5.1. The Service Provider must at all times, with or without notice, provide access to any part of the Facilities to Department Personnel, the Commonwealth and Immigration Ombudsman, the Australian Human Rights Commission, the Auditor-General and the Privacy Commissioner and any persons that are required for the ongoing operation, maintenance and upkeep of the Facilities and welfare of the Detainees.
- 6.5.2. Subject to their compliance with any applicable security requirements contained in Schedule 3 (Statement of Work), the Service Provider must facilitate access to the Facilities by representatives of those Government Agencies who have entered into memoranda of understanding with the Department, in order to enable them to provide the services referred to therein.
- 6.5.3. The Service Provider must not provide access to the Facilities for media visits except with the Department's prior written approval and strictly in accordance with the procedures and conditions specified in Schedule 3 (Statement of Work) and other written direction given by the Department from time to time.

6.6. Utilities

- 6.6.1. The Service Provider is responsible for arranging the provision of and making prompt payment to the relevant authority or Service Provider of all costs or charges associated with:
- a. water;
 - b. sewerage;
 - c. electricity;
 - d. gas (including LPG);
 - e. telephone and all other telecommunications charges including internet access fees;
 - f. council rates; and
 - g. rubbish (including medical waste) removal,
- incurred due to the use and occupation of the Facilities (including by all Detainees, Service Provider Personnel, and the Department Personnel including the DHSP's personnel and any other service providers or contractors using the Facilities) and/or the provision of the Services, including consumption

costs, rental costs, connection fees and minimum charges as Pass Through Costs to the Department in accordance with Schedule 4 (Price Schedule).

7. Performance

7.1. Performance Measures

- 7.1.1. The Service Provider must meet or exceed all Performance Measures specified in Schedule 7 (Performance Management Framework).
- 7.1.2. The Service Provider acknowledges that the Service Fee may be reduced in accordance with Schedule 7 (Performance Management Framework) if the Service Provider fails to meet any Performance Measure.

7.2. Review of Performance

- 7.2.1. The parties will conduct an annual review of this Contract and the scope of Services.
- 7.2.2. For the purposes of clause 7.2.1, the Department will determine the scope, objectives and criteria of the annual review.
- 7.2.3. The scope of the reviews under clause 7.2.1 will include consideration of the appropriateness and effectiveness of the Performance Measures. As a result of the review, Key Performance Measures may be amended to reflect the parties' commitment to continuous improvement and an analysis of any failures in the preceding twelve (12) months.

7.3. Audit and access

- 7.3.1. The Service Provider agrees and must ensure that its Subcontractors agree:
 - a. to give the Contract Administrator, or any persons authorised in writing by the Contract Administrator, access to assets, including any computer hardware or software or other equipment, or premises where the Services are being performed or where Official Resources are located;
 - b. to permit those persons to inspect and take copies of any Material relevant to the Services, including but not limited to:
 - i. details of the Service Provider's compliance with all Australian standards, policies and Laws;
 - ii. the Service Provider's operational practices and procedures as they relate to this Contract, including security procedures;
 - iii. the efficiency of the Service Provider's operations in relation to the provision of the Services;
 - iv. the accuracy of the Service Provider's invoices and Reports in relation to the provision of the Services and the calculation and payment of fees under this Contract;

Released by Department of Home Affairs
under the Freedom of Information Act 1982

- v. the Service Provider's costs during any ramp-up or ramp-down period following the activation or deactivation of a Facility or the provision of any Additional Services;
 - vi. the Service Provider's compliance with its confidentiality, privacy and security obligations; and
 - vii. any other matters determined by the Department to be relevant to the performance of the Services, including ongoing financial viability; and
- c. to participate cooperatively in audits of this Contract at the frequency and in relation to the matters specified by the Department, including on an ad hoc basis if requested by the Department, for the purpose of ensuring that this Contract is being properly performed and administered. This does not in any way reduce the Service Provider's responsibility to perform its obligations in accordance with this Contract.

7.3.2. The rights referred to in this clause 7.3 are subject to:

- a. the Department providing reasonable prior notice;
- b. the reasonable security procedures in place at the premises; and
- c. if appropriate, execution of a deed of confidentiality by the persons to whom access is given.

7.3.3. The Auditor-General and Information Officer (including their delegates) are persons authorised for the purposes of this clause 7.3.

7.3.4. This clause 7.3 does not detract from the statutory powers and functions of the Auditor-General, Information Officer, Commonwealth and Immigration Ombudsman, Privacy Commissioner or Australian Human Rights Commission (including their delegates).

8. Additional Services

8.1. Additional Services Requests

- 8.1.1. The Contract Administrator may from time to time give a written notice requiring that the Service Provider provides Additional Services on and from the date specified in the notice for the period specified in the notice (or such longer period agreed by the parties in writing).
- 8.1.2. The Service Provider must supply such Additional Services to the Department in accordance with the notice provided to it by the Contract Administrator.
- 8.1.3. Unless agreed otherwise in writing by the parties, the Additional Fees payable by the Department for any Additional Services that are provided will be calculated in accordance with the applicable pricing mechanism or metric set out in Schedule 4 (Price Schedule).

8.2. Additional Services proposed by the Service Provider

- 8.2.1. The Service Provider may propose possible Additional Services for the Department's consideration. For the avoidance of doubt, the Service Provider shall not provide any Additional Services, and the Department shall not be liable to pay for any Additional Services, except to the extent set out in a notice in accordance with clause 8.1.1.

9. Fees, allowances and assistance

9.1. Service Fee

- 9.1.1. Subject to adjustment of the Service Fee in accordance with this Contract, including Schedule 4 (Price Schedule), the Department agrees to pay the Service Fee to the Service Provider, which includes the following components:
- a. the fees for delivery of the Services in accordance with Schedule 3 (Statement of Work) and any other Services described in this Contract as set out in Schedule 4 (Price Schedule);
 - b. Pass Through Costs;
 - c. Transition In Fees and Transition Out Fees in accordance with Schedule 4 (Price Schedule);
 - d. the fees for Additional Services provided, and as calculated, in accordance with clause 8;
 - e. any fees associated with a change in Status of a Facility from an Active to Contingency in accordance with Schedule 4 (Price Schedule).
- 9.1.2. The Department will be entitled (in addition and without prejudice to any other right it may have) to defer payment or reduce the amount of any Instalment if and for so long as the Service Provider has not completed, to the satisfaction of the Department, that part of the Services to which the Instalment relates.

9.2. Submission and approval of invoices

- 9.2.1. The Service Provider shall submit each claim for payment under this Contract in the form of a correctly rendered tax invoice, and in accordance with any other requirements specified in Schedule 4 (Price Schedule).
- 9.2.2. The Service Provider shall promptly and without delay submit to the Department any required supporting documents, to support its claims for payment to the satisfaction of the Department.
- 9.2.3. On receipt of a claim for payment together with all required supporting documentation required under clause 9.2.2, the Contract Administrator shall within 15 Business Days:
- a. approve the full claim if it is submitted in accordance with this Contract;
 - b. approve part of a claim (for undisputed items in the claim) that are submitted in accordance with this Contract, and reject those parts of the

claim which the Department considers have not been submitted in accordance with the Contract; or

c. reject the claim, if it is not submitted in accordance with this Contract.

9.2.4. When a claim is approved under clause 9.2.3.a, the Department shall make payment to the Service Provider within 20 calendar days after the approval of the claim.

9.2.5. When part of a claim is approved under clause 9.2.3.b, the Contract Administrator shall request the Service Provider to promptly resubmit a new claim for the approved portion of the claim and shall make payment to the Service Provider within 15 calendar days after receipt of the resubmitted claim.

9.2.6. If the Contract Administrator rejects the claim, either in whole under clause 9.2.3.c or in part under clause 9.2.3.b, the Contract Administrator shall, within the period of time specified in clause 9.2.3 after receipt of the claim, notify the Service Provider of the need to resubmit the claim or the relevant part of it and the reasons for rejection and any action to be taken by the Service Provider for the claim to be rendered correct for payment.

9.2.7. Upon receipt of a notice issued pursuant to clause 9.2.6 the Service Provider shall promptly take all necessary steps to make the claim for payment conform to the requirements of this Contract and shall submit a revised claim to the Contract Administrator. The resubmitted claim shall be subject to the same conditions as if it were the original claim.

9.3. Taxes, duties and government charges

9.3.1. Except as provided by this clause 9.3, and acknowledging the Service Provider's rights in clause 2.9, the Service Provider agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract.

9.3.2. Unless otherwise indicated, the fees and all other consideration for any supply made under this Contract is exclusive of any GST imposed on the supply. The tax invoice shall include the amount and method of calculation of any GST payable by the Service Provider in relation to that claim for payment as a separate item.

9.3.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Contract, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question. If the supplier incorrectly states the amount of GST payable, or paid, by the recipient on an otherwise valid tax invoice, the supplier shall promptly issue to the recipient a valid adjustment note in accordance with the GST Act.

Released by Department of Home Affairs
under the Freedom of Information Act 1982

- 9.3.4. No party may claim or retain from the other party any amount in relation to a supply made under this Contract for which the first party can obtain an input tax credit or decreasing adjustment.

9.4. Service Provider's obligation to pay PT PCP Subcontractors

- 9.4.1. The Service Provider shall comply with the Payment Times Procurement Connected Policy ('PT PCP'), including the obligation to provide and comply with a PT PCP Remediation Plan (as defined in the PT PCP) when required to do so by the PT PCP Policy Team.

Requirements for PT PCP Subcontracts

- 9.4.2. If the Service Provider enters into a PT PCP Subcontract, the Service Provider shall include in that subcontract:
- a. a requirement for the Service Provider to pay the PT PCP Subcontractor:
 - i. within 20 days after the acknowledgement of the satisfactory delivery of the goods or services and receipt of a Correctly Rendered Invoice, provided that this does not affect any other obligation to comply with applicable legislation that provides for a shorter payment period; and
 - ii. subject to clause 9.4.4, for payments made by the Service Provider after the payment is due, the unpaid amount plus interest on the unpaid amount calculated in accordance with the following formula:

$$\text{Interest payment} = \frac{I\% \times P \times n}{365}$$

where:

- 'I%' means the ATO sourced General Interest Charge daily rate current at the due date of payment expressed as a percentage;
- 'P' means the amount of the late payment; and
- 'n' means the number of days after the due date for payment up to and including the day that the payment is made.

- b. a statement that the PT PCP applies to that subcontract;
- c. a statement that the subcontractor may make a complaint to the PT PCP Policy Team or the Department in accordance with the PT PCP if there has been non-compliance with the requirements of this clause 9.4.2;
- d. a statement that the Service Provider must respond to any complaint of non-compliance made by the subcontractor under clause 9.4.2.c; and

Released by Department of Home Affairs
under the Freedom of Information Act 1982

- e. a statement that, if requested by the PT PCP Policy Team or the Department, the Service Provider must complete a questionnaire in the form of Appendix C to the PT PCP.

9.4.3. If the Service Provider enters into a Reporting Entity Subcontract, the Service Provider shall use reasonable endeavours to include in that subcontract:

- a. obligations equivalent to those in clause 9.4.2; and
- b. a requirement that if the Reporting Entity Subcontractor in turn enters into a Reporting Entity Subcontract, then that subcontract shall include:
 - i. obligations equivalent to those in clause 9.4.2; and
 - ii. obligations equivalent to this clause 9.4.3.b (such that the obligations in this clause 9.4.3.b are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).

9.4.4. The Service Provider is not required to pay interest in accordance with clause 9.4.2.a.ii if either:

- a. the Department has failed to pay the Service Provider in accordance with the timeframes and requirements under this Contract; or
- b. the amount of the interest that would otherwise be payable is less than \$100 (inc GST).

9.4.5. The Service Provider agrees that if it is the subject of a complaint in relation to its compliance with clauses 9.4.1 to 9.4.4, or the associated payment provisions of a PT PCP Subcontract, the Service Provider shall:

- a. not take any prejudicial action against the complainant due to the complaint or any investigation or inquiry in relation to the complaint; and
- b. co-operate in good faith with the PT PCP Policy Team in connection with any investigation or inquiry and any attempt to resolve the complaint.

PT PCP Evaluation Questionnaire

9.4.6. If requested in writing by the Department, the Service Provider must properly complete and return a PT PCP Evaluation Questionnaire within 30 calendar days of the request.

Non-compliance and remediation

9.4.7. If the Department considers or becomes aware that the Service Provider has not or may not have complied with:

- a. the requirements of clauses 9.4.1 to 9.4.5 (inclusive); or
- b. the payment requirements of a PT PCP Subcontract,

the Department may direct the Service Provider to provide to the Department either or both of the following within the timeframes specified by the Department:

- c. information to enable the Department to review the Service Provider's compliance; or
 - d. a properly completed PT PCP Remediation Plan.
- 9.4.8. The Service Provider must complete all of the steps and activities contained in the PT PCP Remediation Plan provided under clause 9.4.7.d.
- 9.4.9. If the Department considers that the Service Provider has failed to comply with any of its obligations under this clause 9.4, without limiting the Department's rights and remedies at law or otherwise under this contract, the Department may do either or both of the following:
- a. take the failure or non-compliance into account as part of the Department's monitoring of the Service Provider's performance under this Contract; or
 - b. report the non-compliance (and provide a copy of the completed PT PCP Remediation Plan) to the PT PCP Policy Team.
- 9.4.10. The Service Provider agrees that if it is the subject of a complaint in relation to its compliance with clauses 9.4.1 to 9.4.5 (inclusive) or the associated payment provisions of a PT PCP Subcontract:
- a. it will not take any prejudicial action against the complainant due to the complaint or any investigation or inquiry in relation to the complaint; and
 - b. it will cooperate in good faith with the Department in connection with any investigation or inquiry and any attempt to resolve the complaint.

Consent

- 9.4.11. For any PT PCP Purpose, the Service Provider consents to the Department:
- a. using and sharing with any other Commonwealth Entity the information provided by the Service Provider as part of a PT PCP Evaluation Questionnaire, a PT PCP Remediation Plan, or otherwise received or obtained by the Department in connection with this contract or a PT PCP Subcontract; and
 - b. receiving information obtained under, or in accordance with, the PTR Act ('**Protected Information**') from an Entrusted Person and using such Protected Information.
- 9.4.12. By submitting a PT PCP Evaluation Questionnaire or a PT PCP Remediation Plan or other document in connection with the PT PCP that includes any personal information within the meaning of Privacy Act, the Service Provider warrants and represents that it has obtained all necessary consents in accordance with relevant privacy laws to the collection, use and disclosure of

Released by Department of Home Affairs
under the Freedom of Information Act 1982

such information in the manner contemplated by this clause 9.4.12. The Service Provider will provide evidence of such consents to the Department on request.

References to 'the Department'

- 9.4.13. A reference to 'the Department' in clauses 9.4.6, 9.4.7, 9.4.10.b, 9.4.11 and 9.4.12 includes the PT PCP Policy Team.

10. Intellectual Property

10.1. Use of Department Material

- 10.1.1. The Department agrees to deliver or provide access to the Department Material to the Service Provider, and the Service Provider agrees to manage the Department Material, in accordance with this Contract.
- 10.1.2. The Department grants (or will procure) a royalty-free, revocable, non-exclusive, sublicensable licence for the Service Provider to use, reproduce and adapt the Department Material for the purpose of performing this Contract.
- 10.1.3. The Service Provider agrees to use the Department Material strictly in accordance with any conditions or restrictions notified by the Department and any direction from the Department.
- 10.1.4. Except as otherwise provided in this Contract, the Service Provider shall be responsible for the application or use of the Department Material and any conclusions, assumptions or interpretations made by the Service Provider on the basis of the Department Material, or its application or use of the Department Material.

10.2. Rights in Contract Material

- 10.2.1. Intellectual Property in all Contract Material vests (or will vest immediately on its creation) in the Department.
- 10.2.2. Clause 10.2.1 does not affect the ownership of Intellectual Property in:
- a. any Department Material incorporated into Contract Material; or
 - b. any Material in existence at the Commencement Date or Material developed by the Service Provider completely independently of the performance of this Contract ('**Pre-existing Material**').
- 10.2.3. The Service Provider hereby grants to (or will procure for) the Department a perpetual, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, perform, distribute, communicate and exploit any Pre-existing Material, in conjunction with the Contract Material, for any purpose.

Released by Department of Home Affairs
under the Freedom of Information Act 1982

- 10.2.4. The Service Provider agrees that the licence granted in clause 10.2.3 includes a right for the Department to license the Pre-existing Material in conjunction with the Contract Material to the public under an Open Access Licence.
- 10.2.5. The Service Provider agrees, on request by the Department, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 10.2.
- 10.2.6. The Service Provider warrants that:
- a. it is entitled or it will be entitled at the relevant time, to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause 10.2; and
 - b. the exercise by the Department of any of its rights under this Contract or in relation to Intellectual Property comprised in any Pre-existing Material provided to the Department, or otherwise licensed by the Service Provider to the Department pursuant to this Contract does not and will not infringe the Intellectual Property rights of any person.
- 10.2.7. The Service Provider agrees to ensure that the Department is granted a licence from any Subcontractor on the same terms as clause 10.2.3.

10.3. IP register

- 10.3.1. The Service Provider shall:
- a. develop a register of all Material it creates or uses, or provides to or receives from the Department, in the course of performing this Contract (**the IP register**) and provide it to the Department for approval as part of Transition In; and
 - b. maintain an up-to-date copy of the IP register, and provide it to the Department:
 - i. no later than 7 days following each anniversary of the Service Commencement Date; and
 - ii. promptly when otherwise requested by the Department.
- 10.3.2. The IP register shall include:
- a. an itemised description of all relevant Material;
 - b. details of when each piece of Material was created and by whom; and
 - c. categorisation of the type Material (i.e. whether it is Departmental Material, Contract Material or Pre-existing Material).

10.4. Accuracy of Material markings and descriptions

- 10.4.1. Where descriptions, markings or other notations are used by the Service Provider or a Subcontractor in relation to any Material (including in the IP register), or applied to Material, the Service Provider:
- a. shall ensure that such descriptions, markings or notations accurately reflect the rights and obligations of the Department, the Service Provider or any other person in the Material; and
 - b. acknowledges that such descriptions, markings or notations are not determinative as to the rights and obligations of the parties.

10.5. Knowledge transfer and other assistance

- 10.5.1. In performing this Contract, the Service Provider's must, as required by the Department and at no additional cost to the Department, ensure its Service Provider Personnel use reasonable efforts to transfer their knowledge about the Services to the Department's relevant Department Personnel.

10.6. Moral Rights

- 10.6.1. Where the Service Provider is a natural person and the author of the Contract Material, he or she:
- a. consents to the performance of the Permitted Acts (as the term is defined in Item 7 of Schedule 1) by the Department or any person claiming under or through the Department (whether occurring before or after the consent is given); and
 - b. acknowledges that their attention has been drawn to the Department's general policies and practices regarding Moral Rights.
- 10.6.2. Where clause 10.6.1 does not apply, the Service Provider agrees:
- a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Department or any person claiming under or through the Department (whether occurring before or after the consent is given) and, on request, to provide the executed original of any such consent to the Department; and
 - b. to ensure that each author's attention is drawn to the Department's general policies and practices regarding Moral Rights.
- 10.6.3. This clause 10.6 does not apply to any Department Material incorporated in the Contract Material.

11. Digital service requirements

11.1. Cyber security

- 11.1.1. The Service Provider must take reasonable and prudent steps consistent with good industry practice to reduce the risk of Cyber Attack on the Department's systems and the Service Provider's systems.
- 11.1.2. At the Department's request in a notice, the Service Provider must provide details of the Service Provider's security measures in place to reduce the risk of a Cyber Attack on the Service Provider's systems.
- 11.1.3. If the Service Provider becomes aware of a Cyber Attack on the Service Provider's systems, the Service Provider must immediately notify:
 - a. the Department (and, if this notification is not done by notice, by notice within one Business Day); and
 - b. if required by the Department, advise CERT Australia and/or the Australian Cyber Security Centre.
- 11.1.4. If requested by the Department by written notice, within 10 Business Days, the Service Provider must prepare and provide to the Department for approval a cyber security plan at no additional cost to the Department that provides details of Service Provider's or its Service Provider Personnel's security measures in place to reduce the risk of Cyber Attack on the Service Provider's or any Service Provider Personnel's ICT systems. If the Department does not approve the plan, it may by notice give reasonable directions to the Service Provider to modify the plan. The Service Provider and its Service Provider Personnel must comply with such directions and, within five Business Days resubmit the plan to the Department for approval under this clause.
- 11.1.5. The Service Provider must comply with any cyber security plan approved by the Department and keep the plan up-to-date during the term of this Contract and submit the updated plan to the Department for approval under clause 11.1.4.

11.2. Harmful code

- 11.2.1. The Service Provider must:
 - a. take reasonable precautions (including using good industry practice) to ensure that it does not, and the Service Provider Personnel do not; and
 - b. ensure it does not, and the Service Provider Personnel do not, negligently or deliberately,introduce any Harmful Code into the Department's systems or include any Harmful Code in any deliverable.
- 11.2.2. If the Service Provider becomes aware that Harmful Code has been, or is likely to have been, introduced into the Department's systems by the Service Provider

or any Service Provider Personnel or included in a Deliverable, the Service Provider must:

- a. immediately notify the Department;
- b. take all necessary steps to eliminate the Harmful Code from the deliverable;
- c. if the Service Provider is in breach of clause 11.2.1, take all necessary steps (at no additional cost to the Department) to provide all assistance and information to the Department to enable it to eliminate the Harmful Code in the Department's systems and repair any damage caused by the Harmful Code to the Department's systems, subject to any directions given by the Department; and

11.2.3. if the Service Provider is not in breach of clause 11.2.1, if directed by the Department in a notice and in accordance with such direction, at the Department's cost, provide all assistance and information to the Department to enable it to eliminate the Harmful Code in the Department's systems and repair any damage caused by the Harmful Code to the Department's systems.

11.3. The Department's data

11.3.1. The Service Provider must maintain all of the Department's data it holds securely and in accordance with Item 8 of Schedule 1.

11.3.2. The Service Provider is permitted to access and use the Department's data for the sole purpose of performing this Contract. The Service Provider has no rights in relation to the Department's data.

11.3.3. Unless authorised by the Department in a notice to the Service Provider, the Service Provider must not conduct any data mining activities in respect of the Department's data.

11.3.4. Unless authorised by the Department in a notice to the Service Provider, the Service Provider must not do anything to transfer custody or ownership of the Department's data to a third party.

11.3.5. The Service Provider must provide the Department access to the Department's data as requested by the Department in a notice to the Service Provider.

11.3.6. The Department may at any time issue reasonable directions to the Service Provider in a notice to comply with archival and information management requirements for the Department's data that are necessary or desirable to enable the Department to comply with government policy. Subject to clause 11.3.7, the Service Provider must comply with such directions.

11.3.7. If the Service Provider (acting reasonably) considers complying with a direction under clause 11.3.6 would materially increase its costs of performing this Contract, within 15 Business Days it must notify the Department and provide a Contract Change Proposal in accordance with clause 2.7 to give effect to the Department's direction under clause 11.3.6. If the Service Provider gives a

notice under this clause 11.3.7, the Service Provider is not required to comply with the Department's direction under clause 11.3.6 until the contract variation is agreed by the parties.

- 11.3.8. Upon the expiry or termination of this Contract, the Service Provider must:
- a. transfer all of the Department's data to the Department, in accordance with any reasonable directions of the Department in a notice to the Service Provider, and ensure that any of the Department's electronic data is transferred to the Department in a usable format; and
 - b. unless otherwise required by law or otherwise permitted in Item 8 of Schedule 1, delete all of the Department's data from the Service Provider's systems, provide the Department with confirmation that this has been done in a notice and return all the Department's data that is in physical form to the Department.

11.4. Information security

- 11.4.1. To the extent that the Department authorises the Service Provider to store any of the Department's data on the Service Provider's systems, the Service Provider must:
- a. take reasonable and prudent steps for disaster recovery and business continuity consistent with good industry practice to ensure that the Department's data on the Service Provider's systems is not lost, corrupted or rendered inaccessible;
 - b. ensure that access to the Service Provider's systems is controlled so that only the Service Provider Personnel with a need to access the Department's data for a purpose relating to the performance of this Contract are able to access the Department's data; and
 - c. ensure that the Service Provider's systems are configured so that the Service Provider Personnel who are not permitted under this Contract to access the Department's Official Information cannot access the Department's Official Information.
- 11.4.2. When performing its obligations under this Contract, the Service Provider must, subject to clause 11.4.3, comply with any direction relating to security given by the Department in a notice to the Service Provider (which may include a direction to comply with an additional security policy or requirement including in respect to minimising the risk of a Cyber Attack on the Service Provider's systems).
- 11.4.3. If the Service Provider (acting reasonably) considers complying with a direction under clause 11.4.2 would materially increase its costs of performing this Contract, within 15 Business Days it must notify the Department and propose a change to this Contract under clause 16.1 to give effect to the Department's direction under clause 13.1.2b). If the Service Provider gives a notice under this clause, the Service Provider is not required to comply with the Department's

direction under clause 13.1.2b) until the contract variation is agreed by the parties.

11.4.4. Without limiting any other clause, the Service Provider must ensure that Department's data is protected against loss, damage, corruption, misuse and unauthorised access by taking security measures that are no less stringent than good industry practice.

11.4.5. The Service Provider must immediately notify the Department if any of the following occur;

- a. the Service Provider breaches any of its obligations under this clause 11, clause 12.2 or clause 12.3;
- b. the Service Provider becomes aware of circumstances that may reasonably suggest that it could have breached its obligations under this clause 11, clause 12.2 or clause 12.3;
- c. the Service Provider becomes aware that any Department's data has been lost, stolen, misused, corrupted or accessed by an unauthorised person;
- d. the Service Provider becomes aware of circumstances that may reasonably suggest that any Department's data has been lost, stolen, corrupted or accessed by an unauthorised person.

11.5. Transferring data off-shore

11.5.1. The Service Provider must not transfer, store or access the Department's Official Information outside Australia unless permitted in a notice from the Department to the Service Provider. A notice from the Department may impose conditions on any such permission.

11.5.2. The Service Provider must comply with any conditions in in a notice under clause 11.5.1.

12. Confidential information and security obligations

12.1. Confidential Information of Service Provider

12.1.1. Subject to clause 12.1.2, the Department will not, without the prior written authorisation of the Service Provider, disclose any Confidential Information of the Service Provider to a third party.

12.1.2. This clause 12.1 does not prevent the Department from disclosing any Confidential Information of the Service Provider or any other information provided by the Service Provider where that information:

- a. is disclosed by the Department to Department Personnel solely in order to comply with its obligations, or to exercise its rights, under this Contract;
- b. is disclosed by the Department to enable effective management or auditing of contract-related activities;

- c. is disclosed by the Department to the responsible Minister;
- d. is disclosed by the Department in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- e. is shared by the Department within the Department's organisation, or with another Government Agency, where this serves the Commonwealth's legitimate interests;
- f. is authorised or required by law to be disclosed;
- g. is disclosed in accordance with any relevant Australian Government policy or for a legitimate government purpose or process; or
- h. is in the public domain otherwise than due to a breach of this clause 12.1.

12.1.3. Where the Department discloses Confidential Information to another person pursuant to clauses 12.1.2.a to 12.1.2.e, the Department will notify the receiving person that the information is confidential.

12.1.4. The obligations under this clause 12.1 in relation to an item of information described in Item 10 of Schedule 1 continue for the period set out there in respect of that item.

12.2. Confidentiality of Official Information

12.2.1. The Service Provider will not, without prior written authorisation of the Department, disclose any Official Information to any person (unless required to do so by law or as necessary for the conduct of any legal proceedings arising in connection with the Contract).

12.2.2. The Service Provider is authorised, subject to clauses 12.2.3, 12.3.2.a to 12.3.2.c (inclusive), to provide Official Information to:

- a. the Service Provider Personnel who require access to it for the purposes of this Contract;
- b. the Service Provider's legal adviser, insurer, financier, auditor or accountant, to the extent required by such person enable them to perform their role; and
- c. a Related Body Corporate of the Service Provider, for internal management purposes.

12.2.3. The Service Provider must ensure that, prior to disclosing any Official Information to:

- a. any Personnel under clause 12.2.2.a, that the relevant Service Provider Personnel have given a duly executed and completed written undertaking in the form of:
 - i. *in the case of natural persons* – the Confidentiality Deed Poll in Schedule 8 (Confidentiality Deed Poll for Natural Persons); or

- ii. *in any other case* – the Confidentiality Deed Poll in Schedule 9 (Confidentiality Deed Poll for Corporate and Other Entities), or such other form acceptable to the Department relating to the use and non-disclosure of Official Information before gaining access to any Official Information, and the Service Provider must provide such undertaking to the Department on request by the Department at any time; and
 - b. to any person under clause 12.2.2.b or 12.2.2.c, that the person is under a legally-binding duty of non-disclosure in respect to the information.
- 12.2.4. The Service Provider agrees to secure all Official Information against loss and unauthorised access, use, modification or disclosure.

12.3. Other security obligations of Service Provider

- 12.3.1. Unless otherwise notified by the Department, the highest level of Security Classified Resources that the Service Provider will have access to under this Contract is that specified in Item 8 of Schedule 1.
- 12.3.2. The Service Provider agrees:
- a. to ensure that Security Classified Resources are only provided to persons who satisfy the following requirements:
 - i. they are Service Provider Personnel or such other persons to whom Official Information is permitted to be disclosed to under this Contract or as otherwise approved by the Department in connection with this Contract;
 - ii. they have obtained and continue to hold the appropriate security clearance required for access to the Security Classified Resources proposed to be provided; and
 - iii. they have a need-to-know the relevant Security Classified Resources for the purpose of performing their role,(collectively '**Classified Information Recipients**');
 - b. to promptly inform, and keep informed, all Classified Information Recipients who receive Security Classified Resources of all relevant Department security requirements and the security obligations of the Service Provider under this Contract, including that the obligation to maintain confidentiality of Official Information is ongoing (notwithstanding termination or expiry of this Contract or their involvement with it;
 - c. to ensure that any Classified Information Recipients who receive Security Classified Resources:
 - i. are available to and do attend any security training required by the Department; and
 - ii. notify the Department (or relevant Government agency which undertook the relevant security assessment of the individual) of any

change in their personal circumstances that might affect their eligibility to hold a security clearance;

- d. to prevent access to Security Classified Resources by any person who is not authorised to receive Official Information or does not meet the requirements of a Classified Information Recipient (including persons whose security clearance has been revoked, has lapsed or who no longer require access for the purposes of this Contract);
- e. to notify the Department immediately if it becomes aware that a Security Incident has occurred and otherwise implement the Department's procedures for Security Incident reporting as advised by the Department from time to time;
- f. not to perform the Services outside Australia (or remove any Official Information outside Australia) without the Department's prior written approval; and
- g. to comply with the additional security requirements specified in Item 8 of Schedule 1 and the Statement of Work, if any, and any variations or additions to those requirements as notified by the Department from time to time.

12.3.3. The Service Provider agrees to:

- a. implement security procedures to ensure that it meets its obligations under this clause 12.2 and will provide details of these procedures to the Department on request; and
- b. meet the designated information security standards under the Information Security Manual (ISM), for the electronic processing, storage, transmission and disposal of all Department data including Official Information.

12.3.4. If a variation to security requirements pursuant to clause 12.3.2.g has cost implications for the Service Provider that the Service Provider can substantiate and that cannot be avoided after due and proper consultation with the Department, the Department will not unreasonably refuse a variation proposal made by the Service Provider in respect of the recovery of such reasonable and necessarily additional costs as may be actually incurred and substantiated by the Service Provider.

12.3.5. Without limiting any other provision of this Contract, where Official Information is in the possession or control of the Service Provider, the Service Provider must ensure that any equipment, ICT system, tool, device, facility, premises, or infrastructure of any kind used for the storage, processing, handling,

transmission and disposal of Official Information meet the requirements of this Contract for the relevant security classification of the information.

13. Recordkeeping

13.1. Records

13.1.1. The Service Provider shall:

- a. create, maintain and store securely adequate books, records, documents and other evidence to document all aspects of the performance of this Contract, in accordance with Australian accounting standards, procedures and practices, the Archives Act and all relevant Australian and international standards for records management (such as AS ISO 15489), and without limiting the foregoing shall:
 - i. ensure records are sufficiently detail to enable a full review or audit of all Services provided, including the Service Provider's interactions with Detainees, the Department and other Department contractors and the Service Providers' operational practices and procedures as they relate to this Contract;
 - ii. ensure records are sufficiently detail to enable the Department to fully and accurately determine all amounts payable by the Department under this Contract;
 - iii. keep copies of all accreditations, licences, permits, certifications, approvals and other relevant records to confirm compliance with all applicable Laws, policies and standards;
 - iv. ensure all physical records (including hand-written records) are transferred into an electronic record; and
 - v. ensure all electronic records are effectively backed up on a daily basis in a suitable system that conforms with relevant standards (such as IEC 27001 / SICT standard);
- b. ensure compliance with the privacy obligations set out in this Contract, including as required by clause 15 (Privacy);
- c. ensure compliance with all security and information-handling obligations, including immediately notifying the Department if any event specified in clause 11.4.5 occurs; and
- d. transfer the custody of any physical or electronic records to the relevant Department records management system within the timeframes specified by the Department.

- 13.1.2. The records to be held in accordance with this clause 13.1 must be held for a minimum of the Term of this Contract and for a period of seven years from the date of expiry or termination of this Contract.

13.2. Commonwealth records

- 13.2.1. The Service Provider must:

- a. not arrange for, nor effect, a transfer of custody or ownership of any Commonwealth record without the prior written approval of the Department, nor will the Service Provider remove any such record, except in accordance with arrangements agreed to by the Department;
- b. where the Department and the National Archives of Australia authorises the transfer of custody of Commonwealth records to the Service Provider, comply in every respect with the requirements of the Archives Act;
- c. comply with any direction given by the Department for the purpose of transferring Commonwealth records to the National Archives of Australia or providing the National Archives of Australia with full and free access to those records;
- d. at all times:
 - i. permit the Department to access all Commonwealth records in the custody of the Service Provider; and
 - ii. facilitate reasonable access to Commonwealth records by a requesting Commonwealth agency;
- e. comply with Laws providing for public access to Commonwealth records; and
- f. on or before the date of termination or expiry of this Contract, deliver all Commonwealth records in the Service Provider's possession or under the Service Provider's control to the Department or, if directed by the Department, to another party specified in writing by the Department.

Released by Department of Home Affairs
under the Freedom of Information Act 1982

13.3. Existing Detainee Records

- 13.3.1. The Department will use reasonable efforts to arrange for the Service Provider to have access to Existing Detainee Records as reasonably required for the delivery of the Services.
- 13.3.2. The Service Provider acknowledges that access under clause 13.3.1 may be dependent on the Department obtaining the consent of each relevant Detainee, and any other consents or approvals required by Law.

13.4. Due Diligence

- 13.4.1. Where the Department provides information or Material to the Service Provider under this Contract (including any Existing Detainee Records), that information or Material will be provided in good faith.
- 13.4.2. The Service Provider acknowledges and agrees that, except as specifically agreed to the contrary by the Department in writing or to the extent required by Law:
- a. the Department does not make any representation or give any warranty in relation to such information or Material of any kind, including that such information or Material is complete, comprehensive, accurate, up to date, or does not contain any errors, is fit for any purpose, is of merchantable quality or has been provided by the exercise of due skill or care; and
 - b. the use of such Material or information is at the Service Provider's sole risk.
- 13.4.3. Without limiting the generality of clause 13.1, the Service Provider must not amend, destroy or dispose of any Existing Detainee Record (or any other Commonwealth record) without the Contract Administrator's prior written approval.

14. Dealing with Copies and Access to Documents

14.1. Interpretation

- 14.1.1. In clause 14.2:

Copy	means any document, device, article or medium in which Department Material, Contract Material, or Official Information is embodied.
-------------	---

14.2. Actions at end of contract

- 14.2.1. Without limiting the Service Provider's obligations under clause 13 or this clause 14, the Service Provider agrees, on expiration or termination of this Contract, to deal with all Copies as directed by the Department, subject to any requirement of law binding on the Service Provider.

14.3. Access to documents

- 14.3.1. In this clause 14.3, '**document**' and '**Commonwealth contract**' have the same meaning as in the *Freedom of Information Act 1982* (Cth).
- 14.3.2. The Service Provider acknowledges that this Contract is a Commonwealth contract.
- 14.3.3. Where the Department has received a request for access to a document created by, or in the possession of, the Service Provider or any Subcontractor that relates to the performance of this Contract (and not to the entry into this Contract), the Department may at any time by written notice require the Service Provider to provide the document to the Department and the Service Provider must, at no additional cost to the Department, promptly comply with the notice.
- 14.3.4. The Service Provider must include in any subcontract relating to the performance of this Contract provisions that will enable the Service Provider to comply with its obligations under this clause 14.3.

14.4. Cooperation with investigations

- 14.4.1. Without limiting any other obligations under this Contract, the Service Provider must, and must ensure that Service Provider Personnel and Subcontractors, cooperate with any:
- a. enquiries, investigations or Freedom of Information Requests (**FOIR**) by the Commonwealth and Immigration Ombudsman, the Commonwealth Auditor-General, the Information Commissioner, the Privacy Commissioner, National Anti-Corruption Commission, the Australian Human Rights Commission or FOIR representative of the Commonwealth (including any of their delegates); and
 - b. any inquiry, investigation or review undertaken by a Commonwealth-established external complaints resolution body or agency following referral of a Detainee complaint to that body or agency.

15. Privacy

15.1. Obligations of Service Provider in relation to privacy

- 15.1.1. The Service Provider agrees, in providing the Services:
- a. to comply with its obligations under the Privacy Act and not to otherwise do any act or engage in any practice which, if done or engaged in by the Department, would be a breach of an Australian Privacy Principle under the Privacy Act; and
 - b. to comply with any directions, guidelines, determinations or recommendations referred to in, or relating to the matters set out in, Item 9 of Schedule 1, to the extent that they are consistent with the obligations referred to in subclause a above.

- 15.1.2. The Service Provider shall notify the Department as soon as reasonably practicable if:
- a. it becomes aware of or suspects there has been a breach, or possible breach, of any of the obligations contained, or referred to, in this clause 15, whether by the Service Provider, Subcontractor or any other person to whom the Personal Information has been disclosed for the purposes of this Contract; or
 - b. in relation to Personal Information obtained in the course of performing this Contract:
 - i. it becomes aware that a disclosure of such Personal Information may be required by law; or
 - ii. it is approached by the Privacy Commissioner.

- 15.1.3. The Service Provider shall ensure that Service Provider Personnel who deal with Personal Information for the purposes of this Contract are aware of, and comply with, this clause 15.

15.2. Eligible Data Breach

- 15.2.1. If the Service Provider becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by the Service Provider as a result of this Contract or its provision of the Services, the Services Provider agrees to:
- a. immediately report it to the Department and provide a written report within three Business Days; and
 - b. unless otherwise directed by the Department, carry out an assessment in accordance with the requirements of the Privacy Act.
- 15.2.2. Where the Service Provider is aware that there are reasonable grounds to believe there has been, or where the Department notifies the Service Provider that there has been, an Eligible Data Breach in relation to any Personal Information held by the Service Provider as a result of this Contract or its provision of the Services, the Service Provider must:
- a. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates;
 - b. unless otherwise directed by the Department, take all other action necessary to comply with the requirements of the Privacy Act; and
 - c. take any other action as reasonably directed by the Department.
- 15.2.3. The Service Provider agrees to notify the Department immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 15.

16. Force Majeure

16.1. Force Majeure Event

- 16.1.1. If a party is affected, or likely to be affected, by a Force Majeure Event that party (the **affected party**) must promptly notify the other of that fact and all relevant details including:
- a. full particulars of the Force Majeure Event;
 - b. an estimate of its likely duration;
 - c. the obligations affected by it and the extent of its effect on those obligations; and
 - d. the steps taken to mitigate it.
- 16.1.2. Subject to clauses 16.1.3 and 16.1.4, the obligations under this Contract are suspended to the extent to which the party affected by the relevant Force Majeure Event is unable to perform its obligations under the Contract due to the Force Majeure Event for as long as the Force Majeure Event continues.
- 16.1.3. Where the Department disputes any circumstance is a Force Majeure Event, the circumstances will not be a Force Majeure Event unless the outcome of a Dispute dealt with in accordance with clause 20 deems it to be so.
- 16.1.4. The Service Provider may not claim a Force Majeure Event unless:
- a. the Service Provider has notified the Commonwealth as required by clause 16.1.1 relation to the relevant event or circumstance; and
 - b. the effect of the Force Majeure Event would not have occurred had the Service Provider fully complied with its obligations under this Contract including within the timeframes for performance specified in this Contract.

16.2. Best endeavours to be used to overcome Force Majeure Event

- 16.2.1. A party claiming a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible.

16.3. Rights of the non-affected party

- 16.3.1. Subject to clause 16.3.2, during any period that a party is not performing any obligation because of a claimed Force Majeure Event, all corresponding obligations of any other party are also suspended or abated (for example the other party has no liability to payment for Services not actually provided) and the other party may (but need not) make alternative arrangements for the performance, whether by another person or otherwise, of any obligation that the party claiming the Force Majeure Event is not performing, without incurring any liability to the party claiming the Force Majeure Event. Where it is reasonable for such alternative arrangements to extend beyond the duration of the original Force Majeure Event (for example due to a minimum contract term with an

alternative provider or because of transition requirements) the period of suspension of relevant obligations under this clause 15 must continue until such alternative arrangements expire or are no longer necessary.

- 16.3.2. Where some or all of the Service Provider's obligations under this Contract are suspended under clause 16.3.1, except to the extent that another provision of this Contract provides to the contrary and subject to clause 16.3.3, the Department agrees to pay the Service Provider an amount to cover the Service Provider's fixed or recurrent costs associated with the portion of the Services which are suspended provided that:
- a. those costs are unavoidably incurred by the Service Provider;
 - b. the Service Provider notifies the Department of the quantum (or estimated quantum) of the costs it intends to claim as soon as practicable, and in all cases no later than 10 Business Days, after the Force Majeure Event comes into effect;
 - c. the Service Provider submits a claim to the Department for the costs no later than 20 Business Days after the date those costs are incurred by the Service Provider; and
 - d. the Service Provider provides substantiating evidence to the satisfaction of the Department of the costs and steps taken to mitigate the Service Provider's Loss.
- 16.3.3. The Department will not be liable to pay any amounts under clause 16.3.2 which would, when added to the fees payable in consideration for the portion of this Contract the Service Provider is able to perform, exceed the fees payable if the Service Provider was fully performing all obligations under this Contract.

17. Indemnity, liability and insurance

s. 45(1), s. 47G(1)(a)

Released by Department of Home Affairs
under the Freedom of Information Act 1982

18. Default, cure and step-in

18.1. Department rights

18.1.1. If a Default occurs (whether or not the Service Provider has notified the Contract Administrator of that Default), the Department may give the Service Provider a Default Notice.

18.2. Default Rectification

18.2.1. The Department may, in its absolute discretion, specify in the Default Notice that it requires the Service Provider to remedy the Default, in which case, upon receipt of a Default Notice, the Service Provider:

- a. will have the reasonable time specified in the Default Notice (**Default Rectification Period**) from the date of the Default Notice to remedy the Default; and

- b. must submit a Default Rectification Plan within five Business Days of the Default Notice, or such other period agreed between the parties, setting out how the Service Provider will cure the Default within the Default Rectification Period.

18.2.2. Where the Department specifies in a Default Notice that it requires the Service Provider to remedy a Default, the Service Provider must remedy the Default, including the identification, assessment and rectification of any systemic issues contributing to the Default, within the Default Rectification Period or such extended period as is agreed by the Department following submission of a Default Rectification Plan.

18.3. Step-in

18.3.1. If at any time:

- a. the Department is entitled under clause 19.1 to terminate this Contract; or
- b. the Secretary otherwise considers that circumstances exist which require the Department's intervention,

the Department may suspend the performance of any Services being performed by the Service Provider, arrange for the Department or a third party to perform such suspended Services or otherwise intervene in the management of a Facility by giving written notice to the Service Provider (**Step-in Right**).

18.3.2. The Department's Step-in Right will continue until the circumstance giving rise to the Step-in Right have been rectified or cease to exist.

18.3.3. The Service Provider must:

- a. cooperate with the Department during a period where the Department has exercised its Step-in Right, including by ensuring compliance by the Service Provider and Service Provider Personnel with all directions given by the Department; and
- b. to the extent it is permitted to do so and at no additional charge to the Department, novate or assign (as directed by the Department) such subcontracts the Service Provider has entered into relating to the Services as the Department may request, to the Department or its nominee (which nominee must have been selected by the Department, having reasonable regard to applicable Commonwealth Laws and policy).

18.3.4. The exercise of the powers under this clause 18.3 is without prejudice to any other rights the Department may have to enforce or terminate this Contract.

18.3.5. If the exercise of the Step-in Right was not due to a breach of contract by the Service Provider, the Service Provider will be entitled to payment of any costs reasonably substantiated and necessarily incurred as a result of compliance

Released by Department of Home Affairs
under the Freedom of Information Act 1982

with its obligations under this clause 18.3 which are not recovered through the Service Fee.

- 18.3.6. If the exercise of the Step-in-Right was due to a breach of contract by the Service Provider, the Department may suspend, defer or reduce payment of Service Fees (or part thereof) from the date such Services are suspended pursuant to this clause 18.3.

19. Termination or reduction in scope of Services

19.1. Termination for default

- 19.1.1. The Department may terminate the whole or part of (or reduce the scope of) this Contract immediately by notice if:

- a. the Service Provider breaches any obligation under this Contract in relation to the obligations under any of the following clauses or associated obligations set out elsewhere in this Contract:
 - i. clause 2.3 (Compliance with Laws);
 - ii. clause 2.4 (Work health and safety);
 - iii. clause 3.8 (Public statements);
 - iv. clause 11.5 (Transferring data offshore);
 - v. clause 12 (Confidential information and security obligations);
 - vi. clause 15 (Privacy);
 - vii. clause 17.4 (Insurance);
 - viii. clause 25.10 (Notification of Significant Event); or
 - ix. clause 25.9 (Conflict of interest);
- b. the Service Provider fails to comply with any of its obligations under this Contract and:
 - i. the Department considers that the failure cannot be remedied, or
 - ii. a failure is not remedied within the Default Rectification Period specified in a Default Notice;
- c. any representation, warranty or statement made by, or repeated by, the Service Provider, in or in connection with this Contract is untrue or misleading (whether by omission or otherwise) in any material respect when so made or repeated;
- d. an Insolvency Event occurs in respect of:
 - i. the Service Provider, any of its parent companies or the Guarantor; or
 - ii. a Core Subcontractor, but only if the Service Provider is unable to propose a suitable replacement of that Core Subcontractor within

10 Business Days of receiving notice under clause 4.2.6 requiring the replacement of that Core Subcontractor,

except to the extent the exercise of a right under this clause 19.1.1.d is prevented by law;

- e. the Service Provider ceases to carry on any business or suspends the carrying on of any business material to its obligations under this Contract;
- f. the Service Provider ceases for any reason to be able lawfully to carry out all the transactions that this document contemplates may be carried out by it;
- g. if any matter relating to the Service Provider or any of its Guarantors becomes subject to an investigation under any Law relating to companies;
- h. the Service Provider is prevented by a Force Majeure Event (or a series of Force Majeure Events) from performing obligations under this Contract that is continuing for a period of 60 days or more; or
- i. an event occurs in respect of which this Contract provides that a notice of termination may be given.

19.1.2. Where, before termination or reduction in scope of this Contract, the Department has made any payment in advance to the Service Provider for which it has not received the whole of the Services relating to that payment, the amount of the payment to which the unreceived Services relate must be repaid by the Service Provider to the Department immediately on termination or reduction in scope and, if not repaid, is recoverable by the Department from the Service Provider as a debt due to the Commonwealth.

19.1.3. The rights of the Commonwealth to terminate or reduce the scope of the Contract under clause 19, or exercise step-in under clause 18.3, are in addition to any other right or remedy the Commonwealth may have in relation to the Contract.

19.2. Termination consequences

19.2.1. If this Contract is terminated under clause 19.1:

- a. subject to this Contract and clause 21 (Transition Out) in particular, the parties are relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
- b. subject to the requirements of the Service Provider to perform Services in accordance with clause 21 (Transition Out), all licences and Authorisations granted to the Service Provider by the Department, terminate immediately despite anything to the contrary contained in the relevant licence or Authorisation;
- c. the Service Provider must comply with clause 21 (Transition Out);

Released by Department of Home Affairs
under the Freedom of Information Act 1982

- d. to the extent it is permitted to do so and at no additional charge to the Department, novate or assign (as directed by the Department) such subcontracts the Service Provider has entered into relating to the Services as the Department may request, to the Department or its nominee (which nominee must have been selected by the Department, having reasonable regard to applicable Commonwealth Laws and policy);
 - e. the Department must pay the Service Provider for any Services that were performed in accordance with this Contract prior to the date of termination; and
 - f. without limiting clause 21, the Service Provider will assist in all respects with the transfer of the Services to a Successor according to the needs and instructions requested by the Department and will ensure business continuity of the Services prior to and post termination of this Contract for any reason.
- 19.2.2. If this Contract is reduced in scope under clause 19.1, subject to any direction from the Contract Administrator, clauses 19.2.1.c to 19.2.1.f will apply insofar as they relate to the Services affected by the reduction in scope.
- 19.2.3. If a purported termination or reduction in scope for Default by the Department under clause 19.1 is determined by a competent authority not to be properly a termination for default, then that termination by the Department will be deemed to be a termination for convenience under clause 19.3 which termination has effect from the date of the notice of termination.
- 19.3. Termination for convenience**
- 19.3.1. The Department may by notice, at any time and in its absolute discretion, terminate this Contract or reduce the scope of the Services immediately.
- 19.3.2. The Service Provider agrees, on receipt of a notice of termination or reduction:
- a. to stop or reduce work as specified in the notice;
 - b. to take all available steps to minimise loss resulting from that termination or reduction; and
 - c. to continue work on any part of the Services not affected by the notice.
- 19.3.3. In the event of termination under clause 19.3.1, the Department will be liable only:
- a. to pay any Instalment relating to Services completed before the effective date of termination;
 - b. to reimburse any expenses the Service Provider unavoidably incurs relating entirely to Services not covered under clause 19.3.3.a; and
 - c. to pay any allowance and meet any costs unavoidably incurred before the effective date of termination.

- 19.3.4. The Department will not be liable to pay amounts under clause 19.3.3.a and 19.3.3.b which would, when added to any fees already paid to the Service Provider under this Contract, together exceed the total amount of the Service Fee payable under this Contract had it not been terminated.
- 19.3.5. In the event of a reduction in the scope of the Services under clause 19.1.1 or 19.3.1, the Department's liability to pay fees or allowances, or meet costs under clause 9 will, unless there is agreement in writing to the contrary, reduce in proportion with the reduction in the scope of the Services.
- 19.3.6. The Service Provider will not be entitled to compensation for loss of prospective profits.
- 19.3.7. Notwithstanding that the Service Provider may have received a notice under clause 19.3.1, the Service Provider must comply with its obligations under clause 21 (Transition Out) and with any directions given by the Contract Administrator.

20. Dispute resolution

20.1. Procedure for dispute resolution

- 20.1.1. The parties agree that they a dispute arising under this Contract will be dealt with as follows:
- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
 - b. if the dispute has not been resolved within 20 Business Days (or such other period as agreed by the parties in writing), each party will nominate a senior representative not having any prior involvement in the dispute the representatives will try to settle the dispute by direct negotiation between them;
 - c. failing settlement within a further 40 Business Days or such other period as agreed by the parties in writing, the parties will refer the matter to Assistant Commissioner, Onshore Detention for resolution;
 - d. if the parties have been unable to resolve the dispute within a further 20 Business Days (or such other period as the parties may agree in writing), either party may commence legal proceedings.

20.2. Costs

- 20.2.1. Each party will bear its own costs of complying with this clause 20, and the parties will bear equally the cost of any third person engaged under clause 20.1.1.c.

20.3. Continued performance

- 20.3.1. Despite the existence of a dispute, the Service Provider will (unless requested in writing by the Department not to do so) continue to perform the Services.

20.4. Exemption

- 20.4.1. This clause 20 does not apply to:
- a. action by the Department under or purportedly under clause 19.3;
 - b. action by the Department under or purportedly under clause 19.1; or
 - c. legal proceedings by either party seeking urgent interlocutory relief.

21. Transition out

21.1. Transition Out Plan

- 21.1.1. The Service Provider must develop a Transition Out Plan in accordance with the Statement of Work, which sets out a comprehensive plan for disengagement and transition-out of all Services and handover of the Services to the Department or the Successor, to ensure an orderly Transition Out is fully completed prior to the End Date (or such earlier date specified elsewhere in this Contract or the Transition Out Plan).
- 21.1.2. The Transition Out Plan must include all other relevant information, details and processes to meet the requirements associated with Transition Out set out in this Contract including Schedule 3 (Statement of Work) and as otherwise directed by the Department.
- 21.1.3. The Service Provider must prepare and submit to the Department:
- a. the proposed Transition Out Plan, and ensure the Department approves the Transition Out Plan by no later than 12 months after the Commencement Date or such earlier date specified in Schedule 3 (Statement of Work); and
 - b. an updated version of the currently-approved Transition Out Plan to the Department annually on each subsequent the anniversary on the Commencement Date and a further update 6 months before the expiry of the Term.

Released by Department of Home Affairs
under the Freedom of Information Act 1982

21.2. Compliance with Transition Out Plan

21.2.1. The Service Provider must comply with the Transition Out Plan and all other Transition Out-related requirements set out in this Contract, and provide all other reasonable assistance and cooperation necessary:

- a. during any notice period prior to removal of Services from scope or termination, or upon the expiration of any date for the exercise of an option to extend the term of this Contract; and
- b. on and from the removal of Services from scope, expiration or termination of this Contract for any reason,

to ensure an orderly Transition Out is fully completed in accordance with the requirements of this Contract and the Transition Out Plan prior to the End Date (or such earlier date specified elsewhere in this Contract or the Transition Out Plan).

21.2.2. In particular the Service Provider must:

- a. except with the consent of the Department or as required to comply with this clause 20, cease accessing any of the Department's systems;
- b. continue the provision of the Services, for up to 180 days after the removal of Services from scope, or termination or expiry of this Contract (as the case may be) or such other date as is agreed by the parties, so as to ensure an orderly transition of services as requested by the Department;
- c. perform its other obligations under the Transition Out Plan and any other obligations Schedule 3 (Statement of Work) relating to Transition Out.

21.2.3. The Service Provider must:

- a. allow the Department to audit compliance with this clause 21; and
- b. allow Successors to access the Facilities where relevant to assist in the orderly transition of the Services.

21.3. Transition of Services Removed from Scope

21.3.1. If any Services are removed from scope, the obligations of the Service Provider under clause 21.2 in respect of that termination, apply only to the extent necessary to ensure the orderly cessation of the delivery of the relevant Services and any transition to the Department or other service provider of services similar to the Services which have been removed from scope. In that event, the Service Provider will be entitled to payment for those Transition Out Services as a Pass Through Cost in accordance with Schedule 4 (Price Schedule).

Released by Department of Home Affairs
under the Freedom of Information Act 1982

21.4. Fees for Transition Out Services

21.4.1. Upon the expiry of the Term or termination of this Contract, except where termination is for default under clause 19.1, the Department will pay the Service Provider the Transition Out Fee specified in Schedule 4 (Price Schedule).

21.5. Service Provider Must Not Hinder Transition

21.5.1. The Service Provider agrees that it will not hinder in any way, the transition of the provision of services similar to the Services to a Successor upon expiration of this Contract or upon the termination of this Contract or removal of Services from scope under clause 19 or otherwise in accordance with this Contract.

22. Service Provider representations and warranties

22.1. Warranties

22.1.1. The Service Provider represents and warrants that:

- a. the Services are fit for their intended purpose;
- b. the Service Provider Personnel are appropriately skilled, trained and qualified to provide the Services;
- c. the Services comply with all representations made to the Department (whether made by the Service Provider before or after the Commencement Date) in relation to the standard, quality or timing of the Services;
- d. the Service Provider possesses all relevant industry body, supplier, manufacturer and accreditation or scheme memberships and professional association membership that might be reasonably expected of providers of the Services (including as specified in Schedule 3 (Statement of Work));
- e. the Service Provider Personnel are all required by employment contracts or other legally binding arrangements to maintain the confidentiality of the Department's Official Information;
- f. it has full legal capacity and power to:
 - i. own its property and to carry on its business; and
 - ii. enter into this Contract and to carry out the transactions that this Contract contemplates;
- g. it has taken all corporate action that is necessary or desirable to authorise its entry into this Contract and its carrying out the transactions that this Contract contemplates;
- h. it holds each Authorisation that is necessary or desirable to:
 - i. enable it to properly execute this Contract and to carry out the transactions that this Contract contemplates;

Released by Department of Home Affairs
under the Freedom of Information Act 1982

- ii. ensure that this Contract is legal, valid, binding and admissible in evidence; or
- iii. enable it to properly carry on its business,
and it is complying with any conditions to which any of these Authorisations is subject;
- i. this Contract constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and Laws affecting creditors' rights generally);
- j. neither its execution of this Contract nor the carrying out by it of the transactions that this Contract contemplates, does or will:
 - i. contravene any Law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
 - ii. contravene any Authorisation;
 - iii. contravene any undertaking or instrument binding on it or any of its property;
 - iv. contravene its constitution, rules of association or other equivalent entity governing rules; or
 - v. require it to make any payment or delivery in respect of any Security Interest before it would otherwise be obliged to do so;
- k. no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of any of its officers after due inquiry, threatened which, if adversely decided, could have a material adverse effect on it;
- l. the accounts and any other financial statements and reports that it has given to the Department:
 - i. have been prepared in accordance with the Law and (unless inconsistent with the Law) generally accepted accounting principles consistently applied; and
 - ii. give a true and fair view of the financial condition of it and its subsidiaries as at the date to which they are made up and of the results of operations of it and its subsidiaries for the period that they cover, andthere has been no change since the date of the most recent accounts that it has given to the Department that could have an adverse effect on it;
- m. the Service Provider and its Subcontractors do not have any unpaid claims in respect of judicial decisions made against the Service Provider or its Subcontractors relating to employee entitlements;

- n. as at the Commencement Date or, if given later, when given:
 - i. all information and reports (if any) that the Service Provider has given to the Department in connection with this Contract are true and accurate in all material respects and not misleading in any material respect (including by omission); and
 - ii. any forecasts and opinions in them are fair and reasonable and were made or formed after due inquiry and consideration by appropriate officers of the Service Provider;
- o. without limiting clause 25.10, it has disclosed to the Department all the information that is material to an assessment by the Department of the risks that it assumes by entering into this Contract;
- p. no breach of this Contract has occurred and is continuing, and it is not in breach of any other document or agreement in a manner that could have a material adverse effect on it or any of its subsidiaries; and
- q. it is not entering into this Contract as trustee of any trust or settlement.

22.2. Repetition of Representations and Warranties

- 22.2.1. The representations and warranties in this clause 22 are taken to be repeated on each date on which any Service Fee is due in respect of this Contract, on the basis of the facts and circumstances as at that date.

22.3. Reliance on Representations and Warranties

- 22.3.1. The Service Provider acknowledges that the Department has executed this Contract and agreed to take part in the transactions that this document contemplates in reliance on the representations and warranties that are made or repeated in this clause 22.

22.4. No Representations by the Department

- 22.4.1. The Service Provider acknowledges that it has not relied and will not rely on any representation, statement or promise made by or on behalf of the Department in deciding to enter into this Contract or to exercise any right or perform any obligation under it.

23. Service Provider performance and financial security

s. 45(1), s. 47G(1)(a)

Released by Department of Home Affairs
under the Freedom of Information Act 1982

s. 45(1), s. 47G(1)(a)

23.3. Performance Guarantee

- 23.3.1. The Service Provider must, at its expense, provide to the Department, within 10 Business Days of the Commencement Date, a properly completed and executed deed of guarantee in the form as set out in Schedule 11 (Performance Guarantee) by each Guarantor specified in Item 14 of Schedule 1 (Contract Details), guaranteeing the performance of the obligations and the discharge of the liabilities of the Service Provider under this Contract.

Released by Department of Home Affairs
under the Freedom of Information Act 1982

- 23.3.2. Each deed of guarantee required to be provided under clause 23.3.1 must be in a form as set out in Schedule 11 (Performance Guarantee) and must remain in force for as long as the Service Provider has obligations under this Contract.

23.4. Right of Department to recover money

- 23.4.1. Without limiting the Department's other rights or remedies under this Contract, if the Department elects, in accordance with this Contract, to recover an amount from the Service Provider or the Service Provider otherwise owes any debt to the Department in relation to this Contract, the Department may:

- a. deduct the amount from payment of any claim; or
- b. give the Service Provider a notice of the existence of a debt recoverable which shall be paid by the Service Provider within 30 days after receipt of notice.

- 23.4.2. The Department may exercise any or all of its rights in respect of any security provided in accordance with clauses 23.1, 23.2 or 23.3 to recover any debt owing by the Service Provider, except to the extent otherwise recovered by the Department under clause 23.4.1.

- 23.4.3. If the Department deducts the amount of a debt from any payment or security, it shall notify the Service Provider that it has done so.

- 23.4.4. If any sum of money owed to the Department is not received by its due date for payment, the Service Provider shall pay to the Department interest at the ATO sourced General Interest Charge rate current at the date the payment was due for each day the payment is late.

23.5. Change of Control to the Service Provider or the Guarantor

- 23.5.1. Subject to clause 23.5.2, the Service Provider must seek the Department's prior written consent to any proposed Change of Control by providing notice to the Department at least 45 Business Days before the proposed Change of Control is to occur.

- 23.5.2. If a Change of Control occurs as a result of a transfer of shares or other interests listed on a recognised stock exchange and the consent of the Contract Administrator could not have been obtained in accordance with clause 23.5.1, the Service Provider shall seek that consent by providing notice to the Department at its earliest convenience and in all cases no later than 5 Business Days after the Change of Control.

- 23.5.3. In any notice given to the Department seeking consent to a Change of Control, the Service Provider must include the following details:

- a. the ownership and management arrangements of the Service Provider or the Guarantor (as applicable) that were in place immediately before the change or, if the change has yet to occur, that were in place at the time the Service Provider became aware of the prospective change;

- b. the ownership and management arrangements of the Service Provider or the Guarantor (as applicable) that have been or will be put in place as a consequence of the change or, if the change has yet to occur, that the Service Provider reasonably expects to be put in place if the change occurs;
- c. the impact (if any) that the change has had on the Service Provider's or the Guarantor's (as applicable) ability to meet its obligations under this Contract or, if the change has yet to occur, that the Service Provider reasonably expects the change to have on that ability; and
- d. the steps the Service Provider or the Guarantor (as applicable) has taken or proposes to take to minimise the impact of the change or prospective change.

23.5.4. If there is a Change of Control and the Department does not consent to the Change of Control, then the Department may:

- a. give the Service Provider a notice of termination under clause 19.1.1.i; or
- b. agree not to give the Service Provider a notice of termination under clause 19.1.1.i, subject to the Service Provider providing further information, giving specified undertakings, or executing further agreements (including a Contract Change Proposal), as may be required by the Department.

23.5.5. Nothing in this clause 23.5 requires the Service Provider or the Guarantor to act in a manner inconsistent with its obligations under the Corporations Act or equivalent laws and regulations in the jurisdiction for this Contract, or where applicable, a foreign jurisdiction.

24. Notices

24.1. Format, addressing and delivery

24.1.1. A notice under this Contract is only effective if it is in writing, and dealt with as follows:

- a. *if given by the Service Provider to the Department* - addressed to the Contract Administrator at the address specified in Item 11 of Schedule 1 or as otherwise notified by the Department; or
- b. *if given by the Department to the Service Provider* - given by the Service Administrator (or any superior officer to the Service Administrator) and addressed (and marked for attention) as specified in Item 11.2 of Schedule 1 or as otherwise notified by the Service Provider.

24.1.2. A notice is to be:

- a. signed by the person giving the notice and delivered by hand; or
- b. signed by the person giving the notice and sent by pre-paid post; or

Released by Department of Home Affairs
under the Freedom of Information Act 1982

- c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

24.2. When effective

24.2.1. A notice is deemed to be effected:

- a. *if delivered by hand* - upon delivery to the relevant address;
- b. *if sent by post* - upon delivery to the relevant address (if sent by registered express mail or courier), or 3 Business Days after the date of posting (if sent by pre-paid post in Australia) or 10 Business Days after the date of posting (if posted outside Australia by air mail); or
- c. *if transmitted electronically* - when the email reaches the receiving party's email server, unless the sending party receives an error message indicating that the receiving party's contract representative has not received the message.

24.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

25. Commonwealth requirements

25.1. [Not used]

25.2. Shadow Economy

25.2.1. In this clause 25.2:

Shadow Economy Procurement Connected Policy	means the <i>Shadow economy – increasing the integrity of government procurement: Procurement connected policy guidelines March 2019</i> available at https://treasury.gov.au/publication/p2019-t369466 ;
Satisfactory	means meets the conditions set out in Part 6.b of the Shadow Economy Procurement Connected Policy or, if the circumstances in Part 6.c of the Shadow Economy Procurement Connected Policy apply, the conditions set out in Part 8.b of the Shadow Economy Procurement Connected Policy;
Statement of Tax Record	means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR ; and
Valid	means valid in accordance with Part 7.e of the Shadow Economy Procurement Connected Policy.

- 25.2.2. The Service Provider warrants that at the Commencement Date it holds a Valid and Satisfactory Statement of Tax Record.
- 25.2.3. The Service Provider must hold a Valid and Satisfactory Statement of Tax Record at all times during the term of this Contract and, on request by the Department, provide to the Department a copy of any such Statement of Tax Record.
- 25.2.4. Without limiting its other rights under this Contract or at law, any failure by the Service Provider to comply with the requirements outlined in clauses 25.2.2 and 25.2.3 will be a breach of this Contract.
- 25.2.5. If the Service Provider is a partnership, the Service Provider will ensure that if a new partner joins the partnership that a Valid and Satisfactory Statement of Tax Record for the partner is provided to the Department as soon as possible after they become a partner to the partnership.
- 25.2.6. The Service Provider must ensure that any first tier Subcontractor engaged to deliver Services with an estimated value of over \$4 million (GST inclusive) holds a Valid and Satisfactory Statement of Tax Record at all times during the term of the relevant subcontract.
- 25.2.7. The Service Provider must retain a copy of any Statement of Tax Record held by any first tier Subcontractor in accordance with clause 25.2.6 and must, on request by the Department, provide to the Department a copy of any such Statement of Tax Record.

25.3. Workplace Gender Equality

- 25.3.1. The Service Provider must comply with its obligations, if any, under the *Workplace Gender Equality Act 2012* (Cth) (**WGE Act**).
- 25.3.2. If the Service Provider becomes non-compliant with the WGE Act during the term of this Contract, the Service Provider must promptly notify the Department.
- 25.3.3. The Service Provider must provide a current letter of compliance from the Workplace Gender Equality Department within 18 months from the Commencement Date and, following this, annually to the Department.
- 25.3.4. Compliance with the WGE Act does not relieve the Service Provider from its responsibility to comply with its other obligations under this Contract.

25.4. Fraud

- 25.4.1. For the purposes of this clause, "**Fraud**" means dishonesty obtaining a benefit from the Commonwealth or causing a loss to the Commonwealth by deception or other means. This definition is based on the dishonesty offences under chapter 7 of the *Criminal Code Act 1995* (Cth).
- 25.4.2. The Service Provider must comply with the Commonwealth Fraud Control Framework, as amended from time to time, available at [Commonwealth Fraud Control Framework | Commonwealth Fraud Prevention Centre \(counterfraud.gov.au\)](https://www.counterfraud.gov.au).

- 25.4.3. The Service Provider must take all reasonable steps to prevent and detect Fraud in relation to the performance of this Contract. The Service Provider acknowledges the occurrence of Fraud by the Service Provider or any of its Service Provider Personnel will constitute a breach of this Contract.
- 25.4.4. If an investigation finds that the Service Provider or its employees have committed Fraud, or the Service Provider has failed to take reasonable steps to prevent Fraud by an employee or Subcontractor, the Service Provider must reimburse or compensate the Department in full for any costs and/or damages caused to the Department.

25.5. Modern Slavery

- 25.5.1. In this clause 25.5:

Grievance Mechanism	means a process for handling a complaint or grievance about Modern Slavery practices that is consistent with the criteria set out in the Guiding Principles on Business and Human Rights.
Guiding Principles on Business and Human Rights	means the United Nations' <i>Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework</i> available at https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf .
Modern Slavery	has the same meaning as it has in the <i>Modern Slavery Act 2018</i> (Cth).
Personnel	means any person who is an officer, employee, contractor (including subcontractor) or agent of the Service Provider involved in providing the Goods and/or Services.

- 25.5.2. The Service Provider must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Goods and/or Services.
- 25.5.3. The Service Provider ensure Personnel responsible for managing the operations and supply chains used in the performance of this Contract have undertaken suitable training to be able to identify and report Modern Slavery.
- 25.5.4. Within one month of the Commencement Date, the Service Provider will prepare and implement a Modern Slavery Risk Management Plan in relation to its performance of this Contract and, if requested by the Department, provide a copy of this plan to the Department. The Modern Slavery Risk Management Plan should at a minimum detail:
- a. the Service Provider's steps to identify and assess risks of Modern Slavery practices in the operations and supply chains used in the performance of this Contract;

- b. the Service Provider's processes for addressing any Modern Slavery practices of which it becomes aware in the operations and supply chains used in the performance of this Contract;
 - c. the content and timing of training for Personnel about Modern Slavery; and the Grievance Mechanism/s available to Personnel.
- 25.5.5. The Service Provider must comply with the Modern Slavery Risk Management Plan in its performance of this Contract. For the avoidance of doubt, nothing in this clause derogates from the Service Provider's other obligations arising under this Contract or otherwise in relation to the provision of the Goods and/or Services.
- 25.5.6. If at any time the Service Provider becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of the Contract, the Service Provider must as soon as reasonably practicable:
 - a. take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains; and
 - b. take all reasonable steps to remediate any adverse impacts caused or contributed to by the Service Provider from these practices in accordance with the Guiding Principles on Business and Human Rights.
- 25.5.7. Without limiting clause 25.5.6, in performing this Contract, the Service Provider must:
 - a. not require Personnel to pay fees, charges, expenses or financial obligations incurred in order for the Personnel to secure their employment or placement (Recruitment Fees), regardless of the manner, timing or location of the imposition or collection of these Recruitment Fees;
 - b. not destroy or exclusively possess, whether permanently or otherwise, the travel or identity documents of Personnel; and
 - c. ensure Personnel can access a Grievance Mechanism to safely report any instances of Modern Slavery in the operations and supply chains used by the Service Provider in its performance of this Contract.

25.6. Indigenous Procurement

25.6.1. In this clause 25.6:

Indigenous enterprise	means an organisation that is 50% or more Indigenous owned that is operating a business;
Indigenous Procurement Policy	means the Indigenous Procurement Policy of the Commonwealth, details of which are available at https://www.niaa.gov.au/resource-centre/indigenous-affairs/indigenous-procurement-policy ; and
Remote Area	means the areas identified in the Remote Indigenous Procurement Policy map on the National Indigenous

Australians Agency website, as updated from time to time.

- 25.6.2. It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy.
- 25.6.3. The Service Provider must use its reasonable endeavours to increase its:
- a. purchasing from Indigenous enterprises; and
 - b. employment of Indigenous Australians,
- in the delivery of the Services.
- 25.6.4. Purchases from Indigenous enterprises may be in the form of engagement of an Indigenous enterprise as a subcontractor, and use of Indigenous suppliers in the Service Provider's supply chain.
- 25.6.5. The Service Provider must provide a written report of its compliance with this clause 25.6 annually during the term of this Contract.

25.7. Multicultural Access and Equity Policy

- 25.7.1. The Service Provider acknowledges that the Australian Government's Multicultural Access and Equity Policy applies to the provision of the Services under this Contract and will comply with this policy as set out in Schedule 3 (Statement of Work).
- 25.7.2. The Service Provider will comply with the Australian Government's Multicultural Access and Equity Policy by, at a minimum:
- a. including in its planning for delivery of Services how it will provide the Services to a culturally and linguistically diverse population;
 - b. ensuring it is catering to the needs, circumstances and characteristics of the culturally and linguistically diverse population when delivering the Services, including by recruiting, as relevant, culturally diverse employees, volunteers, grantees and subcontractors;
 - c. monitoring and reporting Services, including:
 - i. data on recruited, as relevant, culturally diverse employees, volunteers, grantees and contractors (note data collection on Services including on performance standards must be consistent with Australian Bureau of Statistics (ABS) Standards for Statistics on Cultural and Language Diversity (available at <https://www.abs.gov.au/statistics/standards/standards-statistics-cultural-and-language-diversity/latest-release>));
 - ii. a complaint mechanism that enables people from culturally and linguistically diverse backgrounds to raise concerns about the Services provided.

25.7.3. Data collection by the Service Provider will be consistent with the ABS Standards for Statistics on Cultural and Language Diversity.

25.8. Child safety/working with vulnerable people

25.8.1. In this clause 25.8:

- a. "Child" means an individual under the age of 18 years and "Children" has a similar meaning;
- b. "Child-Related Personnel" means officers, employees, contractors, agents and volunteers of the Service Provider involved with the Requirements who as part of that involvement may interact with Children;
- c. "Child Safeguarding Framework" articulates the strong commitment of the Department, including the Australian Border Force, to safeguarding children and their wellbeing. The framework outlines the principles that inform the Department's approach to becoming a Child Safe Organisation, as recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse, and in alignment with the Commonwealth Child Safe Framework and the recommendations of the Child Protection Panel. The framework supports the implementation of Australia's international obligations under the Convention on the Rights of the Child in a domestic operational environment (available at <https://www.homeaffairs.gov.au/reports-and-pubs/files/child-safeguarding-framework.pdf>);
- d. "Child Safety" means the safety and protection of Children in accordance with the obligations set out in this clause;
- e. "National Principles for Child Safe Organisations" means the National Principles for Child Safe Organisations, which were endorsed by the Council of Australian Governments (COAG) in February 2019, (available at: National Principles for Child Safe Organisations (humanrights.gov.au) or as otherwise published by the Australian Government);
- f. "Relevant Legislation" means Legislation in force in any jurisdiction where any part of the Requirements may be carried out;
- g. "Working with Children Check" or "WWCC" means the process in place pursuant to Relevant Legislation to screen an individual for fitness to work with Children and may involve undertaking an assessment as to whether a person poses an unacceptable risk to children in Australia.

25.8.2. The Service Provider must:

- a. comply with all Relevant Legislation relating to the employment or engagement of Child-Related Personnel in relation to the Requirements, including all necessary Working With Children Checks however described, and

- b. ensure that Working With Children Checks obtained in accordance with this clause remain current and that all Child-Related Personnel continue to comply with all Relevant Legislation for the duration of their involvement in the Services.

25.8.3. The Service Provider agrees in relation to the Services to:

- a. develop and implement a Child Safety Plan (which should include, but is not limited to, incident reporting requirements, procedure review milestones) as part of the Policy and Procedures Manual (as outlined at Schedule 3 (Statement of Work));
- b. implement the National Principles for Child Safe Organisations;
- c. ensure that all Child-Related Personnel implement the National Principles for Child Safe Organisations;
- d. complete and update, at least annually, a risk assessment to identify the level of responsibility for Children and the level of risk of harm or abuse to Children;
- e. put into place and update, at least annually, an appropriate risk management strategy to manage risks identified through the risk assessment required by this clause;
- f. provide pre-deployment training and establish a compliance regime to ensure that all Child-Related Personnel are aware of, and comply with:
 - i. the Department's Child Safeguarding Framework or other equivalent document as updated from time to time;
 - ii. the National Principles for Child Safe Organisations;
 - iii. the Service Provider's risk management strategy required by this clause;
 - iv. Relevant Legislation relating to requirements for working with Children, including Working With Children Checks;
 - v. Relevant Legislation relating to mandatory reporting of suspected child abuse or neglect, however described; and
- g. provide the Department with, and publish, an annual statement of compliance with this clause, in such form as may be specified by the Department.

25.8.4. With reasonable notice to the Service Provider, the Department may conduct a review of the Service Provider's compliance with this clause.

25.8.5. The Service Provider agrees to:

- a. notify the Department of any failure to comply with this clause;

- b. co-operate with the Department in any review conducted by the Department of the Service Provider's implementation of the National Principles for Child Safe Organisations or compliance with this clause;
- c. promptly, and at the Service Provider's cost, take such action as is necessary to rectify, to the Commonwealth's satisfaction, any failure to implement the National Principles for Child Safe Organisations or any other failure to comply with this clause.

25.8.6. When Child Safety obligations may be relevant to a subcontract, the Service Provider must ensure that any subcontract entered into by the Service Provider for the purposes of fulfilling the Service Provider's obligations under this Contract imposes on the Subcontractor the same obligations regarding Child Safety that the Service Provider has under this Contract. Each subcontract must also require the same obligations (where relevant) to be included by the Subcontractor in any secondary subcontracts.

25.9. Conflict of interest

25.9.1. In this clause 25.9:

Conflict means any matter, circumstance, interest, or activity affecting the Service Provider, any Service Provider Personnel or Subcontractors which may or may appear to impair the ability of the Service Provider to provide the Services to the Department diligently and independently.

25.9.2. The Service Provider warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date no Conflict exists or is likely to arise in the performance of the Services.

25.9.3. If, during the period of this Contract a Conflict arises, or appears likely to arise, the Service Provider agrees:

- a. to notify the Department immediately;
- b. to make full disclosure of all relevant information relating to the Conflict; and
- c. to take any steps the Department reasonably requires to resolve or otherwise deal with the Conflict.

25.9.4. At a minimum, the Service Provider must ensure all Service Provider Personnel properly complete and sign a Conflict declaration in a format approved by the Department:

- a. prior to commencing provision of the Services; and
- b. updated throughout the Term of the Contract as directed by the Department,

and if requested the Service Provider shall provide copies of all relevant Conflict declarations to the Department.

25.9.5. The Department may give the Service Provider a notice of termination under clause 19.1.1.i if the Service Provider fails to:

- a. notify and make full disclosure of any Conflict to the Department in accordance with clause 25.9.3.a or 25.9.3.b; or
- b. take any steps the Department reasonably requires to resolve or otherwise deal with the Conflict.

25.10. Notification of Significant Event

25.10.1. The Service Provider must immediately issue the Department a notice on becoming aware of a Significant Event.

25.10.2. The notice issued under clause 25.10.1 must provide a summary of the Significant Event, including the date that it occurred and whether any Personnel or other personnel engaged in connection with the Services were involved.

25.10.3. The Department may notify the Service Provider in writing that an event is to be considered a Significant Event for the purposes of this clause, and where this occurs the Service Provider must issue a notice under clause 25.10.1 in relation to the event within three Business Days of being notified by the Department.

25.10.4. Where reasonably requested by the Department, the Service Provider must provide the Department with any additional information regarding the Significant Event within three Business Days of the request.

25.10.5. If requested by the Department, the Service Provider must prepare a draft remediation plan and submit that draft plan to the Contract Administrator for approval within ten Business Days of the request.

25.10.6. A draft remediation plan prepared by the Service Provider under clause 25.10.5 must include the following information:

- a. how the Service Provider will address the Significant Event in the context of the Services, including confirmation that the implementation of the remediation plan will not in any way impact on the delivery of the Services or compliance by the Service Provider with its other obligations under this Contract; and
- b. how the Service Provider will ensure events similar to the Significant Event do not occur again; and
- c. any other matter reasonably requested by the Department.

25.10.7. The Department will review the draft remediation plan and either approve the draft remediation plan or provide the Service Provider with the details of any changes that are required. The Service Provider must make any changes to the draft remediation plan reasonably requested by the Department and resubmit the draft remediation plan to the Department for approval within three Business Days of the request unless a different timeframe is agreed in writing by the Department. This clause 25.10.7 will apply to any resubmitted draft remediation plan.

25.10.8. Without limiting its other obligations under this Contract, the Service Provider must comply with the remediation plan as approved by the Department. The Service Provider agrees to provide reports and other information about the Service Provider's progress in implementing the remediation plan as reasonably requested by the Department.

25.10.9. A failure by the Service Provider to comply with its obligations under this clause will be a material breach of this Contract. The Department's rights under this clause are in addition to and do not otherwise limit any other rights the Department may have under this Contract. The performance by the Service Provider of its obligations under this clause will be at no additional cost to the Department.

25.11. National Anti-Corruption Commission Act 2022 (Cth) Requirements

25.11.1. The Service Provider acknowledges that in providing the Services to the Department under this Contract, it is a contracted service provider for the purposes of the *National Anti-Corruption Commission Act 2022 (Cth)* (NACC Act).

25.11.2. The Service Provider must comply with any reasonable request, policy or direction issued by the Department and otherwise cooperate with the Department in relation to any action taken by the Department required or authorised by the NACC Act.

25.12. Public Interest Disclosure

25.12.1. The Service Provider must familiarise itself with the *Public Interest Disclosure Act 2013 (Cth)* and acknowledges that public officials, including service providers and their Subcontractors under a Commonwealth contract, who suspect wrongdoing within the Commonwealth public sector may raise their concerns under the *Public Interest Disclosure Act 2013 (Cth)*.

25.13. Compliance with the Commonwealth Service Provider Code of Conduct

25.13.1. For the purposes of this clause, 'Commonwealth Service Provider Code of Conduct' or 'Code' means the Commonwealth Service Provider Code of Conduct, as published on 1 July 2024, as updated from time to time.

25.13.2. The Service Provider must comply with, and ensure that its officers, employees, agents and subcontractors comply with, the Code in connection with the performance of this Contract.

25.13.3. The Service Provider must:

- a. periodically monitor and assess its, and its officers', employees', and agents' compliance with the Code; and
- b. on request from the Department, promptly provide information regarding:
 - i. the policies, frameworks, or systems it has established to monitor and assess compliance with the Code; and

- ii. the Service Provider's compliance with clause 25.13.2.
- 25.13.4. The Service Provider must immediately issue the Department a notice on becoming aware of any breach of clause 25.13.2. The notice must include a summary of the breach, the date that the breach occurred, and details of the personnel involved.
- 25.13.5. Where the Department identifies a possible breach of clause 25.13.2, it may issue the Service Provider a Notice, and the Service Provider must, within three (3) Business Days of receiving the Notice, either:
 - a. where the Service Provider considers a breach has not occurred: advise the Department that there has not been a breach and provide information supporting that determination; or
 - b. where the Service Provider considers that a breach has occurred: issue a Notice under clause 25.13.4 and otherwise comply with its obligations under this clause 25.13.
- 25.13.6. Notwithstanding clause 25.13.5, the Department may notify the Service Provider in writing that it considers that the Service Provider has breached clause 25.13.2, in which case the Service Provider must issue a Notice under clause 25.13.4 and otherwise comply with its obligations under this clause 25.13.
- 25.13.7. A failure by the Service Provider to comply with its obligations under any part of this clause will be a material breach of the Contract.
- 25.13.8. Nothing in this clause or the Code limits, reduces, or derogates from the Service Provider's other obligations under the Contract. The Department's rights under this clause are in addition to and do not otherwise limit any other rights the Department may have under the Contract. The performance by the Service Provider of its obligations under this clause will be at no additional cost to the Department.
- 25.13.9. The Service Provider agrees that the Department or any other Commonwealth agency may take into account the Service Provider's compliance with the Code in any future approach to market or procurement process.

26. Interpretation and general provisions

26.1. Interpretation

- 26.1.1. In this Contract clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer and, unless the contrary intention appears:
 - a. capitalised terms have the meaning ascribed to them in Schedule 2 (Glossary);
 - b. words importing a gender include any other gender;

- c. words in the singular include the plural and words in the plural include the singular;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars, "\$", "\$A" or "AUD" is a reference to Australian dollars;
- f. a reference to a clause includes a reference to a subclause of that clause;
- g. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- h. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- i. a reference to an Item is a reference to an Item in Schedule 1 [Contract Details];
- j. the Schedules and any other annexes and attachments to this Contract or a Schedule forms part of this Contract, and a reference to a Schedule (or other relevant annex or attachment) includes a reference to the annexes and attachments to that document;
- k. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form;
- l. the word "includes" in any form is not a word of limitation;
- m. a reference to "or" is that of the inclusive, being one, some or all of a number of possibilities;
- n. a reference to a party includes that party's administrators, successors, and permitted assigns, including any person to whom that party novates any part of this Contract; and
- o. a provision stating that a party "may" agree or consent to something, approve or reject something, or take or decline to take an action, means that the party may exercise its discretion in deciding whether or not to do so, and may impose conditions on any such agreement, consent or approval.

26.2. Guidance on construction of contract

- 26.2.1. This Contract records the entire agreement between the parties in relation to its subject matter.
- 26.2.2. As far as possible all provisions of this Contract will be construed so as not to be void or otherwise unenforceable.
- 26.2.3. If anything in this Contract is void or otherwise unenforceable then it will be severed and the rest of this Contract remains in force.
- 26.2.4. A provision of this Contract will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

26.3. Precedence of Documents

- 26.3.1. If there is any inconsistency between parts of this Contract, a descending order of precedence shall be accorded such that the term in the higher ranked document shall prevail to the extent of the inconsistency.
- a. the Operative Provisions of this Contract (clauses 1 to 26, inclusive);
 - b. Schedule 2 (Glossary), as it relates to the Operative Provisions;
 - c. Schedule 1 (Contract Details);
 - d. Schedule 3 (Statement of Work) and any annexes or attachments to it;
 - e. the remainder of the Schedules to this Contract, including any annexes or attachments to those Schedules; and
 - f. any document incorporated by express reference as part of this Contract

26.4. Relationship of parties

- 26.4.1. The Service Provider is engaged as an independent contractor to provide the Services to the Department. The Service Provider is not by virtue of this Contract an officer, employee, partner or agent of the Department, nor does the Service Provider have any power or authority to bind or represent the Department.
- 26.4.2. The Service Provider agrees:
- a. not to misrepresent its relationship with the Department; and
 - b. not to engage in any misleading or deceptive conduct in relation to the Services.
- 26.4.3. Nothing in this Contract shall be interpreted as:
- a. providing that the Service Provider Contractor has the right to be the sole provider of the Services or services that are similar to the Services; or
 - b. preventing the Department from contracting or otherwise engaging other persons to provide the Services or services that are similar to the Services.

Released by Department of Home Affairs
under the Freedom of Information Act 1982

26.5. Waiver

- 26.5.1. A failure or delay by a party to exercise any right or remedy it holds under this Contract or at law does not operate as a waiver of that right.
- 26.5.2. The exercise or partial exercise by a party of any right or remedy it holds under this Contract or at law does not prevent any other exercise or partial exercise of that right or remedy by the party.

26.6. Assignment and novation

- 26.6.1. The Service Provider cannot novate its obligations, and agrees not to assign its rights, under this Contract without the Department's prior written approval.

26.7. Survival

- 26.7.1. Unless the contrary intention appears, the expiry or earlier termination of this Contract will not affect the continued operation of any provision relating to:
- a. Intellectual Property;
 - b. confidentiality, security and privacy;
 - c. dealing with copies and access to documents;
 - d. books and records;
 - e. audit and access;
 - f. warranties and guarantees;
 - g. any indemnity;
 - h. financial and performance securities given under this Contract; or
 - i. transition out and any rights arising on termination or expiration,
- or any other provision which expressly or by implication from its nature is intended to continue.

26.8. Applicable law

- 26.8.1. This Contract is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.
- 26.8.2. The parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and their appellate courts for any matters relating to this Contract.

26.9. Variation

- 26.9.1. A variation of this Contract is binding only if agreed in writing and signed by the parties.
- 26.9.2. Except as expressly permitted in this Contract, this Contract shall be changed only in accordance with this clause 26.9. The parties shall not be liable to each

other for any additional work undertaken or expenditure incurred unless the change has been Approved and taken effect in accordance with clause 26.9.1.

26.10. Counterparts

- 26.10.1. This Contract may be executed in any number of counterparts. All counterparts constitute the same contract.

Released by Department of Home Affairs
under the *Freedom of Information Act 1982*

SCHEDULE 1 – CONTRACT DETAILS

1. Policies, Standards and Guidelines

(see clause 2.1.1.b)

1.1. Australian standards

Refer to the SOW.

1.2. Department or Commonwealth policies, standards or guidelines

Refer to the SOW and Schedule 12 (Legislation and Commonwealth Policies).

2. Commencement and Time-frame

(see clause 1)

2.1. Commencement Date:

16 November 2024

2.2. Transition In Completion Due Date

10 May 2025, or otherwise as notified by the Department

2.3. Initial Term

A period of 5 years, commencing on the Service Commencement Date.

2.4. Extension Options

Refer to clause 1.2.

3. Department Representatives

3.1. Contract Administrator

(see clause 3.2)

The Contract Administrator is the person for the time-being holding, occupying or performing the duties of Assistant Commissioner, Onshore Detention, currently s. 47F(1) [REDACTED].

The Contract Administrator's contact details are:

- telephone number TBA.
- the address and email set out in Item 11 of this Schedule 1.

3.2. Contract Authority

(see clause 3.2)

The Contract Authority is the person for the time-being holding, occupying or performing the duties of Chief Superintendent, currently s. 22(1)(a)(ii) [REDACTED]

The Contract Authority's contact details are:

- telephone number: TBA.
- the address and email set out in Item 11 of this Schedule 1.

3.3. Facility Superintendents
(see clause 3.6)

The Facility Superintendents are:

S. 47F(1)

4. Service Provider Representatives

4.1. Service Administrator
(see clause 3.3)

The Service Administrator is:

S. 47F(1)

Senior Contract Director

The Service Administrator's contact details are:

- telephone number TBA.
- the address and email set out in Item 11 of this Schedule 1.

4.2. Service Authority
(see clause 3.3)

The Service Authority is:

S. 47F(1)

S. 47F(1)

The Service Authority's contact details are:

- telephone number: S. 47F(1) .
- the address and email set out in Item 11 of this Schedule 1.

Released by Department of Home Affairs
under the Freedom of Information Act 1982

s. 45(1), s. 47G(1)(a)

6. **Key Personnel**
(see clause 4.1)

The Service Provider agrees that the following Services described in the table below will be performed by the applicable Key Personnel specified in the table.

Key Personnel	Services to be performed by Key Personnel
s. 47F(1)	

7. **Moral Rights**

(see clause 10.6)

Permitted Acts

The term '**Permitted Acts**' means any of the following classes or types of acts or omissions:

- using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution or authorship;
- supplementing the Contract Material with any other Material;
- using the Contract Material in a different context to that originally envisaged;
- releasing the Contract Material to the public under an Open Access Licence; and
- the acts or omissions notified by the Department in writing,

but does not include false attribution or authorship.

In addition to the above, the following are '**Permitted Acts**' for the purposes of this Contract:

- use of the Contract Material for advertising, merchandising or promotional purposes of any kind;

Released by Department of Home Affairs
under the Freedom of Information Act 1982

- g. incorporating the Contract Material into a website or as part of a multi-media training program; or
- h. synchronising the proposed sound recording as part of the soundtrack of a film.

Department policy on Moral Rights

The Department's policy on Moral Rights is set out in the Department's Intellectual Property Procedural Instruction, a copy of which has been provided to the Service Provider.

8. Security Requirements

Data Security requirements (see clause 11.3)

Any Service Provider system used in performing the Services must meet Information Security Manual (ISM) requirements.

Level of Security Classified Resources (see clause 12.3.1)

The Service Provider acknowledges that it is aware that:

- many of the Service Provider Personnel will have access up to OFFICIAL-level, which may not require the individual Personnel to obtain and maintain an AGSVA security clearance (although other suitability assessments may be required); but
- some Service Provider Personnel will be required to access information up to SECRET, which will require a Negative Vetting Level 1 (NV1) security clearance.

Additional Security Requirements (see clause 12.3.2.g)

The Service Provider must comply with the Protective Security Policy Framework (PSPF) and any relevant Department policies relating to security as notified from time to time.

9. Privacy Codes, Guidelines, Determinations or Recommendations

(see clause 15.1.1.b)

Without limiting the privacy obligations under this Contract, the Service Provider must, and must ensure that its Service Provider Personnel:

- a. comply with the Privacy Principles set out in the Privacy Act which concern the collection, security, storage, access, correction, use and disclosure of Personal Information with respect to any act done or practice engaged in by the Service Provider for the purposes of this Contract, in the same way and to the same extent as if it were a Government Agency;
- b. comply with its obligations arising under or in connection with the Privacy Legislation in respect of any information that comprises Personal Information of the Department or the Service Provider Personnel; and

- c. comply with any policy guidelines laid down by the Department or issued by the Information Commissioner or Privacy Commissioner from time-to-time relating to the handling, collection, storage, access, correction, use or disclosure of Personal Information of the Department.

10. Service Provider's Confidential Information

s. 45(1), s. 47G(1)(a)

s. 45(1), s. 47G(1)(a)

11. Department's Address for Notices

(see clause 24.1.1.a)

11.1. Contract Administrator

Physical address s. 22(1)(a)(ii)

Postal address As above

Email s. 22(1)(a)(ii)

11.2. Contract Authority

Physical address s. 22(1)(a)(ii)

Postal address As above

Email s. 22(1)(a)(ii)

12. Service Provider's Address for Notices

(see clause 24.1.1.b)

12.1. Service Administrator

Physical address s. 47F(1)

Postal address s. 47F(1)

Email s. 47F(1)

12.2. Service Authority

Released by Department of Home Affairs
under the Freedom of Information Act 1982

Physical address

s. 47F(1)

Postal address

s. 47F(1)

Email

s. 47F(1)

13. Insurance
(see clause 17.4)

s. 45(1), s. 47G(1)(a)



Australian Government

Department of Home Affairs

SCHEDULE 2: GLOSSARY

FACILITIES AND DETAINEE SERVICES

Department of Home Affairs

ABN: 33 380 054 835

© Commonwealth of Australia 2023. Except as permitted by the copyright law applicable to you, you may not reproduce or communicate any of the content without the permission of the copyright owner.

Released by Department of Home Affairs
under the *Freedom of Information Act 1982*

1. DEFINITIONS

In this Contract, unless the contrary intention appears, the definitions set out in the table below will apply.

Additional definitions are included within other parts of the Contract (such as its Schedules), and unless the contrary intention appears those definitions apply to the particular part of the Contract where the term is defined as well as other elements of the Contract as applicable.

Term	Definition
Accepted Industry Practice or Accepted Industry Standard	means the protocols and procedures considered best practice in the relevant industry.
Accommodation	means accommodation provided to Detainees by the Department and managed by the Service Provider at the Facilities.
Accountable Item	has the meaning given in clause 12.2 of the Contract.
Active Facility or Operational Facility	means a Facility which contains Detainees.
Active Fee or ASF	has the meaning given in Schedule 4 (Price Schedule), if applicable.
Active Zero Fee or AZF	has the meaning given in Schedule 4 (Price Schedule), if applicable.
Activity	means a business role, task, process, or operation conducted by departmental officers, contracted service providers or other government departments or agencies.
Additional Fees	means amounts payable to the relevant Service Provider for the provision of Additional Services in accordance with clause 8 of the Contract.
Additional Monitoring Services Fee or AMF	has the meaning given in Schedule 4 (Price Schedule), if applicable.
Additional Services	means any additional Services the Contract Administrator has requested the Service Provider to provide by issuing a written notice in accordance with clause 8 of the Contract.
Additional Services Request (ASR)	means an Additional Services Request issued by the Department in accordance with the Contract.
Adjustment	has the meaning given to it in Schedule 7 (Performance Management Framework).
Admiralty Scale	means a method for evaluating collected items of intelligence based on reliability and credibility.
AIP Plan or Australian Industry Participation Plan	has the meaning given in clause 25.1.1 of the Contract.
AIP Plan User Guide for Tenderers	has the meaning given in clause 25.1.1 of the Contract.

Term	Definition
Alternative Place of Detention or APOD	means a place of 'Immigration Detention' (as defined in the Migration Act) approved in writing by the Minister (or his or her delegate) under subparagraph 5(1)(b)(v) of the definition of 'immigration detention' in subsection 5(1) of the Migration Act. APODs are used to meet the specific needs of Detainees that cannot be adequately catered for in an Immigration Detention Centre (IDC). APODs include places in the community, which can be designated as places of Immigration Detention (leased private housing, hotels, motels, and hospitals including mental health facilities and aged care facilities). Places specified in a RD under section 197AB of the Migration Act are not APODs. APODs were previously referred to as 'Immigration Transit Accommodation' or 'ITAs'.
Annual Indexation Adjustment or ANL	has the meaning given in Schedule 4 (Price Schedule), if applicable.
APOD Security Services Fee or APOD-SF	has the meaning given in Schedule 4 (Price Schedule), if applicable.
APS Code of Conduct	means the rules set out in section 13 of the Public Service Act. The APS Code of Conduct is available at: https://www.apsc.gov.au/working-aps/integrity/integrity-resources/code-of-conduct.
Archives Act	means the <i>Archives Act 1983</i> (Cth).
Asset	has the meaning given in clause 12.1 of the Statement of Work.
Asset Management Information	means the information related to the Service Provider's obligations under Part 3 (Facilities Management Services) of Schedule 3 (Statement of Work).
Assistance Program	means the general counselling service organised by the Service Provider, offering confidential and professional short-term counselling to Detainees.
ATO	means Australian Taxation Office.
Auditor-General	has the meaning given in the <i>Auditor-General Act 1997</i> (Cth).
Australian Border Force Act	means the <i>Australian Border Force Act 2015</i> (Cth).
Australian Border Force or ABF	means the Australian Border Force, which is an operationally independent body within the Home Affairs portfolio.
Australian Commission on Safety and Quality in Health Care or ACSQHC	means the corporate Commonwealth entity that works in partnership with patients, health service consumers, clinicians, managers, policy makers and healthcare organisations to achieve a sustainable, safe and high-quality health system. The ACSQHC's role, functions and responsibilities are governed by the <i>National Health Reform Act 2011</i> (Cth).
Australian Government Security Vetting Agency or AGSVA	means the central vetting agency for the Australian Government which is responsible for conducting security clearance assessments for federal, state and territory agencies, or such other agency with security vetting and clearance related functions as relevant.
Australian Health Practitioner Regulation Agency or AHPRA	means the national, statutory Australian authority that operates through intergovernmental collaboration in Australia.
Australian Human Rights Commission or AHRC	means the independent statutory authority which investigates complaints about discrimination and human rights breaches. The

Term	Definition
	AHRC's role, functions and responsibilities are governed by the <i>Australian Human Rights Commission Act 1986</i> (Cth).
Australian Government's Multicultural Access and Equity Policy	means the Australian Government Multicultural Access and Equity Policy, which is managed by Home Affairs. The Policy is available at https://www.homeaffairs.gov.au/about-us/our-portfolios/multicultural-affairs/about-multicultural-affairs/access-and-equity .
Australian Privacy Principles (APPs)	has the meaning given in the Privacy Act.
Australian Prudential Regulation Authority or APRA	means the independent national statutory Australian authority that supervises institutions across banking, insurance and superannuation, and is accountable to the Australian Parliament. APRA's role, functions and responsibilities are governed by the <i>Australian Prudential Regulation Authority Act 1998</i> (Cth).
Australian Red Cross	A humanitarian aid and community services charity in Australia.
Authorisation	includes: a. an authorisation by the Minister under the Migration Act; or b. any approval, authorisation, consent, exemption, filing, licence, notarisation, registration or waiver however described and any renewal of or variation to any of them; as the context permits.
Authorised Officer	has the same meaning as in the Migration Act.
Aviation Transport Security Regulations	means the <i>Aviation Transport Security Regulations 2005</i> , made under the <i>Aviation Transport Security Act 2004</i> (Cth) and the <i>Aviation Transport Security (Consequential Amendments and Transitional Provisions) Act 2004</i> (Cth).
Base Period	has the meaning given in Schedule 7 (Performance Management Framework).
Basic Services	refers to the Services described for each Facility set out in Annexure A: Service Delivery Levels of Schedule 3 (Statement of Work). These Services are those that are provided before the full scope of Services can be established.
Biometrics Collection	as defined in the Migration Act.
Building Code (of Australia) or BCA	refers to the National Construction Code (NCC) produced and maintained by the Australian Building Codes Board (ABCB) on behalf of the Australian Government and State and Territory Governments.
Business Day (in a place)	means any day that is not a Saturday, Sunday or gazetted public holiday in the Australian Capital Territory or, where relevant, the capital city of the State or Territory where a Service or obligation is to be performed.
Business Hours	means hours between 0830 hours to 1700 hours local time where a Service or obligation is to be performed.
Business Services	means the Services set out in Part 8 (Business Services) of Schedule 3 (Statement of Work).
Calendar Day	means any day, including a Saturday, Sunday or a Public Holiday except where the context otherwise indicates 'day' refers to a Calendar Day.
Capital Works	means infrastructure developments, modifications and/or improvements that provide future benefits (i.e. greater than 12 months) to the Department that exceed \$120,000 (GST exclusive) in project value.

Term	Definition
Caretaker Services	means the Services described as Caretaker Services for each Facility set out in Annexure A: Service Delivery Levels of Schedule 3 (Statement of Work).
Case Plan	means a plan developed by the FDSP (in consultation with the Department and DHSP who may be required to have input) for the management of a Detainee within a Detention Facility.
Catering Manager	means a member of the Service Provider Personnel whose duties are set out in Part 2 (Garrison Services) of Schedule 3 (Statement of Work).
Catering Services	means those Services set out in Part 2 (Garrison Services) of Schedule 3 (Statement of Work).
Catering Services Personnel	means those Service Provider Personnel who are responsible for the delivery of Catering Services.
CERT Australia	means Computer Emergency Response Team Australia.
Certificate of Attainment	means a certificate issued by the Department to the Service Provider upon satisfactory completion of a Milestone.
Change of Control	means: a. a body corporate or entity that Controls the Service Provider or a Guarantor ceases to Control the Service Provider or the Guarantor (as applicable); or b. a body corporate or entity that does not Control the Service Provider or a Guarantor comes to Control the Service Provider or the Guarantor (as applicable).
Child	means an individual under the age of 18 years. 'Children' has a corresponding meaning,
Claim	means a claim, demand, suit or proceeding of any kind, including by way of court proceedings, proceedings in the nature of arbitration, mediation or other methods of dispute resolution and administrative claims and proceedings (whether or not before a tribunal).
Cleaning Services	means those Services set out in the Cleaning Services Plan and as otherwise required under clause 16 (Soft Facilities Management Services) of Schedule 3 (Statement of Work).
Code of Conduct	in the context of: a. clause 25.13 of the Contract, means the 'Commonwealth Service Provider Code of Conduct' as published on 1 July 2024 and as updated from time to time; b. the APS Code of Conduct, has the meaning given in the Public Service Act, and in all other contexts means the FDSP Code of Conduct.
Command, Control and Coordination (C3)	refers to the ABF operational management and structural process.
Commencement Date	means the date specified as such in Item 2.1 of Schedule 1 (Contract Details).
Commissioning	in relation to Commissioning infrastructure or works, includes the activities set out at clause 21.1.2 of Schedule 3 (Statement of Work).
Commonwealth	means the Commonwealth of Australia.
Commonwealth Agency or Commonwealth Entity	has the meaning given in the PGPA Act.

Term	Definition
Commonwealth Contract or Commonwealth Document	has the same meaning given in the <i>Freedom of Information Act 1982</i> (Cth).
Commonwealth Child Safe Framework (CCSF)	means the overarching policy framework that provides guidance and assistance to IBP workers, contractors, consultants, service providers and stakeholders to support families and children in the Department programs.
Commonwealth Fraud Control Framework	means the framework outlining the Australian Government's requirements for fraud control. It requires that government entities put in place a comprehensive fraud control program that covers prevention, detection, investigation and reporting strategies. It is accessible at: https://www.counterfraud.gov.au/library/commonwealth-fraud-control-framework .
Commonwealth Policy	has the meaning given by clause 2.1.1.b.iii of the Contract.
Commonwealth Procurement Rules (CPRs)	means the Commonwealth Procurement Rules, being the basic rules set for all Commonwealth procurements and govern the way in which entities undertake their own processes, issued by the Department of Finance, and most recently updated on 01 July 2024, located at https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules .
Commonwealth Records	means records created by either Party or delivered to it by a third party for the purposes of the Contract and will include Records relating to matters between either of the Parties, and Subcontractors to the Service Provider, the agencies of the Department mentioned in the Contract, or any of them, but not including those Records which are specifically created and maintained by the Service Provider or its Subcontractors solely for its own or the Subcontractor's own use.
Commonwealth Resource Management Framework	means the framework detailed on the Department of Finance's website: https://www.finance.gov.au/government/managing-commonwealth-resources .
Commonwealth Security Clearance	means a security clearance determined by the Australian Government Security Vetting Agency (AGSVA) or other relevant exempt vetting agency that will allow the holder access to security classified resources.
Communication Services	means the Services set out in clause 31 of Schedule 3 (Statement of Work).
Complaints Management System	means the Complaints Management System required in accordance with Schedule 3 (Statement of Work).
Conditions of Entry (Visitors)	A form developed and maintained by the Service Provider (and approved by the Department), which sets out the conditions of entry to a Facility for Visitors.
Confidential Information	means, in relation to Confidential Information of the Service Provider: a. any information specified as such in Item 10(a) of Schedule 1; and b. any other information: i. that is commercially sensitive (not generally known or ascertainable); and ii. the disclosure of which would cause unreasonable detriment to the owner of the information or another party; and iii. that was provided with an express or implied understanding that it would remain confidential, but does not include information that:

Term	Definition
	c. is or becomes public knowledge other than by breach of the Contract; d. is in the possession of a party without restriction in relation to disclosure before the date of receipt; or e. has been independently developed or acquired by the receiving party. means, in relation to the Department, Official Information.
Confidentiality Deed Poll	means the Confidentiality Deed Poll at Schedule 8 (Confidentiality Deed Poll for Natural Persons) or the Confidentiality Deed Poll in Schedule 9 (Confidentiality Deed Poll for Corporate and Other Entities) of this Contract as applicable.
Conflict	means any matter, circumstance, interest, or activity affecting the Service Provider, its Personnel or Subcontractors which may or may appear to impair the ability of the Service Provider to provide the Services to the Department diligently or independently.
Consumables	has the meaning given in clause 12.3 of the Statement of Work.
Consumer Price Index	means the index taken to three decimal places entitled 'Consumer Price Index (All Groups) Catalogue 6401.0' as published from time to time by the Australian Bureau of Statistics.
Contingency Facility	means a Facility that has been deactivated and contains no Detainees, but in relation to which the Service Provider is required to provide Care Taker Services and may be required to "ramp-up" in accordance with Schedule 3 (Statement of Work).
Contingency Fee or CF	has the meaning given in Schedule 4 (Price Schedule), if applicable.
Continuous Failure	has the meaning given to it in Schedule 7 (Performance Management Framework) of this Contract.
Contract	means this Contract for the Provision of Facilities and Detainee Services entered into between the Department and the Service Provider. The Contract includes all Schedules (including the Statement of Work), any Additional Services Request issued by the Department in accordance with the Contract, and any attachment, annex or other document expressly incorporated as part of the Contract including a Schedule to it.
Contract Administrator	means the person specified as such in Item 3.1 of Schedule 1 (Contract Details), or any other person nominated by the Contract Administrator (or Contract Authority) from time to time to fulfil the role of Contract Administrator.
Contract Authority	means the person specified as such in Item 3.2 of Schedule 1 (Contract Details), or any other person nominated by the Contract Authority from time to time to fulfil the role of Contract Authority.
Contract Change Proposal	means a written proposal to effect a variation of the Contract in accordance with clause 2.7.2 of the Contract.
Contract Details	means Schedule 1 (Contract Details) to the Contract.
Contract Material	means any Material or information created as a consequence of the Contract, or which is copied or derived from that Material or information.
Contract Term	means the period referred to in the Contract and includes extension of that period under the Contract.
Control	means, in relation to the Service Provider or a Guarantor in the context of a Change of Control, any of the following:

Released by Department of Home Affairs
under the Freedom of Information Act 1982

Term	Definition
	a. the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the voting shares or other form of voting equity in the Service Provider or the Guarantor (as applicable); b. the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in the Service Provider or the Guarantor (as applicable); d. the ability to appoint or remove a majority of the directors of the Service Provider or the Guarantor (as applicable); e. the ability to exercise or control the exercise of the casting of a majority of votes at the meeting of the board of directors of the Service Provider or the Guarantor (as applicable); and f. any other means, direct or indirect, of dominating the decision making and financial and operating policies of the Service Provider or the Guarantor (as applicable).
Control and Restraint	means the use of accoutrements and procedures to control or limit a person's ability to either inflict personal injury to themselves or others, or escape/abscond from the care and control of Service Provider Personnel.
Controlled Items	means the items which may only be brought into a Facility subject to conditions specified by the Department (including mobile phones, tools and equipment and other electronic recording devices).
Core Subcontractor	has the meaning given in clause 5.3.1 of the Contract.
Correctly Rendered Invoice	means, in the context of the PT PCP, an invoice which is: a. rendered in accordance with all of the requirements of the written contract (note that written contracts will often specify that the invoice must be a tax invoice and/or that certain information must be included in the invoice and/or the format of the invoice); and b. for amounts that are correctly calculated and due for payment and payable under the terms of the written contract.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Cost Impact Facility Modification	means a Modification to a one or more of the Facilities which satisfies each of the following: a. it fundamentally changes the nature of the Services or the number of personnel required to perform the Services; or b. the net increased costs to the Service Provider exceeds s. 47G(1)(a) in aggregate over the preceding financial year.
Cost Impact Standards Change	means a change to a Required Standard which satisfies each of the following: a. it fundamentally changes the nature of the Services, or the number of personnel required to perform the Services; b. it was unforeseeable (assessed objectively) at the Commencement Date; and c. the net increased costs to the Service Provider exceeds s. 47G(1)(a) in aggregate over the preceding financial year.
COVID-19	means the severe acute respiratory syndrome coronavirus 2.
Criminal Code	means the Schedule to the <i>Criminal Code Act 1995</i> (Cth), in addition to State and Territory Criminal Codes.
Critical Incident	an Incident of the type more particularly described in the Incident Management Protocols.

Term	Definition
Cyber Attack	any action taken through the use of computer networks or any unauthorised access to or use of a computer system that is intended to have, is likely to have or does have an adverse effect on the security or reliability of data on the system or the accessibility of the system, and includes denial of service attacks.
Data	includes all information stored on magnetic tapes, disks or in written form of any kind.
Day	means 24 hours.
Default	means a failure to deliver the Services in accordance with, or other failure to comply with a requirement of, the Contract.
Default Notice	means a notice issued by the Contract Administrator under clause 18.1 of the Contract.
Default Rectification Period	means the period during which a Default must be rectified, as specified in the Contract or the Default Notice, as the case may be.
Default Rectification Plan	means a plan proposed by the Service Provider to remedy a Default, which: a. is proposed during the Default Rectification Period or in response to a Default Notice; and b. sets out how the Service Provider will cure the Default within the Default Rectification Period, including details: i. if relevant, why an extension of the Default Rectification Period is required; ii. the time required to cure the Default; iii. the temporary measures to be undertaken or already undertaken (if any); iv. a work plan setting out each task to be undertaken and the time for each task to be completed; and v. the mechanics for integrating the cure with the continuing provision of Services.
Delegation	means a delegation pursuant to the Migration Act.
Deliverable/s	means the goods, the Contract Material, the Documentation and any other item to be supplied by the Service Provider to the Department (or Detainees if applicable) under Schedule 3 (Statement of Work).
Delivery of Security	means those Services set out in clause 25 of the part titled Security Services of Schedule 3 (Statement of Work).
Demand Predictor	has the meaning given in Schedule 4 (Price Schedule), if applicable.
Department	means the Commonwealth of Australia as represented by the Department of Home Affairs, which may include the Australian Border Force, or the Commonwealth agency which holds the equivalent functions at the time.
Department Asset Register	means the register of Department Assets provided and agreed at the Commencement Date and maintained by the Service Provider in accordance with Schedule 3 (Statement of Work).
Department Asset/s	includes any item of tangible property utilised in the delivery of Services under this Contract.
Department Case Manager	means a person appointed by the Department with responsibility for the case management of a Detainee in accordance with the National Case Management Framework.
Department Confidential Information	means Official Information.

Released by Department of Home Affairs
under the Freedom of Information Act 1982

Term	Definition
Department Facility Manager	means the Department's representative appointed as the Department Facility Manager from time to time.
Department Material	includes any Material or information provided by the Department to the Service Provider for the purposes of the Contract or which is copied or derived from that Material or information.
Department Medical Asset Register	means the register of Department Medical Assets required to be maintained by the Health Service Provider.
Department Medical Asset(s)	means the Medical Equipment and Instruments with initial purchase price greater than \$5,000 which are included (or required to be included) on the Department Medical Asset Register.
Department Officer	means Commonwealth officers and employees and embedded contractor personnel (other than service providers such as the DHSP and its personnel).
Department Personnel	means the officers, employees, agents, advisers and contractors of the Department (other than the Service Provider and Service Provider Personnel).
Department Policy	means any Department policy listed as a 'Department Policy' or a 'Detention Operational Policy' in Schedule 12 (Legislation and Commonwealth Policies) of the Contract, or which the Service Provider is required to comply with as a result of the processes set out in clauses 2.8 and 2.9 of the Contract.
Department Representative	means any person acting for or on behalf of the Department, and includes Department Personnel.
Department's Nominated IT System	means the centralised information technology system used to record and share certain information in the provision of care and service to Detainees.
Detainee	has the same meaning as in the Migration Act.
Detainee Consultative Forum	means a forum for the Department, Service Provider and Detainees to discuss service delivery issues.
Detainee Information	includes all information held by the Department or the Service Provider pertaining to a Detainee who is or was in Immigration Detention, including but not necessarily limited to Personal Information.
Detainee Operations	means the Services set out in the part titled Detainee Operations of Schedule 3 (Statement of Work).
Detainee Records	means all records relevant to the experience of a Detainee, and includes case files, and Healthcare Records (as the case may be).
Detainee Risk Assessment	means a risk assessment undertaken by the Service Provider for each Detainee and regularly updated throughout their Detention, detailing the individual risks associated with that Detainee against any relevant indicators.
Detainee Information	includes all information held by the Department or the Service Provider pertaining to a Person in Detention who is or was in Immigration Detention, including but not necessarily limited to Personal Information.
Detention	has the same meaning as in the Migration Act.
Detention Health Services Provider (DHSP)	means the service provider (or service providers) the Department has engaged to provide health and wellbeing services.
Detention Services Fee	has the meaning given in Schedule 4 (Price Schedule), if applicable.

Term	Definition
DHSP Manager or DHSP's Facility Manager	means the Personnel appointed by the Detention Health Service Provider to be the Manager of Detention Health Services at any Department Facility.
Dietician	means a registered and practising clinical dietician engaged by the Service Provider, whose duties are set out in Section 2 (Garrison Services) of Schedule 3 (Statement of Work).
Discharge	means the Release of a Detainee from a Detention Facility, Temporary Place of Detention or community detention (Residence Determination) in connection with an immigration outcome, including the grant of a visa, and the Removal or Transfer of that Detainee from Australia.
Discharge Process	means the process of managing the Release of a Detainee, including preparing the Detainee for Release and ensuring that the Department's release documentation is appropriately authorised.
Dispute	means any dispute or difference between the Department and the Service Provider arising out of or in connection with the Contract or the Services, including any dispute arising out of proceedings brought by: a. a third party against the Service Provider or the Department; or b. the Service Provider or the Department against a third party.
Driver	means a member of the Service Provider Personnel who is the designated vehicle driver, who accompanies a Detainee whilst on an Escort Task.
Eligible Data Breach	has the same meaning given in the Privacy Act.
Eligible Personnel	has the meaning given in clause 6.4.3 of the Contract.
Emergency and Breakdown Repairs	includes any repairs required to rectify a defect, fault, damage or breakdown which results in a Facility, Department Asset, System, or other equipment which is material to the delivery of the Services, being unavailable for an unscheduled period.
Emergency and Security Exercise Report	means the report detailing the drills and testing associated with emergency systems and processes (including evacuation procedures) that have occurred over a monthly period.
Emergency Breakdown Table	means a table of assets which have suffered breakdowns requiring immediate reactive maintenance.
Emergency Control Organisation	means the organisation established and managed by the Service Provider with representatives of the Health Service Provider, the Department and any other relevant stakeholder to prepare, manage and coordinate a response to emergency situations.
Emergency Planning Committee	means the committee established as such in accordance with clause 31.6.10 of Schedule 3 (Statement of Work).
Employment Suitability Clearance (ESC)	means the character and integrity suitability screening process undertaken by the Department.
Entry and Exit Control	means the Services set out in clause 26 of Schedule 3 (Statement of Work).
Environmental Management System	means a system developed by the Service Provider for the sustainable, safe and hygienic operation of each Facility as required by Schedule 3 (Statement of Work).
End Date	means the last day of the Term of the Contract, which, unless the Contract is terminated earlier, will be either: (a) the last day of the Initial Term; or

Term	Definition
	(b) if one or more Extension Options have been exercised by the Department, the last day of the last applicable Extension Option period.
Escort	means a member of the Service Provider Personnel who accompanies a Detainee whilst on an Escort Task.
Escort Operational Order	means a document prepared by the Service Provider detailing the way in which Transport, Transfer or Removal Escort Tasks will be undertaken, as required by clause 41.7, as specified in Schedule 3 (Statement of Work).
Escort Security Risk Assessment	means a security risk assessment developed for each Escort Task, capturing all relevant risks associated with that Task including mitigation strategies and controls.
Escort Task(s)	means any operation involving a Detainee being outside a Facility, accompanied by one or more Service Provider Personnel.
Estate, or The Estate, or Detention Estate	has the meaning given at clause 4.1 of Schedule 3 (Statement of Work).
Excluded Items	means those items which may not be brought into a Facility as directed by the Department. These may include weapons, currency, illicit materials and illegal substances.
Executive Direction	means a direction given by the Contract Administrator to the Service Provider in accordance with clause 3.7 of the Contract.
Existing Detainee Record	means any record of a Detainee created and maintained by or on behalf of the Department prior to or independently of this Contract, and includes any Existing Health Care Record.
Existing Health Care Record	means any Healthcare record of a Detainee created and maintained by or on behalf of the Department prior to, or independently of, this Contract.
Expert	means someone that is suitably trained and/or qualified.
Extension Option	has the meaning given in clause 1.2.2 of the Contract.
External Detainees	means a Detainee external to a Facility (such as when a Detainee is out on a Transport and Escort task).
Extraordinary Incident	refers to the circumstances in which control of a Facility, or part thereof, may be assumed by the Department or an external Agency, as detailed in clause 28.8 of Schedule 3 (Statement of Work).
Facility Contingency Plans	means the plan satisfying the requirements of clause 28.11 of Schedule 3 (Statement of Work).
Facilities and Detainee Services	means the Services described as such in Schedule 3 (Statement of Work).
Facilities Management Report	has the meaning defined at clause 3.3 of Annexure A to Schedule 3 (Statement of Work).
Facilities Management Services, or FM	the Services set out in the part titled 'Facilities Management Services' of Schedule 3 (Statement of Work).
Facility Modification Notice	has the meaning given in clause 6.3.3 of the Contract.
Facility Security	means the Services set out in clause 28 of Schedule 3 (Statement of Work).
Facility Security Risk Assessment	means the detailed risk assessment to be conducted by the FDSP on each Facility in accordance with Section 4 (Security Services) of Schedule 3 (Statement of Work).

Term	Definition
Facility Service Fee or FSF	in accordance Schedule 4 (Price Schedule), the Facility Service Fee represents the fees payable by the Department in consideration for the Service Provider providing all required Services at each Facility, other than the Services for which a separate Service Fee is specified in accordance with Schedule 4 (Price Schedule).
Facility Shop	means a shop managed and stocked by the FDSP in each Facility where Detainees can trade IAP points for personal care and other incidental items.
Facility Superintendent	means one or more of the persons specified as such in Item 3.3 of Schedule 1 (Contract Details), or as otherwise appointed as such by the Department from time to time.
FDSP Code of Conduct	means the minimum code of conduct requirements which the Service Provider and all Service Provider Personnel are required to comply with when discharging their responsibilities under the Contract. The FDSP Code of Conduct is included at Annexure D of Schedule 3 (Statement of Work).
FDSP Facility Manager	means the Personnel appointed by the Facilities and Detainee Service Provider to be the Manager of Facilities and Detainee Services at any Department Facility.
FDSP Security Personnel or Security Personnel	means the Service Provider Personnel who are responsible for the delivery of Services relating to the provision of Security Services.
File Transfer Protocol or FTP	is a standard network protocol used to transfer computer files from one host to another host over a network, such as the internet or closed network.
Financial Institution	means a financial institution approved by the Department.
Financial Management	refers to the processes, procedures, governance and resourcing required to manage any expenditure associated with delivery of Services under the Contract.
Financial Undertaking	means the financial undertaking in Schedule 10 of the Contract.
Financial Year	means a period of one year commencing on 1 July and ending on 30 June.
Force Majeure Event	means an event or circumstance which satisfies each of the following: - it delays or prevents the Service Provider in the performance of its obligations under the Contract; - it is beyond the reasonable control of the Service Provider and its Service Provider Personnel including Subcontractors; and - it could not have been reasonably contemplated and allowed for by the Service Provider, or its Service Provider Personnel including Subcontractors, before entering the Contract. A 'Force Majeure Event' may include but is not limited to an event or circumstance arising from: - a pandemic, act of war (whether declared or not), military conflict, invasion, act of terrorism, act of foreign enemies, hostilities (whether or not war has been declared), civil war, civil commotion or riots (except where caused within a Facility), rebellion, revolution, insurrection, military or usurped power or martial law or confiscation by order of any foreign government, accidental fire, disaster, flood, catastrophic weather conditions, earthquake, acts of God, rain in areas with reactive clay soils preventing passage, embargoes, or loss or limitation of essential services such as electricity, water supply; or

Term	Definition
	(ii) strikes or other industrial action not specific to or attributable to any action of the Service Provider.
Full Time Equivalent or FTE	means the total hours worked by employees divided by the average hours worked in full time jobs.
Full Services	refers to those services set out in Annexure A: Service Delivery Levels of Schedule 3 (Statement of Work) for Active Facilities, or following mobilisation from Basic Services for Facilities that have been Activated.
Fraud	means dishonestly obtaining a benefit from the Commonwealth or causing a loss to the Commonwealth by deception or other means.
Garrison Services	those Services set out in Section 2 (Garrison Services) of Schedule 3 (Statement of Work).
General Interest Charge	means the general interest charge rate determined under section 8AAD of the <i>Taxation Administration Act 1953</i> (Cth) on the day that payment is due, expressed as a decimal rate per day.
Global Feedback Unit	means the Department's nominated complaints system.
Good Order	refers to the situation where the behaviour of the Detainees and the security of Immigration Detention Facilities are conducive to the safety and welfare of Detainees, visitors, departmental officers and contracted service providers.
Governance and Business Reporting	as defined at clause 49 of Schedule 3: (Statement of Work).
Government Agency	means a State or Commonwealth government or government department or agency, or a state or federal governmental, semi-governmental person (whether autonomous or not) charged with the administration of any applicable law or governmental executive function.
Grievance Mechanism	in the context of the obligations concerning modern slavery, has the meaning given in clause 25.5.1 of the Contract.
Grounds Maintenance	as defined at clause 18.3 of the part titled Facilities Management Services of Schedule 3 (Statement of Work).
Guarantor	has the meaning given in Item 14 of Schedule 1.
Guiding Principles on Business and Human Rights	in the context of the obligations concerning modern slavery, has the meaning given in clause 25.5.1 of the Contract.
GST	has the meaning given in the GST Act.
GST Act	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Handover or Handover Date	in relation to each Facility, means the date specified in the Transition In Plan in Schedule 5 to the Contract, upon which the FDSP is to commence delivering the full range of Services to that Facility.
Hard Facilities Management (FM) Services	refers to those tasks required to manage the Department's Estate and Assets to maintain fully operational Facilities and a suitable standard and environment for Detainees, Personnel and Visitors, detailed at clause 15 of Schedule 3 (Statement of Work).
Harmful Code	includes any virus, denial of service, disabling or malicious device or code, 'worm', 'trojan', 'time bomb', or other harmful or destructive code, but does not include any 'software lock' or other technical mechanism that is included to manage the proper use of any software.

Term	Definition
Hazard Analysis Critical Control Point or HACCP	means an internationally recognised system used to identify and manage risk. HACCP stands for hazard analysis and critical control points. These principles are used in food safety programs.
Health and Wellbeing Services	means the services the Detention Health Services Provider (DHSP) has been (or is expected to be) contracted to provide to the Department.
Help Desk	has the meaning as it pertains to clause 15 of Part 3: Facilities Management in Schedule 3 (Statement of Work).
High Needs Detainee	as defined at clause 40.16.6 of Schedule 3 (Statement of Work).
Hot Contingency Facility	means a Facility that contains no Detainees, but in relation to which the Service Provider is required to provide Care Taker Services and may be required to "ramp-up" in accordance with clause 4.6.2 of Schedule 3 (Statement of Work).
Hot Contingency Fee or HCF	has the meaning given in Schedule 4 (Price Schedule), if applicable.
Hour	means 60 minutes.
Household Allowance Scheme (HAS)	means the Department-approved scheme managed by the Service Provider at certain Facilities, under which Detainees are allocated points to purchase household items for self-catering and personal hygiene.
Human Resource Management Services	those Services set out in Part 8 (Business Services) of Schedule 3 (Statement of Work).
Identified Personnel	has the meaning given in clause 4.2.6 of the Contract.
Illegal Item	refers to any item that it is illegal for a person to hold under Australian Law.
Illegal Worker	means a person who: a. has unlawfully entered and remains in Australia; b. has lawfully entered Australia but remains in Australia after his or her visa has expired; or c. is working in breach of his or her visa conditions.
Immigration and Border Protection worker or IBP Worker	means an Immigration and Border Protection worker as defined in the <i>Australian Border Force Act 2015</i> (Cth).
Immigration Detention	has the same meaning as in the Migration Act.
Immigration Detention Centre or IDC	means a 'detention centre' as defined in section 273 of the Migration Act, which is a centre for the detention of persons whose detention is authorised under the Migration Act.
Immigration Detention Facility (or IDF, or Facility)	refers to both IDC and facility based APOD Detention Facilities, as described at clauses 4 (Estate Overview) and 4.2 (Types of Immigration Detention Facilities) of Schedule 3 (Statement of Work).
Immigration Detention Facility Report	means a report in relation to each Facility prepared and provided by the FDSP to the Department on a monthly basis, as described in Part 8 (Business Services) of Schedule 3 (Statement of Work).
Immigration Detention Network or IDN or Network	comprises all facility-based Immigration Detention Facilities (IDFs).
Immigration Detention Services Programme	means the Australian Government's policy for the provision of immigration detention.

Term	Definition
Immigration Transit Accommodation (ITA) facility	has a corresponding meaning with APOD.
Immigration Ombudsman	means the Commonwealth Ombudsman established under the <i>Ombudsman Act 1976</i> , in performing functions in relation to immigration (including immigration detention).
Implementation Report	in relation to the Australian Industry Participation requirements, has the meaning given in clause 25.1.1 of the Contract.
Implementation Report Requirements	in relation to the Australian Industry Participation requirements, has the meaning given in clause 25.1.1 of the Contract.
Incident	means an event, accidentally or deliberately caused, which requires a response beyond normal IDF business operations. This includes emergency, planned and unplanned operations and other events.
Incident Command Suite	means the Incident Command Suite established or to be established in Canberra in the event of a Critical Incident occurring which requires additional management to the Emergency Control Organisation at a Facility.
Incident Management	means the requirements set out in clause 15.3 of the Contract.
Incident Management Log	means the log held at each Facility in which the FDSP records accurately and comprehensively the date, time and location for all Incidents, the name(s) of people involved and any witnesses, the actions taken and instructions given in respect of each Incident.
Incident Report	means a report submitted by the Service Provider to the Department documenting the details of an Incident.
Incumbent Service Provider	as the context requires, means either or both of: • Serco Australia Pty Ltd, which is the incumbent contractor providing immigration and detention facilities and detainee services to the Department at around the time of the Commencement Date; and • IHMS Pty Ltd, which is the incumbent contractor providing immigration detention health services to the Department at around the time of the Commencement Date. The term Incumbent Service Provider may also refer to Incumbent Service Provider Personnel, as the context requires.
Indigenous Enterprise	has the meaning given in clause 25.6.1 of the Contract.
Indigenous Procurement Policy	has the meaning given in clause 25.6.1 of the Contract.
Indigenous Procurement Website	means the website at https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp .
Individual Allowance Program Points or IAP points	means points which Detainees may earn or otherwise acquire (in line with Departmental policy) in order to trade for personal care and other incidental items from a Facility Shop.
Individual Management	means those Services set out in Part 6 (Welfare and Engagement) of Schedule 3 (Statement of Work).
Induction	as defined at clause 31.9 (Induction) of Schedule 3 (Statement of Work).
Induction Document	means a document prepared and maintained by the FDSP and provided to each Detainee during the Induction Process, which sets out information regarding how a Facility operates (including the

Term	Definition
	Services provided) and explaining relevant policies, procedures and roles within the Facility.
Induction Process	means the process of providing information to Detainees regarding how a Facility operates (including the Services provided) and explaining relevant policies, procedures and roles within the Facility.
Industry Development Report	As defined at clause 1.2 of Annexure C (Service Provider Reporting and Information Requirements) of Schedule 3 (Statement of Work).
Industrial Cleaning Services	refers to those deep cleaning services specified at clause 16.10 of Schedule 3 (Statement of Work).
Information and Communication Technologies or ICT	means a set of technological tools and resources used to transmit, store, create, share or exchange information, with a sufficient diversity of modalities to prevent and mitigate foreseeable threats to security, including but not limited to health-related and/or Healthcare-specific security.
Information Commissioner	has the meaning given in the <i>Australian Information Commissioner Act 2010</i> (Cth).
Information Officer	means any of the information officers appointed under the <i>Australian Information Commissioner Act 2010</i> (Cth) when performing privacy functions as defined in that Act.
Information Security Manual or ISM	means the Australian Signals Directorate's Australian Government Information Security Manual.
Information Technology Management	refers to the processes, procedures, governance and resourcing required to manage any Information and Communication Technology requirements associated with delivery of Services.
Infrastructure Deficiency	has the meaning as per clause 25.11.9 of Schedule 3 (Statement of Work).
Infringement	includes authorised acts which would, but for the operation of section 163 or 163A of the <i>Patents Act 1990</i> (Cth), section 96 or 96A of the <i>Designs Act 2003</i> (Cth), section 183 of the <i>Copyright Act 1968</i> (Cth), or section 25 of the <i>Circuits Layout Act 1989</i> (Cth), constitute an infringement.
Initial Term	means the term referred to in clause 1.2.1 of the Contract and Item 2.3 of Schedule 1 (Contract Details).
Input Tax Credit	as defined in the <i>A New Tax System (Goods and Services) Act 1999</i> (Cth).
Insolvency Event	means, in respect to a person: a. the person: i. becoming insolvent; ii. ceasing to carry on all or a material part of its business; or iii. taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; b. the appointment of a Controller (as defined in the Corporations Act), a liquidator or provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property; c. the person becoming subject to external administration provided for in Chapter 5 of the Corporations Act; d. the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;

Term	Definition
	e. an order or resolution for the winding up or deregistration of the person; or f. any analogous event under the law of any applicable jurisdiction, except to the extent occurring in connection with a corporate restructure or reorganisation of the Core Subcontractor that does not result in the Core Subcontractor being unable to pay their debts as and when they fall due.
Instalment	means a payment instalment paid by the Department.
Intellectual Property	includes all present and future rights which may subsist in Australia or elsewhere conferred by law in or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable. These rights include: a. all rights in all applications to register these rights; b. all renewals and extensions of these rights; and c. all rights in the nature of these rights. Intellectual Property does not include: d. Moral Rights; or e. rights in relation to confidential information (including confidentiality of Official Information).
IP Register	refers to the register developed by the Service Provider of all Material it creates or uses, or provides to or receives from the Department, in the course of performing the Contract.
International Removal Escort Services	as defined at clause 39.1.2 d of Section 7 (Transport and Escort Services) of Schedule 3 (Statement of Work).
IT Disaster Recovery Plan	means the set of policies and procedures enabling the recovery and/or continuity of vital IT infrastructure and systems following a major incident or disaster.
Key Personnel	mean the Service Provider Personnel listed in Item 6 of Schedule 1 (Contract Details). The term 'Key Person' has a corresponding meaning.
Key Positions	means a position specified as such in the Service Provider's Human Resource Management Plan.
Law	means: a. the requirements of all applicable Legislation and all regulations and requirements made under such Legislation; b. the legal requirements of any Commonwealth, State, Territory or Local government department, agency, body, authority or instrumentality, including statutory tribunals or commissions and similar governmental bodies; c. treaties, conventions, agreements, compacts and similar instruments that have been ratified or adopted by the Australian Government or by a relevant foreign government; and d. court decisions, common law and equity.
Legislation	includes all Commonwealth, State and Territory or local authority legislation, including regulations, legislative instruments, by-laws and other subordinate legislation.

Term	Definition
Local Escort Task	means an Escort Task undertaken within a 100km radius of a Transport Hub.
Location Summary	means a report listing Detainees by Facility, location, nationality and gender and whether adult or minor, at a specified date and time.
Loose Assets Register	means the register of Loose Assets maintained by the FDSP as set out in the Facilities Management Plan.
Loss	refers to liability, loss, damage, compensation and costs and expenses (including the costs of the investigation, defence and settlement of any relevant claim or demand) and any legal costs and expenses in relation thereto on a solicitor and own client basis.
LPG	means liquefied petroleum gas.
Maintenance Management System	refers to the computerised system implemented by the FDSP to manage all assets at all Facility
Maintenance Schedule	refers to the schedule set out in the National Asset Management and Maintenance Plan.
Major Incident	refers to an Incident of the type more particularly described in the Incident Management Protocols.
Major Repair	means the restoration of a facility to such a condition that it may be effectively utilised for its designated purpose.
Management of Stores	includes procurement, management and supply of all stores required for the delivery of services at each Facility, as described at clause 8 (Management of Stores) of Part 2 (Garrison Services) of Schedule 3 (Statement of Work).
Maritime Security Identification Card	refers to the identification card used to identify a person who has been the subject of a background check undertaken by AusCheck, a unit of the Attorney General's Department.
Material	means any material including documents, equipment, software, reports, goods, information, plans, charts, drawings, calculations, tables, and data stored by any means including all copies and extracts.
Medical Equipment and Instruments	means: a. any instrument, apparatus, appliance, material or other article (whether used alone or in combination, and including the software necessary for its proper application) to be used for the purpose of one or more of the following: i. diagnosis, prevention, monitoring, treatment or alleviation of disease; ii. diagnosis, monitoring, treatment, alleviation of or compensation for an injury or handicap; iii. investigation, replacement or modification of the anatomy or of a physiological process; iv. control of conception; v. provision of dental services; and that does not achieve its principal intended action in or on the human body by pharmacological, immunological or metabolic means, but that may be assisted in its function by such means; or b. an accessory to such an instrument, apparatus, appliance, material or other article; and c. which is not a Medical Single Use or Disposable Item.
Memoranda of Understanding (MoU)	agreements in place between the Department and state and territory governments in relation to the provision of services to Detainees.

Term	Definition
Metropolitan Facility	means any detention Facility located within the major cities in the (RA1) and Inner Regional (RA2) classifications of the <i>Australian Standard of Geographical classification Remoteness Area</i> (ASGC-RA).
Migration Act	means the <i>Migration Act 1958</i> (Cth).
Milestone	means one or more requirements specified as a Milestone in clause 16 of Schedule 4 (Price Schedule) which the Service Provider must achieve.
Minister	means the Minister responsible for Immigration Detention.
Minor Works	means any Ad hoc Requests, Reactive Maintenance or other infrastructure related work requested by the Department valued up to \$75,000 (GST exclusive).
Minor	means a person who is under 18 years of age.
Modern Slavery	has the meaning given in clause 25.5.1 of the Contract.
Modification	in the context of clause 6.3 (Modification of the Facilities and Assets) of the Contract, has the meaning given in clause 6.3.12.
More Restrictive Conditions of Accommodation	means the management of Detainees in a closer supervision and engagement arrangement, which may include regulating their movement within the Facility and their access to activities or services.
Movement	refers to the transport of Detainees from one place to another, including Transfer, Release, Relocation and Removal.
Multilateral FDSP Forum	as defined at clause 47.3.1 of Part 8 (Business Services) of Schedule 3 (Statement of Work).
National Accreditation Authority for Translators and Interpreters or NAATI	means the National Accreditation Authority for Translators and Interpreters.
National Anti-Corruption Commission or NACC	means the independent Australian Government agency that detects, investigates and reports on serious or systemic corrupt conduct in the Australian Government public sector, established under the <i>National Anti-Corruption Commission Act 2022</i> (Cth).
National Principles for Child Safe Organisations	means the National Principles for Child Safe Organisations, which were endorsed by the Council of Australian Governments in February 2019 (available at: https://childsafe.humanrights.gov.au/national-principles).
Natural Person	means a living human individual. The term 'natural person' does not include a body politic or corporate entity (including a company).
Negative Vetting 1 or NV1	is a security clearance level granted by the Australian Government Security Vetting Agency.
Net Facility Cost Increase	means the net increased costs to the Service Provider in complying with the relevant Cost Impact Facility Modification after applying all reasonable mitigations.
Net Standards Cost Increase	means the net increased costs to the Service Provider in complying with the relevant Cost Impact Standards Change after applying all reasonable mitigations.
NHMRC	means the National Health and Medical Research Council of Australia.
Non-Citizen	means a person who is not an Australian citizen.
Non-routine Cleaning	means cleaning which is not detailed as routine within the FDSP Cleaning Services Plan or detailed as routine in Section 2 (Garrison Services) of Schedule 3 (Statement of Work).

Term	Definition
Office of the Australian Information Commissioner	means the National regulator for privacy and freedom of information.
Officer	has the same meaning as in the Migration Act.
Official Information	means all information or Material (including all Department Material and all Contract Material): (i) that is designated by the Department to be official or confidential information; (ii) that is security classified, including information classified as "OFFICIAL"; (iii) the disclosure of which might reasonably be expected to cause unreasonable detriment to the Department; (iv) that is confidential by nature; or (v) that a party knows or ought to know is confidential, but does not include any information that is public knowledge other than by breach of a confidentiality obligation. Without limiting the foregoing, Official Information includes: (a) any information or Material developed, received or collected by or on behalf of the Department to which the Service Provider gains access under or in connection with this Contract, including the Department Material, Contract Material and the terms and conditions of this Contract; and (b) and any other information or Material about the operation of the Department's immigration detention facilities, including provision of the Services by the Contractor including its Personnel or in relation to persons detained in the Facilities.
Official Resources	means Official Information, people who work for or with the Department, and assets belonging to (even if in the possession of contracted providers) or in the possession of the Department.
Ombudsman	means in accordance with the requirements contained in the <i>Ombudsman Act 1976</i> (Cth), including a right of access to places occupied by Commonwealth contractors to conduct investigations at those places.
Open Access Licence	means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the material subject to certain restrictions. An Open Access Licence includes any Department or Australian Government open access licence and any Creative Commons Attribution licence (see http://creativecommons.org.au/learn-more/licences).
Operations Logs	means the official record of activities and events within a Facility, as described in clause 27.3 of Schedule 3 (Statement of Work).
Parent	means a person who is the parent of another person, if the other person is a child of the person within the meaning of the <i>Family Law Act 1975</i> (Cth).
Party	means a party to the Contract, including any administrators, successors, transferees or permitted assignees of that party, and including any person to whom that party novates any part of this Contract.
Pass Through Costs or Pass Through or PTC	means expenses for goods and services that the Department will pay for by way of reimbursement to the Service Provider, plus a margin (if applicable) in accordance with Schedule 4 (Price Schedule) of this Contract.

Term	Definition
Performance Framework Adjustment (PFA)	has the meaning given in Schedule 4 (Price Schedule) and Schedule 7 (Performance Management Framework).
Performance Guarantee	means the performance guarantee required to be properly completed, executed and provided to the Department under the Contract, in the form of Schedule 11 (Performance Guarantee) to the Contract.
Performance Management Framework	means the framework described in Schedule 7 (Performance Management Framework).
Performance Measure	has the meaning given in Schedule 7 (Performance Management Framework).
Performance Reporting and Management	includes all processes and procedures relating to any reporting requirements as required by the Services, including as set out in Schedule 7 (Performance Management Framework).
Permitted Acts	has the meaning given at Item 7 of Schedule 1 (Contract Details).
Personal Information	has the meaning given in the Privacy Act.
Personal Officer	means a member of the Service Provider Personnel allocated by the Service Provider to each Detainee who will act as a personal officer for that Detainee and (amongst other things) will meet with the Detainee in order to review, discuss and update the Detainee's Individual Management Plan.
Personnel	means, in respect of a person, the officers, employees, contractors (including subcontractors), agents, and consultants of the person.
PGPA Act	means the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth).
Placement Review	a review of Accommodation assigned to a Detainee, to be conducted by the Individual Management and Placement Review Committee.
Placement Review Committee	means a committee that identifies inappropriate placement of Detainees.
Plan	means any one or more of the plans to be prepared by the Service Provider under the Contract.
Planned Maintenance	means maintenance that is completed in accordance with the maintenance schedule specified in the national asset management and maintenance plan.
Policy and Procedures Manual or PPM	means the manual of standard operating policies, procedures and processes developed and periodically updated by the Service Provider in accordance with Schedule 3 (Statement of Work), as accepted by the Department.
Policy Change Notice	has the meaning given in clause 2.8.1 of the Contract.
Portfolio	means the Portfolio, established through the current Administrative Arrangements Order (AAO), within which the Department is located.
Pre-existing Material	has the meaning given in clause 10.2.2 of the Contract.
Price Schedule	means Schedule 4 (Price Schedule) to the Contract.
Privacy Act	means the <i>Privacy Act 1988</i> (Cth).
Privacy Commissioner	has the meaning given in the <i>Australian Information Commissioner Act 2010</i> (Cth).
Privacy Legislation	means the Privacy Act and any other privacy-related legislation applicable to the performance of this Contract by the Service Provider.
Programs and Activities Operating Model	the operating model is jointly developed and updated by the Department and the Service Provider to provide guidance on the requirements for the development, delivery and management of

Term	Definition
	Programs and Activities to Detainees for the purpose of supporting their health and well-being.
Programs and Activities Schedule	a schedule developed by the Programs and Activities Coordinator, of Programs and Activities to be made available for Detainees.
Programs, Services and Activities	means the English language, life skills, sporting, vocational and other programs, services and activities conducted by the Service Provider for Detainees in accordance with Section 6 (Welfare and Engagement Services) of Schedule 3 (Statement of Work).
Project Services	means the project management of works at any Facility, as specified at clause 20.1 of Schedule 3 (Statement of Work).
Property List	means a register of all property being held in trust by the Service Provider.
Property Management	means the Service Provider's obligations under clause 32 of Part 5 (Detainee Operations) of Schedule 3 (Statement of Work).
Property of Detainees (or Detainees Property)	refers to all property in the possession of a Detainee at the time of his or her arrival at a Facility and any property received by the person during his or her stay in Immigration Detention.
Protective Security Policy Framework or PSPF	means the policy that assists Australian Government entities to protect their people, information and assets, both at home and overseas, and is located at https://www.protectivesecurity.gov.au/ .
Psychological Support Programme (PSP)	the Department's Detention Health Psychological Support Program (PSP) that sets out the policy on the PSP for the prevention of self-harm of Detainees in Immigration Detention.
PT PCP	means the Payment Times Procurement Connected Policy.
PT PCP Evaluation Questionnaire	means the questionnaire substantially in the form of Appendix C of the PT PCP.
PT PCP Remediation Plan	means a written remediation plan substantially in the form of Appendix D of the PT PCP.
PT PCP Policy Team	means the relevant Minister, department or authority that administers or otherwise deals with the PT PCP on the relevant day.
PT PCP Subcontract	means a subcontract between a Reporting Entity and another party (Other Party) where: - the subcontract is (wholly or in part) for the provision of goods or services for the purposes of the Contract; - both parties are carrying on business in Australia; and - the component of the subcontract for the provision of goods or services for the purposes of the Contract has a total value of less than (or is reasonably estimated will not exceed) \$1,000,000 (GST inclusive) during the period of the subcontract, not including any options, extensions, renewals or other mechanisms that may be executed over the life of the subcontract (but including work/official orders entered into that are valued up to \$1 million (GST inclusive) understanding offer (panel) arrangements); but does not include the following subcontracts: - subcontracts entered into prior to the Reporting Entities' tender response for the Contract; - subcontracts which contain standard terms and conditions put forward by the Other Party and which cannot reasonably be negotiated by the Reporting Entity; or

Term	Definition
	f. subcontracts for the purposes of: (i) procuring and consuming goods or services overseas; or (ii) procuring real property, including leases and licences.
PT PCP Subcontractor	means the party that is entitled to receive payment for the provision of goods or services under a PT PCP Subcontract.
PTR Act	means the <i>Payment Times Reporting Act 2020</i> (Cth).
Public Service Act	means the <i>Public Service Act 1999</i> (Cth).
Public Statement	has the meaning given in clause 3.8 of the Contract.
Quarter or quarterly	means each successive period of three months, the first of which commences on the Commencement Date if the Commencement Date is the first day of a month, and otherwise on the first day of the month following the Commencement Date.
Reactive Maintenance	includes non-routine corrective works, required to restore an asset to full operational and serviceability following a service failure, breakdown or accidental damage, as described in clause 15.4 of Schedule 3 (Statement of Work).
Reception Process	means the process of receiving and introducing a new Detainee at a Facility.
Reception, Induction, Transfer, Discharge and Accommodation Services	The Services set out in clause 31 of Part 5 (Detainee Operations) of Schedule 3 (Statement of Work),
Recipe Cards	means cards developed by the Service Provider detailing ingredients and the method of cooking each lunch and dinner to be provided to Detainees, as described in clause 7.2.2 of Schedule 3 (Statement of Work).
Record Management Guide	means the Departmental guidelines to appropriately record information.
Records	refers to any documents, writing or material (including tapes or other electronic matter) including Detainees Records, business records and any other records created, developed or designed for the purpose of providing the Services and may include biometric data and/or personal identifiers.
Records Management	refers to the obligations with respect to records management, set out in clause 44 of Schedule 3 (Statement of Work).
Recycled Content	means the proportion, by mass, of recycled material in a product or packaging. Only pre-consumer and post-consumer materials shall be considered as recycled content.
Regional Escort Task	means an Escort Task which occurs more than 100km from a Transport Hub (excluding tasks involving air travel), as defined at clause 39.1.2(b) of Schedule 3 (Statement of Work).
Regional Facility	means any Detention Facility located within the Outer Regional (RA3) classification of the Australian Standard Geographical Classification Remoteness Areas (RSGS-RA) (2006).
Regional Processing Country	means a country designated by the Minister, acting under subsection 198AB(1) of the Migration Act, as a regional processing country.
Registered Training Organisation	refers to a training provider registered by the Australian Skills Quality Authority.
Related Body Corporate	has the meaning given by section 9 of the Corporations Act.

Term	Definition
Relevant Employer	means, for the purposes of the WGE Act, as being a non-public sector employer (including higher education institutions, trade unions and not-for-profit organisations) of 100 or more employees in Australia.
Relevant Legislation	means Legislation in force in any jurisdiction where any part of the Requirements may be carried out.
Religion Liaison Officer (RLO)	means the person appointed at each Facility by the Service Provider to coordinate religious activities within a Facility.
Relocation	refers to the Movement of Detainees from one Detention Facility to another within Australia.
Remote Area	in the context of the Indigenous Procurement Policy, has the meaning given in clause 25.6.1 of the Contract.
Remote Facility	includes any Facility located within the Remote (RA4) and Very Remote (RA5) classifications of the <i>Australian Standard Geographical Classification Remoteness Areas</i> (RSGS-RA).
Removal	means an action taken by the Department in accordance with section 198 of the Migration Act to ensure that Unlawful Non-Citizens leave Australia, any removal under section 199 of the Migration Act and any deportation pursuant to section 200 of the Migration Act.
Removal Task	means an Escort Task related to a Removal related activity.
Reporting Entity	has the same meaning as per section 5 of the <i>Modern Slavery Act 2018</i> (Cth), or section 7 of the <i>Payment Times Reporting Act 2020</i> (Cth), as applicable.
Reporting Entity Subcontract	has the same meaning as Reporting Entity Subcontractor.
Reporting Entity Subcontractor	means any person that is a Reporting Entity, and provides goods or services directly or indirectly to the Service Provider for the purposes of the contract where the value of such goods or services are estimated to exceed \$4 million (GST inclusive).
Reports	means the reports specified in Schedule 3 (Statement of Works).
Required Standard	has the meaning given in clause 2.1.1.b of the Contract.
Requirement	means the goods and/or services required by the Department, as listed or described in Schedule 3 (Statement of Work).
Residence Determination (RD)	means a community placement as defined by s197AB of the Migration Act, which enables Detainees to be detained in the community and can only be authorised by the Minister. RD may also be referred to as 'community detention'.
Response Times	means the response times maintenance set out in the emergency breakdown table.
Risk Assessment	means each of the risk assessments required to be provided under the Statement of Work, including aviation travel risk assessment, child-related risk assessment, Detainee Risk Assessment, Escort Security Risk Assessment, Facility Security Risk Assessment, and Security Risk Assessment (as applicable).
Risk Management	is the process of identifying, assessing and prioritising risks.
Routine Cleaning	means any routine cleaning Services as stated in the Cleaning Services Plan, or as detailed in Schedule 3 (Statement of Work).
S501 Visa Cancellation	means visa cancellations based on character or related grounds in accordance with section 501 of the Migration Act.
Satisfactory	in the context of a Statement of Tax Record, has the meaning given in clause 25.2.1 of the Contract.

Term	Definition
Secretary	means the Secretary of the Department.
Security and Escort Services	means the overall services relating to security and escorts for immigration detention.
Security Classified Information	means any information, Data or Material which has been classified for security purposes in accordance with the Protective Security Performance Framework.
Security Classified Resources	means any information which has been classified for security purposes in accordance with the Protective Security Policy Framework. Without limitation, Security Classified Resources includes all Official Resources that, if compromised, could have adverse consequences for the Department or Commonwealth more generally.
Security Control Room	means an onsite location to manage all security requirements for a Facility.
Security Incident	means any actual or suspected security breach, violation, contact or approach from those seeking unauthorised access to Security Classified Information or Official Resources.
Security Intelligence	means the practice of collecting, standardising and allaying information and data.
Security Interest	means: a. any bill of sale, mortgage, charge, pledge, hypothecation, title retention arrangement, trust or power as or in effect as security for the payment of a monetary obligation or the observance of any other obligations; b. any lien, profit a prendre, easement, restrictive covenant, any equity or interest in the nature of an encumbrance, garnishee order, writ of execution, right of set-off, lease, licence to use or occupy, assignment of income or monetary claim; or c. an agreement to create or give any arrangement referred to in paragraphs (a) or (b) of this definition.
Security Review Committee	refers to the security-related meeting specified at clause 47.4.9 of Schedule 3 (Statement of Work).
Service Administrator	means the person specified as such in Item 4.1 of Schedule 1 (Contract Details), or any other person nominated by the Service Administrator (or Service Authority) from time to time to fulfil the role of Contract Administrator.
Service Authority	means the person specified as such in Item 4.2 of Schedule 1 (Contract Details), or any other person nominated by the Service Authority from time to time to fulfil the role of Service Authority.
Service Commencement Date	means the date that all Services are provided in accordance with the Statement of Work, that is, after the completion of transition activities at all IDCs.
Service Fee	means the fees payable to the Service Provider as calculated in accordance Schedule 4 (Price Schedule).
Service Provider	means the entity identified as the Service Provider in the Parties section of the Contract, that enters into the Contract with the Department. A reference to 'Facilities Detention Services Provider' or 'FDSP' is a reference to the Service Provider. A reference to 'Health Services Provider' or 'DHSP' is a reference to another contracted service provider engaged (or expected to be engaged) by the Department to provide health services to Detainees.

Term	Definition
Service Provider Asset	means any assets utilised by the Service Provider in order to provide Services, but excludes Department Assets and Loose Assets.
Service Provider Personnel	means the officers, employees, agents, advisers and any Subcontractor and their officers, employees and agents of the Service Provider, who are engaged in performing the Services or activities associated with the provision of the Services. The term 'FDSP Personnel' has the same meaning.
Service Provider Representative	means any person acting for or on behalf of the Service Provider, and includes Service Provider Personnel.
Service Provider's Confidential Information	see definition of "Confidential Information".
Service Tasks	refers to the tasks and requirements contained in each Service Line.
Services	includes all services to be performed under the Contract and includes the provision of any associated goods or other supplies, as described in the Schedule 3 (Statement of Work).
Shadow Economy Procurement Connected Policy	has the meaning given in clause 25.2.1 of the Contract.
Significant Event	means: a. any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Service Provider or Service Provider Personnel that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or b. any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Service Provider or Service Provider Personnel, that may adversely impact on compliance with Commonwealth policy and legislation or the Department's reputation (or the Commonwealth government's reputation more generally).
Small to Medium Enterprises (SMEs)	means an Australian or New Zealand firm with fewer than 200 full-time equivalent employees. When assessing the number of employees a firm has, employees of any associated entities (as defined in s 50AAA of the Corporations Act) to the firm are included. Associated entities to a firm include a firm's parent company, a firm's subsidiaries, and any related bodies corporate to the firm.
Soft Facilities Management (FM) Services	refers to those tasks required to maintain the Estate in a compliant, safe and proactive manner, as described at clause 16 of Schedule 3 (Statement of Work).
Specialised Detention Placement	refers to the Placement that is provided for a small number of Detainees who, due to the extreme risk to themselves or others they pose, or due to their physical and/or mental health needs, are unable to be managed in the Immigration Detention Network.
Stakeholder	means a person or organisation, including a government department or agency, that has an interest in, or may be affected by, the provision of Services.
Standard or AS or AS/NZS or ISO	means a document that sets out specifications, procedures and guidelines that aim to ensure products, service and systems are safe, consistent and reliable. They may be referred to as Australian Standards (AS), Australian and New Zealand Standards (AS/NZ) or International Standards (ISO).

Term	Definition
Standards for Statistics on Cultural and Language Diversity	means the standards developed in response to a widely recognised need for a nationally consistent framework for the collection and dissemination of data on cultural and language diversity, and located at: https://www.abs.gov.au/ausstats/abs@.nsf/mf/1289.0 .
Staff Accommodation	means the staff accommodation the Service Provider is required under the Contract (including as detailed in the Statement of Work) to the Eligible Personnel.
Statement of Rights, Responsibilities and Expected Conduct	means the document of that name which the Service Provider is required to develop in accordance with the Statement of Work, including clause 36.13.
Statement of Tax Record (STR)	has the meaning given in clause 25.2.1 of the Contract.
Statement of Work (SOW)	means Schedule 3 (Statement of Work) to the Contract.
Static IP Address	means a static internet protocol address from which a Service Provider will connect to Department's systems.
Status Resolution Continuum (Status Resolution System)	means the continuum which commences from considering a visa cancellation or refusal to when an individual's status is resolved through departure/Removal, Returns or obtaining a substantive visa.
Status Resolution (SR)	means: i. Proactively managing the cases of lawful non-citizens and Unlawful Non-Citizens (or UNC's) whose immigration status is still being determined, while mitigating risks to the community; and ii. Facilitating Returns and Removal activities where appropriate.
Statutory Maintenance	means the maintenance required due to a statutory obligation and is either covered in relevant regulator/statutory legislation, Australian Standards, including in accordance with the National Construction Code (NCC) and any relevant Code of Good Practice that may be in addition to the Service Provider's maintenance plan.
Step-in Right	refers to the right exercisable by the Department under clause 18.3 of the Contract.
Subcontractor	means a person (not the Department) that, for the purposes of this Contract, provides services or items directly or indirectly to the Service Provider.
Subcontractor Personnel	means the officers, employees, agents, advisers of a Subcontractor, who are engaged in performing the Services or activities associated with the provision of the Services.
Successor	means the person nominated by the Department, who will or has assumed responsibility for the provision of the services similar to any or all Services from the Service Provider.
Supportive Monitoring and Engagement or SM&E	means the monitoring, support and engagement of a Detainee using a risk-based approach and relying on pre-determined Department-approved risk levels according to the Hierarchy of Conformity. SM&E applies only to Detainees who are at risk of self-harm (including at risk of suicide) as determined by a health professional who holds a current registration with AHPRA and is also a current member of the DHSP's MHT.
Tax	means any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding (together with any related interest, penalty, fine or expense in connection with any of them) levied or imposed by any Government Agency, other than any imposed on net overall income.

Term	Definition
Term	means the term of the contract, which comprises the Initial Term of the Contract together with any Extension Options exercised by the Department in accordance with clause 1.2 of the Contract, unless terminated earlier in accordance with this Agreement or any Law.
Therapeutic Goods Administration or TGA	means the Australian national governmental authority that is responsible for evaluating, assessing and monitoring goods that said authority defines as therapeutic goods. TGA regulates many goods including but not limited to medicines, medical devices and biologicals substances to protect the health of people in Australia.
Torture and Trauma or T&T	means the biological, psychological and/or psychosocial health impacts of torture and/or other traumatic events that a Detainee has experienced, including but not limited to bearing witness to another person's torture and/or trauma.
Transfer	refers to the transfer of a Person in Detention within the Detention Services Network.
Transfer Task	refers to the transfer of a Detainee within the Immigration Detention Network.
Transferee (of a Detainee)	refers to the movement of a Detainee from one location to another. This includes: a. movement between immigration detention facilities; b. transfers from held detention to community detention; c. transfers from an immigration detention facility to a Regional Processing Centre; or d. transfers from an immigration detention facility to a hospital setting.
Transition In	means the process whereby the Service Provider will transition-in and accept responsibility for the provision of the Services required to be provided under this Contract from the Incumbent Service Provider(s) currently providing the same or similar services (or part thereof), in accordance with Schedule 5 (Transition In Plan) and this Contract.
Transition In Completion Due Date	means the date specified as such in Item 2.2 of Schedule 1 (Contract Details).
Transition In Fee (TIF)	refers to the fee specified as such (if any) in, and calculated and payable in accordance with, Schedule 4 (Price Schedule) and other applicable terms and conditions of this Contract.
Transition In Plan	means Schedule 5 (Transition In Plan) to the Contract.
Transition In Period	means the period during which the Service Provider will undertake Transition In.
Transition Out	means the process of disengaging and transitioning-out of all Services, and, if applicable, handing-over the services which are the same as or similar to Services (or such part of the Services as directed by the Department) to the Department or the Department's nominated incoming Successor in accordance with the Transition Out Plan and this Contract.
Transition Out Fee (TOF)	refers to the fee specified as such (if any) in, and calculated and payable in accordance with, Schedule 4 (Price Schedule) and other applicable terms and conditions of this Contract.
Translating and Interpreting Services or TIS National	means the Department's in-house language service provider that connects government, businesses, and the Australian community through the provision of credentialed and secure interpreting services.
Transport and Escort	means the service to transport and escort Detainees whilst in immigration detention as set out in Schedule 3 (Statement of Work)

Term	Definition
The Transport and Escort Services Fee (TEF)	has the meaning given in Schedule 4 (Price Schedule), if applicable.
Transport Hub	refers to a location designated to manage, coordinate and maintain vehicles and Escorts for delivery of Escort Services within a 100km radius of that location.
Transport Request	means a request issued by the Department or the Health Service Provider to the Service Provider specifying the details of required transport of Detainees.
Transport Vehicle	refers to a vehicle provided by the Service Provider for the transport of Detainees.
Travel Documents	means an identity document issued by a government or international entity to enable individuals to clear border control measures.
Unaccompanied Minor (UAM)	means a non-citizen who: a. is under 18 years old at the time of (lawful or unlawful) arrival in Australia; b. is not currently in the care of their Parents or an adult relative; c. is not entering Australia for the purpose of a full and permanent adoption; d. does not have a spouse over the age of 21 to whom they are married in accordance with the <i>Marriage Act 1961</i> (Cth); and e. intends or is intended to become a permanent resident of Australia.
Unlawful Non-Citizen	has the same meaning as in the Migration Act.
Use Of Force	as defined in 059-DSM-DM623 Use of Force Procedural Instruction.
Valid	in the context of a Statement of Tax Record, has the meaning given in clause 25.2.1 of the Contract.
Value for Money	refers to the value for money concept described in paragraph 4.4 of the Commonwealth Procurement Rules.
Visit	means a visit to the Facility by a person seeking to meet with a Detainee.
Visitor	refers to a Person who Visits a Detainee.
Visitor Log	means a register detailing all Visits, to be maintained by the FDSP.
Visitor Management	as defined at clause 32 of the part titled 'Detainee Operations' of Schedule 3 (Statement of Work).
Volumetric Adjustment (VA)	has the meaning given in Schedule 4 (Price Schedule), if applicable.
Welfare	means any health-related good or service where and only where the following apply to that good or service. a. The health-related good or service is not a Healthcare good or service (that is, not a Health Service) for the purpose of this Statement of Requirement; b. Any service or good that is not subject to any regulation by AHPRA or TGA; c. Engaging with a Detainee to facilitate their engagement with their personal and/or social advocate(s); or d. Providing services to support a Detainee with disability to live with their disability(s) in a safe, consistent, durable and effective way.
Welfare and Engagement Services	means those Services set out in clause 34.1.3 of Schedule 3 (Statement of Work).
WGE Act	means the <i>Workplace Gender Equality Act 2012</i> (Cth).

Term	Definition
Wi-Fi	means a system used for connecting computer and other electronic equipment to the internet wirelessly.
Wilful Default	means a deliberate act or omission with the knowledge that the act or omission may have harmful consequences but does not include any innocent or negligent act or omission or any other act or omission done or omitted to be done in good faith.
Work Health and Safety (WHS)	means the practice of protecting the health and safety of all stakeholders in the workplace from exposure to hazards and risks resulting from work activities.
Work Health and Safety Act (or WHS Act)	means the <i>Work Health and Safety Act 2011</i> (Cth).
Work Health and Safety Committee	refers to the WHS committee specified at clause 45.21.3 of Schedule 3 (Statement of Work).
Working with Children Check or WWCC	means the process in place pursuant to Relevant Legislation to screen an individual for fitness to work with Children and Young People.
Zone 2	refers to the physical security requirements of the Protective Security Policy Framework.



Australian Government

Department of Home Affairs

**Contract for the Provision of Facilities and Detainee
Services**

SCHEDULE 8

**CONFIDENTIALITY DEED POLL
FOR NATURAL PERSONS**

Released by Department of Home Affairs
under the Freedom of Information Act 1982

SCHEDULE 8 – CONFIDENTIALITY DEED POLL FOR NATURAL PERSONS

THIS DEED POLL is made the _____ day of _____

(day) (month) (year)

in favour of the **COMMONWEALTH OF AUSTRALIA** represented by the Department of Home Affairs (**the Department**)

BY **[Insert name and address of Confidant]** (the **Confidant**)

RECITALS

- A The Department and Secure Journeys Pty Ltd ACN 665 235 549, ABN 31 665 235 549 (**Service Provider**) entered into a contract under which the Service Provider will provide the facilities and detainee services (**Services**) to the Department dated **[insert]** (**Contract**).
- B. In the course of performing the Services, the Confidant may require access to Department Confidential Information or Personal Information.
- C. The Confidant's access to the Department Confidential Information and Personal Information is provided strictly for the purpose of performing the Services and in accordance with this Deed.

THE CONFIDANT DECLARES AS FOLLOWS:

1. INTERPRETATION

1.1. In this Deed Poll, unless the context indicates otherwise:

- (a) **"Australian Privacy Principles"** has the meaning given in the Privacy Act;
- (b) **"Classified Information"** means information that is security classified;
- (c) **"Department Confidential Information"** means all information:
 - (i) that is designated by the Department to be confidential;
 - (ii) that is Classified Information;
 - (iii) disclosure of which cause unreasonable detriment to the Department;
 - (iv) that is confidential by nature; or
 - (v) that a party knows or ought to know is confidential,

but does not include any information that is public knowledge other than by breach of confidentiality obligations. Department Confidential Information includes all information about the operation of the Department's immigration detention facilities, including provision of all Services by the Service Provider and its officers, employees, contractors and agents, and all information in relation to persons detained in the facilities;

- (d) **"Deed"** means this deed titled Confidentiality Deed Poll for Natural Persons;
- (e) **"Documents"** means:
 - (i) any paper or other materials on which there are writing, marks, figures, symbols or perforations having meaning for persons qualified to interpret them; and

- (ii) any article or material from which sound, images or writings are capable of being reproduced with or without the aid of any other article or device;
- (f) **“Government Agency”** means a non-corporate entity representing the Commonwealth, an Australian State or an Australian Territory and a corporate entity that is wholly-owned by the Commonwealth, an Australian State or an Australian Territory;
- (g) **“Loss”** means liability, loss, damage, compensation and costs and expenses (including the costs of the investigation, defence and settlement of any relevant claim or demand) and any legal costs and expenses in relation thereto on a solicitor and own client basis;
- (h) **“Personal Information”** has the meaning given in the Privacy Act; and
- (i) **“Privacy Act”** means the *Privacy Act 1988* (Cth); and
- (j) **“Service Provider Personnel”** means the officers, employees, agents, advisers and any subcontractor (and their officers, employees and agents) of the Service Provider, who have been approved by the Department to perform Services.

1.2. In the interpretation of this Deed, unless the context indicates otherwise:

- (a) headings are for the purpose of convenient reference only and do not form part of this Deed;
- (b) words importing a gender include any other gender;
- (c) words in the singular include the plural and words in the plural include the singular;
- (d) words importing a person include a partnership and a body whether corporate or otherwise;
- (e) a reference to a clause includes a reference to a subclause of that clause;
- (f) a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- (g) if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (h) a reference to writing is a reference to any representation of words, figures or symbols whether or not in a visible form;
- (i) the word “includes” in any form is not a word of limitation;
- (j) a reference to “or” is that of the inclusive, being one, some or all of a number of possibilities; and
- (k) a provision stating that a person “may” agree or consent to something, approve or reject something, or take or decline to take an action, means that the person may exercise its discretion in deciding whether or not to do so, and may impose conditions on any such agreement, consent or approval.

2. DEPARTMENT CONFIDENTIAL INFORMATION

- 2.1. Subject to clause 2.2 and 2.3, the Confidant must not copy, reproduce or disclose any Department Confidential Information without the prior written consent of the Department, which consent the Department may grant or withhold in its absolute discretion.
- 2.2. The Confidant must use Department Confidential Information only for the purpose of performing the Services. In particular, the Confidant must not access, use, modify, disclose, retain or otherwise deal with in any way any Department Confidential Information except for the purpose of performing the Services.
- 2.3. The obligations under clauses 2.1 and 2.2 will not be taken to have been breached to the extent that the relevant Department Confidential Information:
- (a) is disclosed by the Confidant to other Service Provider Personnel solely in order to perform the Service Provider's obligations or to exercise rights under the Contract (or relevant subcontract under the Contract) and provided those other Service Provider Personnel have a need-to-know the Department Confidential Information and have signed undertakings equivalent to those in this Deed;
 - (b) is authorised or required to be disclosed by Law or by an order of any court or tribunal of competent jurisdiction; or
 - (c) is required to be disclosed to a Government Agency, stock exchange or other regulatory body having the legal right to require the disclosure.
- 2.4. Where the Confidant is required by law to disclose the Department Confidential Information, the Confidant must:
- (a) use their best endeavours to notify the Department prior to disclosing the Department Confidential Information;
 - (b) provide full details of the relevant legal requirement and information to be disclosed; and
 - (c) take any reasonable action requested by, and reasonably cooperate with any action taken by, the Department to challenge, prevent or limit such disclosure.
- 2.5. The Confidant agrees to:
- (a) secure all Department Confidential Information against loss and unauthorised access, use, modification or disclosure; and
 - (b) promptly notify the Commonwealth of any actual or attempted unauthorised possession, disclosure or use of the Department Confidential Information contrary to this Deed, and take all steps necessary to prevent the recurrence of such possession, disclosure or use and otherwise implement the Department's procedures for incident reporting as advised by the Department from time to time.
- 2.6. The Confidant agrees to implement security procedures to ensure that it meets its obligations under this Deed and will provide details of these procedures to the Department on request.
- 2.7. The Confidant agrees:
- (a) to ensure that the Confidant has obtained the appropriate security clearance required to receive, and prior to receiving, any classified Department Confidential Information;
 - (b) to be available to attend any security training provided by the Department;

- (c) to notify the Department and relevant security vetting agency of any change in the Confidant's personal circumstances which would or could impact the Confidant's entitlement to continue to hold the appropriate security clearance or the Confidant's ability to comply with any other obligation contained within this Deed;
- (d) not to allow any Classified Information to be transferred outside Australia without the Department's prior written approval;
- (e) to give the Department, or any persons authorised in writing by the Commonwealth, access to premises where Classified Information is located; and
- (f) to comply with any additional security requirements as notified by the Department from time to time.

3. PERSONAL INFORMATION

3.1. The Confidant agrees, with respect to all Personal Information to which it has access in the course of performing duties in relation to the Services to:

- (a) not do any act, or engage in any practice that would breach:
 - (i) the Service Provider's obligations under the Contract to protect Personal Information if done or engaged in by the Service Provider; or
 - (ii) the Australian Privacy Principles set out in the Privacy Act if done or engaged in by the Department;
- (b) to comply with any directions, guidelines, determinations or recommendations of the Department to the extent that they are consistent with the Australian Privacy Principles;
- (c) implement all reasonable measures to assist the Department in meeting the obligations under the Privacy Act concerning the collection security, use and disclosure of information to which the Department is subject in respect of that Personal Information;
- (d) co-operate with any reasonable demands or enquiries made by the Privacy Commissioner;
- (e) not disclose such Personal Information without the written authority of the Department except in the course of, and for the purpose of, performing the Contract, and it will immediately notify the Department where it becomes aware that a disclosure of such information may be required by law;
- (f) ensure that any person who has an access level which would enable that person to obtain access to any information in respect of which the Department has obligations under the Privacy Act is made aware of, and undertakes in writing, to observe the provisions of this Deed;
- (g) take all reasonable measures to ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only the Service Provider Personnel who have a need to know and hold the required security clearance have access to it. For the avoidance of doubt, Personal Information must not be used for, or in any way relating to, any direct marketing purpose;
- (h) not transfer such Personal Information outside Australia, or allow parties outside Australia to have access to it, without the prior approval of the Department;
- (i) inform any person, on their request, in writing of the content of any provision of the Contract that is inconsistent with an approved privacy code binding on the Service Provider

or an Australian Privacy Principle as set out in the Privacy Act, in accordance with the Service Provider's obligations under section 95C of the Privacy Act;

- (j) immediately to notify the Department when the Confidant becomes aware of a breach, or any potential breach, of any obligation concerning security, use and disclosure of such Personal Information by itself or any representative, employee or officer of the Service Provider;
- (k) notify the Department of, and co-operate with the Department in the resolution of, any complaint alleging an interference with privacy;
- (l) upon written notice from the Department given to any person, on their request, having taken reasonable steps to satisfy itself of that person's identity, access to that person's Personal Information held by the Service Provider, except to the extent that the Service Provider is required or authorised by law to refuse to provide the person with access to that Personal Information;
- (m) upon written notice from the Department if requested to correct or update such Personal Information by a person to whom the Personal Information relates, take reasonable steps to correct or update the Personal Information;
- (n) upon written notice from the Department, destroy or permanently de-identify any Personal Information as soon as practicable after it is no longer required for the purpose for which it was originally collected;
- (o) not adopt as its own identifier of a person an identifier that has been assigned by the Department, or use or disclose any such identifier except for the purpose of fulfilling its obligations under the Contract, or where required or authorised by law;
- (p) if the Personal Information is 'sensitive information' or 'health information', as those terms are defined in the Privacy Act, not collect, use or disclose such information without the consent of the person to whom that information relates, subject to any exception provided for by law. For the avoidance of doubt, this does not apply to the giving of sensitive information or health information to the Department; and
- (q) to treat all Personal Information with the utmost care and to protect that information at all times in accordance with all security and privacy requirements imposed by the Contract on persons performing duties in relation to the Contract.

3.2. Without limiting the foregoing, the Confidant agrees that its obligations under this Deed and to perform duties in relation to the Contract:

- (a) to the extent of any inconsistency with the Australian Privacy Principles in the Privacy Act or any privacy codes or privacy principles contained in, authorised by or registered under any law, take priority to the fullest extent permitted by applicable law; and
- (b) to the extent not so inconsistent, are in addition to any obligations the Confidant may have under the Privacy Act or any privacy codes or privacy principles contained in, authorised by or registered under any law.

3.3. The Confidant acknowledges that failure by it to comply with the obligations under the Privacy Act in accordance with clause 3.1 may result in the Service Provider or the Department taking action against the Confidant.

4. DELIVERY UP OF DOCUMENTS

4.1. The Department may, at any time and without prior notice, demand, either orally or in writing, the delivery to the Department, or destruction or erasure, of any Documents (including electronically

stored or otherwise) that are in the possession or control of the Confidant which contain or relate to Department Confidential Information. The Confidant agrees to immediately comply with any such demand.

4.2. If the Department gives a demand under this clause 4 and the Confidant has placed or is aware that Documents containing the Confidential Information are beyond its possession or control, then the Confidant shall provide full particulars of the whereabouts of the Documents containing the Confidential Information, and the identity of the person in whose custody or control they lie.

4.3. Return or destruction of any Department Confidential Information does not release the Confidant from its obligations under this Deed.

5. CONFLICT OF INTEREST

5.1. The Confidant warrants that no conflict of interest exists or is likely to arise in the performance of the Services.

5.2. The Confidant warrants that it will not permit any situation to arise or engage in any activity during the performance of the Services which may result in a conflict of interest.

5.3. If, during the period the Confidant is performing Services on behalf of the Service Provider, a conflict of interest arises or appears likely to arise, the Confidant agrees:

- (a) to notify the Service Provider and the Department immediately, and to make full disclosure of all relevant information relating to the conflict of interest; and
- (b) to take such steps as the Department reasonably requires to resolve or otherwise deal with the conflict of interest.

6. SURVIVAL OF OBLIGATIONS

6.1. The obligations in this Deed are perpetual.

6.2. This Deed will survive the termination or expiry of the Contract and any deed, agreement or arrangement of any kind between the Department and the Service Provider or the Confidant relating to the Services.

7. COMPLIANCE WITH LEGISLATION AND POLICIES

7.1. Without limiting anything contained in this Deed, the Confidant acknowledges that it is aware of the following legislative provisions which may have application to its handling of Department Confidential Information:

- (a) Division 122 of the Schedule to the *Criminal Code Act 1995* (Cth) (the 'Criminal Code');
- (b) Section 91.1 and Part 10.7 of the Criminal Code;
- (c) *Privacy Act 1988* (Cth); and
- (d) *Freedom of Information Act 1982* (Cth).

8. [NOT USED]

9. GOVERNING LAW

9.1. This Deed will be governed by, and construed in all respects in accordance with, the law of the Australian Capital Territory and the Confidant agrees to submit to the non-exclusive jurisdiction of

the Courts of the Australian Capital Territory and its appellate jurisdiction in respect of all matters arising under, or in relation to, this Deed.

10. WAIVER

- 10.1. Failure or delay by the Department to enforce a provision of this Deed shall not be construed as in any way affecting the enforceability of that provision or this Deed as a whole.

11. VARIATIONS

- 11.1. No term or provision of this shall be amended or varied unless such amendment or variation is agreed by the Department in writing.

Released by Department of Home Affairs
under the Freedom of Information Act 1982

Signature page

Executed as a **Deed Poll** by the **Confidant** for the benefit of and enforceable by the Commonwealth of Australia.

[Drafting Note: The Service Provider must ensure that the Confidant executes this Deed in a manner that is correct and legally binding on the Confidant.]

SIGNED, SEALED and DELIVERED by **[Full name of Confidant]**:

Signature of Confidant

in the presence of:

Signature of witness

Full name of witness

Date



Australian Government

Department of Home Affairs

**Contract for the Provision of Facilities and Detainee
Services**

SCHEDULE 9

**CONFIDENTIALITY DEED POLL
FOR CORPORATIONS AND OTHER ENTITIES**

Released by Department of Home Affairs
under the Freedom of Information Act 1982

SCHEDULE 9 – CONFIDENTIALITY DEED POLL FOR CORPORATIONS AND OTHER ENTITIES

THIS DEED POLL is made the _____ day of _____

(day) (month) (year)

in favour of the **COMMONWEALTH OF AUSTRALIA** represented by the Department of Home Affairs (**the Department**)

BY **[Insert name and address of Confidant]** (the **Confidant**)

RECITALS

- A The Department and Secure Journeys Pty Ltd ACN 665 235 549, ABN 31 665 235 549 (**Service Provider**) have entered into a contract under which the Service Provider will provide the facilities and detainee services (**Services**) to the Department dated **[insert]** (**Contract**).
- B. In the course of performing the Services, the Confidant may require access to Department Confidential Information or Personal Information.
- C. The Confidant's access to the Department Confidential Information and Personal Information is provided strictly for the purpose of performing the Services and in accordance with this Deed.

THE CONFIDANT DECLARES AS FOLLOWS:

1. INTERPRETATION

1.1. In this Deed Poll, unless the context indicates otherwise:

- (a) **"Australian Privacy Principles"** has the meaning given in the Privacy Act;
- (b) **"Classified Information"** means information that is security classified;
- (c) **"Department Confidential Information"** means all information:
 - (i) that is designated by the Department to be confidential;
 - (ii) that is Classified Information;
 - (iii) disclosure of which cause unreasonable detriment to the Department;
 - (iv) that is confidential by nature; or
 - (v) that a party knows or ought to know is confidential,

but does not include any information that is public knowledge other than by breach of confidentiality obligations. Department Confidential Information includes all information about the operation of the Department's immigration detention facilities, including provision of all Services by the Contractor and its officers, employees, contractors and agents, and all information in relation to persons detained in the facilities;

- (d) **"Deed"** means this Confidentiality and Personal Information Deed Poll;
- (e) **"Documents"** means:
 - (i) any paper or other materials on which there are writing, marks, figures, symbols or perforations having meaning for persons qualified to interpret them; and

- (ii) any article or material from which sound, images or writings are capable of being reproduced with or without the aid of any other article or device;
- (f) **“Government Agency”** means a non-corporate entity representing the Commonwealth, an Australian State or an Australian Territory and a corporate entity that is wholly-owned by the Commonwealth, an Australian State or an Australian Territory;
- (g) **“Loss”** means liability, loss, damage, compensation and costs and expenses (including the costs of the investigation, defence and settlement of any relevant claim or demand) and any legal costs and expenses in relation thereto on a solicitor and own client basis;
- (h) **“Personal Information”** has the meaning given in the Privacy Act; and
- (i) **“Privacy Act”** means the *Privacy Act 1988* (Cth); and
- (j) **“Service Provider Personnel”** means the officers, employees, agents, advisers and any subcontractor (and their officers, employees and agents) of the Service Provider, who have been approved by the Department to perform Services.

1.2. In the interpretation of this Deed, unless the context indicates otherwise:

- (a) headings are for the purpose of convenient reference only and do not form part of this Deed;
- (b) words importing a gender include any other gender;
- (c) words in the singular include the plural and words in the plural include the singular;
- (d) words importing a person include a partnership and a body whether corporate or otherwise;
- (a) a reference to a clause includes a reference to a subclause of that clause;
- (b) a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- (c) if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to writing is a reference to any representation of words, figures or symbols whether or not in a visible form;
- (e) the word “includes” in any form is not a word of limitation;
- (f) a reference to “or” is that of the inclusive, being one, some or all of a number of possibilities;
- (g) a reference to “the Confidant” includes the Confidant’s administrators and successors; and
- (h) a provision stating that a person “may” agree or consent to something, approve or reject something, or take or decline to take an action, means that the person may exercise its discretion in deciding whether or not to do so, and may impose conditions on any such agreement, consent or approval.

2. DEPARTMENT CONFIDENTIAL INFORMATION

- 2.1. Subject to clause 2.2 and 2.3, the Confidant must not copy, reproduce or disclose any Department Confidential Information without the prior written consent of the Department, which consent the Department may grant or withhold in its absolute discretion.
- 2.2. The Confidant must use Department Confidential Information only for the purpose of performing the Services. In particular, the Confidant must not access, use, modify, disclose, retain or otherwise deal with in any way any Department Confidential Information except for the purpose of performing the Services.
- 2.3. The obligations under clauses 2.1 and 2.2 will not be taken to have been breached to the extent that the relevant Department Confidential Information:
- (a) is disclosed by the Confidant to other Service Provider Personnel solely in order to comply with obligations or to exercise rights of the Service Provider under the Contract and provided those Service Provider Personnel have a need-to-know the Department Confidential Information and have signed undertakings equivalent to those in this Deed;
 - (b) is authorised or required to be disclosed by Law or by an order of any court or tribunal of competent jurisdiction; or
 - (c) is required to be disclosed to a Government Agency, stock exchange or other regulatory body having the legal right to require the disclosure.
- 2.4. Where the Confidant is required by law to disclose the Department Confidential Information, the Confidant must:
- (a) use its best endeavours to notify the Department prior to disclosing the Department Confidential Information;
 - (b) provide full details of the relevant legal requirement and information to be disclosed; and
 - (c) take any reasonable action requested by, and reasonably cooperate with any action taken by, the Department to challenge, prevent or limit such disclosure.
- 2.5. The Confidant agrees to:
- (a) secure all Department Confidential Information against loss and unauthorised access, use, modification or disclosure; and
 - (b) promptly notify the Commonwealth of any actual or attempted unauthorised possession, disclosure or use of the Department Confidential Information contrary to this Deed, and take all steps necessary to prevent the recurrence of such possession, disclosure or use and otherwise implement the Department's procedures for incident reporting as advised by the Department from time to time.
- 2.6. The Confidant agrees to implement security procedures to ensure that it meets its obligations under this Deed and will provide details of these procedures to the Department on request.
- 2.7. The Confidant agrees:
- (a) to ensure that the Confidant's personnel:
 - (i) have obtained the appropriate security clearance required to receive, and prior to receiving, any classified Department Confidential Information;
 - (ii) are available to attend any security training provided by the Department; and

- (iii) notify the Department and relevant security vetting agency of any change in their personal circumstances which would or could impact the Confidant's entitlement to continue to hold the appropriate security clearance or the Confidant's ability to comply with any other obligation contained within this Confidentiality Deed;
- (b) not to allow any Classified Information to be transferred outside Australia without the Department's prior written approval;
- (c) to give the Department, or any persons authorised in writing by the Commonwealth, access to premises where Classified Information is located; and
- (d) to comply with any additional security requirements as notified by the Department from time to time.

3. PERSONAL INFORMATION

3.1. The Confidant agrees, with respect to all Personal Information to which it has access in the course of performing duties in relation to the Services to:

- (a) not do any act, or engage in any practice that would breach:
 - (i) the Services Provider's obligations under the Contract to protect Personal Information if done or engaged in by the Service Provider; or
 - (ii) the Australian Privacy Principles set out in the Privacy Act if done or engaged in by the Department;
- (b) to comply with any directions, guidelines, determinations or recommendations of the Department to the extent that they are consistent with the Australian Privacy Principles;
- (c) implement all reasonable measures to assist the Department in meeting the obligations under the Privacy Act concerning the collection security, use and disclosure of information to which the Department is subject in respect of that Personal Information;
- (d) co-operate with any reasonable demands or enquiries made by the Privacy Commissioner;
- (e) not disclose such Personal Information without the written authority of the Department except in the course of, and for the purpose of, performing the Contract, and it will immediately notify the Department where it becomes aware that a disclosure of such information may be required by law;
- (f) ensure that any person who has an access level which would enable that person to obtain access to any information in respect of which the Department has obligations under the Privacy Act is made aware of, and undertakes in writing, to observe the provisions of this Deed;
- (g) take all reasonable measures to ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only the Service Provider Personnel have access to it. For the avoidance of doubt, Personal Information must not be used for, or in any way relating to, any direct marketing purpose;
- (h) not transfer such Personal Information outside Australia, or allow parties outside Australia to have access to it, without the prior approval of the Department;
- (i) inform any person, on their request, in writing of the content of any provision of the Contract that is inconsistent with an approved privacy code binding on the Service Provider

or an Australian Privacy Principle as set out in the Privacy Act, in accordance with the Service Provider's obligations under section 95C of the Privacy Act;

- (j) immediately to notify the Department when the Confidant becomes aware of a breach, or any potential breach, of any obligation concerning security, use and disclosure of such Personal Information by itself or any representative, employee or officer of the Service Provider;
 - (k) notify the Department of, and co-operate with the Department in the resolution of, any complaint alleging an interference with privacy;
 - (l) upon written notice from the Department given to any person, on their request, having taken reasonable steps to satisfy itself of that person's identity, access to that person's Personal Information held by the Service Provider, except to the extent that the Service Provider is required or authorised by law to refuse to provide the person with access to that Personal Information;
 - (m) upon written notice from the Department if requested to correct or update such Personal Information by a person to whom the Personal Information relates, take reasonable steps to correct or update the Personal Information;
 - (n) upon written notice from the Department, destroy or permanently de-identify any Personal Information as soon as practicable after it is no longer required for the purpose for which it was originally collected;
 - (o) not adopt as its own identifier of a person an identifier that has been assigned by the Department, or use or disclose any such identifier except for the purpose of fulfilling its obligations under the Contract, or where required or authorised by law;
 - (p) if the Personal Information is sensitive information or health information, as those terms are defined in the Privacy Act, not collect, use or disclose such information without the consent of the person to whom that information relates, subject to any exception provided for by law. For the avoidance of doubt, this does not apply to the giving of sensitive information or health information to the Department; and
 - (q) to treat all Personal Information with the utmost care and to protect that information at all times in accordance with all security and privacy requirements imposed by the Contract on persons performing duties in relation to the Contract.
- 3.2. Without limiting the foregoing, the Confidant agrees that its obligations under this Deed and to perform duties in relation to the Contract:
- (a) to the extent of any inconsistency with the Australian Privacy Principles in the Privacy Act or any privacy codes or privacy principles contained in, authorised by or registered under any law, take priority to the fullest extent permitted by applicable law; and
 - (b) to the extent not so inconsistent, are in addition to any obligations the Confidant may have under the Privacy Act or any privacy codes or privacy principles contained in, authorised by or registered under any law.
- 3.3. The Confidant acknowledges that failure by it to comply with the obligations under the Privacy Act in accordance with clause 3.1 may result in the Service Provider or the Department taking action against the Confidant.
- 4. DELIVERY UP OF DOCUMENTS**
- 4.1. The Department may, at any time and without prior notice, demand, either orally or in writing, the delivery to the Department, or destruction or erasure, of any Documents (including electronically

stored or otherwise) that are in the possession or control of the Confidant which contain or relate to Department Confidential Information. The Confidant agrees to immediately comply with any such demand.

- 4.2. If the Department gives a demand under this clause 4 and the Confidant has placed or is aware that Documents containing the Confidential Information are beyond its possession or control, then the Confidant shall provide full particulars of the whereabouts of the Documents containing the Confidential Information, and the identity of the person in whose custody or control they lie.
- 4.3. Return or destruction of any Department Confidential Information does not release the Confidant from its obligations under this Deed.
- 4.4. The Confidant shall ensure that its Personnel and each person to whom it (or its Personnel) has disclosed any Confidential Information comply with the requirements of this clause as if personally bound by it.

5. CONFLICT OF INTEREST

- 5.1. The Confidant warrants that no conflict of interest exists or is likely to arise in the performance of the Services.
- 5.2. The Confidant warrants that it will not permit any situation to arise or engage in any activity during the performance of the Services which may result in a conflict of interest.
- 5.3. If, during the period the Confidant is performing Services on behalf of the Service Provider, a conflict of interest arises or appears likely to arise, the Confidant agrees:
 - (a) to notify the Service Provider and the Department immediately, and to make full disclosure of all relevant information relating to the conflict of interest; and
 - (b) to take such steps as the Department reasonably requires to resolve or otherwise deal with the conflict of interest.

6. SURVIVAL OF OBLIGATIONS

- 6.1. The obligations in this Deed are perpetual.
- 6.2. This Deed will survive the termination or expiry of the Contract and any deed, agreement or arrangement of any kind between the Department and the Service Provider or the Confidant relating to the Services.

7. COMPLIANCE WITH LEGISLATION AND POLICIES

- 7.1. Without limiting anything contained in this Deed, the Confidant acknowledges that it is aware of the following legislative provisions which may have application to its handling of Department Confidential Information:
 - (c) Division 122 of the Schedule to the *Criminal Code Act 1995* (Cth) (the 'Criminal Code');
 - (d) Section 91.1 and Part 10.7 of the Criminal Code;
 - (e) *Privacy Act 1988* (Cth); and
 - (f) *Freedom of Information Act 1982* (Cth).

8. INDEMNITY

- 8.1. The Confidant indemnifies the Department and its officers, employees and agents against any Loss which is caused or contributed to by:
- (a) the Confidant's failure to comply with this Deed; or
 - (b) the act or omission of the Confidant's employees, agents or subcontractors in relation to Department Confidential Information.
- 8.2. The Confidant agrees that the Department may enforce the indemnity in clause 8.1 in favour of any Department officers, employees or agents.

9. GOVERNING LAW

- 9.1. This Deed will be governed by, and construed in all respects in accordance with, the law of the Australian Capital Territory and the Confidant agrees to submit to the non-exclusive jurisdiction of the Courts of the Australian Capital Territory and its appellate jurisdiction in respect of all matters arising under, or in relation to, this Deed.

10. WAIVER

- 10.1. Failure or delay by the Department to enforce a provision of this Deed shall not be construed as in any way affecting the enforceability of that provision or this Deed as a whole.

11. VARIATIONS

- 11.1. No term or provision of this shall be amended or varied unless such amendment or variation is agreed by the Department in writing.

Signature page

Executed as a **Deed Poll** by the **Confidant** for the benefit of and enforceable by the Commonwealth of Australia.

[Drafting Note: The Service Provider must ensure that the Confidant executes this Deed in a manner that is correct and legally binding on the Confidant.]

SIGNED, SEALED and DELIVERED by [full registered company name] ACN [No.] in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director/secretary
(*strike-through as applicable*)

Full name of director

Full name of director/secretary
(*strike-through as applicable*)

Date