

CONTRACT

FOR THE PROVISION OF HEALTH AND WELLBEING SERVICES

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

Healthcare Australia Pty Ltd
ACN 108 180 589
(the '**Service Provider**', '**Detention Health Services Provider**' or '**DHSP**')

CONTENTS

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.	Consultation in respect to changes to Detention Health Policies	11
2.9.	Changes to Commonwealth Policy	11
2.10.	Cost associated with changes to Required Standards	12
3.	Contract Management	13
3.1.	[Not used]	13
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.	Professional accreditation	18
4.5.	Documentation Relating to Authorisations or Delegations	19
4.6.	Accountability of Service Provider Personnel	19
5.	Subcontractors	19
5.1.	Terms and conditions of subcontracts	19
5.2.	Extension of provisions to Subcontractors and Personnel	20
5.3.	Copies of subcontracts	21
5.4.	Service Provider Liability and Obligations	21
5.5.	Subcontractor Warranty	21
5.6.	Service Provider to be the Department's Sole Point of Contact	22

6.	Facilities and Equipment	22
6.1.	Facilities Access Licence	22
6.2.	Service Provider Covenants in Relation to the Facilities and Assets	23
6.3.	Modification of the Facilities and Assets	24
6.4.	Residential Accommodation	24
6.5.	Access	25
7.	Performance	25
7.1.	Performance Measures	25
7.2.	Review of Performance	25
7.3.	Audit and access	26
8.	Additional Services	27
8.1.	Additional Services Requests	27
8.2.	Additional Services proposed by the Service Provider	27
9.	Fees, allowances and assistance	27
9.1.	Service Fee	27
9.2.	Submission and approval of invoices	28
9.3.	Taxes, duties and government charges	29
9.4.	Service Provider's obligation to pay PT PCP Subcontractors	29
10.	Intellectual Property	32
10.1.	Use of Department Material	32
10.2.	Rights in Contract Material	33
10.3.	IP register	35
10.4.	Accuracy of Material markings and descriptions	35
10.5.	Knowledge transfer and other assistance	35
10.6.	Moral Rights	35
11.	Digital service requirements	36
11.1.	Cyber security	36
11.2.	Harmful code	37
11.3.	The Department's data	37
11.4.	Information security	38
11.5.	Transferring data off-shore	39
12.	Confidential information and security obligations	40
12.1.	Confidential Information of Service Provider	40
12.2.	Confidentiality of Official Information	41
12.3.	Other security obligations of Service Provider	41
12.4.	Qualification to Service Provider's obligations of provide information	43
13.	Recordkeeping	44
13.1.	Records	44
13.2.	Commonwealth records	45

13.3. Existing Detainee Records	45
13.4. Due Diligence	45
14. Dealing with Copies and Access to Documents	46
14.1. Interpretation	46
14.2. Actions at end of contract	46
14.3. Access to documents	46
14.4. Cooperation with investigations	47
15. Privacy	47
15.1. Obligations of Service Provider in relation to privacy	47
15.2. Eligible Data Breach	48
16. Service Prevention	48
16.1. Service Prevention Events	48
17. Force Majeure	49
17.1. Force Majeure Events	49
17.2. Best endeavours to be used to overcome Force Majeure Event	50
17.3. Rights of the non-affected party	50

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

19. Default, cure and step-in	56
19.1. Department rights	56
19.2. Default Rectification	56
19.3. Step-in	57
20. Termination or reduction in scope of Services	58
20.1. Termination for default	58
20.2. Termination consequences	59
20.3. Termination for convenience	60
21. Dispute resolution	61
21.1. Procedure for dispute resolution	61
21.2. Costs	61
21.3. Continued performance	61
21.4. Exemption	61

22.	Transition out	61
	22.1. Transition Out Plan	61
	22.2. Compliance with Transition Out Plan	62
	22.3. Transition of Services Removed from Scope	63
	22.4. Fees for Transition Out Services	63
	22.5. Service Provider Must Not Hinder Transition	63
23.	Service Provider representations and warranties	63
	23.1. Warranties	63
	23.2. Repetition of Representations and Warranties	65
	23.3. Reliance on Representations and Warranties	66
	23.4. No Representations by the Department	66
24.	Service Provider performance and financial security	66
	s. 45(1), s. 47G(1)(a)	
	24.3. Performance Guarantee	67
	24.4. Right of Department to recover money	67
	24.5. Change of Control to the Service Provider or the Guarantor	67
25.	Notices	68
	25.1. Format, addressing and delivery	68
	25.2. When effective	69
26.	Commonwealth requirements	69
	s. 22(1)(a)(ii)	
	26.2. Shadow Economy	70
	26.3. Workplace Gender Equality	71
	26.4. Fraud	72
	26.5. Modern Slavery	72
	26.6. Indigenous Procurement	74
	26.7. Multicultural Access and Equity Policy	74
	26.8. Child safety/working with vulnerable people	75
	26.9. Conflict of interest	77
	26.10. Notification of Significant Event	78
	26.11. National Anti-Corruption Commission Act 2022 (Cth) Requirements	79
	26.12. Public Interest Disclosure	79
	26.13. Compliance with the Commonwealth Supplier Code of Conduct	80
27.	Interpretation and general provisions	81
	27.1. Interpretation	81
	27.2. Guidance on construction of contract	82
	27.3. Precedence of Documents	82
	27.4. Relationship of parties	82

27.5. Waiver	83
27.6. Assignment and novation	83
27.7. Survival	83
27.8. Applicable law	83
27.9. Variation	84
27.10. Counterparts	84

SCHEDULE 1 – CONTRACT DETAILS

SCHEDULE 2 – GLOSSARY

SCHEDULE 3 s. 47(1)(a), s. 47E(d)

SCHEDULE 4 s. 45(1), s. 47G(1)(a)

SCHEDULE 5 s. 45(1), s. 47(1)(a)

SCHEDULE 6 – [NOT USED]

SCHEDULE 7 s. 45(1), s. 47G(1)(a)

SCHEDULE 8 – CONFIDENTIALITY DEED POLL FOR NATURAL PERSONS

SCHEDULE 9 – CONFIDENTIALITY DEED POLL FOR CORPORATE AND OTHER ENTITIES

SCHEDULE 10 s. 45(1), s. 47G(1)(a)

SCHEDULE 11 s. 45(1), s. 47G(1)(a)

SCHEDULE 12 – s. 47E(d)

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

CONTRACT

FOR THE PROVISION OF HEALTH AND WELLBEING 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 last 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. **Healthcare Australia Pty Ltd** ACN 108 180 589
3/312 St Kilda Rd, Melbourne VIC 3004
(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 health and wellbeing services for the provision of health care services to detainees (including detainees placed in the community under a 'Residence Determination').
- 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 and any other Commonwealth policies, standards or guidelines specified in Schedule 3 (Statement of Work), 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 2.9 and 2.10 (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. Subject to clauses 16 to 18, and the performance of all obligations under the Transition In Plan, 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 (including this clause 2.5 and 6.1) to the Department's satisfaction, by no later than the Transition In Completion Due Date. If the Service Provider claims it has completed Transition In but the Department is not satisfied of this:

- a. the Department will notify the Service Provider of the reasons for the Department not being satisfied; and
- b. the Service Provider must undertake such additional Transition In activities in order to address any issues identified in the Department's notice promptly and without delay and otherwise in accordance with the Department's required timeframes to ensure Transition In is completed 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:
- a. the Department will notify the Service Provider why the Department does not consider the Plan should be approved; and
 - b. 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 of the Department's approval notice or such later 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 27.9.
- 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. Consultation in respect to changes to Detention Health Policies

- 2.8.1. Except where prior consultation is not reasonably practicable, the Department will consult with the Service Provider in the course of developing new Detention Health Policies or reviewing existing Detention Health Policies where those policies affect the performance of the Services.

2.8.2. Subject to clause 2.8.1:

- a. the Service Provider will be given a reasonable opportunity to review the proposed policy or changes and obtain the expert input of its clinical advisers; and
- b. in the context of the Department's policy objectives for the proposed policy or changes, the Department will give reasonable consideration to the concerns or proposed changes raised by the Service Provider.

2.9. Changes to Commonwealth Policy

- 2.9.1. The Department may give the Service Provider notice of a new or changed Commonwealth Policy (a '**Policy Change Notice**').
- 2.9.2. Subject to clause 2.9.3, 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.
- 2.9.3. 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 2.10.1, 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 this clause 2.10 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 2.10.

2.10. Cost associated with changes to Required Standards

2.10.1. 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 10 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 20 Business Days after the relevant change in Law 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.

2.10.2. Provided that:

- a. the Service Provider has complied with the relevant timeframe specified in clause 2.9.3.a or 2.9.3.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 2.10.1.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 the residual Net Standards Cost Increase).

3. Contract Management

3.1. [Not used]

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 clause 3.3 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.

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. 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 21.
- 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;
 - 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; and
 - e. where the Department rejects a potential replacement is, the Department will endeavour to notify the Service Provider to the extent it reasonably can (but without disclosing sensitive or confidential information) the reasons for the Department not being satisfied and the Service Provider must as soon as possible identify alternative potential replacement personnel who are suitably skilled, experienced and qualified potential

replacements and otherwise comply with this clause 4.1.3 in respect to that replacement.

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 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 20.1.1.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 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 of its Service Provider Personnel (**'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.

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. **Professional accreditation**

4.4.1. The Service Provider must, at its own cost, ensure that all Service Provider Personnel who carry out work or perform duties under this Contract:

- a. have the requisite qualifications, experience and skills to exercise the standard of skill, care and diligence that would be expected of an expert professional provider of health services similar to the Services being provided by the relevant person, and that those persons carry out their work and perform their duties at all times with that standard of skill care and diligence; and

- b. possess and maintain all relevant industry body, supplier, manufacturer accreditations, scheme memberships and professional association membership as specified in Schedule 3 (Statement of Work) or that might be reasonably expected of providers of the relevant health services, and produce evidence of such authorisation, registration, licence, accreditation or membership to the Department upon request at any time.

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. except as otherwise agreed by the Department in writing, any contract 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 service failing on the part of the Subcontractor or Subcontractor Personnel;
 - B. the Subcontractor is considered 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 contract 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 19.3.3.b or clause 22.2.2.c;

- 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 20, 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. The Service Provider agrees to exercise any rights it may have against any of its Subcontractors, Personnel or third parties in connection with a Requirement in accordance with any direction by the Department.

5.3. Copies of subcontracts

5.3.1. 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.

5.4. Service Provider Liability and Obligations

5.4.1. 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.

5.4.2. 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.

5.5. Subcontractor Warranty

5.5.1. 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.

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

- 5.6.1. 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.
- 5.6.2. Except as provided in clause 5.6.1 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 licence to occupy and use granted by this clause is 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 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 Department Assets and Loose Assets;
 - c. keep them in clean, tidy and good order and condition in accordance with the requirements of Schedule 3 (Statement of Work);
 - d. 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;
 - e. 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;
 - f. 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;
 - g. 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);
 - h. 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;
 - i. 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
 - j. 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.

6.3. Modification of the 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. Where the Service Provider seeks any modification, alteration, addition, removal or other change (whether structural or non-structural) to a Facility, the Service Provider must (at its cost) submit a proposal for the modification works to the Department for its approval.
- 6.3.3. 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.
- 6.3.4. Where the Department approves a modification 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.
- 6.3.5. 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.
- 6.3.6. The Service Provider must repair, at its cost, any damage caused by the installation or removal of a modification by the Service Provider or its Subcontractors.

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 ('**Eligible Personnel**') on Christmas Island and Cocos Island. Where the Department provides such accommodation, the Department grants to the Service Provider a licence to

permit Eligible Personnel to occupy the relevant Department residential accommodation.

- 6.4.4. The Service Provider is not liable for fair use and reasonable wear and tear of Department provided residential accommodation used by the Eligible Personnel.
- 6.4.5. Where the Department provided Staff Accommodation is not available for the use of Eligible Personnel, the Department and the Service Provider will agree alternative arrangements for the accommodation of Service Provider 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.

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 will include consideration of the appropriateness and effectiveness of the Performance Measures. As a result of the review, 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 (except as otherwise agreed by the Department in writing) 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;
 - 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;
- b. Pass Through Costs;
- c. transition costs in accordance with the Milestone Payment Schedule upon the completion of the Milestones listed in Schedule 4 (Price Schedule); and

- d. the fees for Additional Services provided, and as calculated, in accordance with clause 8.1.3.

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:

- a. in the form of a correctly rendered tax invoice;
- b. in accordance with all other requirements of this Contract including as specified in Schedule 4 (Price Schedule); and
- c. together with all relevant supporting documentation, to support the claim for payment.

9.2.2. Unless agreed (such agreement will not be unreasonably withheld) otherwise by the Department after being notified by the Service Provider that there will be a delay in a claim for payment and the reasons for the delay, the Service Provider shall submit all claims for payment in accordance with clause 9.2.1 without undue delay and in all cases shall ensure each claim for payment is submitted no later than 3 calendar months after the Service Provider becomes entitled to claim payment of the relevant amounts.

9.2.3. The Service Provider shall, promptly and without delay and in all cases no later than 5 Business Days after receiving notice from the Department, submit to the Department any supporting documents required by the Department, to support its claims for payment to the satisfaction of the Department.

9.2.4. On receipt of a claim for payment together with all required supporting documentation required under clause 9.2.3, the Contract Administrator shall within 10 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 the 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.

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

9.2.6. When part of a claim is approved under clause 9.2.4.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.

9.2.7. If the Contract Administrator rejects the claim, either in whole under clause 9.2.4.c or in part under clause 9.2.4.b, the Contract Administrator shall, within the period specified in clause 9.2.4, 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.

9.2.8. Upon receipt of a notice issued pursuant to clause 9.2.7 the Service Provider shall promptly, and in all cases not more than 20 calendar days after receipt of the notice under clause 9.2.4.b or 9.2.4.c, 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, 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.

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 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
- 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 such information in the manner contemplated by this clause 9.4. 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 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, other than Software, developed by the Service Provider in existence at the Commencement Date or Material developed by the Service Provider or a third party 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 Government Purposes.
- 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, or in any Software licensed to the Department in accordance with clause 10.2.8, 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.

- 10.2.8. To the extent that the Department (acting reasonably) requires access to any Software used by the Service Provider to perform the Services:
- a. *to the extent that Software is owned by the Service Provider:* the Service Provider shall ensure that, unless otherwise agreed by the Department in writing, the Service Provider shall grant the Department a licence to use such Software in accordance with clause 10.2.3 as if the Software were Pre-existing Material; and
 - b. for any third-party Software, including any such Software that is incorporated into the Services or provided in conjunction with Software owned by the Service Provider, the Service Provider shall ensure that:
 - i. during the Term of the Contract (including any additional transition-out period, if applicable), the Service Provider grants to (or will procure for) the Department a licence at no cost to the Department on the best commercially available terms (which must at least allow the Department to use such third-party Software for any Government Purposes, unless otherwise agreed by the Department in writing), the terms of which must be specifically provided to and agreed by the Department; and
 - ii. after the expiry or termination of the Contract, the Service Provider grants to (or will procure for, as a pass-through cost) the Department a licence on the best commercially available terms (which must at least allow the Department to use such third-party Software for any Government Purposes, unless otherwise agreed by the Department in writing), the terms of which must be specifically provided to and agreed by the Department.
- 10.2.9. For the purpose of clause 10.2 and 10.3, the term “**Software**” means any computer program (including the source and object code of any computer program) together with the relevant instruction or user manual and such other instruction documentation explaining how the computer program is to be operated which is supplied with the relevant computer program.
- 10.2.10. The Service Provider must:
- a. promptly advise the Department if it is unable to provide a licence to the Department in accordance with clause 10.2.8.b, and use all reasonable endeavours to ensure a licence is provided to the Department to enable it to use the Software as required by the Department to exercise its rights in any Contract Material or any Pre-existing Material; and
 - b. advise the Department of any pass-through cost that will be payable under clause 10.2.8.b.ii, and obtain the Department’s prior approval prior to incurring such cost.
- 10.2.11. The Department grants (or will procure) a royalty-free, revocable, non-exclusive licence for the Service Provider to use, reproduce and adapt the Contract Material for the purpose of performing this Contract.

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, Pre-existing Material or Software).

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, and no later than within 24 hours, 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 of its 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, and not later than 24 hours after becoming aware, notify the Department;
- b. take all necessary steps to eliminate the Harmful Code from the deliverable; and
- c. if the Service Provider is:
 - i. 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; or
 - ii. 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