



Australian Government

Department of Home Affairs

ABN: 33 380 054 835

REQUEST FOR TENDER (RFT) FOR *VISA AND MIGRATION MEDICAL SERVICES*

RFT TERMS AND CONDITIONS

RFT HOME AFFAIRS2040/RFT

The Department invites interested parties to submit Tenders in accordance with this RFT for the services described in the Statement of Requirement in **Attachment A**.

This RFT consists of:

- a. the RFT Details in **PART 1**, which set out the specific details that apply to this RFT;
- b. the Terms and Conditions in **PART 2** that apply to this RFT; and
- c. the following Attachments:
 - i. Statement of Requirement (**Attachment A**);
 - ii. Tender Responses (**Attachment B**);
 - iii. Pricing Schedule (**Attachment C**);
 - iv. Evaluation Process and Evaluation Criteria (**Attachment D**);
 - v. Draft Contract (**Attachment E**); and
 - vi. Glossary (**Attachment F**).

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PART 1 – RFT DETAILS

RFT Detail	Details
RFT Number	HOMEAFFAIRS2040/RFT
Closing Time	2.00 pm on 19 February 2021 (local time in Canberra, Australian Capital Territory (AEDT)).
Contact Officer	Name: Services Procurement Email: services.procurement@homeaffairs.gov.au
Description of the Requirement	Visa and Migration Medical Services, including: <u>Onshore Medical Services</u> • Provision of Health Examinations by Onshore Panel Physicians via a network of Clinic Locations throughout Australia, including radiology and pathology services. • Provision of Health Assessments by Medical Physicians nominated to be appointed by the successful Tenderer, and appointed by the Department, as Medical Officers of the Commonwealth where a Health Examination has significant findings, to determine whether a Client Meets the Health Requirement. • Facilitating requests from the Administrative Appeals Tribunal (AAT) for review of existing Health Assessment outcomes. • Provision of Caree Assessments. • Provision of Health Status Assessments. • Provision of Fit to Depart Assessments and Fit to Travel Assessments. • Provision of In-Home Examinations, where required and approved by the Department. • Maintenance of a dedicated website for the purpose of providing the Services to Clients. • Provision of an appointment system for all Clinic Locations, to which the Department can refer all Clients. • Provision of phone and email support services for Clients and the Department. • Promotion and provision of access to professional interpreting and communication services to assist Clients. • In undertaking Health Examinations, ensuring that Departmental Policy is followed when checking and

	verifying the identity of a Client, and capturing their facial images. <u>Offshore Medical Services</u> • Provision of Health Assessments by Medical Physicians nominated to be appointed by the successful Tenderer, and appointed, by the Department as MOCs, to determine whether a Client located offshore meets the Health Requirement. • Administrative processing and support of offshore Health Assessments. <u>Health Undertaking Service</u> • Liaising with Clients placed on a Health Undertaking who have committed to contact the Department (through the Contractor) within 28 days of arrival in Australia for checks and the facilitation of their referral to the relevant State and Territory Health Authority for a follow-up medical examination. • All associated monitoring, administrative follow-up and reporting of compliance with regards to Health Undertakings. <u>Maintenance of Notes for Guidance Papers</u> • Conducting reviews of the existing twenty two (22) Notes for Guidance (NfG) papers, which encompass clinical and health economic developments. These papers support MOCs in making an assessment on whether a client meets the Health Requirement. • Drafting any new NfG papers, as directed by the Department. <u>Consultancy Services</u> • Provision of advice or assistance relevant to the Services, as requested by the Department. <u>Adhoc Services</u> • Provision of adhoc services, as requested by the Department. <u>Administrative Support</u> • Provision of administrative support and health processing staff to assist with the provision of all the Services. <u>Auditing</u> • Provision of an up-to-date quality management system, including clinical and administrative audits.
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	<u>Policies and Procedures Manual</u> - Development and regular updating of a comprehensive Policies and Procedures Manual which sets out the material policies and procedures to be followed in providing the Services. <u>Planning and program implementation</u> - Development, adherence and regular updating of a suite of plans and documents in relation to the provision of the Services. - Development and adherence to a framework setting out how communications and reporting requirements in relation to issues and complaints will be managed, including their notification, management and closure. <u>Training</u> - Delivery of a comprehensive training program for the ongoing professional development of Contractor Personnel. <u>Information Technology (IT) Systems and Data</u> - Utilise the Department's IT Systems and ensure that all relevant information is recorded in/uploaded to these systems, as required. - Implement and maintain any systems (or additional systems) required in order to meet the obligations required under the Draft Contract (Attachment E). - Establish and maintain an appropriate secure gateway server to the Department's IT Systems to enable the transfer of data extract files from the Department. <u>Reporting and meetings</u> - Fulfillment of all reporting and meeting requirements. Further details of the Requirement are set out in Attachment A.
Tenders for only part of the Requirement permitted?	☒ No - see Terms and Conditions clause 11
Conditions for Participation and, Minimum Format and Content Requirements	<u>Conditions for Participation:</u> The Tenderer must not have had any judicial decisions against it (excluding decisions under appeal) relating to employee entitlements and have not satisfied any resulting order.

	2. The Tenderer, its personnel and any subcontractor proposed in its Tender must not be listed as terrorists under section 15 of the <i>Charter of the United Nations Act 1945</i> (Cth). 3. The Tenderer, its personnel and any subcontractor proposed in its Tender must not be named in the consolidated list referred to in Regulation 40 of the <i>Charter of the United Nations (Dealing with Assets) Regulations 2008</i> (Cth). 4. The Tenderer must either: a) hold a Valid and Satisfactory Statement of Tax Record by the Closing Time; or b) have a receipt demonstrating that a Statement of Tax Record has been requested from the Australian Taxation Office by the Closing Time, and hold a Valid and Satisfactory Statement of Tax Record no later than four (4) Business Days after the Closing Time. 5. The Tenderer must hold a Valid and Satisfactory Statement of Tax Record for any first tier subcontractor that it proposes, as part of its Tender, to engage to deliver the Services where the estimated value of the Services to be undertaken by that subcontractor is over \$4 million (GST inclusive). <u>Minimum Content and Format Requirements:</u> 1. Tenderers must attach to its Tender a completed and signed copy of the Deed of Undertaking substantially in the form set out in Attachment B. 2. Tenderers must attach to its Tender a completed and signed copy of the statutory declaration substantially in the form set out in Attachment B. 3. Tenderers must submit with their Tender a) for the Tenderer either: (i) a Valid and Satisfactory Statement of Tax Record for the Tenderer; or (ii) a receipt demonstrating that a Statement of Tax Record has been requested from the Australian Taxation Office for the Tenderer and the Tenderer must then provide a Valid and Satisfactory Statement of Tax Record within four (4) Business Days after the Closing Time.
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	b) a Valid and Satisfactory Statement of Tax Record for any first tier subcontractor that it proposes, as part of its Tender, to engage to deliver the Services where the estimated value of the Services to be undertaken by that subcontractor is over \$4 million (GST inclusive). 4. The Tenderer must ensure that its Tender meets each of the following requirements: a) all language, including in all attachments and supporting technical data, must be written in English; b) unless otherwise specified in the Statement of Requirement, all measurements must be expressed in Australian legal units of measurement; and c) all prices must be stated in Australian dollars.
Indicative Timetable for the RFT	Issue RFT: 16 December 2020 Closing Time: 19 February 2021 Evaluation period: February – June 2021 Contract(s) with successful Tenderer(s) finalised: October 2021 [Note to Tenderers: This timetable is indicative only (with the exception of the Closing Time) and the Department reserves the right to change it.]
Intended outcome of the RFT process	☒ One successful Tenderer for provision of the Requirement - see Terms and Conditions clause 21 and the Draft Contract at Attachment E.
Proposed Contract Term	Estimated commencement: 1 July 2022 Estimated end date: 30 June 2025 Options to extend: further periods as determined by the Department up to a total of four (4) years in duration. This means the Contract Term cannot be extended beyond 30 June 2029.
Tender Validity Period	12 months after the Closing Time - see Terms and Conditions clause 6.
Industry briefings	☒ There will be no industry briefings for this RFT process.
Site Inspection	☒ There will be no site inspection for this RFT process.
Data Room or Further Materials	☒ The Department does not intend to provide Tenderers with additional materials, data or information other than that contained in this RFT.

Evaluation Criteria and Process	As set out in Attachment D .
Participation of other Commonwealth Agencies in this RFT process	☒ The Department is not aware of any other requirement by another Commonwealth Agency for the Requirement, but wishes to facilitate procurement by any other Commonwealth Agency in the future using the mechanisms in this RFT and the Draft Contract (Attachment E) - see Terms and Conditions clause 33 .
Security Requirements	Relevant personnel of the successful Tenderer (if any) and its subcontractors, where applicable, may be required to obtain and maintain an Employment Suitability Clearance and Commonwealth Security Clearance, where they require non-public access to the Department's resources (including ICT systems, information and facilities), they are lawfully directed in accordance with the <i>Australian Border Force Act 2015</i> (Cth) (the ABF Act) or they are determined to be Immigration and Border Protection workers in accordance with the ABF Act. Clause 38 of the RFT Terms and Conditions sets out this requirement in further detail.

PART 2 – TERMS AND CONDITIONS

1. Definitions

- 1.1. In this RFT, unless the contrary intention is expressed, the definitions set out in **Attachment F (Glossary)** apply.
- 1.2. Additional definitions may appear throughout this RFT.

2. Interpretation

- 2.1. In this RFT, except where the contrary intention is expressed:
- (a) a reference to time, unless specified otherwise, is to the local time in Canberra, the Australian Capital Territory (AEDT);
 - (b) words importing a gender include any other gender;
 - (c) words in the singular number include the plural and words in the plural number include the singular;
 - (d) a reference to \$AUD, AUD, A\$, \$A, dollar or \$ is to Australian currency;
 - (e) section headings are inserted for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
 - (f) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority, agency or other entity;
 - (g) another grammatical form of a defined word or expression has a corresponding meaning;
 - (h) a reference to a clause, paragraph, part, attachment, schedule or annexure is to a clause, paragraph, part, attachment, schedule or annexure to this RFT;
 - (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (j) a reference to a party includes that party's administrators, successors, and permitted assignees, and its officers, employees, agents and advisors;
 - (k) the meaning of general words is not limited by specific examples introduced by including, 'for example' or similar expressions and the word 'include' is not a word of limitation; and
 - (l) the term 'may' when used in the context of a right exercisable by the Department means that the Department may exercise that right in its discretion and the Department has no obligation to any Tenderer.
- 2.2. To the extent of any inconsistency between any of the information in this RFT, the information will be interpreted in the following order of priority:
- (a) the Terms and Conditions in Part 2 of this RFT;
 - (b) **Attachment F** to this RFT;
 - (c) the RFT Details in Part 1 of this RFT;

- (d) **Attachment E** to this RFT;
- (e) **Attachment A** to this RFT;
- (f) **Attachment D** to this RFT;
- (g) **Attachment B** to this RFT;
- (h) **Attachment C** to this RFT; and
- (i) any other document forming part of this RFT.

2.3. The use of the term 'must' in the RFT does not refer to a mandatory requirement in relation to the RFT process (i.e. a requirement in relation to which a failure of a Tenderer to comply will result in the Tenderer being excluded from the RFT process) unless specified as such in the RFT Details. However, the Department may take into account a Tenderer's failure to meet such a requirement in the evaluation of that Tender.

3. Tender Closing Time

- 3.1. Tenders must be lodged on AusTender before the Closing Time.
- 3.2. The time displayed on AusTender is deemed to be the correct time and will be the means by which the Department will determine that Tenders have been lodged by the Closing Time.
- 3.3. Notwithstanding **clause 3.2**, the judgement of the Department as to the time a Tender has been lodged will be final.
- 3.4. The Department may extend the Closing Time for all Tenderers, at its sole and absolute discretion. If it does so, the Department will issue an addendum notifying of the extension in accordance with **clause 14** (Issue by the Department of Addenda and Notices).

4. Tender Lodgement

Requirement to use AusTender

- 4.1. Tenders in response to this RFT must be lodged electronically using the Electronic Tender Box on the AusTender website, in accordance with the Tender lodgement procedures set out in this RFT and on AusTender.
- 4.2. Tenders lodged by any other means, including by hand, facsimile or email, will not be considered.

AusTender

- 4.3. AusTender is the online tendering system for Australian Government Departments and agencies at <https://www.tenders.gov.au>. AusTender allows Tenderers to download tender documentation and upload Tender responses. Tenderers are required to first register with AusTender and provide their contact details.
- 4.4. Access to and use of AusTender is subject to the AusTender Terms of Use set out on AusTender at <https://www.tenders.gov.au/infolinks/termsfuse>. Tenderers agree to comply with those terms and conditions and any applicable instructions, processes, procedures and recommendations as advised on AusTender.

- 4.5. Where there is any inconsistency between the tender lodgement procedures set out on AusTender and those set out in this RFT, the tender lodgement procedures set out in this RFT will prevail to the extent of the inconsistency.
- 4.6. It is the responsibility of Tenderers to ensure that their infrastructure including operating system and browser revision levels meet the minimum standards as defined on AusTender. The Department takes no responsibility for any problems arising from Tenderers' infrastructure and/or Internet connectivity.
- 4.7. Tenderers are required to inform themselves concerning all security measures and other aspects of the AusTender technical environment. Tenderers should make their own assessment of the AusTender system prior to using it for any matter related to this RFT. The Department accepts no responsibility arising in respect of any use or attempted use of AusTender by any party.
- 4.8. All queries and requests for technical or operational support in respect of AusTender are to be directed to:

AusTender Help Desk

Telephone: 1300 651 698

International: +61 2 6215 1558

Email: Tenders@finance.gov.au

- 4.9. The AusTender Help Desk is available between 9am and 5pm, Monday to Friday (local time in Canberra, ACT), excluding ACT and Australian national public holidays.

Electronic Lodgement by the Closing Time

- 4.10. Tenders must be lodged, on or before the Closing Time, electronically via AusTender in accordance with the lodgement procedures set out in this RFT and on AusTender. Failure to comply with any or all of these requirements may result in the Tender not being received successfully and/or the Department may exclude the Tenderer from further consideration.

Virus Checking

- 4.11. In submitting their Tenders electronically, Tenderers warrant that they have taken reasonable steps to ensure that Tender response files are free of viruses, malicious code, worms or other disabling features that may affect AusTender and/or Department computing environment. Any Tender found to contain viruses, malicious code or other disabling features will be excluded from the evaluation.

Tender File Formats, Naming Conventions and Sizes

- 4.12. Tenderers are required to lodge their Tender in accordance with the requirements for file format/s, naming conventions and file sizes as set out in this **clause 4**. Failure to comply with any or all of these requirements may result in the Tender not uploading successfully and/or may exclude the Tender from consideration.
- 4.13. The Department will accept Tenders lodged in Microsoft Word 2010 (or later version), Microsoft Excel 2010 (or later version), Portable Document Format or other format

specified in **Attachment B** or as otherwise agreed in writing by the Contact Officer.

4.14. The Tender file name/s should:

- (a) incorporate the Tenderer's name;
- (b) reflect the various parts of the Tender they represent, where the Tender comprises multiple files;
- (c) not contain any of the following characters: \ / : * ? " < > | ; and
- (d) not exceed 100 characters, including the file extension.

4.15. Tender files:

- (a) may not exceed a combined file size of five (5) megabytes per upload;
- (b) should be uploaded from a high level directory on a Tenderer's desktop, so as not to impede the upload process;
- (c) should not be selected from a secure or password protected location, or from portable media such as, but not limited to, CD, DVD or USB; and
- (d) should be zipped (compressed) together for transmission to AusTender (Tenderers should contact the Contact Officer if they wish to use compression software other than 'WinZIP' or 'WinRAR' compression software, and may only do so if approved by the Contact Officer in writing).

4.16. AusTender will accept up to a maximum of five (5) files in any one upload of a Tender. Each upload should not exceed the combined file size limit of five (5) megabytes. If an upload would otherwise exceed 5 megabytes, the Tenderer should either:

- (a) transmit the Tender files as a compressed (zip) file not exceeding five (5) megabytes; or
- (b) lodge the Tender in multiple uploads ensuring that each upload does not exceed five (5) megabytes and clearly identify each upload as part of the Tender.

4.17. If a Tender consists of multiple uploads, due to the number of files or file size, Tenderers should ensure that transmission of all files is completed before the Closing Time.

4.18. Tenders are required to be completely self-contained. No hyperlinked or other material may be incorporated by reference.

Scanned or imaged material, including the Tenderer's declarations

4.19. Scanned images of signed and/or initialled pages within the Tender, including deeds of undertaking, statutory declaration, "Declaration of Compliance" and deeds of confidentiality where they are required, are permitted so long as the total file size does not exceed the five (5) megabyte limit. The use of scanned or imaged material, where it expands the Tender file size beyond the five (5) megabyte limit per upload, is prohibited.

4.20. After the Closing Time, the Department may require that the Tenderer courier or post the original signed and initialled pages of their Tender to the Department, at the Tenderer's cost. Receipt of these documents, including time and date, will be provided to the Tenderer by the Contact Officer.

Lodgement process

- 4.21. Before submitting a Tender, Tenderers are required to:
- (a) ensure their technology platform meets the minimum requirements identified on AusTender;
 - (b) refer to AusTender's help guidance, if required, on uploading Tenders;
 - (c) take all steps to ensure that the Tender is free from anything that might reasonably affect useability or the security or operations of AusTender and/or Department computing environment;
 - (d) ensure that the Tender does not contain links in spreadsheets or documents to other spreadsheets or documents not included in the Tender, macros, script or executable code of any kind unless that specific material has previously been approved in writing by the Department; and
 - (e) ensure that the Tender complies with all file type, format, naming conventions, size limitations or other requirements specified in this RFT or otherwise advised by the Department or required by AusTender.
- 4.22. Tenderers should allow sufficient time to complete the tender lodgement process, including time that may be required for any problem analysis and resolution prior to the Closing Time.
- 4.23. Tenderers should be aware that holding the "Lodge a Response" page in the web browser will not hold the electronic Tender box open beyond the Closing Time. An error message will be issued if the lodgement process is attempted after the Closing Time.
- 4.24. Tenders lodged through AusTender will be deemed to be authorised by the Tenderer.
- 4.25. If Tenderers have any problem in accessing the AusTender website or uploading a Tender they must contact the AusTender Help Desk via the details specified in **clause 4.8** prior to the Closing Time.

Proof of lodgement

- 4.26. When a Tender lodgement has successfully completed, an official receipt is provided on screen. The on-screen receipt will record the time and date the Tender was received by AusTender and will be conclusive evidence of successful lodgement of a Tender. Tenderers should save and print this receipt as proof of lodgement. A separate email confirming receipt of the Tender will also be automatically dispatched to the email address of the registered user whose details were recorded at login.
- 4.27. Failure to receive a receipt means that lodgement has not completed successfully. Where AusTender has issued no receipt, the attempted lodgement will be deemed to have been unsuccessful. Tenderers should refer to **clauses 4.21 to 4.25** and recomplete the tender lodgement process until Tender lodgement is successfully completed.

AusTender security

- 4.28. Tenderers acknowledge that although the Commonwealth has implemented the security measures described on AusTender, the Commonwealth does not warrant that unauthorised access to information and data transmitted via the internet will not occur.
- 4.29. Tenderers acknowledge that:
- (a) lodgement of their Tender on time and in accordance with the terms and conditions of AusTender and this RFT is entirely their responsibility; and
 - (b) the Department will not be liable for any loss, damage, costs or expenses incurred by Tenderers or any other person if, for any reason, a Tender or any other material or communication relevant to this RFT, is not received on time, is corrupted or altered or otherwise is not received as sent, cannot be read or decrypted, or has its security or integrity compromised.

Late Tenders, Incomplete Tenders and Corrupted Files

- 4.30. Lodgement of Tenders before the Closing Time is entirely the Tenderer's responsibility.
- 4.31. Late Tenders will not be accepted unless the delay in lodging the Tender before the Closing Time is solely as a consequence of mishandling by the Department.
- 4.32. Tenderers should be aware that AusTender will not permit any attempt to commence lodging a Tender, or any discrete component of a Tender, after the Closing Time. Such a Tender will be deemed to be a Late Tender.
- 4.33. Where electronic submission of a Tender has commenced prior to the Closing Time but concluded after the Closing Time, and upload of the Tender file(s) has completed successfully, as confirmed by AusTender system logs, the Tender will not be deemed to be a Late Tender. Such Tenders will be identified by AusTender to the Department as having commenced transmission prior to, but completed lodgement after, the Closing Time.
- 4.34. Where a Tender lodgement consists of multiple uploads, due to the number and/or size of the files, Tenderers must ensure that transmission of all files is completed and receipted before the Closing Time, and **clause 4.33** will only apply if the final upload commenced before the Closing Time.
- 4.35. Without limiting the Department's other rights under this RFT, the following types of Tenders may be excluded from evaluation:
- (a) subject to **clauses 4.33** and **4.34**, incomplete submissions due to a failure to upload all files by the Closing Time;
 - (b) Tenders with electronic files that cannot be read or decrypted; and
 - (c) Tenders which the Department believes to potentially contain any virus, malicious code, worms, other disabling features or anything else that might compromise the integrity or security of AusTender and/or Department computing environment.

5. Department's Contact Officer and Enquiries about the RFT

Contact Officer

- 5.1. All enquiries in relation to this RFT are to be:
- (a) in writing by email;
 - (b) directed to, and only to, the Contact Officer; and
 - (c) received by the Contact Officer four (4) Business Days before the Closing Time.
- 5.2. The Department may, at its sole and absolute discretion, refuse to respond to any enquiry not made in accordance with **clause 5.1**.
- 5.3. The Department reserves the right to publish on AusTender any enquiry received about this RFT and the Department's response, on a non-attributable basis.

6. Tender Validity Period

- 6.1. Tenders are to remain valid for acceptance by the Department for the Tender Validity Period listed in the RFT Details.
- 6.2. A Tenderer may extend its Tender Validity Period by notice to the Department.
- 6.3. If this procurement is suspended under the *Government Procurement (Judicial Review) Act 2018* (Cth), the Tender Validity Period is extended by the period of suspension, up to twice the period of the Tender Validity Period.

7. Intended Timeframe For The RFT Process

- 7.1. The RFT Details set out the Department's intended timetable for the RFT Process. However, any time or date set out in this RFT (other than the Closing Time) is indicative only, and creates no obligation on the Department, or any right in a Tenderer, in relation to these dates.
- 7.2. Subject to **clause 3.4** (Tender Closing Time), the Department may change the intended timetable in the RFT Details in its absolute discretion at any time, and without giving any notice to Tenderers.

8. Industry briefings and site inspections

- 8.1. If the Department decides to provide an industry briefing as part of the RFT process:
- (a) the Department reserves the right to hold the briefing at a physical location and/or via teleconference, videoconference or another electronic platform;
 - (b) the industry briefing will be open for Tenderers to clarify the Department's objectives and priorities for this RFT and to respond to questions arising out of the RFT process;
 - (c) Tenderers will be required to register their attendance at the industry briefing;
 - (d) the Department may change the date, location and/or time of the industry briefing at its absolute discretion, by issuing an addenda in accordance with **clause 14**;

- (e) if in the course of the industry briefing it becomes clear to the Department, in its absolute discretion, that it is necessary to distribute additional information relating to or concerning this RFT and/or the Requirement, then the Department reserves the right to distribute that information to all Tenderers in accordance with **clause 14**;
- (f) Tenderers must not rely on a statement made at the industry briefing as amending or adding to this RFT unless that amendment or addition is confirmed by the Department in writing in accordance with **clause 14**;
- (g) **clause 30.1(h)** applies to any information given at the industry briefing; and
- (h) attendance at the industry briefing will be at the Tenderer's own cost.

8.2. If the Department decides to undertake a site inspection as part of the RFT process:

- (a) the purpose of the site inspection will be to ensure that all Tenderers are thoroughly informed of the full extent, nature and standard of the Requirement;
- (b) Tenderers will be required to register their attendance for the site inspection;
- (c) the Department may change the date, location and/or time of the site inspection at its absolute discretion, by issuing an addendum in accordance with **clause 14**;
- (d) if in the course of the site inspection it becomes clear to the Department, in its absolute discretion, that it is necessary to distribute additional information relating to or concerning this RFT and/or the Requirement, then the Department reserves the right to distribute that information by issuing an addendum in accordance with **clause 14**;
- (e) Tenderers may not rely on a statement made at the site inspection as amending or adding to this RFT unless that amendment or addition is confirmed by the Department in writing in accordance with **clause 14**;
- (f) **clause 30.1(h)** applies to any information given at the site inspection; and
- (g) attendance at the site inspection will be at the Tenderer's own cost.

9. **Provision of other materials by the Department**

9.1. Unless indicated by the RFT Details, the Department is not making available to Tenderers any materials or information other than that contained or referred to in this RFT.

10. **Conditions for Participation, and Minimum Content and Format Requirements for Tenders**

Conditions for Participation

- 10.1. The Conditions for Participation are set out in Part 1 – RFT Details.
- 10.2. Subject to **clauses 10.7 and 17**, any Tenderer who fails to meet one or more of the Conditions for Participation set out in the RFT Details will be excluded from further consideration.
- 10.3. The Department may at any time during the Evaluation Process reach the view that a Tenderer does not meet one or more of the Conditions for Participation.

Minimum Content and Format Requirements

- 10.4. A Tenderer must meet each of the Minimum Content and Format Requirements set out in Part 1 – RFT Details.
- 10.5. Subject to **clauses 10.7 and 17**, any Tenderer who fails to meet one or more of the Minimum Content and Format Requirements set out in the RFT Details will be excluded from further consideration.
- 10.6. The Department may at any time during the Evaluation Process reach the view that a Tenderer does not meet one or more of the Minimum Content and Format Requirements.

Exceptions to Conditions for Participation and Minimum Content and Format Requirements

- 10.7. The Department will not exclude a Tenderer from further consideration due to:
- (a) a failure by the Tenderer to have a Statement of Tax Record receipt or hold a Statement of Tax Record by the required timeframe, as required by the Conditions for Participation; or
 - (b) a failure by the Tenderer to provide a Statement of Tax Record receipt or Statement of Tax Record by the required timeframe, as required by the Minimum Content and Format Requirements,
- if the Department, in its sole discretion, is satisfied that the failure is due solely to mishandling on the part of the Australian Taxation Office, and provided that the Tenderer:
- (c) provides evidence that it has lodged an application for a Statement of Tax Record prior to the Closing Time if it does not have, or is unable to provide, a Statement of Tax Record receipt; and
 - (d) provides to the Department a Valid and Satisfactory Statement of Tax Record immediately upon receipt from the Australian Taxation Office.

Format of Tenders

- 10.8. Tenders should include all information or other material required by **Attachment B** and **Attachment C**, including:
- (a) the Tender cover sheet in **Part 2 of Attachment B**;
 - (b) the Tender response tables in **Part 4 of Attachment B**; and
 - (c) the pricing information required in accordance with **Attachment C**.
- 10.9. **Clause 10.8** does not limit or add to the Minimum Content and Format Requirements.

11. Part Tenders

- 11.1. Tenderers are to offer to provide the entire Requirement and no Tenders for only part of the Requirement will be allowed.

12. No Consortia or Joint Tenders; Subcontract arrangements

- 12.1. A Tender is required to be submitted by a single legal entity and who proposes to contract with the Department for provision of the Requirement.
- 12.2. Any resulting Contract will require that the successful Tenderer (if any) not subcontract the whole of its obligations under the resulting Contract but the successful Tenderer may, with the prior consent of the Department, subcontract part of the Requirement. Any resulting Contract will require the successful Tenderer to impose similar terms and conditions under subcontracting arrangements in relation to the Requirement.
- 12.3. The successful Tenderer(s) must:
- (a) agree to the public disclosure of the names of any subcontractors engaged to perform any of the Requirement; and
 - (b) inform relevant subcontractors that their participation in fulfilling any of the Requirement may be publicly disclosed.

13. Alternative Tenders

- 13.1. The Department will not consider an alternative Tender submitted by a Tenderer.

14. Issue by the Department of Addenda and Notices

- 14.1. The Department may, in its absolute discretion, issue addenda to this RFT. Such addenda may include variations to the RFT or additional information in relation to the RFT. The addenda may also allow actions that the Department considers necessary or desirable to ensure Tenderers are treated fairly and equitably, such as allowing revision and resubmission of Tenders.
- 14.2. For any addenda issued after the Closing Time, AusTender will notify Tenderers who have registered and downloaded this RFT documentation via email of the issue of any addenda. It is in the interest of Tenderers to ensure they have correctly recorded their contact details prior to downloading RFT documentation. If Tenderers have not recorded their details correctly, they should amend their details and download this RFT documentation again. If a Tenderer has obtained RFT documentation other than from AusTender, they should visit AusTender, register as a user and download this RFT documentation.
- 14.3. Tenderers are required to log in to AusTender and collect addenda as notified.
- 14.4. The Commonwealth will accept no responsibility if a Tenderer fails to become aware of any addendum notice which would have been apparent from a visit to the AusTender page for this RFT.
- 14.5. For any addenda issued after the Closing Time, the Department may issue the addenda, if the Department considers that it is fair and equitable to do so, by sending a copy of the addenda to the email address of each Tenderer as set out in their Tender.
- 14.6. The Department will not be responsible if a Tenderer fails to become aware of any addendum because the email address the Tenderer provided is incorrect or unmonitored, or because the email sent by the Department is not delivered because of

issues or problems with the infrastructure or internet connectivity of the Tenderer's information and communications technology (ICT) systems.

- 14.7. A Tenderer will not be allowed to amend its Tender as a result of its failure to be aware of any issued addenda.
- 14.8. Each addendum forms part of this RFT upon issue.
- 14.9. If a Tenderer finds or reasonably believes it has found any discrepancy, error, ambiguity, inconsistency, omission or misleading statement (**Error**) in this RFT, or in any other information given or made available by the Department, the Tenderer should promptly notify the Contact Officer in writing setting out the Error in sufficient detail. Any consequential amendment of this RFT or information provided by the Department will be made available to all Tenderers in accordance with this **clause 14**.

15. Issue by the Department of Requests for Clarification

- 15.1. If the Department requires clarification of information contained in a Tender, it will request clarification from the Tenderer in writing. The Department will not accept information provided in response to a request for clarification if that information alters the original Tender in any material respect. If the Tenderer fails to supply clarification to the satisfaction of the Department, then the Department may exclude the Tender from further consideration.
- 15.2. Tenderers should:
- (a) respond to any request for clarification within the time period and in the format specified by the Department;
 - (b) ensure that the information provided answers the Department's enquiry and is consistent with their Tender; and
 - (c) not seek to materially alter any aspect of their Tender.
- 15.3. The Department may require the Tenderer to submit similar information to that required by this RFT in respect of any proposed subcontractors if that information was not already required to be included in the Tender by this RFT.
- 15.4. The Tenderer should not interpret a request for clarification as being an indication that its organisation will or will not be the preferred Tenderer. The Tenderer should treat all communications relating to this RFT with the Department as strictly confidential and not disclose the details of those communications to third parties. A Tenderer's failure to observe confidentiality may result in the exclusion of their Tender from further consideration.

16. Corrections by a Tenderer After Lodgement

- 16.1. If, after submission of a Tender but before the Closing Time, a Tenderer becomes aware of any discrepancy, error or omission in the Tender and wishes to lodge a correction or additional information, it must resubmit its whole Tender in accordance with this RFT, clearly stating that the Tender is a replacement Tender. Where more than one Tender has been submitted, the Department will evaluate the last submitted Tender.
- 16.2. The Department is not under any obligation to consider any corrections or additional

information provided by Tenderers after the Closing Time. The Department will consider this material only where it considers it appropriate to do so.

17. Unintentional Errors of Form

- 17.1. An unintentional error of form is an error that the Department considers represents incomplete or incorrect information that is not consistent with the Tenderer's intentions and, if relevant, capabilities at the time the Tender was lodged.
- 17.2. If the Department considers that there are unintentional errors of form in a Tender, the Department may request the Tenderer to correct or clarify the error, but will not permit any material alteration or addition to the Tender.

18. Presentations, Interview and Site Visits

- 18.1. The Department may, at its sole discretion, require the Tenderer to give a presentation on its Tender, attend an interview and/or host a site visit to the Tenderer's premises (or other premises where the Requirement will be provided). Such requirements will be at the Department's sole discretion. The Department will advise the Tenderer of any requirements for the presentation, interview and/or site visit and the Department has the right to set the format, content and length of any presentation, interview and/or site visit.
- 18.2. Any costs incurred by the Tenderer in relation to any presentations, interview or site visits will be borne by the Tenderer.

19. The Evaluation Criteria and Evaluation Process

- 19.1. The Department will evaluate Tenders in accordance with the Evaluation Criteria and Evaluation Process set out in **Attachment D**.
- 19.2. When evaluating the Tenders, the Department may:
- (a) use any material provided in response to one Evaluation Criterion in the evaluation of other Evaluation Criteria;
 - (b) seek clarification or information from any Tenderer, whether or not similar information has been sought from other Tenderers;
 - (c) make independent enquiries about any matters that may be relevant to the evaluation including security, financial and probity checks in relation to the Tenderer, its subcontractors and any related entities or their personnel (and a Tender may be excluded by the Department if the Tenderer does not provide, at its own cost, all reasonable assistance to the Department in this regard);
 - (d) obtain information regarding the capacity and capability of a Tenderer from referees nominated by the Tenderer or any other person contacted by the Department;
 - (e) request that Tenderers submit a Best and Final Offer prior to negotiations;
 - (f) normalise Tender pricing in order to establish a common base for comparative assessment of Tenders, including in relation to:
 - i. consideration of nominal and discounted cash flow;
 - ii. cost associated with transitioning;

- iii. any assumptions, qualifications or caveats attached to the Tender prices;
 - iv. analysis of risks related to a Tender; and
 - v. other costs, if any, or financial impacts on the Department that may arise from appointing a particular Tenderer; and
- (g) use any relevant information obtained in respect of a Tenderer either through this RFT process or by independent enquiry.

20. No Contract; Disclaimer; Acceptance of Tenderer's Offer

- 20.1. This RFT is an invitation to treat and is not to be taken as an offer to enter into a contract, or any sort of recommendation. This RFT does not include any tax, legal, commercial or investment advice.
- 20.2. Lodging a Tender will constitute an offer in accordance with this RFT by the Tenderer.
- 20.3. The Department may accept the whole or any part of the Tenderer's offer. Neither the lowest priced Tender, nor any Tender, will necessarily be accepted by the Department.
- 20.4. Despite the evaluation of Tenders resulting in the selection of a preferred Tenderer, the acceptance or purported acceptance of any Tender by the Department is subject to the execution of a Contract, in a form acceptable to the Department, between the preferred Tenderer and the Department.
- 20.5. No binding contract (including a process contract) or other understanding (including any form of contractual, quasi-contractual, restitutionary rights, or rights based upon similar legal or equitable grounds) will exist between the Department and a Tenderer in relation to this RFT or the Requirement unless and until a Contract (if any) is signed by the Department and a successful Tenderer.
- 20.6. **Clause 20.5** above does not apply to a Deed of Undertaking or any other deed or declaration executed by a Tenderer in accordance with this RFT.
- 20.7. Despite **clauses 20.5** and **20.8**, if a court finds that a contract exists between the Department and a Tenderer regarding the conduct of this RFT process, the Tenderer agrees that the Department's liability for negligence, breach of statute, and any breach of the terms of such a contract is limited to the Tenderer's substantiated costs of participation in the RFT process. For the avoidance of doubt, the Department is not liable for any lost profit, lost opportunity or other losses which may have been incurred by the Tenderer.
- 20.8. To the extent permitted by law, the Department is not liable to any Tenderer on the basis of any contract or other understanding (including any form of contractual, quasi contractual, restitutionary or promissory estoppel rights, implied obligations or rights based on similar legal or equitable grounds) whatsoever, or in negligence, as a consequence of any matter relating or incidental to this RFT, the procurement of any or all of the requirements covered by this RFT or a Tenderer's participation in the RFT process, including instances where:
- (a) the Department varies the RFT process;
 - (b) the Department elects to enter into a contract for all or any of the requirements

covered by this RFT with any party, whether or not that party was a Tenderer in this RFT process;

- (c) the Department decides to suspend or terminate the RFT process or not to tender or enter into a contract for all or any of the requirements covered by this RFT;
- (d) the Department decides to proceed with another approach to market for the Requirement or any part of the Requirement;
- (e) the Department exercises or fails to exercise any of its other rights under or in relation to this RFT; or
- (f) the Department makes information available or provides information to a Tenderer relating to projected future, current or historical requirements.

21. Outcome of the RFT Process

- 21.1. Subject to this RFT, the Department's intention is to enter into an agreement with a successful Tenderer substantially in the form of the Draft Contract in **Attachment E** for the provision of the Requirement.

22. Debriefing

- 22.1. All Tenderers will be notified of the outcome of this RFT in writing and offered an opportunity for a debriefing following finalisation of any resulting Contract with the successful Tenderer (if any). If the Tenderer would like a debriefing, it should contact the Contact Officer to arrange a suitable time.
- 22.2. Tenderers will be debriefed against the Evaluation Criteria. In accordance with Commonwealth policy, a Tenderer will not be provided with information concerning other Tenders or Tenderers, except for publicly available information and except in so far as comparative statements can be made without breaching confidentiality.

23. Intellectual Property Rights in Tender Documents

- 23.1. All Intellectual Property Rights in this RFT are vested in the Department.
- 23.2. The Tenderer agrees that, subject to **clause 23.3** below, their Tender becomes the property of the Department. The Tenderer grants to the Department, and anyone assisting the Department, a licence to use, reproduce, adapt, modify, disclose and, communicate on a royalty-free, perpetual and irrevocable basis any material contained in the Tender which the Department considers necessary for the purpose of:
- (a) the RFT process, evaluating or clarifying the Tender (including any subsequent offer);
 - (b) negotiating, preparing and managing any resulting Contract with the Tenderer;
 - (c) complying with any law;
 - (d) referring any material suggesting collusion by Tenderers to the Australian Competition and Consumer Commission (ACCC) and the use by the ACCC of that material to conduct any review it deems necessary;
 - (e) providing information to another person in the situations specified in **clauses 24.4** or **24.5** (Confidentiality); and

- (f) anything else or any other purposes related to the RFT process, including audit and complying with governmental and parliamentary reporting requests and requirements (including requests for information by Parliament or Parliamentary Committees).

23.3. **Clause 23.2** does not transfer ownership of any Intellectual Property Rights in the information contained in the Tender to the Department (these remain vested in the person with the original ownership of those Intellectual Property Rights).

24. Confidentiality

General

- 24.1. Tenderers acknowledge that the Department is subject to a number of specific requirements, which support internal and external scrutiny of its tendering and contracting processes. These include:
- (a) the requirement to publish details of its agreements valued at or above \$10,000 and all standing offers on AusTender, within six weeks of entering into the agreement or standing offer;
 - (b) the requirement to publish a list of agreements valued at \$100,000 or more, which have not been fully performed or which have been entered into during the previous 12 months, on the internet with access through the Department's home page, and identify confidentiality requirements in accordance with the Senate Order on Department and Agency Contracts;
 - (c) disclosure requirements under the *Freedom of Information Act 1982* (Cth) and *Auditor General Act 1997* (Cth);
 - (d) compliance with record keeping policies, standards and guidelines;
 - (e) compliance with record keeping obligations under the *Archives Act 1983* (Cth);
 - (f) compliance with legislation (including, but not limited to, the *Criminal Code Act 1995* (Cth) relating to the protection of prescribed official information); and
 - (g) the obligation to investigate and report on any complaints received under the *Government Procurement (Judicial Review) Act 2018* (Cth) (the GP(JR) Act).

Disclosure to Parliament and its Committees

- 24.2. Tenderers acknowledge that Federal Parliament and its Committees have the power to require the disclosure of Commonwealth agreements and contract information to enable them to carry out their functions.

Department's confidentiality obligations

- 24.3. Subject to **clauses 24.4** and **24.5**, the Department undertakes to keep confidential all Tenders provided to the Department by Tenderers prior to the entering into of any resulting Contract and, in respect of unsuccessful Tenderers, after the execution of such arrangements.

Limitation of obligation of confidentiality

- 24.4. The obligation of confidentiality in **clause 24.3** does not apply if the information:
- (a) is disclosed by the Department, including to its advisers, contractors or employees, to conduct the RFT process (including evaluating Tenders, providing advice during the RFT process and/or during contract negotiations);
 - (b) suggests collusion and is disclosed to the ACCC to review or investigate the information in question;
 - (c) is disclosed to the Department's internal management personnel, solely to enable effective management or auditing of tender and contract related activities;
 - (d) is disclosed by the Department to the responsible Minister or the Parliamentary Secretary or Cabinet;
 - (e) is disclosed by the Department in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - (f) is shared by the Department within its organisation, or with another Commonwealth Agency, where this serves the Commonwealth's legitimate interests;
 - (g) is authorised or required by law to be disclosed;
 - (h) is disclosed by the Department to defend any claim or proceeding in relation to the RFT process or a resulting Contract;
 - (i) is disclosed by the Department to investigate or manage a complaint made in connection with this RFT process;
 - (j) is in the public domain other than due to a breach of **clause 24.3**;
 - (k) is disclosed with the consent of the Tenderer.

- 24.5. The Department may provide any information supplied by a Tenderer in its Tender or as part of this RFT process to any other Commonwealth Agency to assist that agency determine if it wishes to take advantage of the Tenderer's offer to provide the Requirement to that agency. The provisions of this **clause 24** will apply in respect of the relevant Commonwealth Agency as if references to the Department were references to that agency.

Preservation of confidentiality

- 24.6. Once the RFT process has been finalised, the Department will not keep information provided by the successful Tenderer(s) confidential unless the matters are addressed in the resulting Contract (if any) and it considers it appropriate to do so having regard to the matters covered by the Commonwealth's guidance on *Confidentiality throughout the Procurement Cycle*, which is available on the Department of Finance website.
- 24.7. Tenderers should specify in their Tender the information (if any) they wish to have treated as confidential following the award of any resulting Contract, and give reasons why it is necessary to keep the information confidential. In doing so, Tenderers should address each of the four criteria specified in the Commonwealth's guidance on *Confidentiality throughout the Procurement Cycle* (referred to in **clause 24.6**).

- 24.8. If the Tenderer is successful, the Department will consider any request made in accordance with **clause 24.7** and will inform the successful Tenderer whether or not the Department agrees to the request and the terms under which it agrees.

25. Conflict of Interest

- 25.1. Tenderers are required to:
- (a) include in the applicable table in **Attachment B** any actual or potential conflict of interest that exists at the time of lodging their Tender; and
 - (b) immediately notify the Department if the Tenderer becomes aware of an actual or potential conflict of interest, which has not been disclosed in its Tender, at any time before the completion of the RFT process.
- 25.2. A conflict of interest may exist if:
- (a) the Tenderer or any of its personnel have a relationship (whether professional, commercial or personal) with any personnel in the Department;
 - (b) the Tenderer has a relationship with, and obligations to, an organisation which would affect the performance of the Requirement or would bring disrepute to or embarrass the Department; or
 - (c) the Tenderer or any of its personnel have a relationship which could affect the Department's security.
- 25.3. If a Tenderer has or may have an actual or potential conflict of interest, the Department may at its discretion:
- (a) enter into discussions to seek to resolve the conflict of interest;
 - (b) impose conditions on the Tenderer for the management of the actual or potential conflict of interest; or
 - (c) take any other action which it considers appropriate.
- 25.4. If a Tenderer is unwilling or unable to enter into discussions under **clause 25.3(a)**, comply with the conditions imposed under **clause 25.3(b)** or otherwise resolve the actual or potential conflict of interest in a manner satisfactory to the Department, then the Department may exclude the Tender from further consideration (including terminating any contract negotiations).

26. Statement of Compliance

- 26.1. Tenderers should complete and submit as part of their Tender statements of compliance with respect to the Statement of Requirement and Draft Contract substantially in the form of the relevant Statements of Compliance. Tenderers should use the responses defined in the relevant Statement of Compliance in **Attachment B**.
- 26.2. Tenderers should not seek to resile from:
- (a) clauses that they have stated they comply with; or
 - (b) any statement or representation made in their Tender.
- 26.3. Without limiting its other rights under this RFT, if in the Department's view, during

negotiations:

(a) a Tenderer has resiled from any part of its Tender or offered a reduced position to the Department in any respect; or

(b) a Tenderer retracts, or attempts to retract, agreements under which material business, financial, technical and legal issues were resolved during negotiations,

the Department may reject the Tender, discontinue negotiations with the Tenderer, re-enter negotiations with other Tenderers (including or excluding that Tenderer), and exercise any other right the Department has under this RFT, at law or otherwise.

26.4. The Department is under no obligation to negotiate in relation to any provision of this RFT or the Draft Contract if a Tenderer's Statement of Compliance concerning the provision contains a response of 'complies' or they are deemed to comply in accordance with the provisions of this RFT.

27. Compliance with Commonwealth policies

The Australian National Audit Office

27.1. The attention of Tenderers is drawn to the *Auditor-General Act 1997* (Cth), which provides the Auditor-General or an authorised person with a right to have, at all reasonable times, access to information, documents and records in the possession of a Commonwealth Agency.

27.2. Tenderers should obtain, and will be deemed to have obtained their own advice on the impact of the *Auditor-General Act 1997* (Cth) on its participation in this RFT process and any resulting Contract.

27.3. The Draft Contract (**Attachment E**) contains a right of access by the Auditor-General, or an authorised person, to information, documents, records and the Department's assets, including those on the Tenderer's premises, which are related to the relevant contractual arrangement.

Privacy Legislation

27.4. The *Privacy Act 1988* (Cth) regulates the handling (including the collection, storage, use, disclosure, access and correction) of Personal Information by most Commonwealth Agencies and private sector organisations.

27.5. Tenderers should obtain, and will be deemed to have obtained their own advice on the impact of the *Privacy Act 1988* (Cth) on their participation in this RFT process and any resulting Contract.

27.6. The Draft Contract requires the Contractor to comply with the *Privacy Act 1988* (Cth).

Freedom of Information

27.7. The *Freedom of Information Act 1982* (Cth) (FOI Act) gives certain rights to the community to access information in the possession of the Commonwealth, which may include any Tender submitted and any resulting Contract. Access is only limited by certain exceptions and exemptions as set out in the FOI Act.

- 27.8. Tenderers should obtain, and will be deemed to have obtained their own advice on the impact of this legislation on their participation in this RFT process and any resulting Contract.

Workplace Gender Equality

- 27.9. In accordance with Commonwealth policy, the Department will not enter into contracts with Tenderers who are not compliant under the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act). The Draft Contract requires that, in performing any resulting Contract, a successful Tenderer must:
- (a) comply with its obligations, if any, under the WGE Act;
 - (b) if the term of the contract exceeds 18 months, the successful Tenderer must provide a current letter of compliance with the WGE Act within 18 months from the contract commencement date and following this, annually to the Department; and
 - (c) notify the Department if the successful Tenderer becomes non-compliant with the WGE Act during the term of the contract.
- 27.10. For further information about the WGE Act, Tenderers should contact the WGEA on (02) 9432 7000.
- 27.11. Tenderers must indicate as part of the Tenderer's response at **Attachment B**, whether or not the organisation is a 'relevant employer' under the WGE Act and, if applicable, provide a current letter of compliance as part of the Tender, or prior to entering into any contract.

Prohibition of Illegal Workers

- 27.12. Tenderers should note that it is the Department's policy not to enter into contractual arrangements with an entity engaging Illegal Workers. The Deed of Undertaking in **Attachment B** contains a statement from the Tenderer in relation to this policy.

Anti-Terrorism Measures

- 27.13. The Tenderer, its personnel and any nominated subcontractors proposed in the Tender must not be:
- (a) listed as terrorists under section 15 of the *Charter of the United Nations Act 1945* (Cth);
 - (b) named in the consolidated list referred to in regulation 40 of the *Charter of the United Nations (Dealing with Assets) Regulations 2008* (Cth).
- 27.14. The Department will not enter into any contractual arrangement with a person or organisation on the lists referred to above, and Tenderers are required to declare that the Tenderer, its personnel and any nominated subcontractors are not listed (see the Deed of Undertaking in **Attachment B**).
- 27.15. The Tenderer, its personnel, proposed subcontractors, agents and related bodies corporate are required to comply with the United Nations Security Council sanctions regimes under the *Charter of the United Nations Act 1945* (Cth) and the Australian autonomous sanctions regimes under the *Autonomous Sanctions Act 2011* (Cth).

Tenderers are required to declare the Tenderer's, its personnel's, any proposed subcontractors', agents' and related bodies' corporate compliance (see the Deed of Undertaking in **Attachment B**).

Unpaid Employee Entitlements

- 27.16. The Tenderer must not have had any judicial decisions against it (excluding decisions under appeal) relating to employee entitlements and have not satisfied any resulting order. Tenderers are required to declare that they have no such decisions against them (see the Deed of Undertaking in **Attachment B**).

Ombudsman

- 27.17. Tenderers should be aware of the *Ombudsman Act 1976* (Cth), which provides rights of access to places occupied by Commonwealth contractors to conduct investigations at those places.
- 27.18. Tenderers should obtain, and will be deemed to have obtained their own independent advice on the impact of this legislation on their participation in this RFT process and any resulting Contract.
- 27.19. The Draft Contract (**Attachment E**) includes a right of access by the Ombudsman to the Tenderer's premises and/or relevant documents.

Competitive Neutrality

- 27.20. Competitive neutrality requires that Government business activities should not enjoy net competitive advantages over their private sector competitors simply by virtue of public sector ownership.
- 27.21. Tenderers from the public sector which are a Government business enterprise should identify themselves as such and demonstrate in the pricing of their Tender that the requirements of competitive neutrality have been met, including payment of relevant taxes and charges, rates of return and costs of funds. Compliance with the requirements of competitive neutrality may be tested by the Department.

Small and Medium Enterprises (SMEs)

- 27.22. The Department is obliged to comply with the Commonwealth purchasing policy to encourage Small and Medium Enterprises (**SMEs**). An SME is an Australian or New Zealand entity with fewer than 200 full time equivalent employees.
- 27.23. In compliance with this policy, the Department aims to source at least 10% of its purchases from SMEs. To ensure that SMEs have appropriate opportunities to compete for the Department's business, Tenderers should, where possible, identify any SME involvement in their Tenders.

Fair Work Act 2009 (Cth)

- 27.24. The successful Tenderer will be required to comply with all applicable workplace relations laws while performing any resulting Contract, including:
- (a) the *Fair Work Act 2009* (Cth) or any other applicable workplace relations laws;

- (b) work health and safety laws; and
- (c) worker's compensation laws.

Fraud and Corruption Control Plan

- 27.25. Tenderers should note the Australian Government's position on fraud and corruption control, set out in the Commonwealth Fraud Control Framework (available at: <https://www.ag.gov.au/Integrity/FraudControl/Documents/CommonwealthFraudControlFramework2017.PDF>).
- 27.26. The Statement of Requirement in **Attachment A** sets out requirements for fraud and corruption control in connection with the Requirement, including the requirements to prepare a Fraud and Corruption Control Plan that is consistent with the Commonwealth Fraud Control Framework and to review and update the Fraud and Corruption Control Plan.

Subcontracting

- 27.27. Where subcontractors are specified in the Tender, the Tenderer is required to identify:
- (a) the subcontractor's compliance or otherwise with the *Workplace Gender Equality Act 2012* (Cth); and
 - (b) whether the subcontractor complies with the *Fair Work Act 2009* (Cth).
- 27.28. Tenderers' attention is drawn to the requirements in **Attachment B**.

Multicultural Access and Equity Policy

- 27.29. Tenderers must demonstrate how they will comply with the Australian Government's Multicultural Access and Equity Policy (the 'policy'), including at a minimum, by demonstrating:
- (a) a sound knowledge of the needs, circumstances, cultural and other characteristics of Clients and assessment of the direct impact of the Requirement on those Clients; and
 - (b) how they will provide the Requirement to a culturally and linguistically diverse population, consistently with the policy; and
 - (c) that they have:
 - i. planning, implementation, monitoring and review mechanisms that incorporate the policy;
 - ii. performance standards that use the cultural and linguistic diversity of personnel or their awareness of issues (Note: data collection on services, including on performance standards, must be consistent with Standards for Statistics on Cultural and Language Diversity);
 - iii. complaint mechanisms that enable people from culturally and linguistically diverse backgrounds to raise concerns about the services, program and activity provided; and
 - iv. recruited, as relevant, culturally diverse employees, volunteers, grantees and

subcontractors.

- 27.30. Information on the policy and related documents is available at <https://www.homeaffairs.gov.au/mca/PDFs/multicultural-access-equity-policy-guide.pdf>.

Modern Slavery Reporting Requirement

- 27.31. Tenderers should note that any resulting Contract will require the successful Tenderer to provide all assistance reasonably requested by the Department to comply with its obligations under the *Modern Slavery Act 2018* (Cth) (Modern Slavery Act).
- 27.32. If the Tenderer is a 'reporting entity' for the purpose of the Modern Slavery Act, the Tenderer must comply with the requirement to provide modern slavery statements to the relevant Minister under the Modern Slavery Act.
- 27.33. If the Tenderer is a non-reporting entity which volunteers to comply with the reporting requirements (by giving written notice to the relevant Minister before the end of the reporting period as required by section 6 of the Modern Slavery Act), the Tenderer must provide voluntary statements to the relevant Minister in accordance with the Modern Slavery Act.
- 27.34. Tenderers must indicate as part of the Tenderer's response at **Attachment B**, whether or not the organisation is a 'reporting entity' under the Modern Slavery Act and, if applicable, provide evidence of its compliance with the reporting requirements as part of the Tender, or prior to entering into any resulting Contract, or on the first due date of a modern slavery statement.

Child safety

- 27.35. If the successful Tenderer is to engage or employ any person that is required by State or Territory law to have a working with children or vulnerable people check (however described) to undertake any part of the Requirement, the successful Tenderer must:
- (a) abide by all State, Territory or Commonwealth legislation relating to working with children or vulnerable people checks (however described);
 - (b) if required, provide an annual statement of compliance to the Department; and
 - (c) ensure that all subcontractors, who may have child safety obligations, also comply with the obligations set out in this **clause 27.35**.
- 27.36. Tenderers' attention is drawn to the requirements in **Attachment A**.
- 27.37. If the successful Tenderer is to provide services directly to children or is likely to have direct contact with children in connection with providing the Requirement, the successful Tenderer must:
- (a) comply with all relevant Commonwealth, State, Territory or local authority legislation relating to the employment or engagement of individuals who may deal with children in relation to the services, including all necessary working with children or vulnerable people checks (however described);
 - (b) ensure that working with children or vulnerable people checks (however described) remain current and all relevant individuals continue to comply with all relevant

legislation for the duration of their involvement in the services;

- (c) implement, and ensure that all relevant individuals implement, the National Principles for Child Safe Organisations (available at: <https://www.humanrights.gov.au/about/news/coag-endorses-national-principles-child-safe-organisations>);
- (d) complete and update, at least annually, a risk assessment to identify the level of responsibility for children;
- (e) put into place and update, at least annually, an appropriate risk management strategy to manage risks identified through the risk assessment;
- (f) provide training and establish a compliance regime to ensure that all relevant individuals are aware of and comply with the National Principles for Child Safe Organisations, the successful Tenderer's risk management strategy, all relevant legislation relating to mandatory reporting of suspected child abuse or neglect (however described);
- (g) provide annual statement of compliance to the Department; and
- (d) ensure that all subcontractors, who may have child safety obligations, also comply with the obligations set out in this clause 27.37.

27.38. The Draft Contract in **Attachment E** sets out details of requirements relating to child safety which will apply to any successful Tenderer(s).

28. Public Statements

28.1. Tenderers must not make any public statements or announcements, or issue any press release or like statement (by means of advertisement, in the media or otherwise) in relation to this RFT, the Requirement or any resulting Contract arising out of this RFT, without the prior written consent of the Department. However, nothing in this clause is to be read as limiting a Tenderer's right to enter into public debate or criticism of the Australian Government, Commonwealth Agencies, or their personnel.

29. Ethical Dealing

29.1. The Tenderer must not:

- (a) lodge a Tender that has been compiled with the improper assistance of any current or former employee of the Commonwealth or use information improperly or unlawfully obtained or in breach of an obligation of confidentiality;
- (b) engage in misleading or deceptive conduct in relation to its Tender or the RFT process;
- (c) engage in any collusive tendering, anti-competitive conduct, or any other unlawful or unethical conduct with any other Tenderer, or any other person in connection with the preparation of its Tender or the RFT process;
- (d) attempt to solicit information from or influence improperly any officer, employee, contractor or agent of the Commonwealth, or violate any applicable laws or Commonwealth policies regarding the offering of inducements in connection with the RFT process; or

(e) otherwise act in an unethical or improper manner, or contrary to any law.

29.2. The Department may exclude from consideration any Tender lodged by a Tenderer that, in the Department's opinion, has engaged in any behaviour contrary to **clause 29.1** in relation to the RFT process. This right is in addition to any other remedies the Department may have under law or in any resulting Contract with a successful Tenderer.

30. Acknowledgement and Disclaimer

30.1. The Tenderer acknowledges and agrees that:

- (a) by participating in the RFT process and/or lodging a Tender it accepts the conditions set out in this RFT;
- (b) lodgement of a Tender on time and in accordance with these Terms and Conditions is entirely its responsibility;
- (c) the Department will not be liable for any loss, damage, costs or expenses incurred by Tenderers or any other person if, for any reason, a Tender or any other material or communication relevant to this RFT is not received on time, is corrupted or altered or otherwise not received as sent, cannot be read or decrypted, or has its security or integrity compromised;
- (d) the Department does not warrant that unauthorised access to information and data transmitted via the internet will not occur (Tenderers should take their own measures to protect information transmitted electronically);
- (e) under subsection 137.1 of the *Criminal Code Act 1995* (Cth), giving false or misleading information to the Commonwealth is a serious offence;
- (f) the Tenderer is deemed to have:
 - i. examined this RFT, any documents referred to in it, and any other information made available in writing by the Department to Tenderers under the RFT process;
 - ii. examined all further information which is obtainable by the making of reasonable enquiries relevant to the risks, contingencies and other circumstances which may have an effect on its Tender;
 - iii. satisfied itself as to the correctness and sufficiency of its Tender, including its tendered prices;
 - iv. obtained independent advice on the effect of all relevant legislation in relation to the Tenderer's participation in this RFT process; and
 - v. examined the AusTender Terms of Use which are available on AusTender;
- (g) the Department may exclude any Tender which is made subject to any due diligence or other investigation to be performed after a Tender is submitted; and
- (h) all information (whether written, oral or in any other form) which has been and may subsequently be made available to the Tenderer is provided on the following conditions:
 - i. in deciding to lodge or not lodge a Tender, or in the interpretation of this RFT,

the Tenderer does not rely on:

- A. any representation (whether oral or in writing) other than as expressed in this RFT; or
 - B. other conduct of the Department, or any of its officers, employees, advisers or agents;
- ii. any information contained in this RFT or otherwise provided by the Department may not be accurate and/or may change;
 - iii. where any information relates to future matters, no steps have been taken to verify that the information is based upon reasonable grounds, and no representation or warranty, expressed or implied, is made by the Department, or any of its officers, employees, agents or advisers that the statements contained in this RFT or otherwise provided by the Department will be achieved;
 - iv. this RFT is designed to reflect and summarise information concerning Requirement only and is not a comprehensive description of it;
 - v. neither the delivery of this RFT nor any resulting Contract made subsequent to this RFT will imply that there has been no material change since the date of this RFT or since the date as at which any information contained in this RFT is stated to be applicable;
 - vi. except as required by law and only to the extent so required, the Department and its respective officers, employees, agents and advisers will not be liable to any person or body for any loss, damage, cost or expense arising from any information or representations, actual or implied, contained in or omitted from this RFT or other information provided by the Department, or by reason of any reliance by any person or body on any such information or representation; and
 - vii. the Tenderer should seek its own professional advice as appropriate and should not construe this RFT or other information provided by the Department as investment, commercial, legal or tax advice.

30.2. The Tenderer is responsible for all costs and expenses related to the preparation and lodgement of their Tenders, any subsequent negotiations and any other action or response in relation to this RFT.

31. Department's Rights

- 31.1. Notwithstanding anything else contained in this RFT and without limiting the Department's rights at law or otherwise, the Department may:
- (a) vary the terms of this RFT (including the Draft Contract), or the structure, requirements or processes referred to in this RFT at any time;
 - (b) select one or more Tenderers as successful Tenderers;
 - (c) issue another request for tender or other approach to market in relation to the Requirement (or a solution similar to it) for release to one or more of the Tenderers or the open market;
 - (d) commence a new procurement process;

- (e) undertake any further course of action consistent with the Commonwealth procurement laws and policies that it considers appropriate;
- (f) vary the timing referred to in this RFT;
- (g) determine at any stage or stages after the Closing Time, short list(s) of Tenderers on any basis that the Department considers appropriate;
- (h) terminate, cease, suspend or vary the RFT process, or any part of it, at any time including where the Department considers:
 - i. it is in the public interest to do so;
 - ii. no Tenderer meets the Conditions for Participation;
 - iii. no Tender meets the Minimum Content and Format Requirements;
 - iv. no Tenderer is fully capable of undertaking an agreement in the form of the Draft Contract;
 - v. no Tender represents value for money; or
 - vi. where this is required by law;
- (i) seek additional information from any Tenderer or third party at any time (including from or in respect of a Tenderer's proposed subcontractors or agents);
- (j) provide additional information to all Tenderers at any time (and where the information is provided after the Closing Time, allow the submission of revised Tenders);
- (k) at any time during the RFT process issue additional protocols or requirements that apply to the RFT process, including in relation to any activities to be undertaken as part of the RFT process, and require Tenderers to comply with any such protocols or requirements;
- (l) seek and/or contact any person or entity other than those referees proposed by Tenderers;
- (m) seek amended Tenders or call for new Tenders;
- (n) add to, alter, delete or exclude any part of the Requirement;
- (o) select and negotiate with one or more Tenderer(s) (including but not limited to parallel negotiations) and/or discontinue any of those negotiations at any time for any reason;
- (p) publish or disclose the names of Tenderer(s);
- (q) enter into a contract on terms different to those in the Draft Contract (**Attachment E**); and
- (r) allow or not allow a related entity to take over a Tender in substitution for the original Tenderer; and
- (s) issue additional information or documentation at any time during the RFT process.

31.2. Without limiting the Department's other rights under this RFT or at law, if the Department concludes that a preferred Tenderer has retracted, or attempts to retract, undertakings

under which material technical, commercial, financial, corporate, relationship management, legal or contractual issues were resolved during negotiations, then the Department may choose not to proceed with that Tender and/or exercise another right given by this RFT.

- 31.3. To the extent permitted by law, the Department will not be liable for any loss, cost, expense, claim or damage incurred by a Tenderer as a consequence of any matter or thing relating to or incidental to a Tenderer's participation in the RFT process, including because the Department:
- (a) exercises or fails to exercise any of the Department's rights under this RFT; or
 - (b) fails to inform a Tenderer of its exercise or non-exercise of those rights.
- 31.4. The Department may reject any Tender lodged by a Tenderer that is engaging or has engaged in any conduct that contravenes any laws or contravenes the Terms and Conditions as set out in this RFT.
- 31.5. Any request or invitation by the Department to negotiate all or any part of a Tender is not, nor will it be deemed to be, a representation by the Department that the Tenderer's Tender will be, or is likely to be, accepted.

32. Right to terminate

- 32.1. Without limiting the Department's rights at law, elsewhere in this RFT or otherwise, the Department may, at its sole discretion suspend or terminate this RFT process at any time, without the requirement to give prior notice if:
- (a) the Department does not receive any Tenders in response to this RFT;
 - (b) the Department does not receive any Tenders in response to this RFT which meet the requirements outlined in the Statement of Requirement (**Attachment A**);
 - (c) after evaluating the Tenders received in response to this RFT the Department determines that entering into a resulting Contract with any Tenderer does not represent an effective, efficient, ethical and economical use of resources;
 - (d) in the opinion of the Department, it is unlikely that negotiations with any Tenderer will achieve a value for money outcome for the Commonwealth;
 - (e) no Tenders meet the Minimum Content and Format Requirements or Conditions for Participation as applicable; or
 - (f) the Department determines it is in the public interest to do so.

33. Participation of Other Commonwealth Agencies in this RFT process

- 33.1. This **clause 33.1** applies where the RFT Details indicate that, at the time of issuing this RFT, the Department wishes or intends to facilitate other Commonwealth Agencies procuring the Requirement from a successful Tenderer in the future:
- (a) A successful Tenderer will be required to offer to provide the Requirement to other Commonwealth Agencies on substantially the same terms and conditions as it provides them to the Department (including price). Any Commonwealth Agency will be able to accept this offer by giving a notice to a successful Tenderer. This will create a separate agreement between the successful Tenderer and the

Commonwealth Agency issuing the notice. Tenderers are referred to the Draft Contract for further details.

- (b) The Department makes no warranty, representation or assurance that any or any number of Commonwealth Agencies, or any particular Commonwealth Agency, will accept the offer of a successful Tenderer to provide the Requirement to other Commonwealth Agencies.
- (c) The Department will not undertake any evaluation on behalf of any other Commonwealth Agency during its evaluation of this RFT. Other Commonwealth Agencies will undertake their own evaluation if and when they wish to consider a successful Tenderer's offer to provide the Requirement to it.

34. Applicable Law

- 34.1. The laws of the Australian Capital Territory, Australia apply to this RFT process.

35. Complaints

- 35.1. If Tenderers wish to lodge a formal complaint regarding this RFT process, the complaint is to be directed in writing to the Receiving Officer by email to procurement@homeaffairs.gov.au.
- 35.2. A Tenderer who makes a complaint is requested to clearly identify the issue of concern and to provide any supporting facts and evidence which support the Tenderer's complaint (including, if applicable, the particulars of any identified breaches of the Commonwealth Procurement Rules). The Receiving Officer will promptly acknowledge the complaint and endeavour to respond to any complaint received within 10 Business Days of the complaint being received.
- 35.3. If the Tenderer remains unsatisfied following the response they receive from the Receiving Officer, the Tenderer may lodge a request for further examination of the issue. Such a request should be lodged with the Secretary of the Department, who will determine what further action, if any, is appropriate.
- 35.4. The Department will manage and investigate complaints arising out of the RFT process in accordance with the GP(JR) Act, if applicable, and its internal complaints handling processes.
- 35.5. On the request of the Commonwealth, all Tenderers are to cooperate with the Commonwealth in the resolution of any complaint regarding this RFT process.

36. Government Procurement (Judicial Review) Act

- 36.1. This RFT process is a covered procurement for the purposes of the GP(JR) Act.
- 36.2. Information on any public interest certificate that may be issued under the GP(JR) Act in relation to this RFT process will be available at: <https://www.homeaffairs.gov.au/help-and-support/how-to-engage-us/contracts-and-tenders>.
- 36.3. If a Tenderer makes a complaint under the GP(JR) Act and at the time of the complaint no public interest certificate is in force in relation to this RFT process, the Department may suspend this RFT process by notice to all registered Tenderers.

37. Lobbying Code of Conduct

- 37.1. Tenderers must not engage in, or procure or encourage others to engage in, any activity which would result in a breach of the Lobbying Code of Conduct 2019, published by the Attorney-General's Department and available at <https://www.ag.gov.au/integrity/publications/lobbying-code-conduct>.

38. Security, Probity and Other Checks

- 38.1. Relevant personnel of the successful Tenderer (if any) and its subcontractors who require non-public access to the Department's resources (including ICT systems, information and facilities), are lawfully directed in accordance with the ABF Act or are determined to be IBP Workers are to undergo and obtain:
- (a) an Employment Suitability Clearance (ESC); and
 - (b) a Commonwealth Security Clearance (CSC) to the appropriate level,
- before accessing any departmental premises or official or security classified material, or performing any services for the Department.
- 38.2. The average time for an ESC is four (4) weeks from the submission of all required information and a CSC is six (6) weeks from the submission of all required information. Gaining a higher level of clearance will require a longer timeframe.
- 38.3. Any personnel offered by the Tenderer to perform the Requirement, who are determined to be IBP Workers, are to be made available to the Department for the period of the contract (including any extensions), while such personnel remain employed by or contracted to the Tenderer.
- 38.4. The security vetting processes are conducted to ensure that an individual is both eligible and suitable to be granted, as well as maintain, a security clearance. A clearance is basically an inquiry into and corroboration of a person's background, character and civic values.
- 38.5. ESCs are processed internally by the Department's Employment Suitability Clearance Team which makes a decision whether to grant an ESC. The Australian Government Security Vetting Agency (AGSVA) processes CSCs and makes the decision whether to grant a CSC in accordance with the standards identified in the Australian Government Protective Security Policy Framework (PSPF). To comply with eligibility requirements of the PSPF, security clearance for access to security classified resources must not be provided to anyone who is not an Australian citizen.
- 38.6. The Department or any third party authorised by the Department, may perform probity and financial investigations and procedures that the Department determines are necessary in relation to any Tenderer, its employees, officers, partners, associates, subcontractors or related entities including partners and their officers, employees and subcontractors.
- 38.7. Tenderers should promptly provide the Department with such information or documentation that the Department requires in order to undertake such investigations. The Department may exclude a Tender from further consideration if the Tenderer does not promptly provide all reasonable assistance to the Department in this regard, or based

on the outcomes of the investigations or procedures. In agreeing to supply relevant financial information or statements, the Tenderer also agrees that the information supplied represents a true and fair statement of the affairs of the Tenderer.

- 38.8. Once a person is determined to be an IBP Worker, the person will be required to comply with the ABF Act, and any directions issued to the relevant IBP Workers.
- 38.9. Directions and policies issued pursuant to the ABF Act with which IBP Workers are required to comply at the date of this RFT can be viewed at <https://www.homeaffairs.gov.au/access-and-accountability/our-commitments/integrity-and-professional-standards>.

39. Department's Information

- 39.1. Tenderers must not, and must ensure that their employees, agents or subcontractors do not, either directly or indirectly record, divulge or communicate to any person any:
- (a) confidential information concerning the affairs of the Department, the Commonwealth or a third party acquired or obtained from the Department; or
 - (b) document, data or information provided by the Department in the course of the Tenderer preparing or amending a tender and which the Department indicates to Tenderers is confidential or which Tenderers know or ought reasonably to know is confidential.
- 39.2. The Department's information in the possession of the Tenderer must be stored in accordance with the minimum standards for that type of information, as defined in the Protective Security Policy Framework (PSPF). By submitting a Tender, Tenderers agree to grant the Department the right for it, or its agent, to inspect premises to ensure compliance with storage requirements.
- 39.3. The Department may require that all written information (whether confidential or otherwise and without regard to the type of media on which such information was provided to Tenderers), and all copies of such information made by Tenderers, be:
- (a) returned to the Department - in which case Tenderers will be required to promptly return all such information to the address identified by the Department; or
 - (b) destroyed by Tenderers - in which case Tenderers will be required to promptly destroy all such information and provide the Department with written certification that the information has been destroyed.
- 39.4. The Department may exclude from further consideration any Tender lodged by a Tenderer who has engaged in any behaviour contrary to this **clause 39**.

40. AIP Plan

- 40.1. Tenderers should note that the Australian Industry Participation National Framework principles will apply to the contract(s) resulting from this RFT. More information on Australian Industry Participation (**AIP**) plan requirements can be found at www.industry.gov.au/aip.
- 40.2. The successful Tenderer must have an approved AIP plan in place before any resulting Contract is executed.

- 40.3. An executive summary of the approved AIP plan will be published at www.industry.gov.au/aip once any Contract has been executed.

41. Indigenous Procurement Policy

- 41.1. It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see Indigenous Procurement Policy for further information).

42. Black Economy Policy

- 42.1. Tenderers should note that the Black Economy Procurement Connected Policy, which imposes obligations on the Commonwealth to obtain from Tenderers Satisfactory and Valid Statement of Tax Records, applies to this procurement. More information about the requirements arising under the Black Economy Procurement Connected Policy is available from the Department of Treasury at <https://treasury.gov.au/policy-topics/economy/black-economy/procurement-connected-policy>
- 42.2. In particular, Tenderers should be aware that, in accordance with the Black Economy Procurement Connected Policy, a Tenderer is to lodge with their Tender all of the Satisfactory and Valid Statement of Tax Record required from a Tenderer in accordance with the Conditions for Participation and Minimum Content and Format Requirements as set out in Part 1 - RFT Details.
- 42.3. If a Tenderer has requested, but has not been issued with, a Statement of Tax Record prior to the Closing Time, the Tenderer is to provide as part of their Tender the Statement of Tax Record receipt issued by the Australian Taxation Office confirming that the Statement of Tax Record was requested prior to the Closing Time.
- 42.4. If the Tender includes a Statement of Tax Record receipt issued by the Australian Taxation Office confirming that the Statement of Tax Record required under the Minimum Content and Format Requirements were requested prior to the Closing Time, then the Tenderer must provide all of the required Valid and Satisfactory Statements of Tax Record to the Contact Officer by email within four (4) Business Days after the Closing Time.
- 42.5. The Statements of Tax Record required to be provided by Tenderers are set out in the table below.

If the Tenderer is:	Statement of Tax Record Required:
A body corporate or natural person.	A Valid and Satisfactory Statement of Tax Record in respect of that body corporate or person.
A partner acting for and on behalf of a partnership.	A Valid and Satisfactory Statement of Tax Record: a) on behalf of the partnership; and b) in respect of each partner in the partnership that will be directly involved in the delivery of any resulting Contract or subcontract (as applicable).

If the Tenderer is:	Statement of Tax Record Required:
A trustee acting in its capacity as trustee of a trust.	A Valid and Satisfactory Statement of Tax Record in respect of: a) the trustee; and b) the trust.
A joint venture participant.	A Valid and Satisfactory Statement of Tax Record in respect of: a) each participant in the joint venture; and b) if the operator of the joint venture is not a participant in the joint venture, the joint venture operator.
A member of a Consolidated Group	A Valid and Satisfactory Statement of Tax Record in respect of: a) the relevant member of the Consolidated Group; and b) the head company in the Consolidated Group.
A member of a GST group.	A Satisfactory and Valid Statement of Tax Record in respect of: a) the GST group member; and b) the GST group representative.



Australian Government

Department of Home Affairs

**REQUEST FOR TENDER
FOR THE PROVISION OF VISA AND MIGRATION MEDICAL SERVICES**

RFT HOMEAFFAIRS2040/RFT

ATTACHMENT A: STATEMENT OF REQUIREMENT

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ANNEXURES

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Annexure D – Medical Officer of the Commonwealth (MOC) Advice Pack

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Annexure F – Current Clinic Locations

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Annexure H – Carer Visa Report and Carer Visa Assessment Certificate template

Annexure I – Form 1389 – Assessment of health claims (Health Status Assessment)

Annexure J – Form 1148 – Assessment of Medical Condition (Referred Health Assessment) –
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Annexure K – Notes for Guidance Purpose and Principles Paper

Annexure L – Migration Five Health Working Group Code of Conduct for Panel Members

1. BACKGROUND INFORMATION

- 1.1. The Department is part of the Home Affairs Portfolio, which brings together Australia's federal law enforcement, national and transport security, criminal justice, emergency management, multicultural affairs and immigration and border-related functions and agencies, working together to keep Australia safe.
- 1.2. The Department's purpose is to support a prosperous, secure and united Australia. It is important for Australia and for the continuation of visa programs that public health risks and health costs are not unduly increased by travellers and migrants. For this reason, applicants for visas to visit, or migrate to Australia are required to meet certain health requirements which are outlined in the Migration Regulations 1994 and policy framework. This Health Requirement is a risk-based approach to health screening for visa applicants and travellers intending to cross Australia's borders.
- 1.3. The Health Requirement is set out in the Public Interest Criteria under the Migration Regulations 1994 and is further detailed within Annexure A – Sch4/4005-4007 - The Health Requirement Procedural Instruction. The two health PICs (PIC 4005 and 4007) each include a core requirement that the visa applicant and members of their family unit undergo required Health Examinations and be found to meet the Health Requirement.
- 1.4. The purpose of the health PICs and the Health Requirement is to:
 - a. protect the Australian community from public health and safety risks, in particular active Tuberculosis;
 - b. contain public expenditure on health and community services, including social security benefits, allowances and pensions; and
 - c. safeguard the access of Australian citizens and permanent residents to health care and community services in short supply.
- 1.5. To meet the Health Requirement, travellers and migrants to Australia must be free from a disease or condition that is:
 - a. considered to be a threat to public health or a danger to the Australian community, in particular active Tuberculosis;
 - b. likely to result in significant health care and community service costs to the Australian community; and
 - c. likely to require health care and community services that would prejudice the access of Australian citizens and permanent residents to those services in short supply.
- 1.6. The Health Examinations that a traveller or migrant seeking to enter or remain in Australia is required to undergo to determine if they meet the Health Requirement, are decided by the Department and specified in Annexure B – Health Matrix. This provides a health risk profile, with the settings based on the person's country of citizenship/residence and its Tuberculosis incidence rate (based on World Health Organization (WHO) data), their intended activities and length of stay in Australia. Other factors such as type of visa, age, whether a Health Examination has been undertaken within the previous 12 months and their completed My Health Declaration are also considered. In some cases, non-migrating family members of a visa applicant, who are not visa applicants, may also be required to undertake a Health Examination.
- 1.7. As set out in Annexure C – Australian Panel Member Instructions, Clients may be required to undertake all or some of the following as part of their Health Examination:

- a. a physical medical examination to determine their health status, including medical history, physical examination, height, weight, pulse, blood pressure, eye examination and urinalysis;
 - b. a radiology examination of their chest to confirm the absence of any significant public health risks, such as active Tuberculosis;
 - c. a pathology test to confirm the absence of any significant public health risks, such as Human Immunodeficiency Virus (HIV); and
 - d. any other medical examination or assessment as deemed necessary by the Department.
- 1.8. The exams that a Client is required to undergo as part of their Health Examination are auto generated by the Department's IT System, based on the factors stipulated in paragraph 1.6.
- 1.9. To be granted a visa, a Client's Health Examination results must be assessed and they must be granted a Health Clearance. As set out in Annexure D – MOC Advice Pack, this may involve MOCs providing an opinion on whether a Client meets the Health Requirement. Types of clearances available include:
 - a. an opinion provided by a MOC that a Client Meets the Health Requirement, including a Meets with Undertaking opinion;
 - b. a decision by a departmental delegate (under section 65 of *Migration Act 1958*) that a Client Meets the Health Requirement as per Local Clearance arrangements;
 - c. cases that are auto-cleared by the Department's IT System; and
 - d. cases that are Recommend Cleared by the Contractor's health processing staff or departmental officers.
- 1.10. From 1 July 2019 to 30 June 2020, a total of 319,741 physical medical examinations were undertaken in Australia and 299,182 chest x-ray examinations. For the same period, a total of 187,904 Health Assessments were provided, with 154,609 relating to offshore cases and 33,295 relating to onshore cases. Further data referencing current service volumes is set out at Annexure E – Indicative Annual Service Volumes.
- 1.11. In certain circumstances, as set out in Annexure A – Sch4/4005-4007 - The Health Requirement Procedural Instruction, if a Client has a non-life-threatening condition such as inactive Tuberculosis, HIV, hepatitis B, hepatitis C or leprosy, or for Protection visa applicants who are pregnant, a MOC may request a Health Undertaking as a prerequisite for the Client to be regarded as satisfying the Health Requirement.
- 1.12. Where a Health Undertaking is required, Clients will not meet the Health Requirement until they, or an appropriate adult guardian, parent or other responsible person (for example, prospective adoptive parent(s) for an adoption visa application) has signed the appropriate departmental form for a Health Undertaking and it has been returned to the Department.
- 1.13. A Health Undertaking is required for all Meets with Undertaking outcomes, and can also be requested for Does Not Meet opinions (where a Health Waiver is available) and No Clearance Required outcomes.
- 1.14. There are two (2) possible outcomes with regards to the physical medical examination (501 exam) and radiology examination (502 exam) components of a Health Examination that a Client undergoes, as follows:

- a. 'A' Graded Medical – Client has been assessed as having no significant medical findings; or
 - b. 'B' Graded Medical – Client has been assessed as having a significant medical finding.
- 1.15. Additional examination results, including any pathology results, are reviewed by Panel Physicians as part of making a determination as to whether a Client is provided with an 'A' Graded Medical or 'B' Graded Medical outcome in relation to their physical medical examination (501 exam) and/or radiology examination (502 exam).
- 1.16. There are two (2) groupings of countries conducting Health Examinations, as follows:
- a. '1' – the country's screening facilities and personnel are of a high standard (as determined by the Department); or
 - b. '2' – the country's screening facilities and/or personnel are deemed to require a higher level of scrutiny of their results.
- 1.17. A Health Examination result of 'A' Graded Medical from country grouping '1' is generally auto-cleared by the Department's IT System, without need for intervention by a MOC.
- 1.18. The following Health Examination results must be reviewed by a MOC:
- a. 'A' Graded Medical from country group '1' with comments that require a review – noting that in some instances approved by the Department and referenced in the Policies and Procedures Manual, cases can be progressed as Recommend Cleared in the Department's IT System by the Contractor's health processing staff;
 - b. 'B' Graded Medical from country group '1'; and
 - c. all results from country group '2'.
- 1.19. A small number of countries (i.e. the Democratic Republic of the Congo, Eritrea, Eswatini, Libya and Seychelles) are not yet enabled to use the Department's IT System to record Health Examination results, and instead, submit results in paper format on the Department's templates via mail. The total number of cases submitted in paper format is very small. Current versions of the Department's templates utilised for this purpose can be downloaded from the Department's website (Form 26 – <https://immi.homeaffairs.gov.au/form-listing/forms/26.pdf>; and Form 160 – <https://immi.homeaffairs.gov.au/form-listing/forms/160.pdf>). Tenderers should note that the information captured in these forms mirrors the information captured within the Department's IT System for all Health Examination results submitted in electronic format.
- 1.20. On average, it takes approximately 5.5 minutes for a MOC to review and finalise a Health Assessment of an offshore case submitted electronically via the Department's IT System and approximately 10-12 minutes for a MOC to review and finalise a Health Assessment of an offshore case submitted in paper format. Tenderers should note that these times are averages and individual processing times may vary.

2. THE SERVICES

2.1 Overview of the Services and General Services Requirement

2.1.1 The Department seeks to engage a single Contractor to provide visa and migration medical services to Clients and to the Department, as specified in this Statement of Requirement. The Services which must be provided by the Contractor are specified in this Statement of Requirement, and includes the following:

a. **Onshore Medical Services** in accordance with paragraph 2.2 –

- i. Health Examinations conducted by Onshore Panel Physicians via a network of Clinic Locations throughout Australia, including radiology and pathology services (with indicative annual data set out in Tables 1 to 8 of Annexure E);
- ii. Health Assessments by Medical Physicians nominated to be appointed by the Contractor, and appointed by the Department, as MOCs where a Health Examination has significant findings, to determine whether a Client Meets the Health Requirement (with indicative annual data set out in Tables 9 and 10 of Annexure E);
- iii. facilitating requests from the Administrative Appeals Tribunal (**AAT**) for review of existing Health Assessment outcomes (with indicative annual data set out in Table 11 of Annexure E);
- iv. provision of Caree Assessments (with indicative annual data set out in Table 17 of Annexure E);
- v. provision of Health Status Assessments (with indicative annual data set out in Table 18 of Annexure E);
- vi. provision of Fit to Depart Assessments and Fit to Travel Assessments (with indicative annual data set out in Tables 19 and 20 of Annexure E);
- vii. provision of In-Home Examinations, where required and approved by the Department (with indicative annual data set out in Table 21 of Annexure E);
- viii. maintenance of a dedicated website for the purpose of providing the Services to Clients;
- ix. provision of an appointment system for all Clinic Locations, to which the Department can refer all Clients;
- x. provision of phone and email support services for Clients and the Department (with indicative annual data set out in Tables 15 and 16 of Annexure E);
- xi. promotion and provision of access to professional interpreting and communication services to assist Clients (with indicative annual data set out in Table 14 of Annexure E); and
- xii. in undertaking Health Examinations, ensuring that Departmental Policy is followed when checking and verifying the identity of a Client, and capturing their facial images.

b. **Offshore Medical Services** in accordance with paragraph 2.3 –

- i. provision of Health Assessments by Medical Physicians nominated to be appointed by the Contractor, and appointed by the Department as MOCs, to determine whether a Client located offshore meets the Health Requirement (with indicative annual data set out in Tables 9 and 10 of Annexure E); and

- ii. administrative processing and support of offshore Health Assessments (with indicative annual data set out in Table 12 of Annexure E).
- c. **Health Undertaking Service** in accordance with paragraph 2.4 –
 - i. liaising with Clients placed on a Health Undertaking who have committed to contact the Department (through the Contractor) within 28 days of arrival in Australia for checks and the facilitation of their referral to the relevant State and Territory Health Authority for a follow-up medical examination (with indicative annual data set out in Table 22 of Annexure E); and
 - ii. all associated monitoring, administrative follow-up and reporting of compliance with regards to Health Undertakings.
- d. **Maintenance of Notes for Guidance Papers** in accordance with paragraph 2.5 –
 - i. conducting reviews of the existing NfG Papers, which encompass clinical and health economic developments. These papers support MOCs in making an assessment on whether a Client meets the Health Requirement (noting there are currently twenty two (22) existing NfG Papers); and
 - ii. drafting any new NfG papers, as directed by the Department.
- e. **Consultancy Services** in accordance with paragraph 2.6 – provision of advice or assistance relevant to the Services, as requested by the Department.
- f. **Adhoc Services** in accordance with paragraph 2.7 – provision of adhoc services as requested by the Department.
- g. **Auditing** in accordance with paragraph 2.8, including –
 - i. provision of a quality management system;
 - ii. appointing an external auditor to perform an annual Quality Assurance Systems Audit;
 - iii. undertaking monthly internal audits;
 - iv. providing the Department with the outcome of any administrative and/or clinical audits of the Clinic Locations.
- h. **Policies and Procedures Manual** in accordance with paragraph 2.9 – developing and regularly updating a comprehensive Policies and Procedures Manual which sets out the material policies and procedures to be followed in providing the Services.
- i. **Planning and Program Implementation** in accordance with paragraphs 2.11 to 2.21 and 2.23 – developing, adhering to and the regular updating of:
 - i. a suite of plans and documents in relation to the provision of the Services; and
 - ii. a framework setting out how communications and reporting requirements in relation to issues and complaints will be managed, including their notification, management and closure.
- j. **Training** in accordance with paragraph 2.14 – delivering a comprehensive training program for the ongoing professional development of Contractor Personnel.
- k. **Information Technology Systems and Data** in accordance with paragraph 2.22–
 - i. utilising the Department's IT Systems and ensuring that all relevant information is recorded in/uploaded to these systems, as required;

- ii. implementing and maintaining any systems (or additional systems) required in order to meet the obligations required under the Draft Contract; and
 - iii. establishing and maintaining an appropriate secure gateway server to the Department's IT Systems to enable the transfer of data extract files from the Department.
- I. **Meetings, Contract Management and Reporting** in accordance with paragraphs 2.24 to 2.26 – fulfillment of all meeting and reporting requirements.

- 2.1.2 The Contractor must provide the Services to the Department as described in this Statement of Requirement, and in providing the Services must comply with all Australian Laws, policies and guidelines which are applicable to the Services, including as set out in Annexure A – Sch4/4005-4007 - The Health Requirement Procedural Instruction, Annexure B – Health Matrix, Annexure C – Australian Panel Member Instructions and Annexure D – MOC Advice Pack, and guidelines outlining safeguards for minimising fraudulent practices and ensuring integrity and accuracy of assessments against the Health Requirement.

General Services Requirement

- 2.1.3 In delivering the Services to Clients, the Contractor must provide:
- a. Onshore Panel Physicians and appropriate clinical support staff, for Onshore Medical Services;
 - b. Lead Physicians;
 - c. suitably qualified Medical Physicians in accordance with paragraph 2.1.4, to be approved and appointed by the Department as MOCs, for Onshore Medical Services and Offshore Medical Services;
 - d. suitably qualified Senior Medical Physicians in accordance with paragraph 2.1.4, to be approved and appointed by the Department as MOCs and working as Senior MOCs, for Onshore Medical Services and Offshore Medical Services, providing mentoring, training, leadership and quality assurance to Onshore Panel Physicians and MOCs;
 - e. a designated Principal MOC for the purpose of clinical governance and oversight of the Services;
 - f. administrative support and health processing staff to assist with the provision of the Services, including:
 - i. telephone bookings, enquiries and feedback;
 - ii. mail and email management;
 - iii. working with the Department on a number of areas, including communication, support, urgent matters and priority cases, such as answering queries from Visa Processing Officers (VPOs);
 - iv. onshore and offshore Health Assessments that are not auto-cleared by the Department's IT System or that require manual intervention, channelling information/cases to MOCs where necessary (with indicative annual data set out in Table 12 of Annexure E);
 - v. uploading results (e.g. pathology) to the Department's IT System, including any reports received from State/Territory health authorities;
 - vi. loading/preparing information for MOCs, including for Clients who may have commenced their Health Assessment offshore;

- vii. manual provision of Deferred opinion letters to Clients (with indicative annual data set out in Table 10 of Annexure E), where required, seeking additional advice from the Department where contact details are not known, in accordance with paragraph 2.26.10;
- viii. provision of additional letters to Clients and stakeholders, where required, with the standard wording within these letters to be approved by the Department (for example, where Clients are being linked in with their relevant State/Territory Health Authority);
- ix. filing of paper cases, in accordance with paragraph 1.19, and/or test results; and
- x. refunds to Clients.

2.1.4 The Contractor must:

- a. ensure that Onshore Panel Physicians (including Lead Physicians) and MOCs:
 - i. hold all applicable, valid and current Australian practising medical licences and clearances, including Australia Health Practitioners Regulation Agency (AHPRA) registration (current, full and unconditional);
 - ii. have at least five (5) years post graduate clinical experience and evidence of continuing professional development;
 - iii. have professional indemnity or errors and omissions insurance in the amounts specified within the RFT Attachment E – Draft Contract; and
 - iv. are encouraged to have registration with the appropriate Australian professional college;
- b. ensure that all Medical Physicians nominated to be appointed by the Department as MOCs are Australian citizens or Australian permanent residents;
- c. ensure that all Medical Physicians nominated to be appointed by the Department as MOCs undertake relevant security clearances when and as required by the Protective Security Policy Framework;
- d. obtain a current curriculum vitae of all Medical Physicians nominated for appointment by the Department as MOCs and submit to the Department for approval, prior to the commencement of their employment with the Contractor or if already an employee, prior to commencing provision of Services;
- e. conduct probity and assurance checks on all Medical Physicians nominated for appointment by the Department as MOCs prior to their formal appointment by the departmental delegate as a MOC, including Medical Physicians already employed by the Contractor, and all new Medical Physicians, including:
 - i. AHPRA registration confirmation (current, full and unconditional);
 - ii. Australian national police checks (e.g. criminal history) – through Australian Criminal Intelligence Commission (ACIC);
 - iii. International Police Check if lived overseas in the past 10 years – through the Australian Federal Police (AFP);
 - iv. Entitlement to Work – through the Department;
 - v. Identity;
 - vi. Professional membership;

- vii. Academic qualification;
 - viii. Professional references;
 - ix. Employment history for the past 10 years;
 - x. Overseas travel for the past 10 years;
 - xi. Global media, including social media;
 - xii. Australian Financial Services (AFS) Authorised Representative Register – through Australian Securities and Investments Commission (ASIC);
 - xiii. AFS Licensees Register – through ASIC;
 - xiv. Australian Basic Credit (Public Record) – through ASIC;
 - xv. Australian Prudential Regulation Authority (APRA) Disqualification Register;
 - xvi. ASIC Banned and Disqualified Persons;
 - xvii. Enforceable Undertakings (also known as a work health and safety undertaking) – through respective state/territory agency;
 - xviii. Australian Bankruptcy and National Personal Insolvency – through Australian Financial Security Authority (AFSA);
 - xix. Australian Directorship – through AFSA;
 - xx. Australian Credit Check – through ASIC; and
 - xxi. Anti-Money Laundering & Counter-Terrorism Financing (AML/CTF) – through Australian Transactions Reports and Analysis Centre (AUSTRAC);
- f. promptly provide the Department with evidence of the outcome of the probity and assurance checks set out in paragraph e. above upon request;
 - g. ensure that all clinicians hold a current Working with Children/Vulnerable People Check, where this is required by the relevant State and/or Territory legislation;
 - h. check the AHPRA registration requirements (current, full and unconditional) for all Onshore Panel Physicians and MOCs at least weekly, and notify the Department within one (1) Business Day of the details and circumstances of any clinician involved in the provisions of Services for whom the registration requirements are no longer being met;
 - i. ensure that any Onshore Panel Physician or MOC who is no longer meeting the AHPRA registration requirements (current, full and unconditional) immediately ceases the provision of any Services. The Department must be notified immediately but no later than 24 hours after the Contractor becomes aware, so that their access to the Department's IT Systems can be suspended by the Department;
 - j. ensure that all MOCs do not include their formal position of a MOC within any social media profiles (e.g. LinkedIn, Instagram, Facebook), in accordance with the Department's social media policy;
 - k. ensure that a minimum of two (2) Onshore Panel Physicians and one (1) MOC attends the annual Intergovernmental Panel Physicians Training Summit annually throughout the Term, with all associated costs to be borne by the Contractor. In the event of this summit being held in Australia, the Contractor must ensure that a minimum of six (6) Onshore Panel Physicians and three (3) MOCs attend; and
 - l. ensure that all Personnel, Clients and their family members are treated with respect regardless of their gender, lifestyle, interests, religious or cultural backgrounds or beliefs, and that equitable access to services is maintained, in accordance with the Australian Public Service (APS) Code of Conduct.

2.1.5 The Department requires:

- a. at least five (5) Business Days from the date all relevant information is provided to the Department to consider a request to nominate a Medical Physician for appointment as a MOC; and
- b. an additional ten (10) Business Days to formally appoint a Medical Physician as a MOC, if a request to nominate a Medical Physician as a MOC is approved by the Department.

2.2 Onshore Medical Services

2.2.1 The Contractor must provide the Onshore Medical Services, including:

- a. Health Examinations by Onshore Panel Physicians at Clinic Locations, including radiology and pathology services, and where required and approved by the Department, In-Home Examinations;
- b. Health Assessments by MOCs and the administration and undertaking of AAT requests for review of existing Health Assessment outcomes;
- c. Caree Assessments at Clinic Locations in accordance with paragraphs 2.2.36 to 2.2.47, as well as paper-based assessments where supported by Departmental Policy, and In-Home Examinations where required and approved by the Department;
- d. Health Status Assessments in accordance with paragraphs 2.2.48 to 2.2.57, including independent examinations (or referral for independent examinations by an external medical provider) of Clients where required to finalise a Health Status Assessment;
- e. Fit to Depart Assessments and Fit to Travel Assessments in accordance with paragraphs 2.2.58 to 2.2.64, including paper-based assessments and physical examinations where required to finalise the assessment, and In-Home Examinations where approved by the Department;
- f. maintenance of a dedicated website for the purpose of providing the Services to Clients;
- g. provision of an appointment system for all Clinic Locations, to which the Department can refer Clients;
- h. provision of phone and email support services for Clients and the Department, where enquiries/requests can be directed and actioned; and
- i. promoting and providing access to professional interpreting and communication services to assist Clients from culturally or linguistically diverse backgrounds, and Clients who are deaf, hard of hearing or speech impaired, in accordance with paragraphs 2.2.21 to 2.2.24.

Clinic Locations

2.2.2 The Contractor must:

- a. establish and maintain Clinic Locations in all capital cities;
- b. establish and maintain Clinic Locations in Regional locations across Australia to effectively service regionally-located Clients, taking into consideration factors such as ensuring that the relative geographical location of each Clinic Location effectively services Clients within the broader region, and as much as possible, minimises travel distances. The current clinic locations are set out within Annexure F – Current Clinic Locations, noting that this should not limit Tenderers in determining the number and location of their proposed network of Clinical Locations in Regional locations;
- c. provide Onshore Panel Physicians in all Clinic Locations around Australia where physical examinations (501 exams) are conducted;

- d. provide appropriate administrative and clinical support staff in all Clinic Locations around Australia;
- e. ensure its Clinic Locations are easily accessible by public transport with mobility accessibility options;
- f. ensure that Clinic Locations are able to facilitate appointment load peaks, with service standards continuing to be maintained;
- g. ensure that appropriate workflow management processes are in place at each Clinic Location to ensure the efficient provision of all required examinations, whilst ensuring that the integrity of processes are maintained;
- h. where directed by the Department, establish additional Clinic Locations; and
- i. review and assess the Clinic Locations at least every 24 months from the Commencement Date, to determine whether the Clinic Locations continue to appropriately meet Client demand, taking into account population growth projections and migration growth outlook, and where required by or agreed to by the Department, implement any changes to Clinic Locations following written approval from the Department.

Onshore Panel Physicians

2.2.3 In delivering the Onshore Medical Services, the Contractor must provide Onshore Panel Physicians in accordance with paragraph 2.1.4 to:

- a. conduct physical Health Examinations of Clients from Clinic Locations, in accordance with this paragraph 2.2 and Annexure C – Australian Panel Member Instructions, and any other relevant Departmental Policy;
- b. provide a range of support services to Clients in accordance with Departmental Policy, including:
 - i. referral of Clients with significant medical findings discovered as part of their Health Examination to a doctor, clinic or hospital, as appropriate, for follow-up, including liaising with the treating doctors or clinics as required;
 - ii. for non-Tuberculosis related chest x-ray abnormalities, ensuring the Client is contacted and appropriate medical review and/or treatment is arranged (this may be urgent or an emergency in some cases – for example, pericardial effusion, pneumothorax, pneumonia, undiagnosed mass); and
 - iii. arranging specialist follow-up such as, but not limited to, at a sexual health clinic for all Clients with positive and indeterminate HIV, hepatitis B, hepatitis C or Venereal Disease Research Laboratory (syphilis) tests, or any other condition/s advised by the Department, and where required, notifying the relevant State and Territory Health Authority within the prescribed timeframes;
- c. travel to a Client to perform, and perform, an In-Home Examination, where the Client is medically unable to travel to a Clinic Location for a required examination and approval has been provided by the Department, in accordance with paragraphs 2.2.65 to 2.2.70;
- d. review physical medical examination, pathology and radiology results (including review of any chest x-ray reports) to make a determination as to whether a Client is provided with an 'A' Graded Medical or 'B' Graded Medical;
- e. verify each Client's identity and correctly capture and record biometric information in accordance with the processes set out in paragraphs 2.2.25 to 2.2.26;

- f. record Health Examination results in the Department's IT System, or if required and approved by the Department, on the relevant departmental template (for example, when completing Public Health Risk Assessments);
- g. make either an 'A' Graded Medical or a 'B' Graded Medical, as outlined at paragraph 1.14, and make recommendations where appropriate based on findings in accordance with Annexure C – Australian Panel Member Instructions;
- h. provide both pre and post-test face-to-face counselling to Clients in accordance with Annexure C – Australian Panel Member Instructions;
- i. conduct physical examinations and assessments against the Impairment Tables for Carees at all Clinic Locations where physical examinations (501 exams) are conducted, and where applicable, engage Allied Health Professionals to undertake these examinations, in accordance with paragraphs 2.2.36 to 2.2.47 and relevant Departmental Policies;
- j. provide Lead Physicians in accordance with paragraph 2.1.4 to provide Health Status Assessments for Clients in accordance with paragraphs 2.2.48 to 2.2.57 and relevant Departmental Policies;
- k. provide Lead Physicians in accordance with paragraph 2.1.4 to provide Fit to Depart and Fit to Travel physical examinations and assessments for Clients in accordance with paragraphs 2.2.58 to 2.2.64 and relevant Departmental Policies, where there is insufficient information available for a MOC to finalise a paper-based Health Status Assessment; and
- l. attend to medical emergencies of Clients as they arise on the Contractor's premises, including Clinic Locations or during the course of conducting an In-Home Examination, and arrange for urgent medical assistance where required.

Radiology and Pathology Services

- 2.2.4 The Contractor must provide radiology services to Clients at Clinic Locations as required by Departmental Policy, including:
 - a. chest x-rays, including paediatric chest x-rays, for the detection of Tuberculosis and other abnormalities; and
 - b. other radiological examinations, where required.
- 2.2.5 The Contractor must upload and record the digital images and results of any radiology procedures conducted for a Client in the Department's IT System.
- 2.2.6 The Contractor's radiologists assessing radiological examinations must hold valid AHPRA registration (current, full and unconditional) and be officially recognised by the Royal Australian and New Zealand College of Radiologist (RANZCR) as specialist radiologists.
- 2.2.7 The Contractor must provide pathology collection and testing to Clients as required by Departmental Policy, including:
 - a. HIV serology (707 exam);
 - b. hepatitis B (708 exam) and C (716 exam) serology;
 - c. liver function tests;
 - d. serum creatinine;
 - e. Tuberculosis screening tests (including IGRA and TST); and
 - f. syphilis serology (712 exam).
- 2.2.8 The Contractor's pathology laboratories must:
 - a. perform serum-testing for HIV and other blood borne viruses as required by Departmental Policy;

- b. perform other testing as required; and
 - c. provide results of all pathology tests on the Contractor's letterhead, or in the case of this portion of the Service being subcontracted, on the subcontracted pathology laboratory's letterhead.
- 2.2.9 In addition to the identity checking requirements set out in paragraph 2.2.25, the Contractor must verify, and must ensure that any subcontracted pathology laboratory verifies, a Client's identity in accordance with Departmental Policy and any requirements and control specimen handling notified by the Department to the Contractor, to thwart fraudulent replacement of the Client specimen with that of a third party or artificial substance.
- 2.2.10 The Contractor must record the pathology findings on relevant forms and in the Department's IT System in accordance with Annexure C – Australian Panel Member Instructions.
- 2.2.11 All Contractor, or any subcontracted pathology laboratory undertaking tests on specimens from Clients must be accredited by the National Pathology Accreditation Advisory Council.
- 2.2.12 All radiology and pathology services must be provided at a Clinic Location.
- 2.2.13 Should the Contractor not be able to provide radiology and pathology services onsite at the Clinic Locations where the physical medical (501) examination is being undertaken, the Contractor must develop and maintain alternative arrangements with radiological and pathology providers, via formal subcontractor arrangements.
- 2.2.14 The Contractor must provide the Department with details of any proposed subcontracting arrangements or revised subcontracting arrangements relating to radiology and pathology services, including confirmation on whether radiology and pathology services are co-located, in accordance with paragraph 2.27 and clause 12 of the Contract. If approved, these will be listed in Annexure G – Subcontractor and Approved Sites for Non Co-location. **[Note to Tenderers: If no Subcontractors or Approved Sites for Non Co-location are proposed, Annexure G will be deleted.]**

Website

- 2.2.15 The Contractor must maintain a dedicated website (which is separate from other services or business offered or provided by the Contractor) for the purpose of providing the Services to Clients, with the content written in 'plain English' with appropriate accessibility functions for a diverse audience. The website must, at a minimum, include:
- a. information for prospective Clients on the Services which the Contractor provides to Clients;
 - b. details on all Clinic Locations, including any Subcontractor and Approved Sites for Non-Co-Location;
 - c. the cost of Services to be charged to Clients (except the cost to be charged to Clients for In-Home Examinations), including information regarding the Contractor's cancellation/non-attendance policy, as set out in the Contract or otherwise approved by the Department, and where any credit card surcharges may apply, the details of these charges relevant to each Clinic Location, as set out in the Contract or otherwise approved by the Department;
 - d. an online appointment booking system in accordance with paragraph 2.2.20;
 - e. contact details for telephone bookings;
 - f. contact details for complaints, feedback and enquiries;

- g. a privacy policy that explains how the Contractor will handle Personal Information, including how individuals can seek access to, or correction of, Personal Information held by the Contractor and advice on how an individual can lodge a complaint with regards to how the Contractor has handled their Personal Information; and
 - h. any other information or detail as requested by the Department.
- 2.2.16 The Contractor must submit any proposed new and/or revised content which it intends to publish on the Contractor's website to the Department's Contract Manager for written approval prior to publishing.
- 2.2.17 The Department's Contract Manager will provide the Contractor with any necessary departmental information to assist the Contractor in preparing the Contractor's website, including links to the Department's website.
- 2.2.18 The Department will provide any updated relevant information to the Contractor which must be published on the Contractor's website within one (1) Business Day, should changes to immigration law or policy require this.
- 2.2.19 The Contractor must not include any information, link or direction to any services that are not part of the Services on the website established and maintained in accordance with paragraphs 2.2.15 to 2.2.19.

Appointment System

2.2.20 The Contractor must:

- a. provide an appointment system to which the Department can refer Clients;
- b. ensure that all Clients can make their appointments online, via phone or in-person;
- c. ensure online bookings are available at all times, with any required system update/upgrades to be implemented outside of the hours of 8.30am to 5.30pm;
- d. ensure Clients are able to make phone and in-person bookings during the hours between 8.30am and 5.30pm at a minimum;
- e. ensure that the online appointment booking system can be utilised for all Clinic Locations;
- f. ensure that Clients are able to make an appointment up to 15 Business Days in advance, and that appointment availability is not restricted to what is set out in KPI 1 in Schedule 3 of the Draft Contract;
- g. seek advice from Clients around any specific requirements for their appointment, including a need for an interpreter in accordance with paragraphs 2.2.21 to 2.2.24 and requests for an Onshore Panel Physician of a specific gender (where possible);
- h. ensure the appointment system provides a privacy notice that complies with Australian Privacy Principle 5; and
- i. work with the Department to ensure that the appointment system adequately meets the needs of Clients and reflects best practice standards and policy.

Interpreting and Communication Service

- 2.2.21 The Contractor must, at its own cost, promote and provide access to professional telephone interpreting services to assist all Clients from culturally or linguistically diverse backgrounds, including capacity for Clients requiring rare language translation to be able to pre-book interpreters for their planned Health Assessment, Caree Assessment, Health Status Assessment, Fit to Depart Assessment or Fit to Travel Assessment appointment.

- 2.2.22 The interpreting service provided under paragraph 2.2.21 must meet the National Accreditation Authority for Translators and Interpreters (**NAATI**) standards and maintain NAATI accreditation. The use of the Client's family members or friends as an interpreter is not acceptable.
- 2.2.23 The Contractor must record within the Department's IT System whether an interpreter has been utilised when undertaking a Client's Health Examination.
- 2.2.24 The Contractor must provide appropriate communication services for those who are deaf, hard of hearing, or speech-impaired, such as teletypewriter (**TTY**).

Identity Checking and Capturing of Facial Images

- 2.2.25 The Contractor must follow and comply with Departmental Policy and the Department's minimum IT requirements when checking and verifying the identity of a Client and in addressing any identity concerns that may arise. This includes the Contractor:
- a. verifying the identity of a Client prior to their Health Examination, Caree Assessment, physical Health Status Examination, physical Fit to Depart Assessment and physical Fit to Travel Assessment commencing, and again prior to commencing each component of their Health Examination;
 - b. taking a photograph of each Client immediately prior to them undertaking their Health Examination, with equipment that meets the Department's requirements (digital single-lens reflex (DSLR) technology as a minimum), with the images generated and uploaded to the Department's IT System in accordance with the Department's biometric capturing standards as set out in the relevant Departmental Policy, including resolution/image size, cropping, lighting and colour balance; and
 - c. implementing technology and any other reasonable processes, including the ongoing training of staff, to reduce risk of identity fraud and substitution.
- 2.2.26 The Contractor must submit to the Department a random sample of facial images captured across all Clinic Locations, or from a specific Clinic Location where requested, which will be audited by the Department against the Department's biometric capturing standards. Any required improvements identified by the Department must be implemented by the Contractor within a reasonable timeframe. The frequency of these audits will be determined by the Department.

Medical Officers of the Commonwealth

- 2.2.27 The Contractor must provide suitably qualified Medical Physicians that are eligible to be appointed by the Department as Medical Officers of the Commonwealth in accordance with Australian legislative requirements to be approved and appointed by the Department as MOCs in accordance with paragraph 2.1.4, to provide Health Assessments, Caree Assessments, Health Status Assessments, Fit to Depart Assessments and Fit to Travel Assessments in accordance with this Statement of Requirement and Departmental Policy. The Contractor must ensure that all MOCs:
- a. provide Health Assessments in accordance with the Migration Regulations 1994 and Departmental Policy, including Annexure D – MOC Advice Pack, including:
 - i. opinions on 'B' Graded Medical, stating whether a Client either Meets or Does Not Meet the Health Requirement;
 - ii. where a Meets or Does Not Meet opinion cannot be provided on the basis of the information available, make a Deferred opinion and

- request further testing, examination or specialist's report from the Client to assist in making that determination;
- iii. where required by Departmental Policy, provide opinions on 'A' Graded Medical which fail to auto-clear;
 - iv. where required by the Department, provide relevant outcomes such as No Clearance Required for specific Client cohorts in accordance with Departmental Policy (for example, Protection visa applicants);
 - v. provide a Health Costing Advice in the Department's IT System in accordance with Department Policy and the relevant NfG Papers where the Client Does Not Meet the Health Requirement;
 - vi. opinions of children under six months of age who were born in Australia, based on a review of the available medical information; and
 - vii. Public Health Risk Assessments;
- b. undertake further investigation or make provisions for Health Undertaking arrangements where required by Departmental Policies, including advising the appropriate State and Territory Health Clinics;
 - c. follow-up on outstanding test results originating from the initial Health Examination and subsequent examinations and record all results in the Department's IT System;
 - d. follow-up with the Client in order to facilitate decisions and to avoid high numbers of deferrals where Clients located onshore do not provide requested further medical information;
 - e. provide paper-based assessments for Carees where supported by Departmental Policy, as set out in paragraph 2.2.39;
 - f. where requested by a Lead Physician, review Caree Assessments in instances where the Caree requests an additional re-assessment, as set out in paragraph 2.2.46;
 - g. complete all paper-based assessments and opinions for Health Status Assessments, Fit to Depart Assessments and Fit to Travel Assessments;
 - h. review the completed assessment outcome of all Health Status Assessments, Fit to Depart Assessments and Fit to Travel assessments completed by Onshore Panel Physicians following a physical examination, prior to these being provided to the Department; and
 - i. provide a range of support services including, providing guidance where required and conveying legislative updates to Onshore Panel Physicians.
- 2.2.28 The Contractor must record all results of onshore Health Assessments in the Department's IT System.
- 2.2.29 The Contractor must provide Lead Physicians and Senior MOCs in accordance with paragraph 2.1.4. In addition to performing the general duties of Panel Physicians or MOCs, the Lead Physicians and Senior MOCs must:
- a. provide a review process for all Caree Assessments. This review cannot be undertaken by the original assessor, regardless of their position;
 - b. provide mentoring, training and quality monitoring of Onshore Panel Physicians and MOCs;
 - c. in accordance with paragraph 2.26.8, notify the Department within one (1) Business Day of any case of active Tuberculosis it becomes aware of, where a Health Clearance has already been provided;

- d. provide support and/or guidance where required and conveying legislative and policy changes to Onshore Panel Physicians and MOCs; and
 - e. lead responses to medical emergencies of Clients which arise on the Contractor's premises and arrange for urgent medical assistance.
- 2.2.30 The Contractor must appoint a Principal MOC in accordance with paragraph 2.1.4. The Principal MOC must:
- a. be appointed by the Department as a MOC;
 - b. provide clinical oversight and expertise with regards to governance, safety, quality management, training and innovation;
 - c. liaise with the Department regarding operational needs, contractual standards and any changes in policy or legislation;
 - d. act as a liaison point and manage the relationship with all State and Territory Health Authorities with regards to Health Undertakings and onshore Deferrals, engaging with them on at least a quarterly basis, including seeking feedback from State TB Coordinators and Chest Clinics on any issues around Deferral volumes, and advise the Department on the outcome of these discussions;
 - e. provide oversight of all revised NfG Papers submitted to the Department for review and take accountability for providing responses to the Department following the Department's review of all revised and new NfG Paper submissions;
 - f. liaise with the Department on any high level and/or sensitive clinical matters, including cases of interest; and
 - g. attend any external meetings and/or working groups, as directed by the Department.

2.2.31 The Services described in paragraphs 2.2.27 to 2.2.30 must be provided:

- a. during the hours of 8.00am to 6.00pm, Monday to Friday; and
- b. where an urgent Health Assessment is required by the Department under paragraph 2.2.27(a), at any time. For clarity, this includes any time outside the hours and days specified in paragraph 2.2.31(a) above and including during Saturday, Sunday or public holidays. **[Note to Tenderers: Tenderers should note that this is expected to be no more than approximately ten (10) onshore and offshore cases per year.]**

Administrative Appeals Tribunal Health Assessment Review and Administration

- 2.2.32 The AAT provides independent review of decisions by the Department to refuse or cancel visas. Generally, where a refusal has been on health grounds, the AAT may refer a case to the Department requesting that a RMOC Opinion is provided, often with additional and updated medical information provided as part of the request.
- 2.2.33 The AAT will contact the Department when a RMOC Opinion is required.
- 2.2.34 The Department will provide all relevant documentation to the Contractor to conduct and provide the RMOC Opinion, with the Contractor to upload any additional medical reports to the Department's IT System and acknowledge receipt of the request in writing within two (2) Business Days. The Contractor must notify the Department and the AAT when the RMOC Opinion has been completed, and will attach the written MOC opinion from the Department's IT System, and where appropriate, Health Waiver costing advice in accordance with the relevant NfG Papers.

2.2.35 The Contractor must, when requested by the Department:

- a. undertake all RMOC Opinions and ensure that the reviews are undertaken within the timeframe provided by the AAT, and by a MOC other than the original assessor; and
- b. convey records to the Department for archiving and comply with applicable privacy and data protection laws including the *Privacy Act 1988* (Cth).

Caree Assessments

- 2.2.36 A Caree Assessment relates to a medical assessment of an Australian citizen, permanent resident or eligible New Zealand citizen that has a permanent or long-term need for assistance due to a medical condition, and a relative of the Caree or their family member is seeking to apply for a Carer visa to help care for them.
- 2.2.37 When applying for a Carer visa, the applicant must provide the Department with a medical certificate from the Contractor that includes a statement that their relative or a family member of their relative (i.e. the Caree), has been assessed as having a medical condition that requires care.
- 2.2.38 The Contractor must provide Caree Assessments against the Impairment Tables, and provide each Caree a completed Carer Visa Report and Carer Visa Assessment Certificate (**CVAC**), in the form set out at Annexure H – Carer Visa Report and Carer Visa Assessment Certificate template.
- 2.2.39 In the following circumstances, a paper-based assessment of a Caree by a MOC will be supported by Departmental Policy, and the Contractor will be able to charge a Client directly for this assessment, in accordance with the relevant fee stipulated in the Client Price List:
 - a. Caree is in a nursing home and is bed-bound (non-ambulant);
 - b. Caree is a child who is a long-term hospital inpatient, and/or a hospital inpatient with clinical immunosuppression; and
 - c. Caree is a psychotic mental health patient in a mental health inpatient facility who represents a danger to the community.
- 2.2.40 In the case of a paper-based assessment, the Contractor must provide the completed Carer Visa Report and CVAC to the Caree within six (6) Business Days of the Contractor having received all the required information from the Caree.
- 2.2.41 In all other circumstances, a physical examination of a Caree is required, which may include an In-Home Examination in circumstances where the Caree is medically unable to travel to a Clinic Location, and where this has been approved by the Department. Indicative annual data relating to all types of In-Home Examinations is set out in Table 21 of Annexure E.
- 2.2.42 A Caree must be offered an appointment for their physical examination within ten (10) Business Days of the Contractor having received all the required information from the Caree.
- 2.2.43 Where required, the Contractor must engage appropriate Allied Health Professionals to undertake these examinations.
- 2.2.44 Upon completion of the physical examination, the Contractor must provide the completed Carer Visa Report and CVAC to the Caree within six (6) Business Days.

- 2.2.45 All Carer Visa Reports and CVACs completed by an Onshore Panel Physician must be reviewed by a Lead Physician prior to being provided by the Contractor to the Caree.
- 2.2.46 If the Caree is not satisfied with the outcome of their assessment, the Contractor must provide the Caree with the opportunity to apply for re-assessment, including submitting any additional medical information, with a Lead Physician to determine if a re-assessment is clinically appropriate and warranted (i.e. if it is possible that the outcome of the assessment could change). Where the Contractor determines it is required, additional advice around a requested re-assessment should be sought from a MOC.
- 2.2.47 A re-assessment should only be facilitated where the Contractor has assessed that this is clinically appropriate and warranted, and in such a circumstance, the Contractor is able to charge the Caree a new fee for this additional assessment, in accordance with the fee stipulated within the Client Price List for that particular Clinic Location.

Health Status Assessments

- 2.2.48 The purpose of Health Status Assessments is to assess claims made by Clients, including that they are unable to travel due to medical conditions or disability, or that services for a particular condition may not be available in the Client's country of return.
- 2.2.49 The Contractor's MOCs must provide opinions against a Client's Health Status Assessment, as and when requested by the Department.
- 2.2.50 Health Status Assessments will ordinarily be provided on the basis of medical documentation provided by the Client to the Department, and a MOC must first assess the information provided to determine if a physical examination is required.
- 2.2.51 Where sufficient information has been provided to facilitate finalisation of a paper-based Health Status Assessment, the MOC must finalise and return to the Department the completed assessment on the appropriate departmental template (Annexure I – Form 1389 – Assessment of health claims (Health Status Assessment)) within five (5) Business Days of receipt of the populated template from the Department.
- 2.2.52 Where there is insufficient information available to finalise a Health Status Assessment, the Contractor must seek additional information to enable the opinion to be provided, either from the Client, or from a Medical Physician if a Client is unable to provide further information. This may require, amongst other things, researching availability of medical treatment or support services in the Client's home country, or referring the Client for further physical examination.
- 2.2.53 The Client may be required to undergo further physical examination with the Contractor's Lead Physician. If the Contractor's Lead Physician is not available, a referral to an external medical provider may be required. The cost of any additional physical examinations will be borne by the Contractor. **[Note to Tenderers: Tenderers should note that for the period from 1 July 2018 to 30 June 2020, one (1) physical examination for the purposes of a Health Status Assessment has been undertaken, with the remaining assessments being paper-based.]**
- 2.2.54 Where a referral to an external medical provider is required in accordance with paragraph 2.2.53, the Contractor must seek the next available appointment time for the Client.

- 2.2.55 Where a Client requires an appointment with a Lead Physician, the Client must be offered an appointment within ten (10) Business Days of receipt of the populated template from the Department.
- 2.2.56 Health Status Assessments which involve a Lead Physician must be reviewed by a MOC prior to being finalised and returned to the Department on the appropriate departmental template within five (5) Business Days of the Client undertaking the examination.
- 2.2.57 Health Status Assessments which are completed by an external medical provider must be finalised and provided to the Department within two (2) Business Days of the Contractor receiving the external medical provider's report.

Fit to Depart Assessment and Fit to Travel Assessment

- 2.2.58 Fit to Depart Assessments and Fit to Travel Assessments are conducted when a Client claims they are unable to travel (waiver requests relating to a No Further Stay condition on the Client's visa) (FTT Assessment) or depart Australia (Medical Treatment (subclass 602) visa requests) (FTD Assessment) due to medical conditions.
- 2.2.59 The Contractor's MOCs are required to provide an FTD Assessment and FTT Assessment as and when requested by the Department.
- 2.2.60 An FTD Assessment and FTT Assessment will ordinarily be provided on the basis of medical reports provided by the Client to the Department and a MOC must first assess the information provided to determine if a physical examination is required.
- 2.2.61 Where sufficient information has been provided to facilitate finalisation of a paper-based FTD Assessment or paper-based FTT Assessment, the MOC is required to finalise and return to the Department the completed assessment on the appropriate departmental template (Annexure J – Form 1148 – Assessment of Medical Condition (Referred Health Assessment) – Fit to Travel/Fit to Depart Assessments) within three (3) Business Days of receipt of the populated template from the Department.
- 2.2.62 In the event that insufficient information is available to finalise a paper-based FTT Assessment or paper-based FTD Assessment and a physical examination is required, the Contractor must facilitate an appointment with a Lead Physician at a Clinic Location most convenient to the Client within ten (10) Business Days of receipt of the populated template from the Department.
- 2.2.63 All FTT Assessments and FTD Assessments that require a physical examination must be reviewed by a MOC prior to being finalised and returned to the Department on the appropriate departmental template within five (5) Business Days of the Client undertaking the examination.
- 2.2.64 Where a physical examination is required to finalise a FTT Assessment or FTD Assessment, the Contractor will be permitted to charge Clients the relevant standard Health Examination fee stipulated in the Client Price List for that particular Clinic Location.

In-Home Examinations

- 2.2.65 The Contractor must provide In-Home Examinations where medically supported and approved by the Department. Only Clients with a permanent medical condition who are unable to attend a Clinic Location may be considered by the Department for an In-Home Examination. Such conditions include agoraphobia,

immunosuppression, medically verified as unfit for travel, or Clients in a healthcare or residential care facility.

- 2.2.66 At least two (2) months before the Planned Commencement of Services, the Contractor must submit to the Department for approval an In-Home Examination Framework, including a template to be completed by Clients requesting an In-Home Examination that captures the necessary information for the Contractor to be able to assess, recommend and make arrangements to conduct the required Health Examination, Caree Assessment, Fit to Depart Assessment or Fit to Travel Assessment. Requests for In-Home Examinations are required to be reviewed by a MOC prior to being submitted to the Department for approval.
- 2.2.67 Upon receiving approval from the Department for an In-Home Examination to be undertaken, the Contractor must prepare and provide a quote to the Client based on the relevant Client Fee specified in the Client Price List in Schedule 3 to the Contract prior to proceeding with the In-Home Examination. Upon written acceptance of the quote by the Client, the Contractor must offer to facilitate an appointment for an In-Home Examination within the following ten (10) Business Days.
- 2.2.68 If a chest x-ray is required, the Contractor must investigate arrangements for a mobile x-ray, or in the event that this cannot be facilitated, put forward a recommendation to the Department on how to manage this component of the Client's Health Assessment.
- 2.2.69 All In-Home Examination results must be entered into the Department's IT System within five (5) Business Days of the Contractor undertaking the Client's In-Home Examination, and where required, finalised by a MOC within the Department's IT System within another five (5) Business Days.
- 2.2.70 In the rare circumstance that an In-Home Examination is not able to be facilitated due to a Client's extenuating medical condition/s and sufficient medical information exists, the Contractor may request approval from the Department to conduct a paper-based assessment. If the Department provides approval for the Contractor to conduct a paper-based assessment, this paper-based assessment must be completed by a Senior MOC.

2.3 Offshore Medical Services

- 2.3.1 The Contractor must provide Offshore Medical Services, including the administration and provision of Health Assessments by MOCs of Health Examination results conducted and submitted by members of the Offshore Panel Network.

Medical Officers of the Commonwealth

- 2.3.2 The Contractor must provide suitably qualified Medical Physicians that are eligible to be appointed by the Department as Medical Officers of the Commonwealth in accordance with Australian legislative requirements to be approved and appointed by the Department as MOCs in accordance with paragraph 2.1.4, to perform Health Assessments. The Contractor must ensure that all MOCs:
- review the Health Examination results conducted and submitted by members of the Offshore Panel Network, and provided to the Contractor in electronic format, and in paper format (if required), through the Department's IT System, dependent upon the country where the Health Examination was undertaken;
 - provide Health Assessments in accordance with the Migration Regulations 1994 and Departmental Policy, such as Annexure D – MOC Advice Pack, including to:

- i. provide opinions on 'B' Graded Medicals stating whether a Client either Meets or Does Not Meet the Health Requirement;
 - ii. where a Meets or Does Not Meet opinion cannot be provided on the basis of the information available, make a Deferred opinion and request further testing, examination or specialist's report from the Client to assist in making that determination;
 - iii. where required by Departmental Policy, provide opinions on 'A' Graded Medicals which fail to clear;
 - iv. where required by the Department, provide relevant outcomes such as No Clearance Required for specific Client cohorts in accordance with Departmental Policy (for example, Protection visa applicants);
 - v. where the Client Does Not Meet the Health Requirement, provide a Health Costing Advice in the Department's IT System in accordance with the relevant NfG papers; and
 - vi. provide opinions on Public Health Risk Assessments;
- c. refer cases of drug resistant Tuberculosis to the Department on the agreed template, for the Department to then progress for external review by the Expert Medical Panel to determine the recommended action required by the Contractor (with indicative annual data set out in Table 13 of Annexure E);
 - d. follow-up on outstanding test results originating from the initial Health Examination and subsequent examinations or assessments and record all results in the Department's IT System;
 - e. record in the Department's IT System any errors, issues or feedback regarding quality of the Health Examination results from the Offshore Panel Network and/or adherence to Departmental Policy that are identified whilst undertaking each Health Assessment;
 - f. where required, provide advice regarding clinical follow-up requirements or settlement advice (particularly for refugee and humanitarian applicants) to assist with the Client's health and/or disability needs once in Australia; and
 - g. provide administrative staff as set out in paragraph 2.3.5 to support the provision of Offshore Medical Services, including answering queries from the Department's VPOs.
- 2.3.3 The Contractor must record all results of Health Assessments undertaken in accordance with paragraphs 2.3.2 in the Department's IT System, in accordance with KPI 3 set out in Schedule 3 – Draft Contract.
- 2.3.4 The Services described in paragraphs 2.3.2 and 2.3.3 must be provided:
- a. during the hours of 8.00am to 6.00pm, Monday to Friday; and
 - b. where an urgent Health Assessment is required by the Department under paragraph 2.3.2(b), at any time. For clarity, this includes any time outside the hours and days specified in paragraph 2.3.4(a) above and including during Saturday, Sunday or public holidays). **[Note to Tenderers: Tenderers should note that this is expected to be no more than approximately ten (10) onshore and offshore cases per year.]**

Administration Support of Offshore Health Assessments

- 2.3.5 The Contractor must:
- a. manage information received via the Department's IT System and by paper-based mail from members of the Offshore Panel Network;

- b. provide information to MOCs where necessary and, for paper-based submissions received, enter information into the Department's IT System for the MOCs to review;
- c. record the acknowledgement of the receipt of information in the Department's IT System;
- d. conduct administrative assessments of cases not requiring MOC input, including where auto-clearance has not been provided;
- e. provide the paper records to the Department for archiving; and
- f. comply with applicable privacy and data protection laws including the *Privacy Act 1988* (Cth).

2.4 Health Undertaking Service

- 2.4.1 In accordance with paragraphs 1.11 to 1.13, the Department will apply a condition to a Client's visa when a Health Examination has indicated that there are irregularities which do not preclude the Client from meeting the Health Requirement, however, based on the Health Assessment, do necessitate the Client visiting an Australian medical facility for follow up on arrival.
- 2.4.2 The Department will collect a signed agreement from the Client, the Health Undertaking, as part of their visa application to reflect the Client's understanding of this requirement.
- 2.4.3 Where a Client whose visa is subject to a Health Undertaking arrives in Australia, their details will be listed in the Department's IT System.
- 2.4.4 Upon arrival in Australia, a Client on a Health Undertaking has 28 days to provide their residential address to the Department, via the Contractor. The Contractor must provide Client's medical records including their contact details to the relevant State and Territory Health Authority, which may include a State TB Coordinator, who coordinates the provision of information and sets up relevant appointments for the Client at their nearest clinic.
- 2.4.5 Where a Client whose visa is subject to a Health Undertaking arrives in Australia, and makes contact with the Contractor, or the Contractor makes contact with them in accordance with paragraph 2.4.6, or a Client is referred to the Contractor by the Department or a State and Territory Health Authority, the Contractor must:
 - a. register the Client in the Department's IT System as having made contact;
 - b. record the Client's contact details; and
 - c. provide the Client's contact details and case information/medical records to the relevant State and Territory Health Authority.
- 2.4.6 Where the Client does not contact the Contractor within 28 days of arrival in Australia, in accordance with KPI 5 specified in Schedule 3 of the Draft Contract, the Contractor must:
 - a. call the contact number of the Client provided in the Department's IT System. If multiple contact numbers exist, all numbers should be attempted in an effort to engage with the Client;
 - b. if the contact number provided is unsuccessful or the Client did not provide a contact number, send an email to the Client with a 'request read receipt', requesting that the Client calls the Contractor or provides a contact number or email address for the Contractor to contact them on. If multiple email addresses exist, all should be attempted in an effort to engage with the Client;

- c. if the Contractor does not receive a call or email from the Client within seven (7) days of the Contractor's initial contact attempt/s, a second attempt should be made via all available phone and/or email contact channels;
 - d. if no contact channels exist for the Client or if all available phone and/or email contact channels are unsuccessful, the Contractor must request further information from the Department on any further known Client contact channels. In accordance with paragraph 2.26.9, the Contractor must compile all such requests into a list and submit these to the Department on a weekly basis, in a format agreed to by the Department; and
 - e. if the Department provides further contact channels to the Contractor, the Contractor must make further contact attempts, as outlined above. If no further contact channels are provided, the Contractor will proceed in accordance with paragraph 2.4.7.
- 2.4.7 Where the Contractor does not receive a call or email from the Client within seven (7) days of the Contractor's second contact attempt/s, and all steps outlined in paragraph 2.4.6 have been taken, the Contractor must send a final notification letter to the Client, generated through the Department's IT System.

2.5 Maintenance of Notes for Guidance Papers

- 2.5.1 The NfG Papers are a collection of medical condition and service papers used by MOCs to support decision making when making a Health Assessment to determine whether a Client Meets the Health Requirement. ***[Note to Tenderers: Tenderers are advised that there are currently a total of 22 NfG Papers, which are listed at paragraph 2.5.10 below.]***
- 2.5.2 The NfG Papers provide important diagnostic, prognostic and treatment information, together with unit-cost data for relevant health-care services to assist MOCs in making assessments regarding a person's likelihood of requiring health care or community services, or meeting the medical criteria for the provision of a community service as outlined in the Health Requirement.
- 2.5.3 The NfG Purpose and Principles Paper set out at Annexure K – NfG Purpose and Principles Paper, sets out the guidelines on which the NfG Papers are structured. The NfG Purpose and Principles Paper will be updated by the Department as required, with relevant input and feedback to be provided by the Contractor when requested.
- 2.5.4 The NfG Papers provide medical and costing information about a health condition, specific disease and/or health service, and need to meet the Department's formatting requirements for publication, which may change over time.
- 2.5.5 The existing NfG Papers must be reviewed by the Contractor annually or biennially, as set out in the approved NfG Project Plan. Monitoring of clinical and health economic developments is required to identify whether a material change has occurred which may require an earlier update to the NfG Papers. To this effect, the Contractor must submit monitoring reports to the Department as directed, providing a recommendation as to whether an NfG Paper update is required earlier than the scheduled update. If an out of cycle update to any NfG Paper is identified as being required by the Contractor or the Department, the Contractor must submit the revised NfG Paper to the Department for review and approval within four (4) months of the Contractor's recommendation or the Department's notification to the Contractor that the update is required, unless otherwise agreed by the Department. The Contractor must obtain prior approval from the Department in regard to any required timeframe extension.
- 2.5.6 New NfG Papers are required to be prepared by the Contractor as required, upon the direction of the Department. The timeframe relating to the submission

of any new NfG Paper by the Contractor for approval by the Department will be agreed between the Parties.

- 2.5.7 The Contractor must ensure that all reviews are undertaken by a relevant and appropriate expert/specialist clinician in the field relating to the condition for which the NfG Paper refers (such as the relevant specialist colleges), or entities responsible for the service for which the NfG Paper refers (such as Services Australia), and that any new NfG Paper is drafted by an expert/specialist in that field.
- 2.5.8 In accordance with paragraph 2.2.30, the Principal MOC must provide oversight of all revised NfG Papers submitted to the Department for review, as well as take accountability for providing responses to the Department following the Department's review of all revised and new NfG Paper submissions.
- 2.5.9 The Contractor must submit all revised NfG Papers and new NfG Papers to the Department for review and feedback, with the required accuracy, compliance and completeness requirements set out in KPI 6 within Schedule 3 of the Draft Contract.
- 2.5.10 The Contractor must:
- a. provide comprehensive NfG Papers on the accepted medical treatment (including palliative care where applicable) and eligible community services to be engaged in the care of people with conditions or needs by the timeframes set out in the NfG Project Plan, inclusive of the following existing papers;
 - i. Disability Services;
 - ii. Supported Care;
 - iii. Neurological Conditions;
 - iv. Ophthalmological Conditions;
 - v. Hearing Conditions;
 - vi. Cardiological Conditions;
 - vii. Respiratory Conditions (excluding Tuberculosis);
 - viii. Substance Use Disorder Conditions;
 - ix. Psychiatric Conditions;
 - x. Haematological Conditions;
 - xi. Viral Hepatitis;
 - xii. Gastroenterological Conditions;
 - xiii. Breast Cancer;
 - xiv. Prostate Cancer;
 - xv. Colorectal Cancer;
 - xvi. Respiratory Cancer
 - xvii. Selected Cancers;
 - xviii. Palliative Care
 - xix. Endocrinology Conditions;
 - xx. HIV/AIDS;
 - xxi. Nephrology Conditions; and
 - xxii. Rheumatological Conditions.

- b. research and draft additional comprehensive NfG Papers on the accepted medical treatment (including palliative care where applicable) and eligible community services to be engaged in the care of patients with additional conditions and/or needs to those specified in the above list, as may be requested by the Department from time to time;
- c. ensure all NfG Papers:
 - i. reflect current medical, surgical and pharmacological treatments and eligible community services (including any pensions) available to Australian citizens and permanent residents with these conditions;
 - ii. are written with reference to, and take account of, the NfG Purpose and Principles Paper;
 - iii. include costs for the conditions' treatment and care plans prescribed that take account of and accurately reflect information from, including but not limited to, the Australian Institute of Health and Welfare, Medicare Australia, Pharmaceutical Benefits Scheme, Medical Benefits Schedule and the Independent Hospital Pricing Authority; and any other sources agreed by the Parties, after discussion with the Department;
 - iv. include the cost associated with treatment and use of community service support in each NfG Paper nominated by the Department, reflecting the two entry streams into Australia, where necessary:
 - 1. Temporary Entry – treatment and use of community service support costs for the Client's intended period of stay; and
 - 2. Provisional and Permanent Entry – for treatment and use of community service support costs associated with conditions which have an inevitable outcome, up to a maximum period of ten (10) years;
- d. submit an NfG Project Plan to the Department for approval at least 60 days prior to the Planned Commencement of Services. The NfG Project Plan will include:
 - i. dates for review of each of the existing NfG Papers; and
 - ii. dates for submission of monitoring reports;
- e. maintain and update the NfG Project Plan over the Term of the Contract, with changes implemented as agreed with the Department, showing dates for review of existing NfG Papers and amendments to the NfG Project Plan to include any new NfG Papers required, as information is made available; and
- f. provide monthly reports outlining the progress of updates to the NfG Papers, and the drafting of any new NfG Papers, in a format to be agreed upon by the Department and the Contractor.

2.6 Consultancy Services

2.6.1 The Contractor must:

- a. provide Consultancy Services for advice or assistance relevant to the Contract as requested by the Department. These Consultancy Services may include:
 - i. ongoing research activity agreed to in consultation with the Department within the context of traveller and migrant health examinations and assessments;
 - ii. clinical desktop audits of the Offshore Panel Network's Health Examination results;

- iii. reviewing the quality of chest x-rays from newly empanelled Offshore Panel Network members, and Offshore Panel Network members utilising a new x-ray machine; and
- iv. provision of assistance to the Department in relation to the ongoing training of the Offshore Panel Network, including preparing presentation material for the annual intergovernmental panel physicians training summit.

For clarity, Consultancy Services does not include day-to-day case management discussions relating to other Services. These day-to-day case management discussions are, instead, considered to be communications related to contract management, or Communications in accordance with paragraph 2.211. For further clarity, Consultancy Services will not include any services performed in relation to the Maintenance of Notes for Guidance as set out in paragraph 2.5.

- 2.6.2 The Contractor must provide the first 2,250 hours (for reference, this equals approximately 300 days based on 7.5 hour day) of Consultancy Services free of charge to the Department over the Initial Term, with an additional 750 hours (for reference, this equals approximately 100 days based on 7.5 hour day) of consultancy work per year to be provided by the Contractor free of charge, should any Option Periods be exercised by the Department. Any unused hours not utilised in the Initial Term and any subsequent Option Period/s will remain available for the Department to use in future Option Period/s.
- 2.6.3 The Parties must follow the process in clauses 7.5 to 7.8 of the Draft Contract where Consultancy Services are required.
- 2.6.4 The Contractor must detail the Consultancy Services fees in its monthly invoices, unless otherwise agreed by the Department, and provide the following supporting documentation:
 - a. a description of the Consultancy Services provided;
 - b. the hours used in providing each of the Consultancy Services described;
 - c. the cost per hour;
 - d. the total cost of each Consultancy Service;
 - e. the total hours and total cost of all Consultancy Services set out in the invoice for that period;
 - f. the total "free of charge" hours used to date since the Commencement Date; and
 - g. the total "free of charge" hours remaining.

2.7 Adhoc Services

- 2.7.1 The Contractor may be required to provide adhoc services during the Term, which may include, but is not limited to, adhoc medical examinations which may be required to be conducted in certain circumstances, such as onshore migration health checks and/or services for Australia's International Intergovernmental partners under the terms agreed to by the Contractor and the Intergovernmental partner. For clarity, any adhoc services required by an Intergovernmental partner is subject to its own terms and conditions as agreed by the Contractor and the relevant agency and is not provided under or governed by the Contract.

2.8 Auditing

Quality Assurance System

- 2.8.1 For the Term, the Contractor must, as a minimum, provide an up-to-date quality management system that includes:

- a. measures to minimise/mitigate integrity and fraud risks, including risks of Client, sample or x-ray substitution;
- b. measures to ensure that the Policies and Procedures Manual, including the instructions and Standard Operating Procedures (**SOPs**), are reviewed and updated regularly, including:
 - i. working with interpreters;
 - ii. privacy legislation compliance; and
 - iii. verification of identity;
- c. measures to ensure compliance with WHS legislation;
- d. business continuity and disaster recovery planning, as detailed in the Contractor's Business Continuity Plan set out at paragraphs 2.16.1 to 2.16.6;
- e. training and development plans for Personnel, as detailed in the Contractor's Training Plan set out at paragraphs 2.14.1 to 2.14.5;
- f. quality assurance mechanisms to maintain quality for the entire Clinic Location network, including the regular internal audit of Clinic Locations;
- g. measures for ensuring appropriate qualifications and registrations of Personnel, including ongoing professional development;
- h. measures for putting in place ongoing administrative and clinical audits to ensure accuracy and compliance with Departmental Policies;
- i. a client service strategy, including feedback mechanisms and responses;
- j. a plan to focus on continuous improvement in the context of the underlying principles of the Contract, including areas for potential innovation;
- k. compliance with medico-legal requirements; and
- l. arrangements for financial assurance monitoring, including relevant insurances.

Annual External Audit

- 2.8.2 The Contractor must appoint and pay an external auditor to perform an annual Quality Assurance Systems (**QAS**) Audit, to:
 - a. assess the Contractor's ability to consistently provide services that meet Client and applicable statutory and regulatory requirements, including the Contractor's dedicated appointment system and associated data used for the purposes of KPI 1 as set out in Schedule 3 of the Draft Contract;
 - b. ensure that the Contractor aims to enhance customer satisfaction through effective application of its quality management system, including processes for improvement; and
 - c. ensure that the Contractor is complying with its contractual requirements under the Contract.
- 2.8.3 The selection of an external auditor will be undertaken in accordance with the following process:
 - a. the Contractor will nominate three (3) external auditors who would be suitable to undertake the audit; and
 - b. the Department, through its Contract Manager, will select its preferred auditor.
- 2.8.4 If none of the three (3) nominated auditors are deemed appropriate by the Department, the Contractor must submit a further three (3) auditors until the Department selects an appropriate auditor.

- 2.8.5 Unless otherwise directed by the Department, the Contractor may continue to utilise the same preferred auditor over the Term for each annual QAS Audit, as initially selected by the Department.
- 2.8.6 The annual external audit will be against the quality management system set out in paragraph 2.8.1, the Contractor's Quality Assurance Plan provided under paragraph 2.15 and reporting requirements set out in paragraph 2.26.
- 2.8.7 This annual QAS Audit must set out expectations which are required to be monitored by the Contractor and reported on in accordance with reporting requirements, including around monthly administrative and clinical audits.
- 2.8.8 The auditor will perform the annual QAS Audit in respect of the extent that the Contractor performs the Services in accordance with the Contract, including the extent to which the Contractor meets the timeframes set out in this Statement of Requirement in relation to the provision of Onshore Medical Services and Offshore Medical Services, and the extent to which the Contractor meets the Performance Measures. The Contractor must ensure that the audit is:
 - a. designed and undertaken in accordance with Quality Management System ISO 9001 audit requirements;
 - b. designed with input from quality management audit experts;
 - c. objective and unbiased; and
 - d. focussed on compliance with all relevant management plans, procedures and protocols applicable to the Contractor's provision of the Services.

Monthly Internal Audits

- 2.8.9 For each monthly reporting period, the Contractor must undertake an internal audit in accordance with the following sample (to be a random sample where less than 100%), unless otherwise directed by the Department, with the audit criteria to be agreed between the Contractor and the Department in accordance with paragraph 2.8.11:
 - a. 5% of onshore panel examinations for consistency in clinical decision making and application of Departmental Policies;
 - b. 10% of MOC Meets opinions for consistency in clinical decision making and application of Departmental Policies;
 - c. 100% of MOC Does Not Meet opinions for consistency in clinical decision making and application of Departmental Policies;
 - d. 20% of MOC Deferred opinions for consistency in clinical decision making and application of Departmental Policies; and
 - e. 2% of Onshore Panel Physician Health Examinations for administrative accuracy and compliance with Departmental Policies and instructions, including but not limited to identity checking, integrity standards, data accuracy and other administrative processes.
- 2.8.10 The Contractor must accurately report on the outcomes of these audits in accordance with reporting requirements in paragraph 2.26.
- 2.8.11 The audit tool and template to be used by the Contractor will be developed with the Department at least three (3) months prior to the Planned Commencement of the Services and must be approved by the Department.

Contractor Audits of Clinic Locations

- 2.8.12 The Contractor must provide the Department with the outcome of any administrative and/or clinical audits that it undertakes of the Clinic Locations, including, but not limited to:

- a. which Clinic Locations were audited;
- b. any issues identified from the audit at the Clinic Location level, with additional details to be provided to the Department where any non-compliance issues were identified; and
- c. any improvement initiatives identified to reduce the risk of reoccurrence and improve the quality of services, and regular status updates on these initiatives.

Monthly External Audits

- 2.8.13 Monthly external audits will be conducted by the Department or its nominee as outlined in KPI 4 as set out in Schedule 3 of the Draft Contract.

2.9 Policies and Procedures Manual

- 2.9.1 The Contractor must, in consultation with the Department, prepare a comprehensive Policies and Procedures Manual which sets out the material policies and procedures to be followed by the Contractor in providing the Services, to ensure that operations are undertaken in a consistent manner and in accordance with approved practices, Departmental Policies and applicable Laws.
- 2.9.2 The Contractor must submit the draft Policies and Procedures Manual to the Department for its approval within 90 days of the Commencement Date.
- 2.9.3 The Policies and Procedures Manual must not contradict the provisions of the Contract. If there is any discrepancy between the Policies and Procedures Manual and the Contract, the terms in the Contract will prevail.
- 2.9.4 Subject to paragraph 2.9.3, the Contractor must comply at all times with the Policies and Procedures Manual in providing Services to Clients and to the Department.
- 2.9.5 The Contractor must regularly review and maintain the Policies and Procedures Manual, and must provide the Department with an updated version for review no less than annually on the anniversary of the Commencement Date, or upon request by the Department.
- 2.9.6 The Department will notify the Contractor of any changes to Departmental Policies in writing, as soon as reasonably practicable after the change is authorised by the Department.
- 2.9.7 The Contractor must implement the change in policy immediately upon notification from the Department under paragraph 2.9.6 or the date the change in policy takes effect, whichever is earlier. The Contractor must assess the policies and procedures that are impacted by the changes and incorporate these changes into the updated Policies and Procedures Manual. The Contractor must use all reasonable endeavours to provide the updated Policies and Procedures Manual to the Department for review within 20 Business Days of the written notification (or as otherwise agreed between the Parties).

2.10 Timeframes

- 2.10.1 The successful Tenderer is expected to be engaged to provide the Services in accordance with the following indicative timetable:

[Note to Tenderers: The Department intends that the Contract (and some transition-in activities) will commence from execution of the Contract (e.g. some plans may be required shortly after execution). However, Tenderers should note that the Department anticipates that more intensive transition-in activities will occur between April and 1 July 2022 as the Department requires the provision of the Services to commence from 1 July 2022. Transition-in will be further developed and agreed with the

successful Tenderer depending on its proposed solution and the arrangements with the current provider.]

- a. Contract finalised and Commencement Date – October 2021;
 - b. Transition-In commences – October 2021;
 - c. Contractor commences staggered provision of services, in accordance with the approved Contract Transition-In Plan – expected to be from April 2022; and
 - d. Commencement of Services – by 1 July 2022.
- 2.10.2 A detailed proposed timetable for implementation will be included in the Contract Transition-In Plan approved by the Department, in accordance with paragraph 2.12.

2.11 Planning and Program Implementation

- 2.11.1 The Contractor must perform the Services in an efficient manner including that it must:
- a. provide all relevant plans within the specified timeframes outlined in this Statement of Requirement; and
 - b. ensure all plans include:
 - i. specific requirements where appropriate; and
 - ii. overarching management principles.
- 2.11.2 The Contractor must develop the following plans and documents for approval by the Department in accordance with clause 18 of the Contract and this Statement of Requirement and, ensure that it and all its Personnel comply with those plans and documents once they have been approved:
- a. Contract Transition-Out Plan;
 - b. Training Plan;
 - c. Quality Assurance Plan;
 - d. Business Continuity Plan;
 - e. Risk Management Plan
 - f. Fraud and Corruption Control Plan;
 - g. Work Health and Safety Plan;
 - h. Human Resource Management Plan;
 - i. Communications and Issues Management Protocol;
 - j. Systems' Security Plan; and
 - k. NfG Project Plan.
- 2.11.3 Unless otherwise specified or agreed to by the Department, the Contractor must review and update all plans and documents listed above as required and at a minimum, on an annual basis, to ensure they remain current.

2.12 Contract Transition-In Plan

- 2.12.1 As part of their Tender, Tenderers should provide a draft Contract Transition-In Plan which meets the requirements set out in paragraph 2.12.2.
- 2.12.2 The draft Contract Transition-In Plan must, at a minimum, describe all the tasks and activities (including outlining all documents, plans and other deliverables required to be developed or approved in accordance with this Statement of Requirement), to ensure that the Contractor can effectively commence performing all of the Services by 1 July 2022, including, but not limited to:

- a. securing facilities, including all proposed Clinics Locations for the provision of onshore Health Examinations, Caree Assessments, Health Status Assessments, Fit to Depart Assessments and Fit to Travel Assessments and corporate offices (for example, where administrative and health processing staff, the Contract Manager and MOCs will work from) – with details of their respective locations;
- b. build and fit out of facilities;
- c. the proposed transition-in team, including names, roles, experience and percentage of their time allocated to transition-in and the intended dates of their commencement;
- d. timing proposed for transition, including if a staggered transition of the Services is proposed and if so, the proposed order and timing for each type of service;
- e. a comprehensive Personnel transition-in strategy;
- f. any subcontracting arrangements;
- g. IT systems including the establishment of systems, and links to the Department's existing systems;
- h. records and information management;
- i. asset management;
- j. communications and stakeholder engagement;
- k. process mapping;
- l. collection and transfer of data;
- m. milestones for the approval by the Department of all plans required in accordance with the Contract;
- n. milestones required to be met for achievement of transition-in of the Services;
- o. details of the acceptance criteria for each of the milestones;
- p. details of the responsibilities of the Contractor during the transition-in period;
- q. details of how the Contractor will establish capacity to deliver the Services;
- r. details of how the Contractor will establish robust managerial, administrative and clinical governance arrangements to deliver the Services, in order to comply with this Statement of Requirement;
- s. details of how the Contractor will engage sufficient and adequately skilled Personnel to perform the Services;
- t. details of the training that will be delivered to Personnel during the transition-in period;
- u. details of how the Contractor will establish and maintain appropriate security processes and practices to protect Commonwealth information, in accordance with the Contract (including applicable privacy and records management requirements); and
- v. details of how the Contractor will work cooperatively with the incumbent contractor to transition existing services.

2.13 Contract Transition-Out

2.13.1 The Contractor must provide the Department with a Contract Transition-Out Plan for approval by the Department, in accordance with the following:

- a. a draft Contract Transition-Out Plan within six (6) months after the Planned Commencement of Services;
- b. an updated Contract Transition-Out Plan incorporating any changes requested by the Department within ten (10) Business Days of the request;

- c. an updated Contract Transition-Out Plan annually on the anniversary of the Commencement of Services;
- d. if a Notice of termination is issued under the Contract, within one (1) month of the date on which that notice is given; and
- e. if no Notice of termination is issued under the Contract, at least six (6) months before the Contract expires.

2.13.2 The Contract Transition-Out Plan must, at a minimum, describe:

- a. how the Contractor will effectively and efficiently disengage from the Services upon expiry or termination of the Contract by the end of the Term, or such other date agreed by the Department;
- b. detail all the tasks and activities that will be undertaken to disengage, including in relation to:
 - i. staffing arrangements;
 - ii. records and information management;
 - iii. asset management;
 - iv. communications and stakeholder engagement activities; and
 - v. financial records and acquittals.

2.13.3 The Contractor must include details in its Contract Transition-Out Plan which describes:

- a. its ability to work collaboratively with the Department and a new contractor if there is a transfer of Services, ensuring service continuity, including shadowing arrangements with and training of a new contractor, as directed by the Department;
- b. how it will ensure all Services commenced under the Contract are completed in accordance with the Contract, or are appropriately transferred to the Department, or a new contractor (as required by the Department);
- c. how it will meet all other transition-out requirements as notified by the Department;
- d. appropriate milestones for accepting of, and timeframes for performing, the Contract transition-out activities and tasks; and
- e. the Contractor's responsibilities during the Contract transition-out period.

2.14 Training

2.14.1 As part of their Tender, Tenderers should provide a draft Training Plan which meets the requirements set out in paragraph 2.14.2.

2.14.2 The draft Training Plan must, at a minimum, address the following:

- a. induction and training requirements for the Contractor's Personnel, including any subcontractors;
- b. methods of delivery;
- c. timing of delivery; and
- d. strategies to ensure the Contractor's Personnel, including any subcontractors, meet ongoing training qualifications and registration requirements for different roles.

2.14.3 At least 90 days prior to the Planned Commencement of Services, the Contractor must provide a final draft Training Plan based on the draft plan provided in its Tender for approval by the Department, and thereafter on an

annual basis on each anniversary of the Planned Commencement of Services, or as otherwise directed or agreed by the Department.

2.14.4 For all annual updates to the Training Plan, the Contractor must, at a minimum, taking into consideration risks identified, policy changes, audit findings and any incidents that arose in the previous 12-month period, include:

- a. details of all 'standard' and 'ad hoc' training delivered to Contractor Personnel over the previous 12 month period (by role), as well as confirmation on induction training inclusions and requirements;
- b. details on the Contractor's key areas of focus for training for the previous 12 month period and how this contributed to improved service delivery, including all relevant implementation and evaluation strategies;
- c. details on what changes have/will be made to training for the next year, including the Contractor's key areas of focus;
- d. a schedule setting out all planned training for the next 12 months;
- e. methods of delivery; and
- f. the Contractor's strategies to ensure that its Personnel meet ongoing training qualifications and registration requirements for different roles.

2.14.5 The Contractor must:

- a. deliver a comprehensive training program for the ongoing professional education of its Personnel that is sufficiently tailored for the different roles and responsibilities throughout the Term;
- b. provide the Department with a copy of all of its training material within 90 days of the Commencement Date, and thereafter on an annual basis, or as otherwise directed by the Department;
- c. comply with the Department's reasonable training requirements, including training programs for medical and administrative staff and MOCs, as notified by the Department from time to time;
- d. ensure that training is in accordance with any relevant Departmental Policies provided to the Contractor by the Department;
- e. ensure that its Personnel have online access to the Policies and Procedures Manual and any other relevant documents or plans required to appropriately fulfil their roles;
- f. ensure that all Onshore Panel Physicians and MOCs have online access to Departmental Policy documents, including that all MOCs have ongoing access to the Department's electronic database of migration and citizenship legislation and policy documents (LEGENDcom);
- g. provide the Department with a quarterly (i.e. every three months) schedule of the training sessions that will be delivered by the Contractor and any subcontractors during that period;
- h. allow and facilitate attendance by the Department at any of the training programs as requested by the Department;
- i. ensure that the minimum number of Onshore Panel Physicians and MOCs attend the annual Intergovernmental Panel Physicians Training Summit throughout the Term, in accordance with paragraph 2.1.4;
- j. ensure the training program is regularly updated to respond to newly identified risks; and
- k. ensure its training program is audited internally and that all required changes and improvements are implemented and also detailed in the Training Plan.

2.15 Business Quality Assurance

- 2.15.1 As part of their Tender, Tenderers should provide a draft Quality Assurance Plan which meets the requirements set out in paragraph 2.15.2.
- 2.15.2 The draft Quality Assurance Plan must, at a minimum, address the following:
- a. quality management;
 - b. risk management;
 - c. incident management;
 - d. complaints handling;
 - e. continuous improvement and innovation;
 - f. clinical governance framework, covering:
 - i. governance, leadership and culture;
 - ii. safety and quality improvement systems;
 - iii. clinical performance and effectiveness;
 - iv. safe environments for the delivery of services; and
 - v. partnering with consumers;
 - g. provision of training, education and professional development to the Contractor's Personnel, including any subcontractors;
 - h. records management; and
 - i. document control table.
- 2.15.3 At least 60 days prior to the Planned Commencement of Services, the Contractor must provide a final draft Quality Assurance Plan based on the draft plan provided in its Tender for approval by the Department. For quality assurance purposes, the Contractor must:
- a. provide monthly reports in the format to be agreed by the Contractor and the Department with internal audit results of performance against each relevant Service compared with timeframes set out in this Statement of Requirement in relation to the provision of Onshore Medical Services and the Performance Measures set out in the Draft Contract; and
 - b. provide access to information, premises and the Contractor's Personnel for audits by the Department and/or an organisation nominated by the Department, of the Contractor's performance in accordance with this Statement of Requirement, the Performance Measures set out in the Draft Contract and in accordance with the requirements of the Draft Contract more broadly.
- 2.15.4 The Quality Assurance Plan must be updated by the Contractor, for the Department's approval, on an annual basis on each anniversary of the Commencement of Services, or as otherwise directed or agreed by the Department.
- 2.15.5 The Contractor must, at a minimum, have a documented quality management system in place that demonstrates capacity to systematically plan and manage the quality of work in accordance with paragraph 2.8.1.
- 2.15.6 It is a highly desirable requirement for the Contractor to have, and provide evidence of a certified quality management system to AS/NZS ISO 9001:2015 or equivalent by a certifying body registered with the Joint Accreditation System – Australia and New Zealand or an equivalent body.

- 2.15.7 A quality management system may be integrated with other management systems such as those for environmental and occupational health and safety management. In these circumstances, it is the responsibility of the Contractor to demonstrate evidence of such a system.

2.16 Business Continuity

- 2.16.1 As part of their Tender, Tenderers should provide a draft Business Continuity Plan (**BCP**) which meets the requirements set out in paragraphs 2.16.3 and 2.16.4.
- 2.16.2 At least 60 days prior to the Planned Commencement of Services, the Contractor must provide a final draft BCP based on the draft plan provided in its Tender for approval by the Department.
- 2.16.3 The BCP must address risk management, business impact analysis, incident response, disaster recovery and longer term unforeseen events, such as a pandemic.
- 2.16.4 The draft BCP must include, at a minimum:
- a. key Personnel roles and responsibilities in the event of an emergency;
 - b. off-site recovery location (alternative workplace to operate and to organise recovery from);
 - c. recovery action plan over time periods (first hour, first 24 hours, within 48 hours, within the first week, within two (2) weeks, within the first month and long-term recovery);
 - d. key equipment requirements;
 - e. data mirroring, backup, data transfer, provision of services from alternative premises etc.;
 - f. business continuity processes, e.g. manual systems, standalone systems;
 - g. data security;
 - h. data backup and recovery processes;
 - i. data storage, including offsite storage measures;
 - j. data recovery response times;
 - k. disaster reporting and notification;
 - l. SOPs;
 - m. criteria for identifying and managing business continuity risks, including descriptions of likelihood and consequence criteria, and appropriate risk management criteria;
 - n. processes for reporting business continuity issues internally and to the Department;
 - o. a description of the threshold for escalation and management of business continuity issues;
 - p. a description of the strategies and actions to ensure continuity of the provision of the Services when normal operations are disrupted or circumstances exist that may threaten the operation of the Services, including potential areas of adaptability and innovation during significant and long term events; and
 - q. align with recognised standards for business continuity including:
 - i. ISO 22301:2012 Societal Security Business Continuity Management Systems requirements; and

- ii. ISO 5050:2010 Business Continuity Managing Disrupted Related Risk or equivalent.
- 2.16.5 The BCP must be consistent with and reflect the approved Risk Management Plan and Fraud and Corruption Control Plan.
- 2.16.6 The BCP must be reviewed and updated by the Contractor as and when necessary and, at a minimum, on an annual basis to ensure it is current and reflects industry standards.

2.17 Risk Management Plan

- 2.17.1 As part of their Tender, Tenderers should provide a draft Risk Management Plan as set out in paragraph 2.17.5.
- 2.17.2 At least 90 days prior to the Planned Commencement of Services, the Contractor must provide a final draft Risk Management Plan based on the draft plan provided in its Tender for approval by the Department.
- 2.17.3 The Contractor must comply with the Risk Management Plan during the Term, and ensure that the Contractor manages risks effectively.
- 2.17.4 Effective risk management requires the Contractor to understand the nature of the risks and to systematically identify, assess, treat, monitor and review those risks. The Contractor must ensure that risk identification, assessment, and prevention are embedded into processes at all levels.
- 2.17.5 The draft Risk Management Plan must be consistent with the Department's Risk Management strategies and must, at a minimum, describe:
 - a. how the Contractor will identify, seek to prevent and manage risks in relation to the provision of Services;
 - b. the level of conformance to recognised standards for risk management (AS/NZS ISO 21000:2009);
 - c. criteria for identifying and managing risks, including descriptions of likelihood and consequence criteria;
 - d. how risks will be categorised and appropriate risk treatment strategies applied;
 - e. how risks will be reported internally and to the Department; and
 - f. the thresholds for escalation and management of risks.
- 2.17.6 The Contractor must:
 - a. incorporate or otherwise address any comments or feedback from the Department on the Risk Management Plan during the Term;
 - b. comply with and implement the approved Risk Management Plan during the Term;
 - c. perform its obligations under the Contract in a manner that facilitates identification, control, management and mitigation of the risks in connection with the Contract, whether or not a risk is identified in the approved Risk Management Plan;
 - d. provide the Department with information and documents in relation to the Risk Management Plan promptly on request by the Department;
 - e. promptly report to the Department on the status of the Risk Management Plan, and any significant new or changed risks; and
 - f. regularly update and submit for approval the Risk Management Plan throughout the Term as and when necessary or directed by the Department, to ensure the

Risk Management Plan identifies current risks and appropriate prevention or mitigation strategies at all times.

2.18 Fraud and Corruption Control Plan

- 2.18.1 As part of their Tender, Tenderers should provide a draft Fraud and Corruption Control Plan as set out in paragraph 2.18.5.
- 2.18.2 At least 90 days prior to the Planned Commencement of Services, the Contractor must provide a final draft Fraud and Corruption Control Plan based on the draft plan provided in its Tender for approval by the Department.
- 2.18.3 The Contractor must comply with the Fraud and Corruption Control Plan during the Term, and ensure that the Contractor takes a systematic and stringent approach to the prevention and detection of fraud and corruption to achieve outcomes.
- 2.18.4 The Contractor must ensure that fraud and corruption identification, assessment, and prevention are embedded into processes at all levels.
- 2.18.5 The draft Fraud and Corruption Control Plan must be consistent with the Department's Risk Management strategies and the Commonwealth Fraud Control Framework, and must, at a minimum, describe:
 - a. how the Contractor will identify, prevent and manage risk of fraud and corruption in the provision of the Services;
 - b. a summary of fraud and corruption risks and vulnerabilities associated with the Services;
 - c. treatment strategies and controls put in place to manage fraud and corruption risks and vulnerabilities;
 - d. information about implementing fraud and corruption control arrangements in relation to the provision of Services;
 - e. strategies to ensure the Contractor meets its training and awareness needs;
 - f. mechanisms for collecting, analysing and reporting fraud and corruption incidents, including how any instances of fraud or corruption, or suspected fraud or corruption, will be reported internally and to the Department;
 - g. protocols for handling fraud and corruption incidents; and
 - h. the key roles and responsibilities for fraud and corruption control within the Contractor's Personnel.
- 2.18.6 The Contractor must:
 - a. incorporate or otherwise address any comments or feedback from the Department on the Fraud and Corruption Control Plan during the Term;
 - b. comply with and implement the approved Fraud and Corruption Control Plan during the Term;
 - c. perform its obligations under the Contract in a manner that facilitates identification, control, management and mitigation of the fraud and corruption related risks in connection with the Contract, whether or not a risk is identified in the approved Fraud and Corruption Control Plan;
 - d. provide the Department with information and documents in relation to the Fraud and Corruption Control Plan promptly on request by the Department;
 - e. promptly report to the Department on the status of the Fraud and Corruption Control Plan, and any significant new or changed risks or controls; and

- f. regularly update and submit for approval the Fraud and Corruption Control Plan throughout the Term as and when necessary or directed by the Department, to ensure the Fraud and Corruption Control Plan identifies current risks and appropriate prevention or mitigation strategies at all times.

2.19 Work Health and Safety Plan

- 2.19.1 As part of their Tender, Tenderers should provide a draft Work Health and Safety (WHS) Plan which meets the requirements set out in paragraph 2.19.3.
- 2.19.2 At least 90 days prior to the Planned Commencement of Services, the Contractor must provide a final draft WHS Plan based on the draft plan provided in the Tender for approval by the Department.
- 2.19.3 The draft WHS Plan must, at a minimum:
 - a. describe how the Contractor will comply with its WHS obligations under the Contract and applicable legislation and any current industry standards and practice, including the *Work Health and Safety Act 2011* (Cth);
 - b. identify, prevent and manage the risk of work health and safety issues for Contractor Personnel in the performance of the Services;
 - c. be consistent with AS/NZS 4801:2001 – Occupational Health and Safety Management System; and
 - d. include policies and procedures relating to:
 - i. hazard control;
 - ii. infection control, where appropriate;
 - iii. occupational hygiene;
 - iv. safety and security of persons working at a facility;
 - v. WHS training requirements for Contractor's Personnel working onsite at a facility;
 - vi. emergency and disaster management procedures in the event of cyclones and bushfires where relevant to risk; and
 - vii. the Contractor's Personnel support including Post-Incident Management and debrief activities.
- 2.19.4 The Contractor must:
 - a. regularly review and update the WHS Plan throughout the Term to ensure it remains appropriate and current at all times, and submit an updated WHS Plan to the Department annually on the anniversary of the Planned Commencement of Services, or as otherwise requested by the Department; and
 - b. comply with the WHS Plan during the Term.

2.20 Human Resource Management Plan

- 2.20.1 As part of their Tender, Tenderers should provide a draft Human Resource Management Plan which meets the requirements set out in paragraph 2.20.3.
- 2.20.2 The Contractor must provide a final draft Human Resource Management Plan based on the draft plan provided in the Tender for approval by the Department in accordance with the milestone date specified in the Transition-In Plan.
- 2.20.3 The draft Human Resource Management Plan must, at a minimum:
 - a. comply with the requirements of the Contract, including the Statement of Requirement and all Contract standards including the APS Code of Conduct;

- b. describe the Contractor's attraction and retention strategy and how it will ensure it has sufficient Personnel with appropriate skills to deliver the required services; and
 - c. identify specific Personnel for Key Positions nominated by the Contractor, including specified Personnel and detail the specified Personnel minimum qualifications and experience for said Key Positions.
- 2.20.4 The Contractor must update the Human Resource Management Plan annually on the anniversary of the Planned Commencement of Services, or as otherwise requested by the Department.

2.21 Communications and Issues Management Protocol

- 2.21.1 At least 90 days prior to the Planned Commencement of Services, the Contractor must submit to the Department for approval, a draft Communications and Issues Management Protocol that sets out a framework for how communications and reporting requirements in relation to issues and complaints will be managed by the Contractor, including the notification, management and closure of issues and complaints.
- 2.21.2 The draft Communications and Issues Management Protocol must, at a minimum:
- a. identify governance and reporting structures, including key contacts within both Parties for the purposes of communication, notification and escalation, and their responsibilities;
 - b. specify the role of the Contract Management Teams;
 - c. outline the support arrangements in place in relation to the Department's IT Systems;
 - d. describe how general business enquiries will be managed;
 - e. specify the types of breaches that are required to be reported under the Contract, detailing the notification and escalation, management and reporting requirements in relation to each type of breach, based on the relevant severity of the breach;
 - f. detail the notification and escalation, management, closure and reporting requirements in relation to issues and complaints, including the relevant notification criteria and relevant procedures and timeframes to be adhered to; and
 - g. detail the specific requirements relating to cases and complaints that fall under KPI 7 within Schedule 3 of the Draft Contract.
- 2.21.3 The Contractor must respond to enquiries from the Department's VPOs, including progress enquiries. The Contractor must also respond to Client and VPO complaints, in accordance with the processes set out in the approved Communications and Issues Management Protocol. Where complaints are made directly to the Contractor, the Contractor will be expected to provide the Department with a report detailing the nature and resolution of the claim within five (5) Business Days of finalising the complaint.

2.22 IT Systems and Data

- 2.22.1 The Contractor must:
- a. use the Department's IT Systems (or any new systems notified by the Department) during the Term as required to provide the Services;
 - b. establish and maintain appropriate mechanisms to ensure availability of the Contractor's IT environment that provides its Personnel with access to the Department's IT Systems via the secure dedicated communications links

(covering all possible scenarios, including working from home, alternative or backup work locations);

- c. establish and maintain, in collaboration with the Department, an appropriate secure dedicated communications gateway that services the secure communications links, enabling the Contractor's Personnel to utilise both of the Department's remote system access mechanisms (Trusted Partner and Citrix);
 - d. cooperate with the Department including by providing reasonable assistance to the Department in relation to the implementation or testing of any new IT systems during the Term;
 - e. implement and maintain any systems required, in order to meet its obligations under the Contract;
 - f. establish and maintain an appropriate secure gateway server to enable the transfer of data extract files from the Department; and
 - g. ensure that all data held by the Contractor is held in Australia and not overseas.
- 2.22.2 The Department will provide the Contractor with daily health visa data extract files to allow the Contractor to appropriately monitor cases and compile data. These files will be provided to the Contractor by utilising a series of data extract scripts, which generate output files and are sent to the Contractor as individual text files (Unix) via the Department's secure gateway server.
- 2.22.3 Until such time as the Department is able to provide all the required data to the Contractor to enable the Contractor to compile its own reports, the Department will provide the Contractor with a suite of daily, weekly and monthly reports. Once the Department provides all required data to the Contractor, the Contractor will be responsible for compiling any required reports. Should the Contractor seek any additional reports outside of the agreed reports, such requests will need to be agreed to by the Department and the Contractor may be charged a fee in relation to this work.
- 2.22.4 The Contractor must assist the Department with reviewing and updating the Health Systems Support and Communication Guidelines (**Guidelines**), as directed by the Department. These Guidelines outline the arrangements in place with the Contractor when using the Department's IT Systems to deliver Services as required under this Statement of Requirement, and the processes to follow when seeking assistance from the Department on a system-related issue.
- 2.22.5 The Contractor's email system must be able to send and receive emails to and from the Department of at least 30 megabytes.
- 2.22.6 Without limiting the Contractor's obligations under clauses 29 and 31 of the Contract, the Contractor must report any suspected or actual data breach to the Department in accordance with the approved Communications and Issues Management Protocol set out at paragraphs 2.21.1 to 2.21.2, and in any event, no later than 24 hours of a breach of a severe nature occurring, or no later than 48 hours of any other breach occurring.

2.23 Security Requirements

- 2.23.1 As part of their Tender response, Tenderers should provide a draft Systems' Security Plan (**SSP**) which meets the requirements set out in paragraph 2.23.3.
- 2.23.2 At least 90 days prior to the Planned Commencement of Services, the Contractor must submit to the Department a final draft SSP based on the draft plan provided in its Tender for approval by the Department.
- 2.23.3 The draft SSP must provide details, for each IT system the Contractor proposes to use to collect, store or transmit the Department's or Client information, of

how security requirements are implemented in the IT systems and show the required controls in place to protect departmental and Client information and mitigate against all identified risks. The SSP must also provide details on the Contractor's IT business continuity, IT disaster recovery, and a data breach response plan.

- 2.23.4 The Contractor must prepare and submit to the Department a draft SOP at least 90 days prior to the Planned Commencement of Services for each system the Contractor proposes to use to store or transfer departmental or Client information for the Department's approval. In particular, the SOP must outline the specific operational activities carried out by the Contractor to achieve the requirements of the SSP for each system.

2.24 Meetings

- 2.24.1 During the Term, the Contractor must attend meetings with the Department to review and discuss items such as the provision of Services, performance, reports, disputes, security requirements, integrity and anti-corruption measures, compliance with WHS, non-compliances, relevant industry and technology developments and, attend any other meetings as required by the Department.
- 2.24.2 Unless otherwise specified, the Contractor must chair and keep minutes of any meetings, and the minutes must be submitted to the Department for approval within five (5) Business Days after the meeting, or as otherwise agreed by the Department. The Contractor must distribute copies of the agenda and approved minutes to attendees, unless otherwise directed or agreed to by the Department.
- 2.24.3 Each party is required to bear its own costs in respect of all meetings called and attending to the matters arising which require their action or attention.
- 2.24.4 The required representatives from both Parties (as specified in each relevant paragraph) are required to attend meetings including, but not limited to:
- a. Weekly Communication Update Meeting
 - b. Monthly Contract Management Meeting;
 - c. Performance Review Meeting; and
 - d. Annual Governance Meeting.

Weekly Communication Update Meeting

- 2.24.5 An informal teleconference between the Contract Management Teams will be held weekly, unless otherwise agreed by the Department's Contract Manager and the Contractor's Contract Manager. The purpose of this meeting is for each Party to provide a verbal update on each item set out in the weekly *Communication Update* document specified in paragraph 2.26.6, and any other relevant issues. This informal weekly meeting will not be minuted, unless otherwise directed by the Department.

Monthly Contract Management Meeting

- 2.24.6 The Contractor must attend a formal teleconference which will be held monthly (i.e. approximately every four weeks), at a time agreed between the Contractor and the Department.
- 2.24.7 The purpose of the Monthly Contract Management Meeting is to:
- a. discuss any issues arising relating to:
 - i. IT systems and data;
 - ii. clinical matters; and

- iii. contract management matters;
- b. escalate any issues that might affect delivery of Services under the Contract;
- c. monitor performance against the timeframes set out in this Statement of Requirement in relation to the provision of Services, and the Performance Measures set out in the Draft Contract;
- d. coordinate and communicate day-to-day service delivery issues, and address and prioritise those issues affecting the provision of the Services;
- e. review and escalate operational problems and issues in accordance with the Policies and Procedures Manual;
- f. ensure efficient flow of documentation as required by the Contract;
- g. handle disputes within the authority of the Department's Contract Manager and the Contractor's Contract Manager, and referring others to the Executive Committee in accordance with clause 44 of the Contract;
- h. submit issues concerning the relationship of the Parties to the Executive Committee for its guidance and recommendations;
- i. consider operational and technical changes; and
- j. submit reports as required to the Executive Committee.

2.24.8 The Monthly Contract Management Meeting will:

- a. at a minimum, be attended by the Contract Executive, Contract Manager, Clinical Lead and Health Systems Lead of the Contractor and Department. The Department will confirm and approve meeting attendees with the Contractor as part of the Contract transition-in planning;
- b. be held monthly and scheduled for up to two hours via teleconference. Where agreed by both Parties, every three months this meeting will be held as a face-to-face meeting.

Performance Review Meeting

2.24.9 The purpose of the Performance Review Meeting is to discuss the Contractor's monthly performance against the timeframes set out in this Statement of Requirement in relation to the provision Services and the Performance Measures set out in the Draft Contract, to review the monthly report submitted under paragraph 2.26 and identify any improvements required to the service delivery or the Contract.

2.24.10 The Contractor must attend the monthly Performance Review Meetings and the quarterly Performance Review Meetings. These meetings will be attended by the parties' nominated operational and contract management Personnel and will review the performance of the Contractor over the previous month in the monthly Performance Review Meeting and the previous quarter (i.e. every three months) in the quarterly Performance Review Meeting.

2.24.11 The Department will confirm and approve meeting attendees and scheduling of the monthly and quarterly meetings with the Contractor as part of the Contract transition-in planning. Monthly and quarterly Performance Review Meetings will both be held for a duration of up to two (2) hours. It is expected that the quarterly Performance Review Meetings will be held as a face-to-face meeting, with the monthly meeting to take place via teleconference.

Annual Governance Meeting

2.24.12 The purpose of the Annual Governance Meeting is to review Contract performance outcomes, the outcomes of the QAS audit, the Contractor's Annual Report and identify any improvements to the service delivery of the

Contract. This meeting is required to be held as a face-to-face meeting, at a venue agreed to by both Parties, unless otherwise agreed by the Department.

- 2.24.13 At a minimum, the meeting will be attended by the Executive Contract Sponsors, Contract Executives and Contract Manager of the Contractor and Department. Any other attendees are required to be agreed by the Department prior to the meeting. The Department will confirm and approve meeting attendees with the Contractor as part of the Contract transition-in planning.

Medical/Departmental Policy Forums

- 2.24.14 Where required by the Department, the Department's Clinical Lead will establish and host medical forums for all MOCs. **[Note to Tenderers: It is anticipated that these medical forums will be held approximately once per year.]**
- 2.24.15 These medical forums will be used as an educational forum where topics of policy, administrative and clinical interest to both Parties will be discussed.
- 2.24.16 All Contractor MOCs are required to participate in each medical forum either in person or via videoconferencing and/or teleconferencing facilities, with the Contract Managers of the Contractor and Department also to attend.
- 2.24.17 The topics to be discussed at the medical forums will be agreed between the Parties, and may include guest speakers.

2.25 Contract Management

- 2.25.1 The Contractor must ensure that the Key Personnel are occupied at all times to achieve a strong and effective partnership and facilitate effective Service delivery and contract management.
- 2.25.2 The Contractor must nominate a Contract Manager to act as a single point of contact for the Services during the Term. The Department will direct all contract related communications to the Contractor through the Contractor's designated Contract Manager. The Contract Manager is required to undertake the below responsibilities, which include but is not limited to:
- a. issue resolution for Contract Management related items;
 - b. management of Performance Measures and associated reporting;
 - c. escalation point for Contractor and/or Department identified critical issues;
 - d. oversight of the reporting requirements; and
 - e. staff management including any subcontracting arrangements.
- 2.25.3 The Contractor's Contract Manager must assist the Department in formulating workflow processes for any new Departmental Policy as provided to the Contractor by the Department which may impact on the Services.
- 2.25.4 The Contractor's Contract Manager must advise the Department of the change to any Key Personnel in writing within five (5) Business Days.

2.26 Reporting Requirements

Monthly Reports

- 2.26.1 The Contractor must submit to the Department a written monthly report and corresponding data for the Department's review and agreement, in a format to be agreed between the Department and the Contractor during transition-in planning, that includes at a minimum:
- a. the Contractor's performance against each KPI;

- b. total volume statistics, including by Clinic Location and State/Territory, and relative trends across previous months and years;
 - c. details on any public holidays observed over the period;
 - d. the number of Services provided, with case details relating to each Performance Measure as well as any Caree Assessments, Health Status Assessments, FTT and FTD Assessments and RMOc Opinions that were completed or remain on-hand;
 - e. list of any cases that have been excluded from the monthly dataset for each KPI, with detailed reasons provided around the exclusion reason (noting that the Department will provide guidelines to the Contractor around acceptable exclusion criteria and it is at the Department's discretion to determine if a case is able to be excluded);
 - f. the number of Deferrals, and commentary around relative trends;
 - g. the revenue received from Clients;
 - h. details of Client support services, including:
 - i. the number of phone calls received, answered, abandoned and the average handle time; and
 - ii. the number of emails received according to the stakeholder the request came from, including number processed, number remaining on hand and the date of the oldest request still on hand;
 - i. the number and nature of any complaints received by the Contractor in relation to the Services, including from Clients or any other stakeholders, including any trends and resolution strategies;
 - j. details of any incidents that occurred over the reporting period that relate to the Services;
 - k. an overview of training and development activity for the Contractor and its Personnel over the period;
 - l. an overview of all engagement with State and Territory Health Authorities;
 - m. details of any system outage/s relating to the Department's IT Systems that caused Service interruption;
 - n. status updates on any key areas of focus relating to the Services, including advice around any service enhancements or initiatives that were progressed over the period;
 - o. the results of any customer satisfaction surveys;
 - p. all internal Audit reports in accordance with paragraphs 2.8.9 and/or 2.8.12;
 - q. details of any security incidents;
 - r. details of any WHS incidents; and
 - s. any other subject matter that is deemed necessary by the Department throughout the Term.
- 2.26.2 The Contractor must provide the monthly reports in PDF and Excel format to the Department's Contract Manager by the 10th Business Day of the following calendar month.
- 2.26.3 The Department may request additional clarification or further information from the Contractor in relation to each monthly report, including the data submitted and any proposed exclusions or missing cases. The Contractor must provide the requested clarification or information to the Department within the period specified by the Department in the request. Each monthly report will not be

considered finalised until such time as the Department has confirmed its agreement with the data submitted by the Contractor and all excluded cases.

- 2.26.4 The Contractor must notify the Department immediately of any incidents that may, in the Contractor's reasonable opinion, significantly affect the Contractor's ability to fulfil its obligations under the Contract and that may have adverse implications for the Department.
- 2.26.5 In addition to the monthly reports described in paragraph 2.26.1, the Contractor must provide to the Department an Immigration Health Executive Dashboard each month, by the 10th Business Day of the following month, that provides a high-level overview of the Contractor's provision of the Services for the previous rolling 12-month period, in a format to be agreed between the Department and the Contractor during transition-in planning. The Dashboard must, at a minimum, include:
- a. the total number of each of the Services provided each month broken down by service, including but not limited to:
 - i. onshore Health Examinations by volume and visa class;
 - ii. Health Assessments provided for onshore and offshore by volume and type;
 - iii. chest clinic Deferrals (603);
 - iv. onshore HIV, Hepatitis B and C examinations by reactive and non-reactive results;
 - v. Health Undertaking referrals;
 - vi. percentage of Onshore Panel Physicians registered with AHPRA; and
 - vii. a dashboard user guide.

Weekly Communication Update

- 2.26.6 The Contractor must provide the Department with a weekly summary table (**Weekly Communication Update**) outlining all outstanding items that have been communicated between the Parties via email, in a format agreed by the Department.

Annual Report

- 2.26.7 The Contractor must prepare and submit to the Department for approval, an Annual Report each year for the period 1 July to 30 June throughout the Term. This Annual Report must be submitted to the Department no later than 30 September each year and must include detailed information, figures and graphs relating to the provision of Services under the Contract over the 12-month period, as well as key outcomes achieved and priorities for the next 12-months.

Active Tuberculosis

- 2.26.8 The Contractor must:
- a. notify the Department within one (1) Business Day of any case of active Tuberculosis it becomes aware of, both onshore and offshore, where a Health Clearance has already been provided; and
 - b. in relation to a case of active Tuberculosis located onshore, ensure that the relevant State and Territory Health Authority is notified within the prescribed timeframe.

Weekly Report on Health Undertaking Cases

- 2.26.9 In accordance with paragraph 2.4.6, the Contractor must submit to the Department on a weekly basis, a list of all Clients it is managing who have provided Health Undertakings, for whom no contact channels exist, or where all available phone and/or email contact channels were unsuccessful, in a format agreed by the Department.

Weekly Report on Onshore Deferrals

- 2.26.10 In relation to paragraph 2.1.3, the Contractor must submit to the Department on a weekly basis, a list of Clients for whom Deferred opinion letters need to be sent, however, the Clients' contact details are not known.

Notifiable Incidents

- 2.26.11 Without limiting the Contractor's obligations under clauses 29 and 31 of the Contract, the Contractor must report any deaths, critical and significant incidents (e.g. staff misconduct or corruption) and significant near misses to the Department in accordance with the approved Communications and Issues Management Protocol set out at paragraphs 2.21.1 to 2.21.2, and in any event, no later than 24 hours of the incident occurring – with any critical incidents to be reported within two (2) hours and any significant incidents within six (6) hours.
- 2.26.12 In the event of a critical or significant incident, the Contractor is required to undertake a Critical Incident Review/Root Cause Analysis, with the completed Critical Incident Review/Root Cause Analysis to be completed and provided to the Department within 28 days of the incident occurring, unless otherwise agreed by the Department.

2.27 Subcontractors

- 2.27.1 If subcontractors are engaged by the Contractor for the provision of any component of the provision of the Services, the Contractor must keep the Department updated on all stages of the development of subcontracting arrangements and must provide the Department with details of all subcontracting arrangements.
- 2.27.2 The Contractor must not subcontract any part of the Services without the prior written approval of the Department.
- 2.27.3 The Contractor must notify the Department of any variations to Clinic Locations, existing subcontracting arrangement (such as clinic re-locations), or proposed new subcontracting arrangements, through the completion and submission of the agreed template, in accordance with the format agreed between the Department and the Contractor.
- 2.27.4 All radiology and pathology services (including in-house service and where the Contractor has a subcontract with radiological practices and laboratories in Australia) must be co-located at the same site as the Onshore Panel Physician unless specified in Annexure G – Subcontractor and Approved Sites for Non Co-location.

2.28 Performance Measurement

- 2.28.1 The performance measures which the Contractor must meet are detailed in Schedule 3 of the Draft Contract, and are summarised below:

Key Performance Indicator (KPI)	Purpose and Measure
KPI 1 – Client Service (Appointment Time)	To motivate prompt Client service. It measures time from when a Client first makes contact to book an appointment for a Health Examination (including any standalone radiology exams and/or pathology tests) to the date of the appointment.
KPI 2 – Client Service (Processing Time)	To motivate prompt Client service. It measures time from when a Client attends a Clinic Location to commence their Health Examination (including any standalone radiology and/or pathology tests) to the date when the Health Examination results are 'A' Graded Medical or 'B' Graded Medical and are referred to a MOC for subsequent Health Assessment.
KPI 3 – MOC Efficiency	To motivate efficient decision making by MOCs. It measures the time from when the case was referred for a Health Assessment to when the case is finalised within the Department's IT System.
KPI 4 – Accuracy	To motivate accurate assessment of Clients by Onshore Panel Physicians and accurate assessment of cases referred to MOCs. It measures accuracy rates, with regard to how incorrect Health Examination findings and Health Assessments would affect Client outcomes.
KPI 5 – Management of Health Undertaking Service	To ensure diligent performance of the Health Undertaking Service. The KPI measures reporting to the Department, by percentage of Clients that are followed up for Health Undertakings in the specified timeframes.
KPI 6 – Maintenance of NfG Papers	To motivate diligent performance of maintenance of NfG Papers. It measures percentage of the NfG Papers that meet accuracy, compliance and completeness requirements.
KPI 7 – Escalated Cases and Complaints	To motivate responsiveness to cases escalated by the Department's nominated Contract Manager and complaints made directly to the Contractor or via the Department which relate to the provision of Services. It measures the timeliness with which these incidences are resolved.

2.29 Compliance with other Commonwealth Policies

- 2.29.1 The Contractor must provide the Services in accordance with all applicable Commonwealth and State and Territory Laws, and any applicable policies and guidelines.

2.30 Records Management

- 2.30.1 The Contractor must:

- a. create, maintain, store securely and transfer records to the Department in accordance with the *Archives Act 1983* (Cth) and the Australian and International Standard for Records Management, AS ISO 15489;
- b. ensure privacy is maintained in accordance the *Privacy Act 1988* (Cth) and the Australian Privacy Principles;
- c. produce timely, legible, accurate and comprehensive records of all services;
- d. transfer the custody of any hard or soft copy records to the Department within timeframes acceptable to the Department;
- e. ensure records are safeguarded from unauthorised access or use;
- f. ensure all handwritten records are transferred into an electronic record in the Contractor's relevant IT system;
- g. ensure all electronic records have been effectively backed up daily; and
- h. ensure that no data, record or report is inappropriately accessed, removed, lost, corrupted or misplaced.

2.31 Ozone Depleting Substances and Hazardous Substances

- 2.31.1 The Commonwealth wishes to be informed about ozone depleting substances and hazardous substances that may be used in undertaking the Services.
- 2.31.2 The Tenderer should state whether or not any ozone depleting or hazardous substance may be used in undertaking the Services, or contained in any goods supplied as part of the Services and set out full details of each ozone depleting or hazardous substance concerned in their Tender.

2.32 Compliance with Industry Codes or Guidelines

- 2.32.1 The Contractor must comply, and must ensure its Personnel complies, with the Migration Five Health Working Group Code of Conduct for Panel Members in carrying out its obligations under the Contract, as set out at Annexure L - Migration Five Health Working Group Code of Conduct for Panel Members.
- 2.32.2 The Contractor must comply with all relevant industry codes and guidelines in carrying out its obligations under the Contract.



Australian Government

Department of Home Affairs

ABN: 33 380 054 835

REQUEST FOR TENDER (RFT)

FOR THE PROVISION VISA AND MIGRATION MEDICAL SERVICES

RFT HOMEAFFAIRS2040/RFT

ATTACHMENT B: TENDER RESPONSE FORM

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PART 1 - INTRODUCTION

1. Format for Tenders

- 1.1. Tenderers are required to complete and provide, as part of their Tender:
- (a) the Tender Cover Sheet in **Part 2** of this **Attachment B** to the RFT;
 - (b) a scanned copy of a completed and signed Tenderer's Deed of Undertaking and statutory declaration substantially in the form of **Part 3** of this **Attachment B** to the RFT;
 - (c) the completed Tender Response Tables in **Part 4** of this **Attachment B** to the RFT; and
 - (d) the completed Pricing Schedule at **Attachment C** of the RFT.
- 1.2. As provided in clause 10 of **Part 2 – Terms and Conditions**, subject to clauses 10.7 and 17 of **Part 2 – Terms and Conditions**:
- (a) a Tenderer will be excluded if it does not meet one or more of the Conditions for Participation as set out in **Part 1 – RFT Details**; and
 - (b) a Tender will be excluded from further consideration if it does not meet one or more of the Minimum Content and Format Requirements as set out in **Part 1 – RFT Details**.
- 1.2. As provided in clause 4 of **Part 2 – Terms and Conditions**, the Department will accept Tenders lodged in Microsoft Word 2010 (or later version), Microsoft Excel 2010 (or later version), Portable Document Format, or another format as agreed in writing by the Contact Officer.
- 1.3. Tenderers should note that each requirement in each part of this **Attachment B** may not be of equal importance or weight. However, Tenderers should address each requirement completely.
- 1.4. Tenderers should include within each Tender Response Table any assumptions which the Tenderer is relying upon.

2. Questions and Answers

- 2.1 Any enquiries regarding this **Attachment B** or the RFT in general should be directed to the Contact Officer in accordance with clause 5.1 of **Part 2 – Terms and Conditions**.

PART 2 - TENDER COVER SHEET

Tenders should include a completed Tender cover sheet substantially in the following form:

REQUEST FOR TENDER FOR Visa and Migration Medical Services

REQUEST FOR TENDER NUMBER: HOMEAFFAIRS2040/RFT

CLOSING TIME: 2.00pm on 19 February 2021 (local time in Canberra,
Australian Capital Territory (AEDT)).

Full legal name of Tenderer:	
Trading or business name:	
Name of contact person:	
Position:	
Telephone number:	
Facsimile number:	
Email address:	
Postal address:	

PART 3 – TENDERER'S DECLARATIONS

Form 1 – Deed of Undertaking

It is a Minimum Content and Format Requirement that Tenders **must** include a completed and signed Deed of Undertaking substantially in the following form:

DEED POLL

Date: <insert date>

By: <insert full legal name of Tenderer> (Tenderer)

- 1 This deed is provided in connection with the Request for Tender for the provision of Visa and Migration Medical Services (HOMEAFFAIRS2040/RFT) (RFT), issued by the Department for the provision of the Requirement.
- 2 In this deed, terms not otherwise defined have the meaning ascribed to them in the RFT.
- 3 The Tenderer declares that this deed is for the benefit of the Commonwealth as represented by the Department of Home Affairs ABN 33 380 054 835 (Department).
- 4 The Tenderer:
 - (a) offers to supply the Requirement described in the RFT on the conditions set out in the RFT for the prices contained in its Tender and, subject to the Statement of Compliance included as part of its Tender, in accordance with the Draft Contract;
 - (b) agrees to participate in the RFT process in accordance with the RFT; and
 - (c) declares that all information in its Tender is true and correct in every respect.
- 5 The Tender submitted by the Tenderer in response to the RFT remains open to acceptance by the Department for the Tender Validity Period.
- 6 Except this deed and any other deed or declaration executed by the Tenderer in accordance with the RFT process, the Tenderer acknowledges that no binding contract (including a process contract) or other understanding (including any form of contractual, quasi-contractual, restitutionary rights, or rights based upon similar legal or equitable grounds) will exist between the Department and a Tenderer in relation to the RFT or the Services unless and until a Contract (if any) is signed by the Department and a successful Tenderer.
- 7 Despite paragraphs 6 and 8, if a court finds that a contract exists between the Department and a Tenderer regarding the conduct of the RFT process, the Tenderer agrees that the Department's liability for negligence, breach of statute, and any breach of the terms of such a contract is limited to the Tenderer's substantiated costs of participation in the RFT process. For the avoidance of doubt, the Department is not liable for any lost profit, lost opportunity or other losses which may have been incurred by the Tenderer.
- 8 The Tenderer acknowledges and agrees that:
 - (a) to the extent permitted by law, the Department is not liable to the Tenderer on the basis of any contract or other understanding (including any form of contractual, quasi contractual, restitutionary or promissory estoppel rights, implied obligations or rights based on similar legal or equitable grounds) whatsoever, or in negligence, as a consequence of any matter relating or incidental to the RFT, the procurement of any or all of the requirements

covered by the RFT or the Tenderer's participation in the RFT process, including instances where:

- (i) the Department varies the RFT process;
 - (ii) the Department elects to enter into a contract for all or any of the requirements covered by the RFT with any party, whether or not that party was a Tenderer in the RFT process;
 - (iii) the Department decides to suspend or terminate the RFT process or not to tender or enter into a contract for all or any of the requirements covered by the RFT;
 - (iv) the Department decides to proceed with another approach to market for the Requirement or any part of the Requirement;
 - (v) the Department exercises or fails to exercise any of its other rights under or in relation to the RFT; or
 - (vi) the Department makes information available or provides information to a Tenderer relating to projected future, current or historical requirements;
- (b) lodgement of its Tender on time and in accordance with the RFT is entirely its own responsibility;
 - (c) it is responsible for all costs and expenses in relation to the preparation and lodgement of its Tender, any subsequent negotiations and any other action or response in relation to the RFT;
 - (d) under subsection 137.1 of the *Criminal Code Act 1995* (Cth), giving false or misleading information to the Commonwealth is a serious offence;
 - (e) the Department does not warrant that unauthorised access to information and data transmitted via the internet will not occur (Tenderers should take their own measures to protect information transmitted electronically);
 - (f) all information (whether written, oral or in any other form) which has been and may subsequently be made available to the Tenderer is provided on the terms and conditions of the RFT, including clause 30.1(h) of Part 2 – Terms and Conditions; and
 - (g) it will not make any public statements or announcements, or issue any press release or like statement (by means of advertisement in the media or otherwise) in relation to the RFT, any related procurement process, the Requirement, or any resulting Contract arising out of the RFT, without the prior written consent of the Department.

9 The Tenderer warrants that:

- (a) it will not, in negotiating the terms of any contractual arrangement with the Department, depart from the information it has provided or statements or claims it has made in its Tender;
- (b) if successful, at the time of signing any contractual arrangement, it will not have any judicial decision against it (excluding decisions under appeal) relating to employee entitlements that have not been paid;
- (c) other than as disclosed in its Tender, at the time of lodging this Tender, it does not have any known actual or potential conflict of interest in respect of the RFT, its Tender or the provision of the Requirement;

- (d) it does not, and will not in the provision of the Requirement, engage Illegal Workers;
- (e) neither it, its personnel or any proposed subcontractors are listed as terrorists under section 15 of the *Charter of the United Nations Act 1945* (Cth);
- (f) neither it, its personnel or any proposed subcontractors are named in the consolidated list referred to in regulation 40 of the *Charter of United Nations (Dealing with Assets) Regulations 2008* (Cth);
- (g) it, its personnel, any proposed subcontractors, agents or related bodies corporate comply with the United Nations Security Council sanctions regimes under the *Charter of the United Nations Act 1945* (Cth) and the Australian autonomous sanctions regimes under the *Autonomous Sanctions Act 2011* (Cth);
- (h) it holds a Valid and Satisfactory Statement of Tax Record for any first tier subcontractor that it proposes, as part of its Tender, to engage to deliver the Services, where the estimated value of the Services to be undertaken by that subcontractor is over \$4 million (GST inclusive);
- (i) if successful, it will ensure that any first tier subcontractor not included in its Tender that it subsequently engages to deliver the Services, where the estimated value of the Services to be undertaken by that subcontractor is over \$4 million (GST inclusive), provides it with a Satisfactory Statement of Tax Record that is Valid at the time of entry into the subcontract;
- (j) if successful and its Satisfactory Statement of Tax Record is or will be no longer Valid at the time any contract will be entered into with the Department, it will, if requested by the Department, provide the Department with a renewed Valid and Satisfactory Statement of Tax Record prior to the contract being entered into;
- (k) if successful, it will:
 - (i) hold a Valid and Satisfactory Statement of Tax Record for the duration of any contract entered into with the Department and, on request by the Department, provide to the Department a copy of any such Statement of Tax Records;
 - (ii) ensure that any first tier subcontractor it engages to deliver the Services, where the estimated value of the Services to be undertaken by that subcontractor is over \$4 million (GST inclusive) holds a Valid and Satisfactory Statement of Tax Records for the duration of any subcontract in relation to those Services; and
 - (iii) retain a copy of all Statements of Tax Records held by any first tier subcontractor in accordance with paragraph 5(k)(ii) and, on request by the Department, provide to the Department a copy of any such Statement of Tax Records;
- (l) it acknowledges that, if it is successful and it does not comply with the requirements outlined in paragraph 5(k)(i), it will be a breach of the contract; and
- (m) that during the Tender Validity Period, the Tenderer will notify the Department in writing of any changes to information contained in its Tender immediately upon becoming aware of that change.

10	The Tenderer is compliant with all paragraphs of the RFT and all clauses of the Draft Contract except as specified in the Compliance Statement that forms part of its Tender to the RFT.
11	The Tenderer represents that: (a) this Tender has been compiled without the improper assistance of any current or former Commonwealth employee and without the use of information obtained improperly or unlawfully or in breach of an obligation of confidentiality; (b) it has not attempted to solicit information from or influence improperly any officer, employee or agent of the Commonwealth, or violate any applicable laws or Commonwealth policies regarding the offering of inducements in connection with the RFT process; (c) it has not engaged in misleading or deceptive conduct in relation to its Tender or the RFT process; (d) it has not engaged in any collusive tendering, anti-competitive conduct, or any other unlawful or unethical conduct with any other Tenderer, or any other person in connection with the preparation of their Tender or the RFT process; and (e) it has not otherwise acted in an unethical or improper manner, or contrary to any law.
12	The Tenderer declares that there are no proceedings that, to the best of the Tenderer's knowledge and belief after having made proper enquiry are taking place, pending or threatened, against the Tenderer, a related body corporate, a proposed subcontractor, where such proceedings will or have the potential to impact adversely upon either: (a) the Tenderer's capacity to perform and fulfil its obligations if contracted as a result of the RFT process; or (b) the Tenderer's reputation. If there are no proceedings, indicate "No" below:
The Tenderer discloses the following proceedings:	
13	Under Commonwealth procurement policy, Tenderers are obliged to indicate whether or not they are covered by the <i>Workplace Gender Equality Act 2012</i> (Cth) (the WGE Act). The Tenderer is covered by the WGE Act if it is a 'relevant employer', defined 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. For more information about the coverage of the WGE Act, contact the Workplace Gender Equality Agency on (02) 9432 7000.
Guidance to Tenderers: Indicate with a ✓ whichever option applies.	

	☐ Yes, the Tenderer is a relevant employer. The Tenderer has attached a current letter of compliance as part of its Tender which indicates the Tenderer's compliance with the WGE Act.
	☐ Yes, the Tenderer is a relevant employer. The Tenderer will be providing a current letter of compliance prior to entering into any resultant Contract.
	☐ No, the Tenderer is not a relevant employer.
14	The Tenderer acknowledges that it is the Department's policy that it will not contract with providers who have had any judicial decisions against them (excluding decisions under appeal) relating to employee entitlements and have not satisfied any resulting order. The Tenderer represents that, having made all reasonable enquiries, as at the date of this deed, the Tenderer has not had any judicial decisions against it (excluding decisions under appeal) relating to employee entitlements for which it has not satisfied any resulting order.
15	The Tenderer acknowledges that it is the Department's policy that it will not contract with providers engaging Illegal Workers as defined in the RFT and declares that: (a) it and any party proposed by the Tenderer to provide any of the Services [has]/[has not] received a penalty or order arising from a Court or Tribunal decision in relation to an Illegal Worker; and (b) it and any party proposed by the Tenderer to provide any of the Services [has]/[has not] fully complied with a penalty or order arising from a Court or Tribunal decision in relation to an Illegal Worker.
16	The Tenderer represents and warrants that it has not engaged in, or procured or encouraged others to engage in, activity that would result in a breach of the Lobbying Code of Conduct, published by the Attorney-General's Department. Note: The Lobbying Code of Conduct is available at https://www.ag.gov.au/integrity/publications/lobbying-code-conduct .
17	The Tenderer acknowledges, agrees and makes the following further representations to the Department: (a) it has examined the RFT, the Draft Contract, all documents referred to in the RFT and all other information made available to it and all applicable legislation and policies; (b) it has read and considered all addenda in preparing its Tender; (c) it has examined all further information which is obtainable by making reasonable enquiries relevant to the risks, contingencies and other circumstances having an effect on its Tender; (d) it has satisfied itself as to the correctness and sufficiency of its Tender; (e) obtained independent advice on the effect of all relevant legislation in relation to the Tenderer's participation in this RFT process; and (f) it has relied entirely on its own enquiries and has not relied on any representation, warranty or other conduct by or on behalf of the Department, except as expressly provided in the RFT or in notices received by it.
18	The Tenderer acknowledges that the Department has received this Tender in reliance on this Declaration. The Tenderer acknowledges that the Department may suffer loss if

any of the representations, undertakings, consents or other statements in this Declaration or the Tenderer's Tender are misleading or deceptive.

Consents

19 The Tenderer:

- (a) consents to and authorises the Department to undertake such security, probity and/or financial investigations as the Department may determine are necessary in relation to the Tenderer, its partners, associates, subcontractors or related entities, and their officers or employees;
- (b) agrees to provide, at its cost, all such reasonable assistance to the Department in this regard; and
- (c) agrees to the public disclosure of the name and details of any subcontracts and any subcontractors and acknowledges responsibility to obtain the subcontractor's agreement to the disclosure of this information.

Other Laws

20 The Tenderer represents that, to the best of its knowledge after having made proper enquiry, it has complied with, and will continue to comply with:

- (a) any obligations applicable to the Tenderer contained in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth); and
- (b) all other relevant Laws in preparing and lodging its Tender and taking part in the RFT process.

Survival

21 This deed survives the termination or expiry of the RFT process.

Governing Law

22 This deed is subject to and is to be construed in accordance with the Laws in force in the Australian Capital Territory.

23 The courts of the Australia Capital Territory will have non-exclusive jurisdiction to decide any matter arising out of this deed.

EXECUTED AS A DEED POLL for the benefit of the Commonwealth of Australia

Execution by a company incorporated in Australia

The following execution block should be used by a Tenderer that is a company incorporated in Australia.

Executed by [Name of company] in accordance with section 127 of the *Corporations Act 2001* (Cth)

Signature of director

Signature of director/company secretary

(Please delete as applicable)	
Name of director (print)	Name of director/company secretary (print)
Execution by an attorney Where the Deed of Undertaking is executed by an attorney under a power of attorney on behalf of a company incorporated in Australia, the Tenderer should submit with its executed Deed of Undertaking a copy of the relevant power of attorney. Powers of attorney must be in the form of a deed executed in accordance with section 127 of the <i>Corporations Act 2001</i> (Cth).	
Signed sealed and delivered by [company name] by its attorney under power of attorney [dated [date of power of attorney] registered number [registered number] book number [book number], who warrants that, as at the date of this deed, they have had no notice of revocation of the power of attorney	
Signature of attorney	Signature of witness
Name of attorney (print)	Name of witness (print)
Execution by a company not incorporated in Australia Where this Deed of Undertaking is completed by a company not incorporated in Australia, the company should: (a) if registered in Australia, include the company's ABN or ARBN (or if not registered in Australia, include any equivalent registration number in its jurisdiction of incorporation, in the place of the ABN or ARBN); (b) use an appropriate execution block (such as the example block provided below); (c) state the company's jurisdiction of incorporation; (d) execute this deed in accordance with the relevant requirements of the jurisdiction of its incorporation; and (e) on request from the Department, and at the expense of the Tenderer, provide a legal opinion from: (1) a legal practitioner registered to practise in the relevant jurisdiction confirming that the deed has been executed in accordance with the relevant requirements of the jurisdiction in which it has been executed, and is valid and legally binding on the relevant company; and (2) a legal practitioner registered to practise in Australia, confirming that the deed is enforceable in the Australian Capital Territory.	

The legal opinion should also confirm that the relevant company has validly and irrevocably appointed an Australian based law firm as its agent for acceptance of service of proceedings by the Department for breach of the Deed of Undertaking.

Signed sealed and delivered by [foreign corporation company name] in the presence of

Signature of witness

Signature of authorised signatory

Name of witness (print)

Name of authorised signatory (print)

Execution by an entity other than a company

The following execution block is should be used by a Tenderer that is not a company.

Signed sealed and delivered by and on behalf of [insert name] by a duly authorised representative

Signature of authorised signatory

Signature of witness

Name of authorised signatory (print)

Name of witness (print)

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

Form 2 – Statutory Declaration

It is a Minimum Content and Format Requirement that Tenders **must** include a completed and signed statutory declaration substantially in the following form:

COMMONWEALTH OF AUSTRALIA STATUTORY DECLARATION <i>Statutory Declarations Act 1959</i>	
I, [Name, address and occupation of person making the declaration] make the following declaration under the <i>Statutory Declarations Act 1959</i>:	
1	This declaration (Declaration) relates to the Request for Tender for the provision of Visa and Migrant Medical Services (HOMEAFFAIRS2040/RFT) (RFT), issued by the Department for the provision of the Requirement. In this Declaration, terms not otherwise defined have the meaning ascribed to them in the RFT.
2	I am the [relationship to Tenderer, e.g. "managing director"] of [insert name and ABN/ACN of Tenderer] (Tenderer) and have been authorised by the Tenderer to make the statements in this statutory declaration personally and on behalf of the Tenderer.
3	I declare that all information in the Tender is true and correct in every respect.
I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the <i>Statutory Declarations Act 1959</i>, and I believe that the statements in this declaration are true in every particular. <i>Signature of person making the declaration</i> DECLARED at[insert place]..... on.....of..... Before me, <i>Signature of person before whom the declaration is made</i> <i>Full name of person before whom the declaration is made (BLOCK LETTERS)</i> <i>Address of person before whom the declaration is made (BLOCK LETTERS)</i> <i>Qualification of person before whom declaration is made (BLOCK LETTERS)</i> <i>Note 1</i> A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years — see section 11 of the <i>Statutory Declarations Act 1959</i>. <i>Note 2</i> Chapter 2 of the <i>Criminal Code</i> applies to all offences against the <i>Statutory Declarations Act 1959</i> — see section 5A of the <i>Statutory Declarations Act 1959</i>.	

Qualification of Witness

Pursuant to section 8 (b) of the *Statutory Declarations Act 1959* the above declaration must be made before a prescribed person. Please refer to the *Statutory Declarations Regulations 1993* for a list of the prescribed persons.

PART 4 – TENDER RESPONSE TABLES

The Tenderer should include completed responses to each of the following tables.

1 - Executive Summary

1.1 The Tenderer should provide a summary of how it will meet the Requirement.

Executive Summary

Guidance to Tenderers: *The executive summary should as a minimum include the following:*

- a summary of the Tender
- a summary of how the Tenderer will perform the required Services.

This RFT does not specify a particular form for the executive summary.

The executive summary will be used by the Department as a guide to the Tender. Therefore, the Tenderer should ensure that all information in the executive summary is expanded in the specific Tender areas that follow.

The Tenderer should note that the executive summary may be used for high-level briefing of key stakeholders including the Minister, Parliamentary Secretaries, Parliamentary Committees, the Secretary of the Department and other executive and personnel.

The executive summary should not contain any information that the Tenderer would not wish to have made available in the public domain.

The executive summary should not exceed 10 single-sided pages. Pages in excess of this page limit may not be considered by the Department.

2 - Tenderer Information

2.1 The Tenderer should provide all of the information requested in the tables below:

Requirement	Tenderer's Response
Tenderer's full legal name: Tenderers should provide the Tenderer's full legal name, that would be the legal entity which would enter into a contractual arrangement with the Department:	
Tenderer's Trading or Business Name (if different to above):	
Tenderer's Australian Business Number (ABN): ¹ The Tenderer	

¹ the Department will withhold 46.5% of any payment claimed under an invoice that does not specify an ABN in respect of the contractor, unless an applicable exception is specified in the *Taxation Administration Act 1953*. (See section 12-190 of Schedule 1 of the *Taxation Administration Act 1952*.) Tenderers should obtain and will be deemed to have obtained, their own taxation advice.

Requirement	Tenderer's Response
should indicate if they are registered on the Australian Business Register and, if so, provide their ABN:	
Tenderer's Contact: The Tenderer should include details of a person who is authorised to represent and legally bind the Tenderer:	Name: Position: Address: Phone: Fax: Email:
Tenderer's legal entity type: The Tenderer should specify the legal entity type (e.g. company, partnership, incorporated association, trustee on behalf of a trust, sole trader or other):	
Tenderer's principal place of business: The Tenderer should provide both their administrative or head office address and details of any other premises which will be used to provide the Requirement	
SME: The Tenderer should specify if it is a large business, or Small and Medium Enterprise (SME) (being an Australian or New Zealand registered firm with fewer than 200 full time equivalent employees)	
Indigenous: The Tenderer should specify if it is Indigenous enterprise (as defined in the Indigenous Procurement Policy)	
If the Tenderer is a company, include details of:	
The registered office:	
The date and place of incorporation and the Australian Company Number:	
Details of office bearers and shareholders (if a company with less than five [5] shareholders):	
If the Tenderer is a partnership, include details of:	
The principal place of business:	
Details of partners (if less than ten (10) partners):	
If the Tenderer is a sole trader	

Requirement	Tenderer's Response
Provide details of the sole trader, including name, address, date of birth and the length of time as a sole trader:	
If the Tenderer is a trustee	
If the Tenderer is tendering in respect of a business carried on by it as a trust, provide details of the relevant trust including details of the trustees and beneficiaries (the Department may also request a copy of the relevant trust deed and any variations. Please note that if the Department accepts such a Tender, the Draft Contract will contain additional clauses to protect the Department's interests):	
Employees	
Number of employees (full-time equivalent (FTE)) and Average Staffing Level (ASL) in the total organisation, including contracted staff:	

2.2 The Tenderer should provide information on its office locations and the number of persons employed (FTE and ASL) at those locations.

Resource information	Office address(es)	Number of employees (FTE)	Number of employees (ASL)
ACT			
NSW			
VIC			
QLD			
WA			
SA			
NT			
TAS			
Overseas locations (if applicable)			

- 2.3 The Tenderer should provide the following details of two of its personnel that are nominated to be the contacts for the Tenderer during the RFT process.

	Primary Contact Details	Secondary Contact Details
Name		
Position		
Postal address		
Physical address		
Phone number		
Mobile number		
Email address		
Facsimile number		

3 - Proposed Subcontractors

- 3.1 The Tenderer should complete the following table for each proposed subcontractors (if any) that it intends to use for the supply of any element of the Requirement.

Requirement	Tenderer's Response
Subcontractor name and details (including as applicable, full legal name, ABN, ACN, RBN and address)	
Elements of the Requirement which are to be provided by that subcontractor or agent	
The reasons for using the proposed subcontractor	
Revenue for last financial year	
Ownership and governance structure of the proposed subcontractor	
The Tenderer's previous experience in working with the proposed subcontractor	
The nature of the commercial arrangements between the Tenderer and the subcontractor	

Requirement	Tenderer's Response
Subcontractor complies with the Workplace Gender Equality Act 2012 (Cth) ?	
Subcontractor has not had any judicial decision made against them (excluding decisions under appeal) in respect of employee entitlements for which it has not satisfied any resulting order?	
Subcontractor complies with the Fair Work Act 2009 (Cth) ?	
Is the estimated value of the Services to be performed by the subcontractor under the subcontract greater than \$4 million (GST inclusive)?	☐ Yes ☐ No

- 3.3 Tenderers are required to provide with their Tender a written confirmation from each proposed subcontractor that the subcontractor agrees to participate in the Tender submitted by the Tenderer and to provide the relevant part or parts of the Requirement if the Tender is accepted.
- 3.4 The Tenderer should note that in accordance with paragraph 7.21 of the Commonwealth Procurement Rules, the names of subcontractors may be publicly disclosed. Tenderers must inform relevant subcontractors that the subcontractor's participation in delivering the Requirement may be publicly disclosed and obtain their consent to any such disclosure.
- 3.5 If a proposed subcontractor is a SME (being an Australian or New Zealand registered firm with fewer than 200 full time equivalent employees) or an Indigenous enterprise (as defined in the Indigenous Procurement Policy - <https://www.niaa.gov.au/resource-centre/indigenous-affairs/indigenous-procurement-policy>), the Tenderer should specify the organisation name, the percentage of involvement and basis of determining the percentage involvement of SME or Indigenous enterprise participation for the provisions of the Services that the respective subcontractor is to undertake.

Response	
Subcontractor name	
ABN	
ACN or ARBN (if applicable)	
Is the subcontractor an SME or Indigenous enterprise?	☐ SME ☐ Indigenous enterprise
Percentage of involvement	

Basis of percentage	<i>[Guidance to Tenderers: Describe how the percentage of involvement has been determined.]</i>
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4 – Referees

- 4.1 The Tenderer should provide the details in the table below of at least two (2) referees for whom they have recently provided the Requirement or similar services to the Requirement.

[Note to Tenderers: A Tenderer can provide contacts within the Department as referees. However, if the Tenderer's referees are members of the Tender Evaluation Committee or otherwise involved in the procurement process, the Department reserves the right to seek referee comments from other individuals with sufficient knowledge of the Tenderer's work.]

(a) Referee 1

Name of Organisation:	
Summary of services provided (including date those services were provided):	
Involvement of personnel in provision of the services to the Organisation:	
Contact Details of Referee:	- Name: - Title: - Telephone: - Email address:

(b) Referee 2

Name of Organisation:	
Summary of the services provided (including date those services were provided):	
Involvement of personnel in provision of the services to the Organisation:	
Contact Details of Referee:	- Name: - Title: - Telephone: - Email address:

5 - Response to the Conditions for Participation and Minimum Content and Format Requirements

5.1 Conditions for Participation

- (a) The Tenderer must complete the table below to confirm compliance (or otherwise) with the Conditions for Participation.
- (b) Tenderers are reminded that compliance with the Conditions for Participation is mandatory. A Tenderer either 'complies' or 'does not comply'. Partial compliance is 'does not comply' and will be treated as such. Subject to clauses 10.7 and 17 of **Part 2 – Terms and Conditions**, any Tender that does not comply with a Condition for Participation will be excluded (see clause 10.2 of **Part 2 – Terms and Conditions**).

Requirement	Tenderer's Response (Complies/Does not Comply)
The Tenderer must not have had any judicial decisions against it (excluding decisions under appeal) relating to employee entitlements and have not satisfied any resulting order.	
The Tenderer, its personnel, and any subcontractor proposed in its Tender must not be listed as terrorists under section 15 of the <i>Charter of the United Nations Act 1945</i> (Cth).	
The Tenderer, its personnel, and any subcontractor proposed in its Tender must not be named in the consolidated list referred to in Regulation 40 of the <i>Charter of the United Nations (Dealing with Assets) Regulations 2008</i> (Cth).	
The Tenderer must either: (a) hold a Valid and Satisfactory Statement of Tax Record by the Closing Time; or (b) have a receipt demonstrating that a Statement of Tax Record has been requested from the Australian Taxation Office by the Closing Time, and hold a Valid and Satisfactory Statement of Tax Record no later than four (4) Business Days after the Closing Time.	
The Tenderer must hold a Valid and Satisfactory Statement of Tax Record for any first tier subcontractor that it proposes, as part of its Tender, to engage to deliver the Services where the estimated value of the Services to be undertaken by that subcontractor is over \$4 million (GST inclusive).	

5.2 Minimum Content and Format Requirements

- (a) The Tenderer must complete the table below to confirm compliance (or otherwise) with the Minimum Content and Format Requirements.
- (b) Tenderers are reminded that compliance with the Minimum Content and Format Requirements is mandatory. A Tenderer either 'complies' or 'does not comply'. Partial compliance is 'does not comply' and will be treated as such. Subject to clauses 10.7 and 17 of **Part 2 – Terms and Conditions**, any Tender that does not comply with a Minimum Content and Format Requirement will be excluded (see clause 10.5 of **Part 2 – Terms and Conditions**).

Requirement	Tenderer's Response (Complies/Does not Comply)
Tenderers must attach to its Tender a completed and signed copy of the Deed of Undertaking substantially in the form set out in Form 1 in Part 3 of this Attachment B .	
Tenderers must attach to its Tender a completed and signed copy of the statutory declaration substantially in the form set out in Form 2 in Part 3 of this Attachment B .	
Tenders must submit with its Tender either: (a) For the Tenderer either: i. a Valid and Satisfactory Statement of Tax Record for the Tenderer; or ii. a receipt demonstrating that a Statement of Tax Record has been requested from the Australian Taxation Office for the Tenderer and the Tenderer must then provide a Valid and Satisfactory Statement of Tax Record within four (4) Business Days after the Closing Time. (b) a Valid and Satisfactory Statement of Tax Record for any first tier subcontractor that it proposes, as part of its Tender, to engage to deliver the Services where the estimated value of the Services to be undertaken by that subcontractor is over \$4 million (GST inclusive).	
The Tenderer must ensure that its Tender meets each of the following requirements: (a) all language, including in all attachments and supporting technical data, must be written in English; (b) unless otherwise specified in the Statement of Requirement, all measurements must be expressed in Australian legal units of measurement; and (c) all prices must be stated in Australian dollars.	

6 - Conflicts of Interest

6.1 The Tenderer should complete the table below.

Requirement	Tenderer's Response
The Tenderer should specify any actual or potential conflicts of interest that it has.	
If an actual or potential conflict of interest exists, the Tenderer should identify how it proposes to manage that conflict of interest.	

7 – Insurance

7.1 The Tenderer should complete the table below.

Requirement	Tenderer's Response
Public and products liability Insurance for an insured amount of \$20 million per occurrence and not less than \$20 million in aggregate.	Insured Amount per occurrence: Insurance Amount in aggregate: Insurer: Expiry Date:
Worker's Compensation Insurance as required by law.	Insurer: Expiry Date:
Professional indemnity or errors and omissions insurance for an insured amount of \$5 million per occurrence and not less than \$10 million in the aggregate (including an automatic right of reinstatement).	Insured Amount per occurrence: Insured Amount in aggregate: Insurer: Expiry Date:

8 - Financial and Corporate Viability

8.1 Financial Viability

(a) The Tenderer should complete the table below. If required, the Tenderer can include further information as attachments to its Tender.

Requirement	Tenderer's Response
The Tenderer should provide a summary of its, and any proposed subcontractor that will provide any elements of the Requirement, financial viability to provide the Requirement. This could include data from or for a financial analysis of its operations, including profitability; liquidity; insolvency; bankruptcy actions; working capital management efficiency; financial structure; debt coverage and return on investment. Note that the Department may also undertake its own independent enquiries in relation to the Tenderer's financial viability.	
The Tenderer should provide copies of audited financial statements and annual reports for the preceding three (3) financial years.*	
The Tenderer should provide particulars of any petition, claim, action, judgement or decision that is likely to adversely affect its capacity to provide the Requirement.	

*Notes:

- (a) Where the Tenderer was incorporated/established in the last three (3) financial years, the Tenderer is required to provide an auditor's statement that the Tenderer was incorporated/established less than three (3) financial years previously and audited financial statements from incorporation/establishment are required

- (b) Where the Tenderer is the result of a merger, takeover or consolidation, audited financial statements for the entities prior to the merger, takeover or consolidation for the preceding three (3) years should be provided. For example Company A and Company B merge in March 2013 to form Company AB. In this case audited financial statements should be provided for the preceding three (3) financial years for Company A and the preceding three (3) financial years for Company B
- (c) Where the Tenderer is not required to be audited under any legislation, unaudited financial statements are permissible where accompanied by a letter of assurance as to their authenticity provided by the Tenderer's accountant
- (d) The Tenderer should attach a copy of the Certificate of Incorporation for the Tenderer, where applicable.
- (e) The Department may seek additional financial information in relation to any Tenderer (or subcontractor) at any stage of the evaluation process.

8.2 Corporate Information

- (a) The Tenderer should complete the table below. If required, the Tenderer can include further information as attachments to their Tender.

Requirement	Tenderer's Response
The Tenderer should provide a summary of the Tenderer's background, history, services, and corporate organisation.	
The Tenderer should include a high-level organisation chart for the Tenderer.	
The Tenderer should describe its strategic direction, and the implications the strategic direction may have on the Department. The Tenderer should also indicate what proportion of its business any resulting Contract for the provision of the Services would represent.	
The Tenderer should provide: (a) for each key executive officer within the organisation, a Curriculum Vitae/resume of no more than three (3) A4 pages including length of service with the Tenderer (b) details of other key personnel to the business (including position and why significance/dependencies exists) (c) details of key executives and management who have left the business in the last two (2) years (if applicable).	

8.3 Details of all current Directors and Senior Executives

(a) The Tenderer should complete the table below.

Name	Length of Service	Qualifications	Relevant Experience

Guidance to Tenderers: Tenderers should add additional rows as required

8.4 Information Relating to Legal Status of Tenderer

- (a) The Tenderer should complete the following information relating to the legal status of the Tenderer and its ultimate parent or associated entities including Directors/Executive Officers.
- (b) The Department may seek additional corporate information in relation to any Tenderer (or subcontractor) at any stage of the Evaluation Process.

Requirement	Tenderer's Response
The Tenderer should provide details of any litigation proceedings whatsoever, actual or threatened, against the Tenderer, its parent or associated entities or any director of the Tenderer, its parent or associated entities within the past four (4) years	
The Tenderer should provide details of any bankruptcy actions against any director of the Tenderer, its parent or associated entities within the past four (4) years	
The Tenderer should provide details of any de-registration actions against the Tenderer, its parent or associated entities within the past four (4) years	
The Tenderer should provide details of details of any actions of insolvency proceedings, actual or threatened (including voluntary administration, application to wind up, or other) against the Tenderer, its parent or associated	

Requirement	Tenderer's Response
entities within the past four (4) years	
The Tenderer should provide details of any breaches or defaults, of any agreement, contract, order, award binding upon the Tenderer, its parent or associated entities within the past four (4) years	

9 - Confidential Information

- 9.1 The Tenderer may specify below what information (if any) it requests to be treated as confidential under the Contract (if any), should it be the successful Tenderer, giving reasons why it is necessary to keep the information confidential information.
- 9.2 The Tenderer should have regard to the matters identified in the Department of Finance's "Confidentiality throughout the Procurement Cycle Principles", available at <https://www.finance.gov.au/government/procurement/buying-australian-government/confidentiality-throughout-procurement-cycle>.

Information the Tenderer proposes as Confidential Information	Reason(s)	Proposed period of confidentiality

Guidance to Tenderers: It is highly desirable that the Tenderer strictly limits identification of material as Tenderer Confidential. Confidential Information should be limited to material which could, in a practical sense, cause harm to its business and which is consistent with Finance Guidance on Confidential Information, which is publicly available at <http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/principles.html>.

Categories of information that may meet the requirements of the Confidentiality Test include:

- internal costing information or information about profit margins
- proprietary information, for example information about how a particular technical or business solution is to be provided that may compromise the supplier's commercial interests elsewhere, including competing in future tender processes
- pricing structures (where this information would reveal whether a potential supplier was making a profit or loss on the supply of a particular good or service)
- artistic, literary or cultural secrets. These may include photo shoots, historic manuscripts, or secret indigenous culture
- intellectual property including trade secrets and other intellectual property matters where they relate to a potential supplier's competitive position.

Commercial information that would not generally be considered to be confidential includes:

- *performance and financial guarantees*
- *indemnities*
- *the price of an individual item or group of items*
- *rebates, liquidated damages and service credits*
- *performance measures*
- *clauses which describe how intellectual property rights are to be dealt with*
- *payment arrangements.*

See also <http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/tips.html> and clause 24 of **Part 2 - Terms and Conditions.**

10 - Commonwealth Policy Requirements

10.1 The Tenderer should indicate below how and/or the extent to which it will comply with Commonwealth policies.

Requirement	Tenderer's Response
Modern Slavery Act 2018	
The <i>Modern Slavery Act 2018</i> ('Modern Slavery Act') established a national Modern Slavery Reporting Requirement, which applies to large businesses and other entities in the Australian market with annual consolidated revenue of at least AUD\$100 million. Entities required to comply with the Reporting Requirement must prepare annual Modern Slavery Statements, which set out the entity's actions to assess and address modern slavery risks in their global operations and supply chains. The Australian Government will make reporting entities' annual Modern Slavery Statements publicly available through an online central register. Non-reporting entities can voluntarily choose to comply with the reporting requirements. The Tenderer should indicate whether or not the organisation is a 'reporting entity' under the Modern Slavery Act and, if applicable, provide evidence of its compliance with the reporting requirements as part of the Tender, or prior to entering into any Contract, or on the first due date of a modern slavery statement.	Please tick the relevant box: ☐ Yes, the Tenderer is a reporting entity under the Modern Slavery Act. Attached is evidence of its compliance with the reporting requirements under the Modern Slavery Act. ☐ Yes, the Tenderer is a reporting entity. The Tenderer will be providing evidence of its compliance with the reporting requirements under the Modern Slavery Act prior to entering into a contract or on the first due date of a modern slavery statement. ☐ No, the Tenderer is not a reporting entity. It did not voluntarily choose to comply with the reporting requirements. ☐ No, the Tenderer is not a reporting entity. However, it voluntarily chose to comply with the reporting requirements. Attached is evidence of its compliance.

Requirement	Tenderer's Response
	☐ No, the Tenderer is not a reporting entity. However, it voluntarily chose to comply with the reporting requirements. It will be providing evidence of its compliance prior to entering into a contract or on the first due date of a modern slavery statement.
Web Accessibility Transition Strategy	
The Tenderer should provide a statement confirming whether their Tender complies with the Web Accessibility National Transition Strategy, and demonstrate how its products, services and outputs conform to Web Content Accessibility Guidelines (WCAG 2.0, Level AA) including the dedicated website required to be maintained by the successful Tenderer under the Statement of Requirement.	
Ozone Depleting Substances	
The Tenderer should provide details of any ozone depleting substances and hazardous substances that may be used in undertaking the Requirement or contained in goods supplied as part of the Requirement. Please include full details of the nature of the ozone depleting substance or hazardous substances. Where applicable please ensure that any Product Safety guidelines or Material Safety Data Sheets are provided as attachments to the Tender.	
Environmental Impacts	
The Tenderer should provide details of how any particular part of the production process or characteristic of any part of the Requirement offered is environmentally beneficial. The Tenderer should substantiate their claims and state how their claims take into account the provisions of any applicable legislation and government policies that relate to the environment. The Tenderer acknowledges that the Department does not verify claims or accept responsibility for their accuracy.	
Multicultural Access and Equity Policy	
The Tenderer should demonstrate how it will comply with the Australian Government's Multicultural Access and Equity Policy (the 'policy'), including at a minimum, by	

Requirement	Tenderer's Response
demonstrating: (a) a sound knowledge of the needs, circumstances, cultural and other characteristics of Clients and assessment of the direct impact of the Requirement on those Clients; (b) how they will provide the Requirement to a culturally and linguistically diverse population, consistently with the policy; and (c) that they have: i. planning, implementation, monitoring and review mechanisms that incorporate the policy; ii. performance standards that use the cultural and linguistic diversity of personnel or their awareness of issues (Note: data collection on services, including on performance standards, must be consistent with Standards for Statistics on Cultural and Language Diversity); iii. complaint mechanisms that enable people from culturally and linguistically diverse backgrounds to raise concerns about the services, programme and activity provided; and iv. recruited, as relevant, culturally diverse employees, volunteers, grantees and subcontractors.	

10.2 Broader Benefits to the Australian Economy

The Tenderer should provide information about how their Tender provides a direct economic benefit to Australia. A link to the Department of Finance's guidance material on economic benefit to the Australian economy is available here:

<https://www.finance.gov.au/sites/default/files/2020-08/consideration-of-broader-economic-benefits-in-procurement.pdf>.

Tenderers should provide the following information:

- (a) how they would communicate with Australian industry about participation opportunities, if they were the successful Tenderer;
- (b) any opportunities for Australian industry participation, if they were the successful Tenderer, in their supply chain (including long term); and
- (c) the procedures and resources they have to support paragraphs (a) and (b) above.

This information may also be used by the successful Tenderer (if any) to complete their Australian Industry Participation plan, if this is required.

In addition, as per the Department of Finance's guidance material, Tenderers could include details about matters such as:

- (a) paying taxes in Australia;
- (b) competitive pricing;
- (c) employing workers in Australia;
- (d) sharing knowledge with SMEs;
- (e) using goods and services from a business that provides services of persons with a disability;
- (f) developing innovative practices,

to show how they provide a direct economic benefit to Australia.

Tenderer's Response

10.3 Black Economy Procurement Connected Policy

Tenderers must submit with their Tender either:

- (a) a Valid and Satisfactory Statement of Tax Record for the Tenderer; or
- (b) a receipt demonstrating that a Statement of Tax Record has been requested from the Australian Taxation Office for the Tenderer.

Tenderers must either:

- (a) hold a Valid and Satisfactory Statement of Tax Record by the Closing Time; or
- (b) have a receipt demonstrating that a Statement of Tax Record has been requested from the Australian Taxation Office by the Closing Time.

If the Tenderer provides a receipt demonstrating that a Statement of Tax Record has been requested from the Australian Taxation Office, the Tenderer must also provide a Valid and Satisfactory Statement of Tax Record to the Contact Officer by email within four (4) Business Days after the Closing Time (the Tenderer must provide all applicable Statements of Tax Record as set out below).

The Tenderer must hold a Valid and Satisfactory Statement of Tax Record for any first tier subcontractor that it proposes, as part of its Tender, to engage to deliver the Services where the estimated value of the Services to be undertaken is over \$4 million (GST inclusive).

In order to meet the Minimum Content and Format Requirements and the Conditions for Participation, Tenderers may need to provide the Department with more than one Statement of Tax Record with their Tender, depending on the type of legal entity that the Tenderer is.

The Statements of Tax Record required to be provided by the Tenderer are set out in the table below:

If the Tenderer is:	Statement of Tax Record Required:
A body corporate or natural person.	A Valid and Satisfactory Statement of Tax Record in respect of that body corporate or person.

A partner acting for and on behalf of a partnership.	A Valid and Satisfactory Statement of Tax Record: a) on behalf of the partnership; and b) in respect of each partner in the partnership that will be directly involved in the delivery of any Contract or subcontract (as applicable).
A trustee acting in its capacity as trustee of a trust.	A Valid and Satisfactory Statement of Tax Record in respect of: a) the trustee; and b) the trust.
A joint venture participant.	A Valid and Satisfactory Statement of Tax Record in respect of: a) each participant in the joint venture; and b) if the operator of the joint venture is not a participant in the joint venture, the joint venture operator.
A member of a Consolidated Group	A Valid and Satisfactory Statement of Tax Record in respect of: a) the relevant member of the Consolidated Group; and b) the head company in the Consolidated Group.
A member of a GST group.	A Satisfactory and Valid Statement of Tax Record in respect of: a) the GST group member; and b) the GST group representative.

Tenderer should carefully review the requirements above to ensure that all required Statement of Tax Records are provided.

[Guidance to Tenderers: the above is required to meet the Minimum Content and Format Requirements and the Conditions for Participation.

Tenderers should apply to the Australian Taxation Office for a Statement(s) of Tax Record as soon as possible after the release of this RFT and within sufficient time to meet the requirements of the Black Economy Procurement Connected Policy.

More information about the requirements under the Black Economy Procurement Connected Policy (including how to apply for a Statement of Tax Record) is available from the Department of Treasury at <https://treasury.gov.au/policy-topics/economy/black-economy/procurement-connected-policy> and on the Australian Taxation Office website at <https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/>.]

11 – Other Business Requirements

Guidance to Tenderers: Where an attachment is provided, Tenderers should ensure include it as a clearly labelled attachment and not embed the document in its Tender.

11.1 Compliance with Industry Codes or Guidelines

Tenderer's Response

12 - Statement of Compliance

12.1 Tenderers should submit this Statement of Compliance completed substantially in the form of the table below with their Tenders. Tenderers are advised to carefully review clause 26 of **Part 2 – Terms and Conditions** to assist in completing this Statement of Compliance.

12.2 Tenderers should use the following responses in completing the Statement of Compliance:

Complies. In the case of a paragraph or clause:

- (a) that is of an informative nature only, or is a provision in the Statement of Requirement or Draft Contract, compliance means that the paragraph or clause has been read, understood and accepted;
- (b) that imposes a condition or obligation, compliance means that the Tenderer has submitted its Tender in full compliance with that condition or obligation;
- (c) that specifies a future condition or obligation, compliance means that the Tenderer will comply in full and on time with that condition or obligation;
- (d) that specifies a characteristic or performance requirement, compliance means that the Tenderer will provide the requirement as specified; and
- (e) where information has been requested, compliance means that the information has been provided to the required level of detail and in the required format.

Does Not Comply. In the case of a paragraph or clause:

- (a) that is of an informative nature only, or is a provision of the Statement of Requirement or Draft Contract, non-compliance means that the paragraph or clause has been read, understood and not accepted;
- (b) that imposes a condition or obligation, non-compliance indicates that the Tenderer has not complied with that condition or obligation;
- (c) that specifies a future condition or obligation, non-compliance means that the Tenderer will not comply with that condition or obligation;
- (d) which specifies a characteristic or performance requirement, non-compliance means that the Tenderer will not provide the requirement as specified; and
- (e) where information has been requested, non-compliance means that the information has not been provided or not in the required format.

Partially Complies. In the case of a paragraph or clause:

- (a) that is of an informative nature only, or is a provision of the Statement of Requirement or Draft Contract, partial compliance means that the paragraph or clause has been read and understood but only partially accepted;
- (b) that imposes a condition or obligation, partial compliance indicates that the Tenderer has submitted its Tender in partial compliance with that condition or obligation;
- (c) that specifies a future condition or obligation, partial compliance means that the Tenderer will comply partially with that condition or obligation;
- (d) which specifies a characteristic or performance requirement, partial compliance means that the Tenderer will partially satisfy the requirement as specified; and
- (e) where information has been requested, partial compliance means that the Tenderer complies partially with the request for information to the required level of detail and in the required format.

Not Applicable: This means that the paragraph or clause does not apply to the Tenderer.

- 12.3 Where a Tenderer indicates that it is non-compliance or partially compliance with a paragraph in the Statement of Requirement, or has indicated that a paragraph in the Statement of Requirement is not applicable, the Tenderer should provide:
- (a) a full explanation of the reasons for each instance of partial compliance, non-applicability or non-compliance; and
 - (b) for each instance of partial compliance, detail on the extent of the non-compliance.
- 12.4 Where a Tenderer indicates that it is non-compliant or partially compliant with a clause in the Draft Contract, or has indicated that a clause in the Draft Contract is not applicable, the Tenderer should provide:
- (a) a full explanation of the reasons for each instance of non-compliance, partial compliance or nonapplicability;
 - (b) for each instance of partial compliance, detail on the extent of the non-compliance; and
 - (c) an alternative clause the Tenderer considers acceptable.
- 12.5 Where a Tenderer indicates that the paragraph or clause is not applicable to the Tenderer, the Tenderer should explain the reasons why it is not applicable. A statement that an issue 'needs to be negotiated' or other statement that does not fully state the specific requirement or position of the Tenderer will be treated by the Department as meaning 'Does Not Comply'.
- 12.6 If a Tenderer does not include a statement of non-compliance, partial compliance or non-applicability relating to any matter, the Tenderer will be deemed to 'comply' with that matter.
- 12.7 Tenderers should note that stating 'Does Not Comply' in response to a term or requirement specified in the Draft Contract or the Statement of Requirement (irrespective of the language used in those parts), will not result in a Tender being excluded from consideration but may impact on the overall evaluation of that Tender, in relation to which a non-compliance or partial compliance may result in exclusion from further consideration).
- 12.8 Tenderers should be clear and precise and should reference, where appropriate, the paragraph numbers in the Statement of Requirement and the clause numbers in the Draft Contract to which each item relates.
- 12.9 Tenderers may complete the response to the Statement of Requirement and Draft Contract on an exceptions basis.
- 12.10 Tenderers are taken to have complied with every paragraph or clause of the Statement of Requirement and Draft Contract unless they have specified that they are non-compliant or partially compliant with the paragraph or clause or have indicated that the paragraph or clause is not applicable.

Compliance with Statement of Requirement

Statement of Requirement reference	Tenderer's response (Complies, Does Not Comply, Partially Complies, Not Applicable)	If response is Does Not Comply, Partially Complies or Not Applicable, Tenderer to specify full explanation of the reasons (and detail on the extent of any partial compliance)

Compliance with Draft Contract

Draft Contract reference	Tenderer's response (Complies, Does Not Comply, Partially Complies, Not Applicable)	If response is Does Not Comply, Partially Complies or Not Applicable, Tenderer to include full explanation of the reasons (and detail on the extent of any partial compliance)	If response is Does Not Comply, Partially Complies or Not Applicable, Tenderer to include proposed alternative clause

13 – Technical Evaluation Criteria**13.1 Criterion 1: Capability and Capacity**

Guidance to the Tenderer: The response to technical 'Criterion 1' should not exceed 30 single-sided pages. Pages in excess of this page limit may not be considered by the Department. Attachments to this response do not count towards this guidance page limit.

- (a) The Tenderer should demonstrate its capability and capacity to provide the Requirement so as to achieve the Department's stated outcomes, including:
- (i) The Tenderer should outline its proposed network of Clinic Locations and demonstrate how it meets the requirements set out in the Statement of Requirement and the Performance Measures set out in **Attachment E** to this RFT, including how it will effectively service Clients, including by outlining:
- its proposed service delivery model (i.e. structure, number and location of clinics)
 - its ability to service Clients in Regional, as much as possible, minimise travel distances
 - the proximity to public transport
 - its ability to service appointment load peaks, including the provision of sufficient clinical personnel with required skills and expertise
 - its workflow management processes

Tenderer's Response

- (ii) The Tenderer should outline its capability to provide the following Onshore Medical Services in an effective manner, meeting the requirements set out in the Statement of Requirement and Performance Measures set out in **Attachment E** to the RFT: Health Examinations (including radiology and pathology services), Caree Assessments, Health Status Assessments, Fit to Depart Assessments, Fit to Travel Assessments, In-Home Examinations, dedicated website, appointment system, administrative support to onshore cases, such as telephone and email support services as set out in paragraph 2.1.3f. of the Statement of Requirement, interpreting and communication service and, identity checking and capturing of facial images

Tenderer's Response

- (iii) The Tenderer should outline its capability to provide Health Assessments on onshore and offshore cases in an effective manner, meeting the requirements set out in the Statement of Requirement and Performance Measures set out in **Attachment E** to the RFT, including the review of existing Health Assessment outcomes as requested by the AAT, the provision of sufficient clinical personnel with required skills and expertise to service onshore and offshore load peaks and sufficient administrative support to service offshore Health Assessments, as set out in paragraph 2.1.3f. of the Statement of Requirement.

Tenderer's Response

- (iv) The Tenderer should outline its ability to provide the Health Undertaking Service as described in paragraph 2.4 of the Statement of Requirement

Tenderer's Response

- (v) The Tenderer should outline its ability to provide maintenance of Notes for Guidance Papers as described in paragraph 2.5 of the Statement of Requirement

Tenderer's Response

- (vi) The Tenderer should outline its ability to provide Consultancy Services and Ad Hoc Services as described in paragraphs 2.6 and 2.7 of the Statement of Requirement respectively

Tenderer's Response

- (vii) The Tenderer should outline its ability to change with varying requirements (e.g. changes to applicable Laws and policy settings)

Tenderer's Response

- (viii) The Tenderer should outline its capability to manage its proposed network of Clinic Locations, including any proposed subcontractors

Tenderer's Response

- (ix) The Tenderer should provide details of any existing quality assurance accreditation, and any other relevant accreditations it holds, and outline its proposed quality management system, including clinical and administrative audits

Tenderer's Response

- (x) The Tenderer should outline its commitment to continuous improvement and innovation

Tenderer's Response

- (xi) The Tenderer should provide a draft Quality Assurance Plan, as specified in the Statement of Requirement

Tenderer's Response

- (xii) The Tenderer should outline its proposed Client service strategy and commitment to Client service

Tenderer's Response

- (xiii) The Tenderer should outline its proposed training program and provide a draft Training Plan, as specified in the Statement of Requirement

Tenderer's Response

- (xiv) The Tenderer should provide a draft Business Continuity Plan, as specified in the Statement of Requirement

Tenderer's Response

- (xv) The Tenderer should provide a draft Risk Management Plan, as specified in the Statement of Requirement

Tenderer's Response

- (xvi) The Tenderer should provide a draft Fraud and Corruption Control Plan, as specified in the Statement of Requirement

Tenderer's Response

- (xvii) The Tenderer should provide a draft Work Health and Safety Plan, as specified in the Statement of Requirement

Tenderer's Response

- (xviii) The Tenderer should provide a draft Human Resource Management Plan, as specified in the Statement of Requirement

Tenderer's Response

- (xix) The Tenderer should outline its detailed approach to professional development and skills maintenance and enhancement, including maintenance of appropriate professional qualifications, certifications and credentialing, as outlined in the Statement of Requirement.

Tenderer's Response

- (xx) The Tenderer should attach to its Tender a proposed organisation chart for its provision of the Requirement. The chart should identify personnel positions with the names of personnel, if allocated. The chart should encompass all aspects of the RFT.

Tenderer's Response

- (xxi) The Tenderer should identify and provide details of relevant key personnel who will be used for the supply of the Requirement. For each nominated specified personnel, the Tenderer should provide a table in the following format:

Name and Title of Nominated Specified Personnel:	
Location:	
Qualifications/skills and Registrations:	
Relevant Expertise and Experience:	
Position Responsibilities in delivering Requirement:	
Curriculum Vitae attached to Tender (Yes/No)?	

- (xxii) The Tenderer should outline its capability to meet the reporting requirements set out in the Statement of Requirement

Tenderer's Response**13.2 Criterion 2: Effective Working Relationships with the Department**

Guidance to the Tenderer: The response should not exceed 15 single-sided pages. Pages in excess of this page limit may not be considered by the Department. Attachments to this response do not count towards this guidance page limit.

- (a) The Tenderer should outline how the Tenderer will establish and maintain an effective and efficient working relationship with the Department.
- (i) The Tenderer should outline its understanding of the Department's operations, culture and values

Tenderer's Response

- (ii) The Tenderer should outline its proposed methodology to successfully manage the relationship with the Department, including how it intends to collaborate and have proactive relationships with a broad range of stakeholders within the Department to deliver high quality services

Tenderer's Response

- (iii) The Tenderer should provide an overview of the Tenderer's experience in establishing and maintaining successful relationships with organisations similar to the Department

Tenderer's Response**13.3 Criterion 3: Provision of Requirement Timeframes**

Guidance to the Tenderer: The response should not exceed 15 single-sided pages. Pages in excess of this page limit may not be considered by the Department. Attachments to this response do not count towards this guidance page limit.

- (a) The Tenderer should outline how it proposes to transition-in the Services to meet the Department's proposed timeframe for provision of the Requirement as set out in the Statement of Requirement, including:
- (i) The Tenderer should provide a draft Contract Transition-In Plan detailing how the Tenderer will achieve a successful transition of Services without disruption or degradation to service delivery by the timeframe set out in the Statement of Requirement, including details on any other commitments the Tenderer has which may impact upon the transition-in timeframes being met

Tenderer's Response**13.4 Criterion 4: Experience in performing similar services**

Guidance to the Tenderer: The response should not exceed 5 single-sided pages. Pages in excess of this page limit may not be considered by the Department. Attachment to this response do not count towards this guidance page limit.

- (a) The Tenderer should outline its experience in delivering similar services to large numbers of clients

Tenderer's Response

13.5 Criterion 5: ICT System Requirements

Guidance to the Tenderer: *The response should not exceed 10 single-sided pages. Pages in excess of this page limit may not be considered by the Department. Attachment to this response do not count towards this guidance page limit.*

(a) The Tenderer should outline how its proposed approach will meet the ICT system and data requirements set out in the Statement of Requirement, including:

- (i) its ability to integrate with, and be capable of using, the Department's IT Systems

Tenderer's Response

- (ii) The Tenderer should outline its proposed approach and solution to meet the Department's security requirements

Tenderer's Response

- (iii) The Tenderer should provide a draft Systems' Security Plan, as specified in the Statement of Requirement

Tenderer's Response



Australian Government

Department of Home Affairs

ABN: 33 380 054 835

REQUEST FOR TENDER (RFT) **FOR THE PROVISION VISA AND MIGRATION MEDICAL SERVICES**

RFT HOMEAFFAIRS2040/RFT

ATTACHMENT C: PRICING SCHEDULE

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SECTION 1: PRICING REQUIREMENTS

1. INSTRUCTIONS

1.1 Tenderers:

- (a) must ensure all prices are stated in Australian dollars;
- (b) should ensure their Tenders includes a pricing schedule substantially in the form of **Section 2** of this **Attachment C**, including that it contains pricing for both the one-tiered and four-tiered pricing models as outlined below. In addition to providing pricing for both the one-tiered and four-tiered pricing models as requested, Tenderers can provide an alternative pricing model for the Department's consideration;
- (c) should include any assumptions within the table under paragraph 2.21 upon which the pricing in the other pricing tables is based;
- (d) should provide sufficient information for the Department to determine whether prices are reasonable in the context of the Department's assessment of value for money.

1.2 In completing the pricing tables, Tenderers should note that:

- (a) there are two (2) categories of fees that the successful Tenderer may receive for the provisions of Services under any resulting Contract:
 - i. the Client Fees for services which the successful Tenderer is permitted to charge directly to Clients in relation to the provision of certain Onshore Medical Services specified in the Client Price List set out in **Section 2** of this **Attachment C**; and
 - ii. Contract Charges paid by the Department to the Contractor for any Consultancy Services provided in excess of:
 - a. during the Initial Term, 2,250 hours for the Initial Term; and
 - b. during any Option Period, 750 hours for each Option Period (in addition to any unused hours remaining from the Initial Term),(each an **Allocated Number of Hours**);
- (b) the Client Fees which are payable by Clients as specified in the Client Price List set out in **Section 2** of this **Attachment C** will need to cover the provision of all Services set out in **Attachment A – Statement of Requirement**, except for any Consultancy Services payable by the Department; and
- (c) the current volumes set out within *Annexure E [Indicative Annual Service Volumes]* to **Attachment A – Statement of Requirement** are indicative only and may change, including due to factors outside of the Department's control, such as changes in law or policy.

1.3 In completing the pricing tables in **Section 2** of this **Attachment C**, the Tenderer's prices are required to:

- (a) be inclusive of detailed costing of each item to enable an effective evaluation of all Tenders received, inclusive of all itemised costs, expenses and disbursements to be incurred by the Tenderer in providing these Services (these may include, but are not limited to, overheads such as travel, consumables, preparation costs, rental costs, superannuation guarantee, insurances, enterprise based wage increases etc.
- (b) be inclusive of all charges, expenses, duties and taxes, subject to the Requirements regarding Goods and Services Tax (GST);
- (c) be inclusive of GST, but identify separately the GST component, where required;

- (d) apply for the duration of the Tender Validity Period;
 - (e) be inclusive of all applicable Australian (Federal, State and Local Government) and overseas taxes and charges;
 - (f) include details about any assumptions or other caveats upon which the pricing is based, as well as information or events required to remove caveats; and
 - (g) include all costs associated with the performance of any resultant Contract.
- 1.4 The Department will not pay any allowances or costs other than the Contract Charges (if any) for the provision of the Services.
- 1.5 In relation to any Consultancy Services requested by the Department which may incur fees (i.e. following exhaustion of the quota of hours provided free of charge, as set out in paragraph 1.2(a)(ii) above and paragraph 2.6 of the Statement of Requirement (**Attachment A**)), the Department will pay fees monthly in arrears on completion of the Consultancy Services to the Department's satisfaction and on receipt of a Correctly Rendered Invoice.

SECTION 2: PRICING TEMPLATE

2. PRICING

Client Price List

- 2.1 The Client Fees specified in the Client Price List which the Tenderer proposes to charge Clients in Australia will need to cover the provision of all Services set out in **Attachment A – Statement of Requirement**, except for any Consultancy Services payable by the Department.
- 2.2 Tenderers should note the Client Price List may be indexed annually, in accordance with the performance measures and pricing mechanism set out in Schedule 3 of the Draft Contract (**Attachment E**).
- 2.3 The successful Tenderer (if any) will not be permitted to charge any Client any fee for Services rendered other than the applicable Client Fee set out in section 2, including the Client Price List, except as otherwise agreed to by the Department in writing in accordance with clause 43 of the Draft Contract (see **Attachment E**).
- 2.4 The Client Fees set out in the Client Price List are required to be inclusive of any GST and administrative and postage fees, including the provision of physical images in relation to chest x-rays. Tenderers are required to ensure that they comply with Part 3-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) (GST-free health supplies) when completing the Client Price List.
- 2.5 If Tenderers are proposing to charge Clients a cancellation and/or non-attendance fee, further details of these fees should be outlined below.

Tenderer's response

- 2.6 If Tenderers are proposing to charge Clients a credit card surcharge, further details, including all relevant surcharge rates, should be outlined in the table below.

Tenderer's response

- 2.7 The Department is considering two options with regards to the structure of the Client Price List, specifically whether a one-tiered or four-tiered pricing model is most appropriate.

Table 1 – Client Price List – One-Tier Model

- 2.8 Tenderers are to set out the proposed Client Fees to be directly charged to Clients for each of the items set out in Table 1 below, which sets out the one-tier model for the Client Price List. Under this model, every Client would be charged the same amount at each Clinic Location across Australia, regardless of the location of the Clinic Location they attend.

Table 1 – Client Price List – One-Tier Model

Service	Client Fee (incl. GST)
Medical examination (including Fitness to Depart Assessment and Fitness to Travel Assessment conducted at a Clinic Location)	
Medical examination and chest x-ray	
Chest x-ray on its own	
TB Screening Test – Interferon-Gamma Release Assay (IGRA) or Tuberculin Skin Test (TST)	
Paediatric chest x-ray (posterior-anterior and lateral projection)	
Caree Assessment (paper-based)	
Caree Assessment (conducted at a Clinic Location)	
HIV Blood Test (as part of a medical examination)	
HIV Blood test on its own	
Hepatitis B and C Pathology (as part of a medical examination)	
Hepatitis B Pathology on its own	
Hepatitis C Pathology on its own	
Syphilis (VDRL) blood test (as part of a medical examination)	
Syphilis (VDRL) blood test on its own	

Table 2 – Client Price List – Four-Tier Model

- 2.9 Tenderers are to set out proposed Client Fees to be directly charged to Clients for each of the items set out in Table 2 below, which sets out a four-tiered model for the Client Price List. Under this model, Clients may be charged different fees based on the location of the Clinic Location they attend.

Table 2 – Client Price List – Four-Tier Model

Service	Metro (A) Client Fee (incl. GST)	City (B) Client Fee (incl. GST)	Regional (C) Client Fee (incl. GST)	Regional (D) Client Fee (incl. GST)
Medical examination (including Fitness to Depart Assessment and Fitness to Travel Assessment conducted at a Clinic Location)				
Medical examination and chest x-ray				
Chest x-ray on its own				
TB Screening Test – Interferon-Gamma Release Assay (IGRA) or Tuberculin Skin Test (TST)				
Paediatric chest x-ray (posterior-anterior and lateral projection)				
Caree Assessment (paper-based)				
Caree Assessment (conducted at a Clinic Location)				
HIV Blood Test (as part of a medical examination)				
HIV Blood test on its own				
Hepatitis B and C Pathology (as part of a medical examination)				
Hepatitis B Pathology on its own				
Hepatitis C Pathology on its own				
Syphilis (VDRL) blood test (as part of a medical examination)				
Syphilis (VDRL) blood test on its own				

- 2.10 Tenderers are to provide details of which category each of its proposed Clinic Locations sits within (i.e. Metro (A), City (B), Regional (C) or Regional (D)), and provide further details around the criteria used in differentiating between the four different categories.

Tenderer's response

- 2.11 Tenderers should note that during the Term of any resulting Contract, any changes to the Client Price List (other than for annual indexation in accordance with the performance measures and pricing mechanism set out in Schedule 3 of the Draft Contract (**Attachment E**)), including any changes to the Clinic Locations and their categorisation as "Metro (A)", "City (B)", "Regional (C)" or "Regional (D)" for the purposes of the Client Price List will need to be agreed by the Department in writing in accordance with clause 43 of the Draft Contract.

Alternative Costing Model

- 2.12 In addition to the two pricing models set out above, Tenderers may also put forward an alternative tiered pricing model, if desired, for the Department's consideration.

Tenderer's response

Table 3 – State/Territory Radiology Services

- 2.13 If Tenderers are proposing to utilise the radiology services of any State and/or Territory Health Departments, details and associated fees and arrangements are to be outlined in the table below.

Tenderer's Response

Table 4 – In-Home Examinations

- 2.14 Tenderers are to set out proposed fees to be directly charged to Clients for whom an In-Home Examination is required (and approved by the Department) in accordance with paragraph 2.2.65 of the Statement of Requirement (Attachment A). The Tenderer should refer to paragraphs 2.2.65 to 2.2.70 of the Statement of Requirement on the requirements relating to In-Home Examinations.

Tenderers may put forward a tiered pricing model, factoring in variables such as the Client's location, their distance to the closest Clinic Location, the type of examinations required and whether a mobile chest x-ray machine needs to be sourced (if required).

Service	Client Fee
In-Home Examinations (other than Caree Assessment)	
Caree Assessments – In-Home Examinations	

Consultancy Services Fees – Contract Charges

- 2.15 The only fees payable by the Department to the Contractor are Contract Charges (if any) in relation to any requested Consultancy Services provided in excess of the Allocated Number of Hours.
- 2.16 As set out in paragraph 2.6.1 of **Attachment A** – Statement of Requirement, the Department may require the Contractor to provide the consultancy services on an ad hoc basis.
- 2.17 The Department requires the parties to agree that the Contract Charges payable by the Department to the Consultant will not be GST-free pursuant to section 38-60(4) of the GST Act. Accordingly, the Department anticipates that all fees payable by the Department will be subject to GST.
- 2.18 For Consultancy Services exceeding the Allocated Number of Hours under paragraph 2.6.2 of **Attachment A**, the Tenderer should set out in the table below the rates that will apply.

Table 5 – Pricing for Consultancy Services

Classification/Title/ Role of Personnel	Cost per hour (GST inclusive)	Cost per day (GST inclusive)	Cost per week (GST inclusive)
MOC			
Senior MOC			
Administrative (clerical)			
Administrative (manager)			
Medical writer			
Data analytics			
<i>[Tenderers to insert further rows as required]</i>			

Abatement – Final Pricing Indexation Adjustment period

- 2.19 The Performance Measures and Performance Indexation Adjustment (PIA) processes set out within Schedule 3 of the Draft Contract (**Attachment E**) continue to apply in the final year of any Contract. To mitigate against the risks associated with the financial incentive for the Contractor to meet all KPIs in the final PIA period being reduced (given the performance incentive of an indexation increase or reduction to the Client Price List does not apply in practice in the final year of the Contract), and the associated risks this poses to the Department, an abatement will be charged to the Contractor in the event that the PIA score for the final PIA period of the Contract Term is lower than zero (0).
- 2.20 Tenderers are to outline in the table below their proposal on how this abatement should be structured.

Tenderer's response

Financial Assumptions/Qualifications

- 2.21 Tenderers are to insert details of any assumptions or qualifications on which the Tendered costs have been based.

Tenderer's response

SECTION 3: INVOICE REQUIREMENTS

- 3.1 In addition to the specific requirements set out in paragraph 2.6.4 of the Statement of Requirement (**Attachment A**) in relation to Consultancy Services, all invoices issued by the Contractor must contain:
- (a) tax invoice details as required by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
 - (b) the title of the Contract, the Contract number or other reference to the Contract;
 - (c) a description of the relevant Services and/or Deliverables;
 - (d) the timeframe in which the Services and/or Deliverables were provided;
 - (e) details of delivery location (if applicable); and
 - (f) evidence of delivery of the Deliverables as required by the Contract.
- 3.2 The Contractor must submit a Correctly Rendered Invoice no later than the 10th Business Day of each month.



Australian Government

Department of Home Affairs

ABN: 33 380 054 835

REQUEST FOR TENDER (RFT)

FOR THE PROVISION VISA AND MIGRATION MEDICAL SERVICES

RFT HOMEAFFAIRS2040/RFT

ATTACHMENT D: EVALUATION PROCESS AND EVALUATION CRITERIA

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1. THE EVALUATION PROCESS

1.1 General

1.1.1 The Department will evaluate Tenders in accordance with the Evaluation Process and Evaluation Criteria set out in this **Attachment D** (Evaluation Process and Evaluation Criteria).

1.1.2 The following steps outline the Evaluation Process, noting that the steps may be conducted concurrently and/or sequentially:

- Step 1: Receipt and Registration of Tenders;
- Step 2: Initial Screening of Tenders;
- Step 3: Technical Evaluation;
- Step 4: Pricing Evaluation;
- Step 5: Non-technical Evaluation; and
- Step 6: Value for Money Assessment.

1.1.3 The Department may use material tendered in response to one Evaluation Criterion in the evaluation of other Evaluation Criteria.

1.1.4 Tenderers should provide enough detail in their Tender against each Evaluation Criterion to ensure that the Department has a clear understanding of their offer and that all requirements have been addressed. Tenderers are advised that unclear or contradictory statements may result in a low scoring assessment.

1.2 Step 1 – Receipt and Registration of Tenders

1.2.1 Following the Closing Time, all Tenders will be downloaded from the relevant section of AusTender.

1.2.2 All Tenders received on or before the Closing Time will be registered on a procurement register.

1.2.3 Any Tenders received after the Closing Time and any disputes or issues regarding receipt of Tenders will be managed in accordance with Part 2 – Terms and Conditions.

1.3 Step 2 – Initial Screening of Tenders

1.3.1 All registered Tenders will be screened by the Department to identify any Tender that:

- (a) fails to comply with one or more of the Conditions for Participation specified in the RFT;
- (b) fails to comply with one or more of the Minimum Content and Format Requirements specified in the RFT;
- (c) contains unintentional errors of form; or
- (d) is otherwise incomplete or non-compliant with the RFT.

1.3.2 Subject to clauses 10.7 and 17 of Part 2 – Terms and Conditions, a Tender which fails to comply with a:

- (a) Condition for Participation; or
 - (b) Minimum Content and Format Requirement,
- will be excluded from further consideration.

1.3.3 The Department may also exclude a Tender from further consideration where, in the Department's reasonable opinion, the Tender is:

- (a) incomplete or non-compliant with the RFT; or
- (b) otherwise is so clearly non-competitive.

Without limiting any rights in Part 2 – Terms and Conditions, the Department may, however, decide to consider these Tenders and seek further clarification from the Tenderer if it believes that this is appropriate.

- 1.3.4 Screening is an ongoing process. The Department may decide at any time during the detailed Evaluation Process that a Tender or Tenderer falls within the categories listed in paragraphs 1.3.1 to 1.3.3 above and should therefore be excluded from further consideration.
- 1.3.5 If the Department requires clarification of information contained in a Tender, it will request clarification in accordance with clause 15 of Part 2 - Terms and Conditions.

1.4 Step 3 – Technical Evaluation

- 1.4.1 For each Tenderer that passes Steps 1 and 2 above, the Department will evaluate Tenders against the technical Evaluation Criterion (see below for details of those Evaluation Criteria that are technical Evaluation Criteria).
- 1.4.2 Weightings will apply for the technical Evaluation Criteria.
- 1.4.3 After reviewing the Tenders, the Department may decide to:
- (a) conduct visit(s) to the Tenderers' premises;
 - (b) seek presentation(s) by Tenderer(s) on their Tender;
 - (c) require the Tenderer(s) to attend an interview;
 - (d) conduct referee checks;
 - (e) discuss with, and/or visit, customers or subcontractors of Tenderers, whether or not the customers or subcontractors are provided as referees by a Tenderer; and
 - (f) carry out independent enquiries about any matter that may be relevant to the evaluation of a Tender.
- 1.4.4 Following the conclusion of any site visits, presentations, interviews and/or referee checks and obtaining of further independent enquiries, the Department will, unless the activities result in completely new information that improves a Tender or are irrelevant, take into account the further information received in the evaluation of Tenders.
- 1.4.5 At any stage of the technical evaluation or after its completion, the Department may shortlist Tenders for progression to further steps of the Evaluation Process. The Department in its absolute discretion will determine the number of Tenderers on any shortlist.

1.5 Step 4 – Pricing Evaluation

- 1.5.1 For each Tenderer that passes Steps 1 and 2 above, the Department will undertake an assessment of the cost or prices contained in Tenders against the financial Evaluation Criteria. The Department may seek assistance from a financial advisor, if required. Tenderers are required to cooperate with any financial advisor appointed for this purpose, including making financial information available to the financial advisors.
- 1.5.2 Where required, the Department will:
- (a) adjust and “normalise” prices to account for assumptions and other variations between Tenders;
 - (b) use pricing tools which allow sensitivity analysis and/or scenario testing;
 - (c) use benchmarking tools to assist in evaluating the proposed price; or
 - (d) make any other adjustments set out in Part 2 – Terms and Conditions or **Attachment C** to this RFT.
- 1.5.3 At any stage of the pricing evaluation or after its completion, the Department may shortlist Tenderers for progression to further steps of the Evaluation Process. The Department in its absolute discretion will determine the number of Tenderers on any shortlist.
- 1.5.4 The Department reserves the right, during the Evaluation Process, to ask all Tenderers (or, if Tenderers have been shortlisted, the shortlisted Tenderers) to submit new or revised pricing based on an alternative methodology.
- 1.5.5 The Department also reserves the right to seek clarification on any pricing matters and to seek a Best and Final Offer in respect of pricing from each Tenderer (or, if Tenderers have been short-listed, short-listed Tenderers) if it is deemed necessary to determine a clear value for money outcome for the Commonwealth.

1.6 Step 5 – Non-technical Evaluation

- 1.6.1 For each Tenderer that passes Steps 1 and 2 above, the Department will assess the risks associated with the non-technical Evaluation Criteria and conduct an overall risk assessment taking into account all risks associated with each Tender that have not already been taken into account.
- 1.6.2 Following the completion of the risk assessment process, the Department will review and, where applicable, may revise scores or rankings for each Tender.
- 1.6.3 The Department may shortlist Tenderers following completion of its assessment of risk, for further progression in the Evaluation Process. The Department in its absolute discretion, will determine the number of Tenderers on any shortlist.

1.7 Step 6 – Value for Money Assessment

- 1.7.1 The Department will determine the extent to which the Tender represents value for money having regard to the outcomes of each of Steps 3, 4 and 5 for each Tender.
- 1.7.2 The Department will determine overall best value for money represented by the Tenders, based on relevant financial and non-financial costs.
- 1.7.3 Value for money is the core principle governing the Department's procurement and is enhanced by three supporting principles:
- encouraging competition;
 - efficient, effective, ethical and economic use of resources; and
 - accountability and transparency.
- 1.7.4 Value for money is a comprehensive assessment that takes into account the following:
- the technical assessment under Step 3;
 - cost represented by the assessment of price under Step 4; and
 - the non-technical assessment and assessment of the relevant risks under Step 5.
- 1.7.5 At the end of Step 6, the Department may identify the Tender(s) that represents the best value for money and should therefore be selected as the preferred Tenderer(s).
- 1.7.6 The Department may enter into negotiations with one or more Tenderers, including parallel negotiations, or if it has selected a Tenderer as the preferred Tenderer it may enter into negotiations with that Tenderer only. The purpose of negotiations is for the Department to address any risks and issues it has identified in the Evaluation Process. As part of this process, any Tenderer participating in negotiations may be asked to improve on any or all aspects of their Tender.

2. EVALUATION CRITERIA

2.1 Technical Evaluation Criteria

Tenders will be evaluated against the following technical Evaluation Criteria:

No.	Evaluation Criteria		Sub-criterion	Weighting
1	The extent to which the Tenderer demonstrates that it has the capability and capacity to provide the Requirement so as to achieve the Department's stated outcomes	1.1	Coverage – the extent to which the Tenderer's proposed network of Clinic Locations meets the requirements set out in the Statement of Requirement and the Performance Measures set out in Attachment E to this RFT, including that it effectively services Clients, including: - proposed service delivery model (i.e. structure, number and location of clinics) - ability to service Clients in Regional locations, as much as possible, minimise travel distances - proximity to public transport - ability to service appointment load peaks, including the provision of sufficient clinical personnel with required skills and expertise - workflow management processes	10%

No.	Evaluation Criteria	Sub-criterion	Weighting
		1.2 The extent to which the Tenderer demonstrates that it has the capability to provide the following Onshore Medical Services in an effective manner, meeting the requirements set out in the Statement of Requirement and Performance Measures set out in Attachment E to this RFT for: • Health Examinations, including radiology and pathology services • Caree Assessments • Health Status Assessments • Fit to Depart Assessments • Fit to Travel Assessments • In-Home Examinations • dedicated website • appointment system • administrative support to onshore cases, such as telephone and email support services as set out in paragraph 2.1.3f. of the Statement of Requirement • interpreting and communication service • identity checking and capturing of facial images	15%
		1.3 The extent to which the Tenderer demonstrates that it has capability to provide Health Assessments on onshore and offshore cases in an effective manner, meeting the requirements set out in the Statement of Requirement and Performance Measures set out in Attachment E to this RFT, including: • the review of existing Health Assessment outcomes as requested by the AAT • the provision of sufficient clinical personnel with required skills and expertise to service onshore and offshore load peaks • sufficient administrative support to service offshore Health Assessments, as set out in paragraph 2.1.3f. of the Statement of Requirement	15%
		1.4 The extent to which the Tenderer demonstrates that it has capability to provide the Health Undertaking Service as described in paragraph 2.4 of the Statement of Requirement	10%
		1.5 The extent to which the Tenderer demonstrates that it has capability to provide maintenance of Notes for Guidance Papers as described in paragraph 2.5 of the Statement of Requirement	5%
		1.6 The extent to which the Tenderer demonstrates that it has capability to provide Consultancy Services and Ad Hoc Services as described in paragraphs 2.6 and 2.7 of the Statement of Requirement respectively	1%
		1.7 The extent to which the Tenderer demonstrates its ability to change with varying requirements (e.g. changes to applicable Laws and policy settings)	2%
		1.8 The extent to which the Tenderer demonstrates it has the capability to manage its proposed network of Clinic Locations, including any proposed subcontractors	5%

No.	Evaluation Criteria		Sub-criterion	Weighting
		1.9	The extent to which the Tenderer's draft plans, client service strategy and commitment to Client service and proposed quality assurance system meets the requirements set out in the Statement of Requirement, including as demonstrated through the following: - existing quality assurance accreditation, and other relevant accreditations - quality management system, including clinical and administrative audits - the Tenderer's commitment to continuous improvement and innovation - the Tenderer's draft Quality Assurance Plan - proposed Client service strategy and commitment to Client service - proposed training program and the Tenderer's draft Training Plan - the Tenderer's draft Business Continuity Plan - the Tenderer's draft Risk Management Plan - the Tenderer's draft Fraud and Corruption Control Plan - the Tenderer's draft Work, Health and Safety Plan	10%
		1.10	The extent to which the Tenderer's proposed draft Human Resource Management Plan meets the requirements in the Statement of Requirement. The extent to which the Tenderer's detailed approach to professional development and skills' maintenance and enhancement, including maintenance of appropriate professional qualifications, certifications and credentialing meets the requirements in the Statement of Requirement	3%
		1.11	The extent to which the Tenderer demonstrates that it has capability to meet the reporting requirements set out in the Statement of Requirement.	3%
2	The extent to which the Tenderer's approach will establish and maintain an effective and efficient working relationship with the Department	2.1	The extent to which the Tenderer demonstrates an understanding of the Department's operations, culture and values	1%
		2.2	The extent to which the methodology proposed by the Tenderer is likely to successfully manage the relationship with the Department, including the extent to which the Tenderer can collaborate and have proactive relationships with a broad range of stakeholders within the Department to deliver high quality services	2%
		2.3	The extent to which the Tenderer has previously established and maintained successful relationships with organisations similar to the Department	2%

No.	Evaluation Criteria		Sub-criterion	Weighting
3	The extent to which the Tenderer demonstrates its ability to transition-in the services to meet the Department's proposed timeframe for provision of the Requirement as set out in the Statement of Requirement	3.1	The extent to which the Tenderer's draft Contract Transition-In Plan demonstrates that the Tenderer will achieve a successful transition of Services without disruption or degradation to service delivery by the timeframe set out in the Statement of Requirement, including other commitments which might prevent the transition-in timeframe being met.	5%
4	Experience in performing the Requirement	4.1	The extent to which the Tenderer demonstrates it has experience in delivering similar services to large numbers of clients.	3%
5	The extent to which the Tenderer's proposed approach will meet the ICT system and data requirements as set out in the Statement of Requirement	5.1	The extent to which the Tenderer's proposed approach demonstrates ability to integrate with, and be capable of using, the Department's IT Systems	5%
		5.2	The extent to which the Tenderer demonstrates its proposed approach and solution to meet the Department's security requirements, including the extent to which its draft Systems' Security Plan meets the requirements in the Statement of Requirement.	3%

2.2 Non-Technical Evaluation Criteria

2.2.1 Tenderers will also be evaluated against the following non-technical Evaluation Criteria (which are unweighted):

No.	Evaluation Criteria
1	The financial viability of the Tenderer, including any associated risks to the Department
2	The extent of the Tenderer's overall compliance with the RFT (including Draft Contract)
3	The appropriateness of any information which the Tenderer proposes be kept confidential and the extent of any associated risks to the Department
4	The number and type of any conflicts of interest which have been identified by the Tenderer or identified by the Department, and whether those conflicts can be and/or will be appropriately managed
5	The extent to which the Tenderer does or will meet Commonwealth policy requirements specified in the RFT including: - the <i>Workplace Gender Equality Act 2012</i> (Cth); - Illegal Workers; - the <i>Modern Slavery Act 2018</i> (Cth); and - the Australian Government's Multicultural Access and Equity Policy
6	The extent to which the Tenderer's Tender provides direct benefits to the Australian economy
7	The extent to which the Tenderer has demonstrated its commitment to Indigenous participation, including its proposed: - use of Indigenous enterprises in its supply chain; and - employment of Indigenous Australians.
8	Any other risks to the Department which are inherent in, or associated with, the Tenderer's offer.

2.3 Financial Evaluation Criteria

2.3.1 Tenderers will also be evaluated against the following financial Evaluation Criteria (which are unweighted):

No.	Evaluation Criteria
1	The extent to which the pricing proposed by the Tenderer contributes to value for money.



Australian Government
Department of Home Affairs

CONTRACT FOR THE PROVISION OF VISA AND MIGRATION MEDICAL SERVICES

BETWEEN

COMMONWEALTH OF AUSTRALIA
AS REPRESENTED BY THE DEPARTMENT OF HOME AFFAIRS
ABN 33 380 054 835

AND

[INSERT NAME OF CONTRACTOR]
ACN [INSERT ACN OF CONTRACTOR]
ABN [INSERT ABN OF CONTRACTOR]

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

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This Contract is made on the

PARTIES

1. The **Commonwealth of Australia** as represented by the **Department of Home Affairs**
ABN 33 380 054 835 of 6 Chan Street BELCONNEN ACT 2617
(**"Department"**)
2. **[Insert name of Contractor]** ABN **[Insert Contractor's ABN]** of **[Insert Contractor's address]**
(**"Contractor"**)

RECITALS

- A. The Department requires the provision of the Requirement as specified in Schedule 1.
- B. The Contractor was the successful tenderer to an open market tender process conducted by the Department for the Requirement.
- C. The Contractor has fully informed itself on all aspects of the work required to be performed and has offered to provide the goods, products and services of, and otherwise meet, the Requirement in the manner set out in this Contract.
- D. The Department has agreed to accept the Contractor's offer to provide the Requirement in accordance with this Contract.
- E. The parties acknowledge that this is a Contract relating to Australia's national security or border protection.

OPERATIVE PROVISIONS

THE PARTIES AGREE as follows:

1 Structure of this Document

- 1.1 This Contract consists of:
 - (a) the Contract Details;
 - (b) the Contract Terms and Conditions; and
 - (c) the following Schedules:
 - (i) Schedule 1 Statement of Requirement;
 - (ii) Schedule 2 Contract Charges and Expenses;
 - (iii) Schedule 3 Performance Measures and Pricing Mechanism;
 - (iv) Schedule 4 Confidential Information;
 - (v) Schedule 5 Change Process;
 - (vi) Schedule 6 Material;

- (vii) Schedule 7 Contract Transition-In Plan;
- (viii) Schedule 8 Commonwealth Law and Policy Requirements;
- (ix) Schedule 9 Instrument of Acceptance;
- (x) Schedule 10 Financial Security;
- (xi) Schedule 11 Performance Guarantee; and
- (xii) Schedule 12 Acceptance Certificate.

CONTRACT DETAILS

Item/Description	Reference	Details
Item 1. Contractor Details	2.1	[Insert name of Contractor] [Insert Contractor's address] [Insert Contractor's ABN / ACN]
Item 2. Contractor Representative	2.1	[Insert position and/or name of Contractor's representative.]
Item 3. Department Representative	2.1	[Insert details of the position of the Department's Personnel responsible for managing the relationship between the Department and the Contractor under this Contract.]
Item 4. Commencement Date	2.1, 5.1	The date of execution of the Contract by the second Party. <i>[Note to Tenderers: The Department intends that the Contract (and transition in activities) may commence from execution of the Contract (e.g. some plans may be required shortly after execution). However, Tenderers should note that the Department anticipates that more intensive transition in activities will occur from April 2022. This will be further developed and negotiated with the successful Tenderer.]</i>
Item 5. Initial Term	2.1, 5.1, 6	The period commencing on the Commencement Date and ending on the day that is three years after the Planned Commencement of Services.
Item 6. Option Period	2.1, 5.2	Further periods as determined by the Department up to a total of four years in duration. The Department must give not less than 60 days' Notice to exercise an option.

Item/Description	Reference	Details
Item 7. Specified Personnel	2.1, 11	[If the Contractor is required to use particular personnel to provide the Requirement, insert the names, positions and roles of those Specified Personnel here. Otherwise insert "Not applicable".]
Item 8. Subcontractors	2.1, 12	As set out in Schedule 1.
Item 9. Intellectual Property Rights – Ownership of Contract Material	23, 24, 25	☒ clause 24 (Commonwealth Ownership of Intellectual Property Rights in Contract Material) is to apply ☐ clause 25 (Contractor Ownership of Intellectual Property Rights in Contract Material) is to apply
Item 10. Insurances and quantum of insurance	37	Public and products liability insurance for an insured amount of \$20 million per occurrence and not less than \$20 million in aggregate which covers the Contractor and its Personnel for their respective liabilities caused by, arising out of, or in connection with the negligent performance of any obligation or the exercise of any right under this Contract. Either professional indemnity or errors and omissions insurance for an insured amount of \$5 million per occurrence and not less than \$10 million in aggregate (including an automatic right of reinstatement) which covers the liability of the Contractor at general law arising from a negligent breach of duty owed in a professional capacity. Such insurance must have a retroactive date of no later than the earlier of the commencement of the work under this Contract or any earlier preparatory work by the Contractor. Workers compensation as required by law. The professional indemnity or errors and omissions insurance must be maintained for a period of seven years after the end of the Term.
Item 11. Financial Security and Performance Guarantee	38	<i>[Note to Tenderers: The Department may require the preferred Tenderer to provide a parent company guarantee, or if a parent company guarantee cannot be provided by the Tenderer, a financial guarantee. Whether a guarantee is required by the Department</i>

Item/Description	Reference	Details
		<i>will be advised by the Department during the negotiations, based on the risk profile of the preferred Tenderer. Where a financial guarantee is requested by the Department, the amount of the guarantee will also be advised by the Department. If the requirement for a parent company guarantee or financial guarantee, if a parent company guarantee cannot be provided, will affect the pricing set out by Tenderers within Attachment C (Pricing Schedule), this should be noted and where possible, specific details provided within Attachment C (Pricing Schedule).]</i> [insert 'Not applicable' or if the Contractor is required to provide the Department with: • a performance guarantee, insert 'performance guarantee from [insert name of Guarantor'; or • a financial guarantee, insert 'financial guarantee required in the amount of [\$ insert amount]' by [insert date]. The release event is [insert].]
Item 12. Address for Notices	48	Department [Insert position of person to receive Notices] [Insert postal address] [Insert physical address] [Insert facsimile number] [Insert email address] Contractor: [Insert name and/or position of person to receive Notices] [Insert postal address] [Insert physical address] [Insert facsimile number] [Insert email address]
Item 13. Governing Law	54	Australian Capital Territory

CONTRACT TERMS AND CONDITIONS

2 Definitions

- 2.1 In this Contract, except where the contrary intention is expressed, the following definitions apply:

Abatement means an amount payable by the Contractor to the Department in accordance with Schedule 3.

ABF Act means the *Australian Border Force Act 2015* (Cth).

Acceptance means acceptance by the Department that all or part of the Requirement meets the requirements of this Contract in relation to that Requirement.

Acceptance Certificate means a certificate in the form (or substantially in the form) of the certificate set out in the Schedule 12 signed by both Parties.

Acceptance Criteria means the requirements and criteria for Acceptance of a Requirement as specified in the Contract Transition-In Plan.

Authorisation means any consent, authorisation, registration, filing, lodgement, permit, licence, agreement, notarisation, certificate, permission, licence, direction, declaration, authority or exemption issued by any government or any governmental, semi-governmental, regulatory, statutory or similar entity or authority, or any other party under Law which has a right to impose a requirement or whose consent is required with respect to the Contractor's performance of its obligations under this Contract.

Auxiliary Material means Material (other than Contract Material and Commonwealth Material) which is made available by the Contractor for the purposes of the Contract on or following the Commencement Date, including any Existing Contractor Material, Third Party Material, and other Material specified as Auxiliary Material in Schedule 6.

Business Continuity Plan means the Contractor's business continuity plan for the Requirement, prepared by the Contractor in accordance with Schedule 1.

Business Day means:

- (a) for the purposes of reporting against the Performance Measures and for the purposes of any corresponding performance obligation set out in Schedule 1, a day that is not a Saturday, Sunday or public holiday in the specific jurisdiction in which the Requirement is being provided; or
- (b) for all other purposes, any day that is not a Saturday, Sunday or public holiday in the Australian Capital Territory, unless otherwise approved by the Department.

Business Disruption Event means:

- (a) any occurrence or omission as a direct or indirect result of which the party relying on it is prevented from or delayed in performing any of its obligations under this Contract and that is beyond the reasonable control of that party; or
- (b) an act of war (whether declared or not), terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, lightning, fire,

earthquake, storm, flood, drought, disease, pandemic, explosion, government travel or civil restrictions, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a Commonwealth Agency (except the Department) or a failure of a contractor other than the Contractor, public utility or telecommunications service provider.

Change of Control means, in relation to a body corporate that:

- (a) the power (whether formal or informal, whether or not having legal or equitable force, whether or not based on legal or equitable rights and whether direct or indirect, including through one or more entities):
 - i. to control more than half of the voting power of that body corporate;
 - ii. to control the composition of the board of directors of that body corporate; or
 - iii. to control more than half of the issued share capital of that body corporate, excluding any part of it which carries no right to participate beyond a specified amount in the distribution of either profit or capital, resides with persons other than those holding that power on the Commencement Date;
- (b) the body corporate enters into any arrangement (whether formal or informal, whether or not having legal or equitable force, whether direct or indirect), under which any other person or entity agrees to assume management of the body corporate or to assume day to day control of, or power over, the business and assets of the body corporate; or
- (c) the body corporate sells, transfers or otherwise disposes of, all, substantially all, or a material proportion of its assets, or enters into any arrangement with substantially the same effect.

Claim means any claim, action, demand or proceeding including any claim, action, demand or proceeding:

- (a) under, arising out of, or in any way in connection with, this Contract; or
- (b) otherwise at law or in equity including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution, including restitution based on unjust enrichment.

Client means the persons requiring and eligible for access to the Requirement, as determined by the Department.

Client Fee means the fees payable by a Client to the Contractor (including the Client Price List) specified in Schedule 2.

Client Price List means the itemised fees that Clients pay to the Contractor for the provision of Health Examinations (in-Clinic), Caree Assessments (in-Clinic and paper-based), Fit to Depart Assessments (in-Clinic), Fit to Travel Assessments (in-Clinic) and In-Home Examinations, as specified in Schedule 2.

Clinic Location means the location of clinics provided by the Contractor for the provision of Health Examinations, Caree Assessments, Health Status Assessments, Fit to Depart Assessments and Fit to Travel Assessments including any subcontractor site and non co-located sites for radiology and/or pathology services as set out in Schedule 1.

Commencement Date means the date specified in Item 4 of the Contract Details.

Commonwealth means the Commonwealth of Australia.

Commonwealth Agency means:

- (a) a non-corporate Commonwealth entity as defined in the *Public Governance, Performance and Accountability Act 2013* (Cth);
- (b) a corporate Commonwealth entity as defined in the *Public Governance, Performance and Accountability Act 2013* (Cth); or
- (c) a Commonwealth company as defined in the *Public Governance, Performance and Accountability Act 2013* (Cth).

Commonwealth Contract has the same meaning as in the *Freedom of Information Act 1982* (Cth).

Commonwealth Material means any Material provided by the Department to the Contractor for the purposes of this Contract (including any Material specified as Commonwealth Material in Schedule 6) or which is copied or derived from that Material.

Communications and Issues Management Protocol means a framework developed by the Contractor and approved by the Department which sets out how communications and reporting requirements in relation issues and complaints will be managed between the Parties, including their notification, management and closure.

Confidential Information in relation to a Party, means information that is:

- (a) by its nature capable of being protected in law or equity as confidential;
- (b) designated as confidential in respect of that Party in Schedule 4; or
- (c) in the case of the Department's Confidential Information, the Contractor knows or ought to know is confidential;

but does not include information:

- (d) which is or becomes public knowledge other than by breach of this Contract or any other confidentiality obligation; or
- (e) that has been independently developed or acquired without reference to the other Party's Confidential Information.

Consultancy Services means the services described in paragraph 2.6 of Schedule 1. **[Note to Tenderers: Tenderers should refer to paragraph 2.6 of Attachment A – Statement of Requirement to the RFT.]**

Contract means this document, including the Schedules, any annexures or attachments, and any document stated in this Contract to be expressly incorporated into this Contract.

Contract Charges means the amounts payable by the Department to the Contractor as set out in, or calculated in accordance with, Schedule 2 for Consultancy Services.

Contract Details means the details applying to this Contract as set out in 'Contract Details'.

Contract Material means all Material:

- (a) created by or on behalf of the Contractor or a Subcontractor for the purposes of this Contract, including any Material specified as Contract Material in Schedule 1;
- (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or
- (c) copied or derived from Material referred to in paragraphs (a) or (b),

and includes any modifications to that Material made in accordance with clause 26.2(b).

Contract Terms and Conditions mean the terms and conditions of this Contract set out in 'Contract Terms and Conditions'.

Contract Transition-In Plan means the plan for the Transition-In set out in Schedule 7.

Contract Transition-Out Plan means the plan for the transition out of the Requirement, prepared by the Contractor in accordance with Schedule 1.

Contract Year has the meaning given in Schedule 3.

Contracted Person includes the Contractor's agents, subcontractors, consultants, professional advisers and contracted staff, but does not include the Contractor's employees.

Contractor means the Party specified in Item 1 of the Contract Details.

Contractor Representative means the person identified in Item 2 of Contract Details or as otherwise Notified by the Contractor to the Department.

Controller has the same meaning as in the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Correctly Rendered Invoice has the meaning given in clause 20.1.

Deliverables means the Contract Material, the Documentation and any other item to be supplied by the Contractor under this Contract.

Department means the Department of Home Affairs (or its successor) or the department or agency of the Commonwealth which is from time to time responsible for the administration of this Contract.

Department Representative means the person for the time being holding, occupying or performing the duties of the office of the Department specified in Item 3 of the Contract Details or any substitute Notified to the Contractor by the Department.

Department's IT Systems [*Note to Tenderers: Tenderers should refer to the definition in Attachment F – Glossary.*]

Documentation means any documentation to be provided by the Contractor under the Contract, including any Material specified as Documentation in Schedule 1.

End Users means persons or category of persons (if any) specified in Schedule 1

who will use, or receive the benefit from, any of the Requirement.

Existing Contractor Material means the Material, including any specified as Existing Contractor Material in Schedule 6 that the Contractor has developed before the Commencement Date which is:

- (a) used in the provision of the Requirement or the development of Contract Material or other Deliverables;
- (b) incorporated in the Contract Material or other Deliverables; or
- (c) is otherwise provided to the Department under or in connection with this Contract.

Expenses means any expenses payable by the Department to the Contractor as set out in, or calculated in accordance with Schedule 2.

Fraud and Corruption Control Plan means the plan for fraud and corruption control, prepared by the Contractor in accordance with Schedule 1.

Health Systems Support and Communication Guidelines means the guidelines referred to in Schedule 1 which outlines the arrangements in place with the Contractor when using the Department's IT Systems to deliver the Services.

Human Resource Management Plan means the plan in relation to the Contractor's strategy for managing human resources, prepared in accordance with Schedule 1.

Initial Term means the initial period of time for which this Contract is intended to continue, as specified in Item 5 of the Contract Details.

Insolvency Event, in respect of a Party, means:

- (a) a meeting of the Party's creditors being held or called;
- (b) the appointment of a liquidator, provisional liquidator or administrator to the Party;
- (c) the appointment of a Controller or analogous person appointed to the Party or any of its property;
- (d) an application being made to a court for an order to appoint a Controller, provisional liquidator, administrator or analogous person to the Party or any of its property;
- (e) the holder of a Security Interest or any agent on its behalf, appointing a Controller or taking possession of any of the Party's property (including seizing the person's property within the meaning of section 123 of the PPSA) or otherwise enforcing or exercising any rights under the Security Interest or Chapter 4 of the PPSA in respect of any of the Party's property;
- (f) the Party failing to comply, under paragraph 459F(1) of the Corporations Act with a statutory demand;
- (g) the Party being unable to pay its debts as they fall due;
- (h) the Party suspending (or threatening to suspend) payment of its debts or ceasing (or threatening to cease) to carry on all or a material part of its business;
- (i) the Party ceasing to exist, for whatever reason, or otherwise becoming

incapable of managing its own affairs for any reason;

- (j) the Party taking any step that could result in that Party becoming insolvent under administration (as defined in section 9 of the Corporations Act);
- (k) any action being commenced to bankrupt or wind-up the Party, including the passing of a resolution for the winding up of the Party; or
- (l) that Party taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors,

or any analogous event under the Laws of any applicable jurisdiction.

Intellectual Property Rights (or **IPR**) means all intellectual property rights, including but not limited to the following rights:

- (a) patents, copyright, rights in circuit layouts, designs, trademarks (including goodwill in those marks) and domain names;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,

whether or not such rights are registered or capable of being registered.

Key Performance Indicators means the key performance indicators set out in Schedule 3.

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and equity as applicable from time to time.

Liability means any liability (whether it is present or future, fixed or unascertained, actual or contingent), including for any Loss, irrespective of how or when the acts, events, circumstances or things giving rise to the liability occurred or existed.

Loss means all losses, liabilities, damages, fines, penalties, costs, interest, fees and expenses however it arises and whether it is present or future, fixed or unascertained, actual or contingent, including:

- (a) legal costs and expenses on a solicitor/own client basis, disbursements, costs of investigation, litigation, settlement, judgment interest and penalties;
- (b) the value of internal management and staff time assessed according to overhead costs with no profit margin, even if the affected Personnel would not have been engaged in profitable work;
- (c) the cost of taking reasonable, preventative, protective remedial or mitigatory action; and
- (d) the cost of obtaining any replacement products or services to rectify, remedy or mitigate the damage caused by the relevant event.

Material includes documents, equipment, software, goods, computer file, design,

know-how, information and data stored by any means, and the subject matter of any category of Intellectual Property Right.

Medical Officer of the Commonwealth or MOC means an Australian registered medical practitioner appointed by the Department of Home Affairs under regulation 1.16AA of the *Migration Regulations 1994* (Cth).

Milestone means any fixed date to be met by the Contractor in performing any of its obligations under this Contract and includes the milestones specified in Schedule 1.

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth).

NfG Papers means a collection of medical condition and service papers providing clinical guidance to MOCs about the costs of specific health conditions and prejudice to access prepared by the Contractor and approved by the Department in accordance with Schedule 1. The NfG Papers are used by MOCs to support decision making when assessing whether a Client meets the health requirement.

NfG Project Plan means a plan relating to the review and update of the NfG Papers, prepared by the Contractor in accordance with Schedule 1.

Notice means a notice, demand, consent, approval or communication issued under this Contract that is sent in accordance with clause 48. Notify and Notification have a corresponding meaning.

Obligation means any legal, equitable, contractual, statutory or other obligation, commitment, duty, undertaking or Liability, present or future.

Option Period is the period of extension of this Contract referred to in clause 5.2.

Outgoing Contractor means the existing contractor to the Department for services and deliverables similar to the Requirement.

Party or Parties means either or both the Department and the Contractor as the context requires.

Performance Measures means the Key Performance Indicators or other measures (if any) of the Contractor's performance under this Contract, as set out or described in Schedule 3.

Personal Information has the same meaning as in the *Privacy Act 1988* (Cth).

Personnel means any officers, employees, agents, Subcontractors, staff or professional advisers of the Party or its Subcontractors engaged in, or in relation to, the performance or management of this Contract.

Plan means all plans (including draft plans and draft updates to approved plans) required to be prepared and updated by the Contractor under this Contract.

Planned Commencement of Services means 1 July 2022. **[Note to Tenderers: The Department requires the provision of the Requirement to commence on 1 July 2022 (subject to Acceptance of Transition-In). The Department is contemplating a possible staggering of transition in of Requirement components. Transition-in will be further developed and agreed with the successful Tenderer depending on its proposed solution and the arrangements with the current provider.]**

PPSA means the *Personal Property Securities Act 2009* (Cth).

Pricing Mechanism means the mechanism to determine pricing as set out in

Schedule 3.

Quality Assurance Plan means a plan in relation to quality assurance measures by the Contractor which will apply to this Contract, prepared by the Contractor in accordance with Schedule 1.

Related Bodies Corporate has the same meaning as under section 50 of the Corporations Act.

RFT means the Request for Tender issued to market setting out the original version of the Requirement.

Requirement means the Services, and the provision of the Deliverables, as described in Schedule 1.

Risk Management Plan means the plan for risk management, prepared by the Contractor in accordance with Schedule 1.

Schedule means each schedule to this Contract including those identified in clause 1.1(c).

Security Interest means:

- (a) a security interest that is subject to the PPSA;
- (b) any other mortgage, pledge, lien or charge; or
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Services means the services to be provided by the Contractor, as set out or described in Schedule 1.

Specified Personnel means the personnel specified in Item 7 of the Contract Details.

Subcontract means the contractual or other arrangements with a Subcontractor.

Subcontractor means a person to whom the Contractor or another Subcontractor has subcontracted any part of the Requirement, including those person(s) specified at Item 8 of the Contract Details.

Systems' Security Plan means a plan in relation to the Contractor's system security requirements, prepared by the Contractor in accordance with Schedule 1.

Term means the Initial Term plus any extension in accordance with clause 5.2.

Termination Event means any event described in clause 45 giving rise to the Department's right to terminate this Contract.

Third Party Interest means any legal or equitable right, interest, power or remedy in favour of any person other than the Department or the Contractor in connection with this Contract, including, without limitation, any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest.

Third Party Material means Material in which a third party holds Intellectual Property Rights, and includes any Material specified as such in Schedule 6.

Training Plan means a plan in relation to training requirements for Contractor Personnel, prepared by the Contractor in accordance with Schedule 1.

Transition-In means the process of transitioning delivery of the Requirement from the Outgoing Contractor to the Contractor in order to achieve the orderly transition of the Requirement from the Outgoing Contractor.

Transition-In Period has the meaning given in clause 6.1.

Transition Out Period has the meaning given in clause 59.

Wilful Misconduct means an act or omission that is taken:

- (a) intentionally to achieve a wrongful purpose;
- (b) without legal or factual justification; and
- (c) in disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit.

Work Health and Safety Legislation means:

- (a) Work Health and Safety Act 2011 (Cth);
- (b) *Work Health and Safety Regulations 2011* (Cth); and
- (c) any "corresponding WHS law" within the meaning of section 4 of the *Work Health and Safety Act 2011* (Cth) and Regulation 6A of the *Work Health and Safety Regulations 2011* (Cth).

Work Health and Safety Plan or **WHS Plan** means a plan detailing the measures the Contractor will implement to manage its work health and safety obligations, prepared by the Contractor in accordance with Schedule 1.

3 Interpretation

3.1 In this Contract, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, item, paragraph, Attachment, Schedule or Annexure is to a clause or paragraph of, or attachment, schedule or annexure to, this Contract as the context requires;
- (d) any Schedules, Attachments and Annexures to this Contract form part of this Contract as the case may be;
- (e) a reference to a clause includes a reference to a subclause of that clause;
- (f) a reference to any agreement or schedule or annexure is to that agreement or schedule or annexure as amended, supplemented or replaced;
- (g) a reference to a document, publication, Commonwealth policy or instrument is a reference to the document, publication, Commonwealth policy or instrument as amended, supplemented or replaced from time to time;

- (h) a reference to A\$, \$A, AUD, dollar or \$ is to Australian currency unless stated otherwise;
- (i) a reference to time is to the time in the place where the Obligation is to be performed or, to the extent that there is any uncertainty, to the time in the Australian Capital Territory;
- (j) a reference to a Party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (k) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (l) a reference to a statute, ordinance, code or other Law is a reference to that statute, ordinance, code or other Law as in force from time to time, and includes regulations and other instruments made under it and consolidations, amendments, re-enactments or replacements of any of them;
- (m) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (n) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (o) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (p) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Contract or any part of this Contract; and
- (q) headings are for ease of reference only and do not affect interpretation.

3.2 To the extent that the Parties have not completed an item of the Contract Details or a Schedule is blank, unless otherwise stated in this Contract, that item or Schedule will be taken to be "not applicable" for the purpose of this Contract.

4 **Priority of Documents and changes to Contract Terms and Conditions**

- 4.1 If there is any inconsistency between the provisions of this Contract, a descending order of precedence will be accorded to:
- (a) the Contract Details;
 - (b) the Contract Terms and Conditions;
 - (c) the Schedules to this Contract;
 - (d) any annexures or attachments to this Contract; and
 - (e) any document incorporated by express reference as part of this Contract,

so that the provision in the higher ranked document will, to the extent of the inconsistency, prevail.

- 4.2 The provisions of these Contract Terms and Conditions apply to this Contract, as supplemented by the Contract Details or as varied in accordance with clause 43.

5 Term

- 5.1 This Contract commences on the Commencement Date and continues for the Initial Term unless terminated earlier in accordance with clauses 45 or 46, or otherwise.
- 5.2 The Term of this Contract may be extended by the Department for further period(s), specified in Item 6 of the Contract Details (each an Option Period), on the terms and conditions then in effect, by giving Notice to the Contractor. Such Notice must be given:
- (a) at least sixty (60) days; or
 - (b) if another period is specified in Item 6 of the Contract Details, that period,
- before the end of the then current Term.
- 5.3 Any extension exercised in accordance with clause 5.2 takes effect from the end of the then current Term.

6 Transition-In

Transition-In Period

- 6.1 Transition-In commences on the Commencement Date and continues until Transition-In is Accepted (**Transition-In Period**).
- 6.2 The Contractor must perform its obligations during the Transition-In Period:
- (a) in accordance with the Contract Transition-In Plan; and
 - (b) so as to achieve Acceptance of Transition-In by the Planned Commencement of Services.

Responsibility

- 6.3 During the Transition-In Period, the Contractor must:
- (a) use diligent efforts to identify and resolve, or assist the Department in the resolution of, any problems encountered in the timely completion of each Transition-In activity or task outlined in the Contract Transition-In Plan;
 - (b) cooperate, as required by the Department, with the Outgoing Contractor and the Department for the purpose of facilitating the smooth transition of the provision of the Requirement to the Contractor; and
 - (c) provide the Department with the progress reports as specified in the Contract Transition-In Plan (or as otherwise directed by the Department) that describe in detail the current status of the Transition-In, and identify any actual or anticipated problems and propose solutions to those

problems.

Acceptance of Transition-In

- 6.4 The Contractor must provide all assistance reasonably requested by the Department in connection with the Acceptance of Transition-In.
- 6.5 The Department will assess whether the Contractor has achieved the Acceptance Criteria to determine if the Contractor is fully able to provide the Requirement.
- 6.6 If the Department's assessment reveals that the Acceptance Criteria:
- (a) have been achieved, the Department will issue an Acceptance Certificate to that effect to the Contractor; or
 - (b) have not been achieved, the Contractor must, at no cost to the Department, do all things necessary to rectify any problems and the Department will repeat the assessment in accordance with the Contract Transition-In Plan.
- 6.7 If:
- (a) the Contractor fails to comply with clause 6.6(b); or
 - (b) the Contractor fails to pass the repeat assessment referred to in clause 6.6(b),
- then the Department may, at its absolute discretion and without limitation:
- (c) set a new date for repeating the assessment (in which case clause 6.6(b) applies);
 - (d) conditionally Accept Transition-In in accordance with clause 6.8; or
 - (e) reject the Transition-In and terminate this Contract under clause 45.

Conditional Acceptance

- 6.8 The Department may, at any time, conditionally Accept Transition-In, notwithstanding that the Acceptance Criteria have not been achieved, by giving the Contractor a Notice that:
- (a) includes a statement that the Department Accepts Transition-In, subject to certain conditions which the Contractor must satisfy;
 - (b) specifies the problems that prevent Transition-In from achieving the Acceptance Criteria;
 - (c) specifies the remaining conditions which the Contractor must satisfy to achieve Acceptance of Transition-In; and
 - (d) specifies the rectification work to be performed by the Contractor and the time period for performing such work.
- 6.9 If the Contractor does not perform the rectification work or satisfy the conditions within the time frame specified in the Notice, the Department may (at its absolute discretion) and without limitation:
- (a) set a new date for the assessment; or
 - (b) reject the Transition-In and terminate this Contract under clause 45.

No deemed Acceptance

- 6.10 The Department will not be deemed to have Accepted Transition-In by any act or omission other than the provision of an Acceptance Certificate.

Responsibility

- 6.11 On and from the Acceptance of Transition-In, the Contractor must accept full responsibility for provision of the Requirement in accordance with this Contract.

Delays

- 6.12 The Contractor must be able to fully provide the Requirement by the Planned Commencement of Services.
- 6.13 The Contractor must actively monitor and manage the Transition-In, including:
- (a) anticipating and identifying potential failures to meet the Planned Commencement of Services (**Delay**); and
 - (b) taking reasonable steps to avoid those potential Delays.
- 6.14 If there is an actual or potential Delay:
- (a) the Contractor must immediately Notify the Department of the Delay;
 - (b) the Contractor must immediately prepare and submit to the Department a report identifying the nature and consequences of the Delay;
 - (c) the Contractor must inform the Department whether:
 - (i) the Contractor (or the Contractor's Personnel) will be able to temporarily work around the problem in order to prevent or rectify the Delay; or
 - (ii) any other person can provide the relevant part of the Requirement in order to prevent, limit or rectify the Delay;
 - (d) the Department Representative and Contractor Representative (or their nominated representatives) must, if requested to do so by the Department, meet within five (5) Business Days after receiving notification of the actual or potential Delay, to discuss how to prevent, limit or rectify the Delay;
 - (e) the Contractor must:
 - (i) prepare and submit regular update reports (as required by the Department) in relation to the Delay; and
 - (ii) take all steps reasonably required by the Department to prevent, limit or rectify the Delay, including working cooperatively with the Outgoing Contractor;
 - (f) if required by the Department, the Parties must negotiate in good faith to attempt to agree on a temporary workaround plan by the time notified by the Department (having regard to the overall timeframe and the extent of the Delay) which must set out as a minimum:
 - (i) the cost implications of the Delay;
 - (ii) the interdependencies; and

(iii) the expected time impact of the tasks required to rectify the Delay, and, if agreed, must be signed and dated by the parties; and

- (g) the Contractor must implement and comply with any temporary workaround plans agreed in accordance with clause 6.14(f).

6.15 If the parties agree on a temporary workaround plan in accordance with clause 6.14(f), that workaround plan will:

- (a) be used by the parties to assist to document that variation in accordance with clause 43;
- (b) only operate as a variation of this Contract to the extent that it relates to, and for the duration of, the Delay and does not operate as a waiver of the other obligations that the Contractor may have under this Contract; and
- (c) not limit the Department's rights or remedies it may have against the Contractor in connection with the Delay (for example, to claim damages).

Failure to meet Planned Commencement of Services

6.16 To the extent a Delay is caused by the Contractor (or its Subcontractors or Personnel), then any costs and expenses incurred by the Contractor to implement a workaround plan agreed under clause 6.15 will be borne by the Contractor, and the Department may, at its election and in addition to requiring the performance of the workaround plan specify a revised Planned Commencement of Services and if a Delay cannot be remedied within a timeframe acceptable to the Department, the Department may terminate this Contract under clause 45.

Regular progress reports

6.17 Every week, the Contractor must provide to the Departmental current, accurate and complete written updates of its progress of Transition-In (including against any timelines identified in the Contract Transition-In Plan).

6.18 Notwithstanding clause 6.17, the Contractor must immediately report to the Department any material deviation from the Contract Transition-In Plan.

7 Provision of the Requirement

7.1 The Contractor must provide the Requirement to the Department:

- (a) by performing the Services; and
- (b) by providing the Deliverables,

specified in, and in accordance with, Schedule 1 and the other provisions of this Contract and any reasonable directions of the Department.

7.2 The Contractor must:

- (a) provide the Requirement as specified in Schedule 1 to the satisfaction of the Department;
- (b) ensure that the provision of the Requirement complies with the requirements of this Contract;

- (c) ensure that the provision of the Requirement complies with all representations made to the Department by the Contractor in relation to standards, quality and timing;
- (d) provide all reasonable assistance consistent with the Contractor's Obligations under this Contract and required by the Department;
- (e) coordinate and cooperate with any other contractors to the Department or Commonwealth Agencies in providing the Requirement;
- (f) comply with the time frames specified in Schedule 1 or as reasonably Notified by the Department; and
- (g) submit invoices, and any supporting documents, in the manner specified in clause 20.

7.3 The Contractor is fully responsible for the provision of the Requirement 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 or any of its Personnel in the provision of the Requirement;
- (b) payment made to the Contractor on account of the Requirement;
- (c) subcontracting of the Requirement; or
- (d) acceptance or rejection by the Department of Personnel nominated by the Contractor to replace Specified Personnel.

7.4 The Contractor acknowledges and agrees that this Contract is not an exclusive arrangement and nothing in this Contract prevents the Department, in its discretion, from entering into an arrangement with a person other than the Contractor for the provision of the Requirement.

7.5 If the Department requires Consultancy Services, the Department may issue a request for quotation for Consultancy Services.

7.6 A request for quotation will include details of the Consultancy Services required by the Department, including:

- (a) the required Consultancy Services;
- (b) the time frame for delivery of the Consultancy Services; and
- (c) any other specific requirements of the Department.

7.7 Upon receipt of a request for quotation, the Contractor must, within the time frame specified in the Request for Quotation, prepare a written Quotation in the form requested by the Department specifying the:

- (a) Consultancy Services to be provided;
- (b) the estimated number of hours required to provide the Consultancy Services and, if the allocated number of hours for the relevant period has been exhausted, the Contract Charges. If any fees are payable, the Contract Charges must be based on and not higher than the fees set out in Schedule 2; and
- (c) names of Specified Personnel proposed to deliver the Consultancy Services.

- 7.8 Upon acceptance of a successful quotation from the Contractor by the Department, the Contractor must provide the Consultancy Services specified in the quotation in accordance with this Contract.

8 Standards

- 8.1 Without limiting any other provision of this Contract, in providing the Requirement the Contractor must ensure:
- (a) in relation to any Services provided, that the Contractor:
 - (i) performs the Services with due care and skill and to a high professional standard, in accordance with relevant best practice, including any Commonwealth, State and Territory and industry standards and guidelines specified in Schedule 1;
 - (ii) performs the Services to the satisfaction of the Department and (if applicable) in a manner that meets or exceeds the Performance Measures; and
 - (iii) complies with all relevant Laws (including Work Health and Safety Legislation), codes and licensing obligations; and
 - (b) in relation to any Documentation provided, that it:
 - (i) is fit for purpose;
 - (ii) is written in English (unless another language is specified in Schedule 1);
 - (iii) is complete and accurate; and
 - (iv) is of such a nature and quality that it might reasonably be expected to achieve or satisfy the Contractor's Obligations under this Contract; and
 - (c) in relation to any Contract Material or other Deliverable provided, that it:
 - (i) is fit for purpose;
 - (ii) is complete and accurate;
 - (iii) is of such a nature and quality that it might reasonably be expected to achieve or satisfy the Contractor's Obligations under this Contract;
 - (iv) complies with the highest relevant commercially acceptable standards and best practice including, at a minimum, to any Departmental, Commonwealth or industry standards and guidelines specified in Schedule 1; and
 - (v) is supplied with due skill and care and to the best of the Contractor's knowledge and expertise and in accordance with all relevant Laws.

9 Delivery

- 9.1 The Contractor must supply and deliver the Requirement at the times and in the manner specified in Schedule 1.
- 9.2 The Contractor must provide evidence of delivery of any Deliverable as specified in Schedule 1.
- 9.3 The Contractor must, on becoming aware that it will be unable to meet an Obligation in relation to provision of the Requirement, promptly Notify the Department and provide details of the cause of the anticipated delay or failure and of the Contractor's proposal for managing the delay.
- 9.4 Without limiting the Contractor's other Obligations under the Contract, if the Contractor is delayed in the provision of a Requirement and the event giving rise to the delay:
- (a) is beyond the Contractor's reasonable control (including being beyond the reasonable control of the Subcontractors of the Contractor);
 - (b) could not have reasonably been contemplated or allowed for by the Contractor or its Subcontractors; and
 - (c) is not provided for elsewhere in this Contract,
- and provided that the Contractor:
- (d) demonstrates to the Department's satisfaction that work under this Contract cannot be performed in such a way, as is reasonable having regard to any other relevant circumstances, so as to avoid or remove the delay; and
 - (e) has made (and continues to make) all reasonable endeavours to minimise the delay and mitigate both Parties' losses,
- the Contractor may request an extension of time for the provision of the Requirement of no more than the period the Contractor was delayed or prevented from providing the Requirement.
- 9.5 A request made by the Contractor under clause 9.4, must include substantiating documentation, including details of any other events or circumstances which contributed to the delay, to the satisfaction of the Department.
- 9.6 If the Department grants an extension of time, the Parties will vary this Contract in accordance with the variation procedures in clause 43 to reflect the extension agreed to by the Department.
- 9.7 The Department may take steps to verify that the Requirement conform to the requirements of this Contract before accepting or taking delivery of the Requirement. The Contractor must, if requested by the Department, assist the Department to undertake such steps either at the Contractor's premises or at the premises of any Subcontractor, as applicable.
- 9.8 Title to the Deliverables passes to the Department on the earlier of payment of the Contract Charges for those Deliverables or delivery of the Deliverables to the Department.
- 9.9 The Contractor warrants that it has the right to transfer title to the Deliverables to

the Department and that title to the Deliverables will pass to the Department free of any Security Interest.

- 9.10 Subject to clause 9.12, risk of Loss of or damage to the Deliverables passes from the Contractor to the Department upon delivery.
- 9.11 The Department may return to the Contractor any Deliverables, at no additional cost to the Department, providing that those Deliverables are returned substantially in the condition in which they were received.
- 9.12 Where the Department Notifies the Contractor that it wishes to return Deliverables, the Contractor must promptly arrange for collection of those Deliverables and the Department will hold those Deliverables at the Contractor's risk and the Department accepts no responsibility for those Deliverables.
- 9.13 Clause 9.11 applies irrespective of whether the title in the Deliverables has passed to the Department. Where title to the Deliverables has passed and payment has been made, such payment (or part payment) is an amount not due to the Contractor for the purposes of clause 19.6(c).
- 9.14 Where title to the Deliverables has passed and payment has been made, title to Deliverables returned under this clause 9 will revert to the Contractor on the date when the repayment is received by the Department or set-off occurs.

10 Directions, reporting and liaison

- 10.1 The Contractor must prepare and submit to the Department:
- (a) the reports described in Schedule 1, at the times specified in Schedule 1; and
 - (b) any other reports reasonably requested by the Department from time to time.
- 10.2 The Contractor must prepare each report in good faith and certifies that all information contained in each report is accurate, complete and up to date as at the time it is provided to the Department.
- 10.3 The Contractor must advise the Department of any notifiable incidents (deaths, critical and significant incidents (e.g. staff misconduct or corruption) and significant near misses – as defined in the Communications and Issues Management Protocol) immediately, but no later than 24 hours of the incident occurring – with any critical incidents to be reported within two (2) hours and any significant incidents within six (6) hours.
- 10.4 The Parties will meet at the times and manner set out in Schedule 1 (or as otherwise agreed between the Parties) to review and discuss any issues in relation to this Contract or the progress of the provision of the Requirement.
- 10.5 In addition to any other Obligations in this Contract, the Contractor must:
- (a) liaise with the Department Representative and comply effectively and efficiently with any reasonable directions given by the Department Representative in respect of this Contract; and
 - (b) promptly provide any information the Department Representative may reasonably require.

11 Personnel

- 11.1 The Contractor must undertake all necessary recruitment, including probity and assurance checks, training, security clearance preparation and other functions as necessary, to ensure its Personnel have and maintain the requisite skills, registrations, experience and qualifications for the Contractor to meet the requirements of this Contract.
- 11.2 The following process will apply to the approval of a MOC:
- (a) the Contractor may, from time to time, propose a person to the Department for approval and appointment by the Department as a MOC;
 - (b) prior to proposing a person, that person must be subjected to any background and security checks referred to in this Contract, including Schedule 1 and such other security or assurance checks as the Department may determine from time to time; and
 - (c) approval of a person by the Department as a MOC must be in writing and will be at the discretion of the Department.
- 11.3 Where the Contract Details set out Specified Personnel, the Contractor agrees that the Specified Personnel will undertake work in respect of the Requirement as set out in the Contract Details and in accordance with the terms of this Contract.
- 11.4 If any Specified Personnel are or will become unable or unavailable to undertake work in respect of the Requirement, the Contractor will Notify the Department immediately.
- 11.5 The Department may, at its absolute discretion, give Notice requiring the Contractor to remove any of its Personnel (including Specified Personnel) from work in respect of the Requirement. The Contractor must remove the Personnel from work in respect of the Requirement within the time specified in the Notice.
- 11.6 If any Specified Personnel are or will become unable or unavailable or are removed under this clause 11, the Contractor must provide replacement Specified Personnel with equivalent skills, experience and qualifications acceptable to the Department at no additional cost and at the earliest opportunity. The Contractor must provide documentation to support the nomination of any replacement Specified Personnel.
- 11.7 Any need to replace any of the Contractor's Personnel (including Specified Personnel) during the course of this Contract will not constitute an act or event that is beyond the reasonable control of the Contractor in meeting the requirements of the Contract.
- 11.8 If the Contractor is unable to provide acceptable replacement Specified Personnel, the Department may terminate this Contract in accordance with the provisions of clause 45.

12 Subcontracting

- 12.1 The Contractor must not, without the prior written approval of the Department, subcontract any part of the Requirement.
- 12.2 The Department may impose any terms and conditions it considers appropriate

when giving its approval under clause 12.1.

12.3 The Contractor must:

- (a) enter into a written Subcontract with each Subcontractor prior to that Subcontractor performing any part of the Requirement; and
- (b) ensure that any Subcontract for the performance of the Requirement contains provisions that are equivalent with all Obligations imposed on this Contractor and rights of the Department under this Contract, including those in relation to work health and safety, confidentiality, privacy, security, reporting obligations, Immigration and Border Protection Workers, disclosures, audit requirements, compliance with Laws and Commonwealth policies and termination for convenience.

12.4 The Contractor must ensure that each Subcontractor:

- (a) has in place adequate resources and personnel who are appropriately experienced, qualified and skilled to perform work in respect of the Requirement under this Contract; and
- (b) is of sufficient financial standing to enable it to perform its obligations under the Subcontract.

12.5 The Contractor, by subcontracting any part of the Requirement or by obtaining the Department's approval to a Subcontract, will not be relieved of its liabilities or obligations under this Contract, and will be responsible for all Subcontractors.

12.6 The Contractor must make available, on request, details including names of all Subcontractors.

12.7 The Contractor must inform the Subcontractors that their participation in relation to all or part of the Requirement may be publicly disclosed.

12.8 Once a Subcontractor has been approved by the Department in accordance with clause 12.1, that Subcontractor will be an approved Subcontractor (but only for the purpose of the Subcontract in relation to which the Department has provided its approval).

13 Conduct on premises

13.1 When using the Department's premises or facilities, the Contractor must comply (and must ensure that its Personnel comply) with all directions and all current procedures relating to security and work health and safety and any codes of behaviour that apply to those premises or facilities.

14 Departmental assistance

14.1 Without limiting any of the Contractor's Obligations under this Contract, the Department must provide the facilities and assistance as specified in Schedule 1.

15 Performance management

15.1 The Department will monitor the performance of the Contractor under this Contract

and will evaluate the effectiveness of the Contractor's performance on an ongoing basis.

- 15.2 The Contractor must report to the Department on its performance under this Contract monthly or as otherwise specified in Schedule 1 and Schedule 3.
- 15.3 The Department may conduct a review to assess the performance of the Contractor. Reviews will take into account the information that the Contractor provides to the Department in its reports.
- 15.4 If the Department determines that the Contractor's performance is not compliant with this Contract, whether after a review or otherwise, then, without limiting the Department's rights, the Department may:
- (a) require the Contractor to propose and comply with service levels or other measures for performance that are acceptable to the Department;
 - (b) withhold part or all of the Contract Charges payable under this Contract until such time as the Contractor's performance has improved, or until a breach is rectified, to the Department's satisfaction;
 - (c) take any action provided for under clause 15.7; or
 - (d) reduce the scope of this Contract in accordance with clause 46; or
 - (e) terminate this Contract in accordance with clause 45.
- 15.5 The remainder of this clause 15 applies if Schedule 3 is completed with specific Performance Measures.
- 15.6 Unless specified otherwise in Schedule 3, the Contractor must:
- (a) implement and maintain during the Term, measuring and monitoring tools capable of measuring its performance against the Performance Measures;
 - (b) provide the Department with access to the data and information gathered by those tools;
 - (c) if requested by the Department, demonstrate to the Department the operation and accuracy of those tools; and
 - (d) investigate any failure to provide the Requirement in accordance with the Performance Measures.
- 15.7 Schedule 3 may specify consequences which will apply if the Contractor fails to meet a Performance Measure.
- 15.8 Without limiting clause 15.7, a failure by the Contractor to meet a Performance Measure may:
- (a) require an adjustment to fees payable by Clients under the Client Price List for a subsequent Contract Year; or
 - (b) for the last year of the Term, require the Contractor to pay to the Department an Abatement,
- in accordance with Schedule 3.
- 15.9 The Contractor acknowledges and agrees that the consequences for failing to meet the Performance Measures set out in Schedule 3:

- (a) are reasonable and appropriate for managing the Contractor's adherence to its Obligations under the Contract; and
- (b) do not limit the Department's rights or remedies arising from any defective performance under the Contract.

16 Compliance

- 16.1 Unless otherwise agreed by the Department in writing, the Contractor must, and must ensure that its Subcontractors, obtain and maintain all Authorisations necessary to enable the provision of the Requirement in accordance with this Contract.
- 16.2 The Contractor must provide the Department with copies of any Authorisations relevant to the performance of, or necessary to perform, this Contract, promptly upon request by the Department.
- 16.3 The Contractor must, in carrying out its Obligations under this Contract, comply with all Laws of the Commonwealth or State or Territory or local authority in force from time to time and applicable to the provision of the Requirement.
- 16.4 The Contractor must, in carrying out its Obligations under this Contract, comply with applicable Commonwealth policies if those policies are specified in this Contract or Notified to the Contractor.
- 16.5 Without limiting clauses 16.1 or 16.4, the Contractor must comply with all provisions and requirements set out in Schedule 8.

17 Offer to provide the Requirement to other Commonwealth entities

- 17.1 In addition to providing the Requirement to the Department under this Contract, the Contractor offers to provide the Requirement to any other Commonwealth Agency that wishes to obtain the Requirement from the Contractor.
- 17.2 A Commonwealth Agency may accept the offer under clause 17.1 by:
 - (a) holding discussions with the Contractor about it providing the Requirement to the Commonwealth Agency; and
 - (b) if the Contractor indicates that it can provide the Requirement to the Commonwealth Agency, giving the Contractor an Instrument of Acceptance substantially in the form of Schedule 9, in accordance with clause 48 (as if references to the Department in that clause were references to the other Commonwealth Agency).
- 17.3 Each Instrument of Acceptance given to the Contractor under this Contract will create a separate agreement, on the terms and conditions of this Contract as modified by the Instrument of Acceptance, between the Contractor and:
 - (a) where the Commonwealth Agency is a Commonwealth entity other than a body corporate the Commonwealth of Australia as represented by that Commonwealth Agency; or
 - (b) where the Commonwealth Agency is a body corporate – the body

- corporate; and
- (c) where the Commonwealth Agency is a Commonwealth company that Commonwealth company.

18 Plans and other documents

- 18.1 The Contractor must prepare and maintain a range of Plans and other documents for the Department's approval including:
- (a) Contract Transition-Out Plan;
 - (b) Training Plan;
 - (c) Quality Assurance Plan;
 - (d) Work Health and Safety Plan;
 - (e) Human Resource Management Plan;
 - (f) Communications and Issues Management Protocol;
 - (g) Systems' Security Plan;
 - (h) Policies and Procedures Manual;
 - (i) Risk Management Plan;
 - (j) Fraud and Corruption Control Plan;
 - (k) Business Continuity Plan; and
 - (l) NfG Project Plan.
- 18.2 Where this Contract requires the Contractor to submit a Plan or any other document for approval by the Department:
- (a) that Plan or document will have effect from the date the Department provides its written approval to the Contractor; and
 - (b) if the Department is not satisfied with the Plan or other document submitted, the Contractor must promptly amend the Plan or document and resubmit it for approval within the time frame specified by the Department.
- 18.3 The Contractor must comply with, and ensure that all Contractor Personnel (including its Subcontractors) comply with, the Plans and other document set out in clause 18.1 in the provision of the Requirement, including in relation to the approval process set out in the Requirement.
- 18.4 The Contractor agrees that it is wholly responsible for the Plans and other documents, and for ensuring that the Plans and other documents meet the requirements in Schedule 1 and clause 34, as applicable, and that it must, at no additional cost to the Department, rectify any deficiency, error or other inadequacy in the Plans or other documents.
- 18.5 No approval or assistance provided by the Department in relation to the Plans or other documents under this clause 18 or clause 34, or any approval or assistance provided by the Department for any subsequent update of any Plan or other document, will:

- (a) relieve the Contractor from responsibility for the Plans or other document;
- (b) entitle the Contractor to claim any delay in delivering the Requirement; or
- (c) otherwise limit or affect the Contractor's Obligations or warranties under the Contract.

[Note to Tenderers: The Contractor is required to maintain its Business Continuity Plan, Risk Management Plan, and Fraud and Corruption Control Plan (once approved by the Department) under clause 34.]

19 Contract Charges, Expenses and Client Fees

- 19.1 In consideration for the performance by the Contractor of its Obligations under this Contract and subject to the terms of the Contract:
- (a) the Contractor may charge a Client the applicable Client Fee specified in the Client Price List; and
 - (b) the Department must pay to the Contractor the Contract Charges and the Expenses (if any),
- in accordance with Schedule 2.
- 19.2 The Contractor acknowledges and agrees that:
- (a) it is not entitled to charge any Client any amount in addition to the Client Fees; and
 - (b) it is not entitled to be paid Client Fees more than once for the Requirement provided to the Client,
- unless the Client Fees have been varied in accordance with clause 43.
- 19.3 The Department must pay the Contractor the Contract Charges owing within 20 days of the receipt of a Correctly Rendered Invoice submitted by the Contractor. If this 20 day period ends on a day that is not a Business Day, payment will be made on the next Business Day.
- 19.4 If there is a dispute as to whether an amount is payable under an invoice, the Contractor must cancel the invoice in dispute and issue a Correctly Rendered Invoice for any undisputed portion of the disputed invoice. The Department must pay a Correctly Rendered Invoice for the undisputed portion of a disputed invoice.
- 19.5 The Client Fees, Contract Charges and Expenses are set out in Schedule 2 and are taken to include:
- (a) all costs, resources and expenses required or incurred by the Contractor in providing the Requirement; and
 - (b) except as provided by clause 21, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract by the Contractor.
- 19.6 Despite anything else in this Contract:
- (a) the Department is not obliged to pay the Contract Charges for any

Requirement that is not provided in accordance with the Contract;

- (b) the Department may (in addition and without prejudice to any other right it may have) defer payment or reduce the amount of any Contract Charges payable until the Contractor has completed, to the satisfaction of the Department, that part of the Requirement to which those Contract Charges relate;
- (c) if the Department pays any amount to the Contractor that is not due, including by making a payment under an improperly rendered or inaccurate invoice, the Contractor must immediately repay that overpayment to the Department; and
- (d) the Department may set-off any amount the Contractor owes it, including under clause 19.6(c), against any amount the Department owes the Contractor, whether owed actually, contingently or prospectively under this Contract.

19.7 The Department is not required to pay any interest or penalty in respect of late payments, unless expressly stated in Schedule 2.

20 Invoices

20.1 A Correctly Rendered Invoice means an invoice that:

- (a) is submitted in arrears;
- (b) is correctly addressed;
- (c) is correctly calculated;
- (d) identifies the amount claimed and the Services, Deliverables or Expenses for which the amount is claimed;
- (e) is accompanied by documentation substantiating the amounts claimed; and
- (f) contains the information and meets the requirements for invoices set out in Schedule 2.

20.2 The Contractor must submit a Correctly Rendered Invoice to the Department for the Contract Charges monthly in arrears or at the times (if any) set out in Schedule 2.

20.3 The Contractor must not submit invoices for Services or Deliverables that have not been delivered to the Department.

21 GST

21.1 In this clause 21:

- (a) unless the context otherwise requires, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) has the meaning given to it in that Act;
- (b) a reference to a GST liability or input tax credit entitlement of a Party includes a GST liability or input tax credit entitlement of the representative member of any GST group of which that Party is a

member;

- (c) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 21; and
- (d) any reference to GST payable by, input tax credit entitlements of or adjustments for an entity includes any notional GST, input tax credit or adjustments arising in accordance with Division 177 of the GST Act.

21.2 If a Party (**Supplier**) makes a supply under or in connection with this Contract in respect of which GST is payable (not being a supply the consideration for which is specifically described in this Contract as 'GST inclusive'):

- (a) the consideration payable or to be provided for that supply under this Contract but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must pay to the Supplier, an amount equal to the GST payable on the supply (**GST Amount**); and
- (b) subject to the Supplier issuing a tax invoice to the Recipient, the GST Amount must be paid at the same time as the GST exclusive consideration.

21.3 The Parties agree that:

- (a) the Contract Charges are, unless expressly stated otherwise, GST inclusive and no GST Amount will be payable under clause 21.2;
- (b) pursuant to section 38-60(4) of the GST Act, the supplies for which the Contract Charges are consideration will not be treated as GST-free supplies;
- (c) all invoices for the Contract Charges must be valid tax invoices; and
- (d) notwithstanding the above, if and to the extent that a Contract Charge is not consideration for a taxable supply by the Contractor to the Department, that Contract Charge shall be reduced by the GST component (being 1/11th of that amount as at the date of this Contract).

21.4 If a Party must reimburse or indemnify another Party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other Party is entitled to for that loss, cost or expense, and then increased in accordance with clause 21.2.

21.5 If an adjustment event results in the GST on a taxable supply being different from the GST Amount recovered by the Supplier, the Supplier:

- (a) must issue an adjustment note to the Recipient;
- (b) must refund to the Recipient any excess; and
- (c) may recover from the Recipient any shortfall.

21.6 The Contractor must:

- (a) ensure that it correctly applies Part 3-1 of the GST Act (GST-free health supplies) to all supplies made to a Client in accordance with this Contract; and

- (b) comply with section 48 of the *Competition and Consumer Act 2010* (Cth) when disclosing Client Fees to Clients.

22 Commonwealth Material

- 22.1 The Department must provide to the Contractor the Commonwealth Material as specified or described in Schedule 6.
- 22.2 The Contractor must ensure that the Commonwealth Material is used, copied, supplied, transferred or reproduced only for the purposes of this Contract.
- 22.3 The Contractor must ensure that all Commonwealth Material is used strictly in accordance with any conditions or restrictions set out in Schedule 6, and any direction by the Department.
- 22.4 The Parties acknowledge that the Commonwealth Material is not provided to the Contractor for the purpose of either directing or guiding the Contractor's work under the Contract. The Department does not warrant the suitability of Commonwealth Material for any particular use or application, nor does the Department warrant the accuracy or precision of that material.
- 22.5 The Contractor will be responsible for the application or use of the Commonwealth Material and any conclusions, assumptions or interpretations made by the Contractor on the basis of the Commonwealth Material.
- 22.6 The Contractor must ensure that all Commonwealth Material and Contract Material in the form of information, data and records held in its business systems are captured and maintained in accordance with the principles of ISO16175 (Principles and Functional Requirements for Records in Electronic Office Environments).

23 Intellectual Property – Ownership Model

- 23.1 Item 9 of the Contract Details sets out the ownership model for Intellectual Property Rights in all Contract Material.
- 23.2 If no ownership model is selected in Item 9 of the Contract Details:
- (a) clause 24 will apply; and
 - (b) for the avoidance of doubt, no part of clause 25 will apply.
- 23.3 Nothing in clauses 23, 24 or 25 affects the ownership of the Intellectual Property Rights in any:
- (a) Commonwealth Material;
 - (b) Existing Contractor Material;
 - (c) Third Party Material; or
 - (d) other Auxiliary Material.
- 23.4 The Contractor must obtain all necessary Intellectual Property Rights and permissions before using or making available any Third Party Material or other Auxiliary Material for the purposes of the Contract.
- 23.5 The Department must obtain all necessary Intellectual Property rights and

permissions before making Commonwealth Material available to the Contractor for the purposes of the Contract.

- 23.6 If required by the Department, the Contract Material or Auxiliary Material must be made available to third parties (including to members of the public) by means of a Creative Commons licence, in accordance with any reasonable direction by the Department.

24 Commonwealth Ownership of Intellectual Property Rights

- 24.1 All Intellectual Property Rights in all Contract Material vests or will vest in the Department immediately on its creation.
- 24.2 Unless otherwise specified in Schedule 6, the Contractor grants to (or must procure for) the Department a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right to sublicense) to use, reproduce, adapt, modify, distribute, communicate and exploit the Auxiliary Material.
- 24.3 Unless otherwise specified in Schedule 6, to the extent that the Contractor needs to use any of the Commonwealth Material or Contract Material for the purpose of performing its obligations under the Contract, the Department grants to the Contractor a world-wide, royalty free, non-exclusive, non-transferable licence to use, reproduce, adapt, modify, distribute and communicate that Material solely for the purpose of providing the Requirement.
- 24.4 The licence in clause 24.3 is subject to:
- (a) any permissions, limitations, conditions or restrictions in Schedule 6; and
 - (b) any direction given by the Department to the Contractor.

25 Contractor Ownership of Intellectual Property Rights

[Note: This clause only applies if specified in Item 9 of the Contract Details.]

- 25.1 All Intellectual Property Rights in the Contract Material vests or will vest immediately in the Contractor.
- 25.2 Unless otherwise specified in Schedule 6, the Contractor grants to (or must procure for) the Department a permanent, irrevocable, worldwide, royalty free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute, communicate and exploit the Contract Material.
- 25.3 Unless otherwise specified in Schedule 6, to the extent that the Contractor needs to use any of the Commonwealth Material for the purpose of performing its obligations under the Contract, the Department grants to the Contractor a world-wide, royalty-free, non-exclusive, non-transferable licence to use, reproduce, adapt, modify, distribute and communicate that Material solely for the purpose of providing the Requirement.
- 25.4 The licence in clause 25.3 is subject to:
- (a) any permissions, limitation, condition or restriction in Schedule 6; and
 - (b) any direction by the Department.

26 Intellectual Property Warranty

26.1 The Contractor represents and warrants that:

- (a) it is entitled; or
- (b) it will be entitled at the relevant time,

to grant the licences and deal with the Intellectual Property in any Material, including Contract Material, Existing Contractor Material, Third Party Material and any other Auxiliary Material provided by it to the Department, in the manner set out in this Contract.

26.2 If a person claims, or the Department reasonably believes that a person is likely to claim, that all or part of a Deliverable or the performance of a Service infringes the person's Intellectual Property Rights, the Contractor must, in addition to the indemnity under clause 36 and to any other rights that the Department may have against it, promptly, at the Contractor's expense:

- (a) use its best efforts to secure the rights for the Department to continue to use the Deliverables free of any claim or Liability for infringement; or
- (b) the Service or Deliverables in such a manner that the Contractor's provision of the Service or Deliverable, or the Department's use of the relevant Deliverable does not infringe the Intellectual Property Rights of any other person,

without any degradation of the performance or quality of the Service or Deliverable.

27 Moral Rights

27.1 For the purposes of this clause 27, "Permitted Acts" means any of the following classes or types of acts or omissions:

- (a) using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution of authorship;
- (b) supplementing the Contract Material with any other Material; or
- (c) using the Contract Material in a different context to that originally envisaged,

but does not include those which would infringe the author's right not to have authorship falsely attributed.

27.2 Where the Contractor is a natural person and the author of the Contract Material, he or she consents to the performance of the Permitted Acts by the Department or any person claiming under or through the Department.

27.3 If clause 27.2 does not apply, the Contractor must:

- (a) 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
- (b) provide the executed original of any such consent to the Department upon request by the Department.

- 27.4 This clause 27:
- (a) applies subject to any provision to the contrary in Schedule 6; and
 - (b) does not apply to any Commonwealth Material incorporated into the Contract Material.

28 Confidential Information

- 28.1 A Party must not, without prior Notice of consent from the other Party:
- (a) use any Confidential Information of the other Party except for the purposes of this Contract; and
 - (b) disclose any Confidential Information of the other Party to a third party, except where permitted under this Contract.
- 28.2 In giving written consent to use or disclose the Department's Confidential Information, the Department may impose such conditions as it thinks fit, and the Contractor must comply with these conditions.
- 28.3 If the Contractor becomes subject to a legal Obligation to provide any Confidential Information of the Department to a third party, including any of the situations specified in clause 28.8(e), the Contractor must immediately Notify the Department.
- 28.4 If the Contractor becomes aware that any Confidential Information of the Department may have been lost, stolen, accessed or used in a manner inconsistent with this clause 28, or any suspected or possible breach of this Contract, the Contractor must:
- (a) immediately Notify the Department giving all known details of the suspected or possible breach as well as provide regular updates as requested by the Department;
 - (b) do everything necessary to remedy the unauthorised access to, use or disclosure of the Confidential Information, or to prevent the suspected or possible breach of this clause 28;
 - (c) comply with all written directions from the Department in relation to the actual, suspected or possible breach of this clause 28; and
 - (d) give the Department all assistance required in connection with proceedings which the Department may institute against any person for breach of confidence or otherwise.
- 28.5 The Contractor must ensure that each member of its Personnel who may have access to any Confidential Information of the Department is (before being given access to that Confidential Information) briefed on or otherwise made aware of the fact that the wrongful disclosure of, or the misuse of, Confidential Information would be a breach of this Contract.
- 28.6 The Department may at any time require:
- (a) the Contractor's Personnel (including its Subcontractors); or
 - (b) any person with a Third Party Interest,
- to give a written undertaking in a form reasonably required by the Department

relating to the use and non-disclosure of the Department's Confidential Information.

28.7 If the Contractor receives a request under clause 28.6, it must promptly arrange for all such undertakings to be given.

28.8 The obligations on the Parties under this clause 28 will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by a Party in order to comply with obligations, or exercise rights, under this Contract, including the exercise of a Party's IPR in relation to Material that includes the Confidential Information;
- (b) is disclosed by a Party to its professional adviser, financier or auditor;
- (c) is disclosed by a Party's internal management personnel, solely to enable effective management or auditing of Contract related activities;
- (d) is disclosed to any Commonwealth Minister, or the Minister's advisers;
- (e) is disclosed:
 - (i) in order to comply with the requirements of any regulatory body;
 - (ii) in order to respond to a request that is made by a Royal Commission, a body undertaking an administrative or statutory review, or an audit or inquiry (whether within or external to the Commonwealth), including a review, audit or inquiry that is conducted by the Commonwealth Auditor-General, the Commonwealth Ombudsman, the Australian Information Commissioner or the Privacy Commissioner pursuant to clause 39.5; or
 - (iii) in order to respond to a request or direction of a House, or a request by a Committee, of the Parliament of the Commonwealth;
 - (iv) is authorised or required by Law to be disclosed;
- (f) is disclosed for the conduct of any legal proceedings arising in relation to the Contract;
- (g) is shared by the Department within the Department's organisation, or with another agency, where this serves the legitimate interests of the Department or its portfolio agencies; or
- (h) is in the public domain otherwise than due to a breach of this clause 28.

28.9 Where a person discloses Confidential Information to another person pursuant to clauses 28.8(a), 28.8(c), 28.8(d), or 28.8(e), the disclosing person must Notify the receiving person that the information is confidential.

28.10 The obligations under this clause 28 continue after the expiry or termination of this Contract unless specified otherwise in relation to particular Confidential Information in Schedule 4.

28.11 The Contractor must provide all reasonable assistance to the Department with regard to the release of the Contractor's Confidential Information where disclosure may be required for the purposes of the Department's Parliamentary reporting and accountability obligations.

29 Protection of Personal Information

- 29.1 This clause 29 applies only to the extent that the Contractor deals with Personal Information in providing the Requirement under this Contract.
- 29.2 In this clause 29, the following terms have the same meaning as they have in the *Privacy Act 1988* (Cth) (the Privacy Act):
- (a) an agency;
 - (b) overseas recipient;
 - (c) registered APP code;
 - (d) registered CR code;
 - (e) contracted service provider;
 - (f) Eligible Data Breach; and
 - (g) APPs (Australian Privacy Principles).
- 29.3 The Contractor acknowledges that it is a contracted service provider and agrees, in providing the Requirement under this Contract:
- (a) to use or disclose Personal Information obtained in the course of providing the Requirement under this Contract only for the authorised purposes of this Contract;
 - (b) to carry out and discharge the obligations contained in the APPs as if it were an agency;
 - (c) not to do any act or engage in any practice which, if done or engaged in by an agency, would be a breach of an APP;
 - (d) to comply with the APPs, any registered APP code or registered CR code that is applicable to the Contractor;
 - (e) to comply with APP 5 in relation to notifying individuals where their Personal Information is being, or has been collected by the Contractor. Without limiting the Contractor's obligations in relation to APP 5 compliance, the Contractor must notify or make the individual/s aware that important information about the collection, use and disclosure (to other agencies and third parties, including overseas entities) of Personal Information, including sensitive information, can be located in the Department's Privacy Notice Form (Form 1442i);
 - (f) not to use or disclose Personal Information in breach of APP 7 (Direct marketing) of the Privacy Act (where applied to the Contractor), unless the information was collected for the purpose of meeting, directly or indirectly, an obligation under this Contract and the use or disclosure is necessary to meet, directly or indirectly, such an obligation under this Contract;
 - (g) to comply with any request under section 95C of the Privacy Act (relating to disclosure of any provisions of this Contract that are inconsistent with a registered APP code binding a party to this Contract or with an APP);

- (h) to not transfer Personal Information outside Australia, or allow parties outside Australia to have access to it, without the prior approval of the Department;
- (i) if the Department approves the transfer of Personal Information outside Australia or access of it to parties outside Australia, to ensure (if requested by the Department) that the overseas recipient implements a data breach response plan which includes a mechanism for notifying the Department where there are reasonable grounds to suspect a data breach and outlines appropriate remedial action;
- (j) to notify individuals whose Personal Information is held by the Contractor or a Subcontractor, as the case may be, of the Contractor and Subcontractor's privacy complaints mechanism;
- (k) to notify the Department immediately if the Contractor:
 - (i) becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 29, whether by the Contractor or a Subcontractor;
 - (ii) becomes aware that a disclosure of Personal Information may be required by law; or
 - (iii) is contacted by the Information Commissioner, or by any individual to whom any Personal Information held by the Contractor or a Subcontractor relates, in respect of a privacy complaint or investigation.
- (l) to cooperate with any reasonable request or direction of the Department in relation to an inquiry, audit or other exercise of powers and functions, by the Information Commissioner under the Privacy Act;
- (m) to comply with any directions, guidelines, determinations or recommendations relating to the use or disclosure of Personal Information publicly available or Notified to the Contractor by the Department Representative;
- (n) to 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 upon written Notice from the Department; and
- (o) to ensure that all Personnel required to deal with Personal Information for the purposes of this Contract are made aware of the obligations of the Contractor set out in this clause 29.

29.4 Without limiting clause 29.3, if the Contractor becomes aware that there are reasonable grounds to suspect that there may have been, or where the Department notifies the Contractor that there has been, an Eligible Data Breach in relation to any Personal Information held by the Contractor (or a Subcontractor) as a result of this Contract or its provision of the Requirement, the Contractor must:

- (a) notify the Department in writing immediately but not later than 24 hours upon becoming aware of an actual or suspected Eligible Data Breach;
- (b) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom the Personal Information relates;

- (c) unless otherwise directed by the Department, carry out an assessment in accordance with the requirements of the Privacy Act; and
 - (d) take any action as reasonably directed by the Department.
- 29.5 The Contractor must ensure that any Subcontract entered into by the Contractor for the purpose of fulfilling its obligations under this Contract imposes on the Subcontractor the same obligations that the Contractor has under this clause 29 (including this requirement in relation to Subcontracts). The Contractor agrees to indemnify the Department against any Loss, Liability or expense suffered or incurred by the Department which arises directly or indirectly from a breach of any of the Contractor's or Subcontractor's obligations referred to in this clause 29.
- 29.6 The provisions of this clause 29 survive termination or expiration of this Contract.

30 Media and public statements

- 30.1 The Contractor must refer to the Department as soon as practicable all media enquiries received by the Contractor which relate to the Requirement or this Contract.
- 30.2 Subject to clause 30.2, the Contractor must not, and must ensure its Personnel do not, make or permit any public announcement in connection with this Contract or the Requirement under it or the Department without obtaining the Department's prior consent (which will not be unreasonably withheld or delayed).
- 30.3 Nothing in clause 30.2 limits the Contractor's right to:
 - (a) disclose information about this Contract or the Requirement in order to meet a requirement under any Law or regulatory body (including a relevant stock exchange); or
 - (b) enter into public debate or criticism of the Australian Government, its agencies or its personnel.
- 30.4 The provisions in clause 30 survive the expiry or earlier termination of this Contract.

31 Security requirements

- 31.1 In this clause 31:
 - (a) **AGSVA** means the Australian Government Security Vetting Agency;
 - (b) **Official Information** means any information developed, received or collected by or on behalf of the Commonwealth of Australia through its agencies and contracted providers;
 - (c) **Official Resources** includes:
 - (i) Official Information;
 - (ii) people who work for or with the Commonwealth; and
 - (iii) assets belonging to (even if in the possession of contracted Contractors) or in the possession of the Commonwealth;
 - (d) **Protective Security Policy Framework** is the *Australian Government*

protective security policy, amended from time to time;

- (e) **Security Classified Information** means Official Information that, if compromised, could have adverse consequences for the Commonwealth; and
- (f) **Security Incident** means a security breach, violation, contact or approach from those seeking unauthorised access to Official Resources.

General Security Obligations

- 31.2 The Contractor must ensure that its Personnel comply with:
 - (a) all relevant security requirements specified in the Protective Security Policy Framework and the Department's security policies and procedures;
 - (b) any security requirements specified Schedule 1; and
 - (c) any variations or additional security requirements that the Commonwealth (in its absolute discretion) Notifies the Contractor in writing, including any changes to the requirements referred to in clauses 31.2(a) and 31.2(b).
- 31.3 The Contractor must comply with any such varied or additional security requirement from the date specified in the Notice (or five (5) Business Days after it receives the Notice if no date is specified) under clause 31.2(c).
- 31.4 The Contractor acknowledges that in performing the Contract, it may become subject to certain statutory provisions relating to security and security issues, and must ensure that its Personnel are aware of, and comply, with those statutory provisions.
- 31.5 Subject to clause 43, the Contractor may apply to the Department for a variation in the Contract Charges if the Contractor can substantiate that changes to the security requirements pursuant to clause 31.2(c) have cost implications for it.

Security clearances and Employment Security Clearances

- 31.6 To comply with the eligibility requirements of the Protective Security Policy Framework, security clearances for access to security classified resources must not be provided to anyone who is not an Australian citizen.
- 31.7 Where required, individuals who require non-public access to the Department's resources (including ICT systems, information and facilities), or any individual lawfully directed in accordance with the ABF Act, must undergo employment suitability screening and be granted an Employment Suitability Clearance as well as hold a minimum baseline security clearance from the AGSVA. [**Note to Tenderers: The Department is considering the requirement for security clearances and this will be confirmed by the Department during negotiations.**]
- 31.8 The Contractor must not permit any of its Personnel to have any access to any security classified resources, or any of the Department facilities, information or ICT systems which are not publicly available, unless:
 - (a) that person(s) has been:
 - (i) assessed and cleared by the Department's Employment Suitability Clearance Team or been granted an exemption in writing from the

- Department from compliance with this requirement; and
- (ii) assessed and received a minimum baseline security clearance provided by the AGSVA or been granted an exemption in writing from the Department from compliance with this requirement;
 - (b) the Department has given written authority for the Contractor's Personnel to access such resources, premises and information;
 - (c) a request has been submitted to the Department in accordance with the Health Systems Support and Communications Guidelines, seeking access to the required system/s.
- 31.9 The Contractor must ensure that at all times during the Term of this Contract a sufficient number of its Personnel hold the appropriate security level to enable efficient provision of the Requirement.
- 31.10 The Contractor must inform the Department Representative immediately upon becoming aware that:
- (a) a person has had their security clearance revoked or denied by AGSVA;
 - (b) a person's security clearance has lapsed; or
 - (c) a person who is not assessed and cleared by AGSVA has had access to Department's resources which are not publically available.
- 31.11 The Contractor must provide any information to the Department Representative, as reasonably requested for the Department to undertake reasonable investigations for the purposes of this clause 31.
- 31.12 The Department may, from time to time, Notify the Contractor that particular Personnel must hold a particular level of Department security clearance and the Contractor must comply with, and ensure its Personnel act in accordance with, that Notice.
- 31.13 Unless otherwise specified in Schedule 2, the Contractor is responsible for all costs associated with obtaining security clearances or obtaining authorisation under this clause 31.

Official Information

- 31.14 In relation to Official Information, the Contractor must:
- (a) if and when requested by the Department, arrange for it and its Personnel to promptly execute a declaration of interest and deed of non-disclosure, in a form reasonably required by the Department, relating to the use and non-disclosure of Official Information in connection with this Contract;
 - (b) promptly Notify and disclose to the Department any conflict of interest affecting it or its Personnel that may impact on security in the performance of the Contractor's obligations with respect to Official Information under this Contract;
 - (c) promptly inform, and keep informed, its Personnel in respect of all the Department's security requirements and the Contractor's security obligations under this Contract, including that the obligation to maintain confidentiality of Official Information is ongoing (notwithstanding

termination or expiry of this Contract or the Personnel's involvement with this Contract);

- (d) ensure that its Personnel have and use systems, that meet the designated information security standards under the Australian Government Information Security Manual, for the electronic processing, storage, transmission and disposal of Official Information;
- (e) ensure that its Personnel Notify the Department, within the timeframes set out in clause 31.23, of any actual or suspected security incident, security infringement, security violation or security breach in connection with this Contract, including where it may impact upon the provision of the Requirement, or Official Information held by or in the control of the Contractor; and
- (f) on termination or expiry of this Contract, ensure that its Personnel:
 - (i) delete all Official Information from their respective ICT systems; and
 - (ii) return all Department resources and assets to the Department, except to the extent that the Law requires it to be retained by them, in which event the retained information, resource or asset continues to be subject to all security requirements applying under this Contract.

Security Classified Information

31.15 In relation to Security Classified Information, the Contractor must:

- (a) not permit any of its Personnel to have any access to Security Classified Information unless:
 - (i) the relevant person has:
 - A. a security clearance to the appropriate level and a need-to-know;
 - B. received prior written authorisation from the Department to access the Security Classified Information; and
 - C. undergone any training specified in Schedule 1 relating to access and use of Security Classified Information;
- (b) prevent access to Security Classified Information by any individual whose security clearance has lapsed or been revoked or who no longer requires access;
- (c) notify the Department immediately upon becoming aware of any unauthorised access to Security Classified Information and the extent and nature of that access (whether incidental or accidental access, or by any of its Personnel), and must comply with any reasonable directions of the Department in order to rectify the security incident;
- (d) ensure that its Personnel store and handle Security Classified Information and resources in premises and facilities that meet the minimum standards set by the Commonwealth for storage and handling of such information and/or resources, as applicable, of the relevant

security classification level (as set out in the Protective Security Policy Framework); and

- (e) not transfer Security Classified Information outside of Australia, without the prior written approval of the Department Representative.

Handling of information

31.16 The Contractor and its Personnel must handle any information received from the Department under this Contract in accordance with all Commonwealth legislative requirements, directions and policies, including but not limited to:

- (a) Parts 5.3, 5.6 and section 137.1 of the *Criminal Code Act 1995* (Cth);
- (b) Section 91.1 and Part 10.7 of the *Criminal Code Act 1995* (Cth);
- (c) *Privacy Act 1988* (Cth);
- (d) *Freedom of Information Act 1982* (Cth); and
- (e) *Australian Border Force Act 2015* (Cth).

31.17 The Contractor must draw all Commonwealth legislative requirements, directions and policies addressing the handling of information received from the Department to the attention of all Personnel involved in providing the Requirement.

Physical Security

31.18 The Contractor may only access the Department's premises if it:

- (a) has the Department's written authorisation; and
- (b) complies with the Department's requirements set out in this Contract or otherwise Notified by the Department.

31.19 The Contractor must ensure that its facilities for storing the Department's security information and resources:

- (a) Classified up to and including PROTECTED is built to Zone 2 level as defined in the Australian Government's Physical Security Management Guidelines – Security Zones and Risk Mitigation Control Measures and stored in a Class 'C' security container; or
- (b) Classified SECRET is built to Zone 4 level as defined in the Australian Government's Physical Security Management Guidelines – Security Zones and Risk Mitigation Control Measures, and stored in a Class 'B' security container.

31.20 The Contractor's facilities must have the capability of increasing the security Zone to a higher level:

- (a) as advised by the Department;
- (b) subject to a Protective Security Risk Assessment conducted by the Department; and
- (c) certified by the Department's Agency Security Adviser.

31.21 The Contractor must ensure that its Personnel safeguard any keys, passwords, building passes or other Material detailing access arrangements that are provided to the Contractor for the purposes of this Contract.

- 31.22 The Contractor must protect any Official Resources it possesses or controls to the same extent as if it were the Department, including ensuring that unauthorised persons cannot access any Official Information.

Notifications of breach

- 31.23 The Contractor must proactively monitor compliance with its obligations under this clause 31, and if it becomes aware of any breach or potential breach of those obligations, including under clause 31.14(e), then it must Notify the Department:

- (a) immediately but not later than 24 hours of a breach or potential breach of a Severe nature occurring; or
- (b) within 48 hours of any other breach or potential breach occurring, and will:
- (c) immediately comply with all directions of the Department in order to address the incident or breach, and ensure it does not occur again;
- (d) provide all information requested by the Department in relation to a breach of this clause 31;
- (e) take all action necessary to:
 - (i) eliminate or minimise the impact of such breach or potential breach; and
 - (ii) prevent any repeat of such breach in the future; and
- (f) retain evidence and logs regarding the incident to help in determining cause, damage and likely source.

- 31.24 For the purposes of clause 31.23, a breach of a Severe nature includes, but is not limited to, a breach that:

- (a) in the case of a security breach involving Personal Information – is likely to cause serious harm to an affected individual;
- (b) has a significant exposure to business, legal or regulatory impact;
- (c) involves a large volume of sensitive data;
- (d) has received, or is likely to receive, media attention;
- (e) is likely to have a reputational impact for the Department or the Commonwealth; or
- (f) has or is likely to be the subject of a claim against the Department or the Commonwealth.

Security breaches

- 31.25 The Contractor acknowledges and agrees that if any Contractor Personnel loses their security clearances or causes a security breach, then the Department may:
- (a) after consultation with the Contractor, require the replacement of that person; or
 - (b) immediately terminate this Contract under clause 45.

Security training

- 31.26 The Contractor must, upon request by the Department, ensure that its Personnel undertake the training specified in Schedule 1 or as Notified by the Department.

Audit by the Department

- 31.27 The Department may audit the Contractor's compliance with the arrangements, policies, procedures, restrictions and safeguards required under clause 31 from time to time.

32 Immigration and Border Protection Workers

- 32.1 The Contractor acknowledges that it, its employees and Contracted Persons (including the Specified Personnel) may be Immigration and Border Protection Workers as determined by the Secretary or Australian Border Force Commissioner under section 5 of the ABF Act.
- 32.2 The Contractor acknowledges that Immigration and Border Protection Workers must comply with:
- (a) requirements and directions that may be issued under Part 5 of the ABF Act relating to alcohol and drug tests;
 - (b) secrecy and disclosure provisions in Part 6 of the ABF Act;
 - (c) Directions given by the Secretary or the Australian Border Force Commissioner to Immigration and Border Protection Workers from time to time, which may include directions about security clearances, drugs and alcohol, mandatory reporting and professional standards or other matters;
 - (d) any other obligations under the ABF Act; and
 - (e) Departmental policies issued by the Department to Immigration and Border Protection workers, as applicable.
- 32.3 The Contractor must ensure that its employees and Contracted Persons who are Immigration and Border Protection Workers are aware of and comply with their obligations under the ABF Act and applicable Departmental policies.
- 32.4 At the Commencement Date, the directions and Departmental policies applicable to Immigration and Border Protection Workers are available on an ongoing basis on the following Department website: <https://www.homeaffairs.gov.au/access-and-accountability/our-commitments/integrity-and-professional-standards>.
- 32.5 The Contractor must include written terms and conditions in any agreement that it enters into with Contracted Persons, obliging such Contracted Persons, if they are Immigration and Border Protection Workers, to:
- (a) be aware of and comply with their obligations under the ABF Act and applicable Departmental directions and policies;
 - (b) ensure that their employees and Contracted Persons are aware of and comply with their obligations under the ABF Act and applicable Departmental policies; and
 - (c) ensure that they have the right to cease the involvement of their

employees and Contractor Personnel in the performance of the Requirement, if so requested by the Department under this clause 32.

32.6 If the Contractor or its employees or Contracted Persons, including the Specified Personnel:

- (a) breach this clause 32;
- (b) fail at any time to comply with their obligations under the ABF Act or applicable Departmental policies; or
- (c) fail to exercise any right to cease the involvement of any of their employees or Contracted Persons in the performance of the Requirement, if so requested by the Department under this clause,

then the Department may (without limiting or affecting the Department's rights at law or otherwise), by written Notice, in its absolute discretion:

- (d) require that the Contractor immediately cease the involvement of specified employees or Contracted Persons, including Specified Personnel, in the performance of all or part of the Requirement;
- (e) immediately revoke its approval of a Subcontractor under this Contract; or
- (f) immediately terminate this Contract, whether or not the breach, failure or conduct is capable of being remedied,

without liability and at no additional cost to the Department.

32.7 Without limiting or affecting the Department's rights at law or otherwise, the Department may also claim damages in connection with any of the matters set out in clause 32.6.

32.8 The Contractor acknowledges that the Commonwealth's rights under this clause 32 are in addition to the rights of the Secretary and the Australian Border Force Commissioner under section 57 of the ABF Act, and in particular their rights to require that persons cease to perform services for the Department or to terminate this Contract.

32.9 Any termination of this Contract by the Secretary or the Australian Border Force Commissioner under section 57 of the ABF Act is also a valid termination under the terms and conditions of this Contract.

33 Conflict of interest

33.1 In this clause 33, **Conflict** means any matter, circumstance, interest, or activity affecting the Contractor (including its Personnel) which may or may appear to impair the ability of the Contractor to provide the Requirement to the Department diligently and independently.

33.2 The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date no Conflict that has not been disclosed to the Department exists or is likely to arise in the performance of its obligations under this Contract by itself or by any of its Personnel.

33.3 The Contractor must not, and must ensure that its Personnel do not, engage in any

activity that is likely to give rise to a Conflict.

33.4 If a Conflict arises, or appears likely to arise, during the Term the Contractor agrees to:

- (a) Notify the Department immediately;
- (b) to make full disclosure of all relevant information relating to the Conflict; and
- (c) to take such steps as the Department may reasonably require to resolve or otherwise deal with the Conflict.

34 Risk Management, Fraud and Corruption Control and Business Continuity

34.1 The Contractor must maintain and implement the following Plans once approved by the Department in accordance with clause 18:

- (a) the Risk Management Plan, to facilitate identification, control, management and implementation of appropriate risk mitigation strategies in the provision of the Requirement;
- (b) the Fraud and Corruption Control Plan, to facilitate identification, control, management and implementation of appropriate fraud and corruption mitigation strategies in the provision of the Requirement; and
- (c) the Business Continuity Plan, to ensure the continued provision of the Requirement when a Business Disruption Event arises during the Term of this Contract.

34.2 The Contractor must review and update the Risk Management Plan, Fraud and Corruption Control Plan and, the Business Continuity Plan for the Department's approval every 12 months, as directed by the Department, in accordance with Schedule 1 and:

- (a) in the context of the Risk Management Plan and Fraud and Corruption Control Plan, earlier if a significant risk arises or clause 34.4(b) applies; and
- (b) in the context of the Business Continuity Plan, as soon as practical and no later than 48 hours following a Business Disruption Event.

34.3 The Contractor must, and must ensure all Contractor Personnel (including Subcontractors where relevant), comply with their obligations with respect to:

- (a) the management of risks as specified in the Risk Management Plan;
- (b) the management of controls as specified in the Fraud and Corruption Control Plan; and
- (c) the procedures specified in the Business Continuity Plan to respond, recover, resume and restore normal business operations and the provisions of the Requirement following a Business Disruption Event.

34.4 Without limiting clause 34.1(a) in relation to risk management:

- (a) the Contractor must maintain and regularly update a risk register, and

provide the Department with a copy of the risk register within five (5) Business Days of a written request from the Department;

- (b) subject to clause 34.4(c), where a Party identifies a risk or change in an existing risk which may have a significant effect on the performance of this Contract, the Party must promptly Notify the other Party in writing of the risk as well as its strategy to manage the risk; and
- (c) the Department is not required to disclose information which has been provided to it by other Commonwealth Agencies or the Commonwealth which is subject to express or implied restrictions on disclosure.

34.5 Without limiting clause 34.1(c), in relation to business continuity:

- (a) the Contractor must conduct an exercise or test of the procedures set out in the Business Continuity Plan on an annual basis and provide assurance in writing to the Department that its Business Continuity Plan complies with this Contract; and
- (b) report to the Department:
 - (i) the results of the annual exercise or testing of the Business Continuity Plan referenced in clause 34.5(a) within five (5) Business Days after the conclusion of the exercise or test and results; and
 - (ii) the results of any detailed damage assessment conducted by the Contractor, including recommendations for improvement, following a business interruption within five (5) Business Days after the Business Disruption Event.

34.6 The Department may conduct, or engage a third party auditor to conduct, an audit of the Contractor's compliance with the Risk Management Plan, Fraud and Corruption Control Plan and/or the Business Continuity Plan.

35 Warranties

35.1 The general warranties provided under this clause 35:

- (a) will survive the termination or expiry of this Contract; and
- (b) are in addition to, do not limit and are not limited by any other warranties provided by the Contractor under this Contract.

35.2 The Contractor warrants that:

- (a) it has done everything possible to inform itself fully and completely as to:
 - (i) the requirements in this Contract;
 - (ii) the Law and the conditions, risks, contingencies and all other factors which may affect the timing, scope, cost or effectiveness of performing this Contract; and
 - (iii) all things necessary for delivery and management of this Contract and the performance of the Contractor's obligations under this Contract;

- (b) it enters into this Contract based on its own investigations, interpretations, deductions, information and determinations; and
- (c) it does not rely on any representation, warranty, condition or other conduct, information, statement or document which may have been made by the Department or any person purporting to act on behalf of the Department in entering into this Contract, other than an express warranty contained in this Contract.

35.3 The Contractor represents and warrants that it has, and its Personnel have, and they will both continue to have and to use, the skills, qualifications and experience to provide the Requirement in a skilful, diligent, responsive, professional, efficient and controlled manner, with a high degree of quality and to a standard that complies with this Contract and meets the Department's requirements in full.

35.4 The Contractor warrants that it has the right to grant all licences granted pursuant to this Contract.

35.5 The Contractor warrants that:

- (a) it has the right to enter into this Contract;
- (b) it has:
 - (i) full corporate power and authority; and
 - (ii) all rights, title, licences, interests and property necessary, to lawfully enter into, perform and observe its obligations under this Contract;
- (c) the execution, delivery and performance of this Contract by the Contractor has been duly and validly authorised by all necessary corporate action; and
- (d) the Contractor's signing, delivery and performance of this Contract does not constitute:
 - (i) a violation of any judgment, order or decree;
 - (ii) a material default under any agreement which relates in any way to the provision of the Requirement; or
 - (iii) an event that would, with notice or lapse of time, constitute such a default.

35.6 The Contractor warrants that it has disclosed in writing prior to the Commencement Date any matter that may affect the Contractor's reputation or capability or ability to perform and fulfil its obligations under this Contract, including:

- (a) any relevant litigation, arbitration, mediation, conciliation, proceeding or investigation that is taking place, pending or threatened (either in Australia or overseas); and
- (b) any relevant matters relating to the commercial, technical or financial capacity of the Contractor or of any Subcontractor proposed to be engaged in respect of this Contract.

35.7 The Contractor warrants that:

- (a) it is solvent and there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable;

and

- (b) no Controller is currently appointed in relation to any of its property, or any property of any of its subsidiaries.

35.8 The Contractor warrants that it has not provided, offered or promised a benefit to another person that is not legitimately due to that person with the intention of influencing a foreign public official in the exercise of his or her duties in order to obtain or retain business or a business advantage not legitimately due to its recipient.

35.9 For the purposes of clause 35.8:

- (a) expressions defined in section 70.1 of the *Criminal Code Act 1995* (Cth) have the meanings given to those expressions in that section.
- (b) the warranty in paragraph (i) does not apply to conduct that is lawful in the foreign public official's country (as set out in section 70.3 of the *Criminal Code Act 1995*) or facilitation payments (as set out in section 70.4 of the *Criminal Code Act 1995*) that are notified to the other Party.

35.10 The Contractor warrants that:

- (a) it is not named by the Workplace Gender Equality Agency as an employer that is currently not complying with the *Workplace Gender Equality Act 2012* (Cth);
- (b) it has not had a judicial decision against it (not including decisions under appeal) relating to employee entitlements in respect of which it has not paid the judgment account; and
- (c) it is not on the Commonwealth's consolidated list of individuals and entities to which terrorist asset freezing applies and none of its Personnel are on, or a member of an entity on, that list.

35.11 If the Contractor supplies any items that have been procured from a third party, or that incorporate or rely on goods or services that have been procured from a third party, the Contractor assigns to the Department, to the extent permitted by Law, the benefits of any warranties given by the third party. This assignment does not in any way relieve the Contractor of the Obligation to comply with warranties offered directly by the Contractor under this Contract.

35.12 The Contractor warrants that, to the extent permitted by law, it will not invoke or rely on the *Civil Law (Wrongs) Act 2002* (ACT) Chapter 7A or other State or Territory proportionate liability legislation.

36 Indemnity

36.1 The Contractor must at all times indemnify the Department and its Personnel and any End User (**those indemnified**) from and against any Loss or Liability incurred as a consequence of a Claim (including costs and expenses of defending or settling any Claim referred to above) in connection with;

- (a) loss of or damage to property of those indemnified or any other person;
- (b) personal injury or death of any person;

- (c) any other Liability owed by those indemnified to any other person, arising from or as a consequence of:
 - (d) any act or omission by the Contractor or its Personnel in connection with this Contract;
 - (e) any breach by the Contractor of its Obligations or warranties under this Contract;
 - (f) any unauthorised use or disclosure by the Contractor, its Personnel, or Subcontractors of Personal Information held or controlled in connection with this Contract; or
 - (g) the use by those indemnified of the Contract Material, Existing Contractor Material, Third Party Material or other Auxiliary Material provided by it (including in respect of any infringement of Intellectual Property Rights in that Material).
- 36.2 The right to be indemnified under clause 36.1 is in addition to, and not exclusive of, any other right, power or remedy provided by Law.
- 36.3 This clause 36 will survive seven (7) years after the expiration or termination of this Contract.
- 36.4 The benefit of this indemnity clause 36 is held by the Department on trust for those indemnified.

37 Insurance

- 37.1 In connection with the provision of the Requirement, the Contractor must effect and maintain valid and enforceable insurance policies of the types for the amounts set out in Item 10 of the Contract Details and otherwise in accordance with this clause 37.
- 37.2 The insurance policies referred to in clause 37.1 must be maintained for the Term unless specified otherwise in Item 10 of the Contract Details.
- 37.3 With the exception of the workers compensation insurance, the insurances referred to in clause 37.1 must be effected with insurers with a financial security rating of "A-" or better by Standard & Poors (or the equivalent rating with another recognised rating agency), or an insurer approved by the Department, acting reasonably.
- 37.4 The Contractor must ensure that its Subcontractors are insured as is appropriate (including with respect to the amount of insurance, types of insurance and period of insurance) given the nature of services or work to be performed by them, in a manner consistent with the requirements of this clause 37 as if they were the Contractor.
- 37.5 The Contractor must, upon request by the Department, provide evidence that it has current insurance policies which comply with the requirements of this clause 37 to the Department.
- 37.6 The Contractor must, in respect of the insurances required by this clause 37:
- (a) promptly inform the Department if it becomes aware of any actual, threatened or likely claims which could materially reduce the available

limits of indemnity or which may involve the Department, and must reinstate or replace any depleted aggregate limit resulting from claims that are unrelated to the work under this Contract, if requested to do so in writing by the Department; and

- (b) do everything reasonably required by the Department to enable the Department to claim and to collect or recover monies due under any insurance policy.

38 Guarantees

- 38.1 The Contractor must provide a financial security in accordance with this clause 38 in the amount set out, and by the date set out in Item 11 of the Contract Details.
- 38.2 The security provided under clause 38.1 must be:
- (a) unconditional and irrevocable;
 - (b) issued by a bank or financial institution acceptable to the Department; and
 - (c) in the form set out at Schedule 10.
- 38.3 The security will be released by the Department within 10 Business Days after the release event set out in Item 11 of the Contract Details occurs.
- 38.4 The security provided under clause 38.1 will be exercisable by the Department for either or both of the following:
- (a) to obtain compensation for Loss suffered in the event that the Contractor fails to perform this Contract, including upon termination of this Contract; or
 - (b) to recover any debts due to the Department in relation to the Contract.
- 38.5 The Contractor must provide to the Department on or before the Commencement Date a guarantee:
- (a) executed by its parent company; and
 - (b) in the form set out in Schedule 11,
- which must remain in place until the Department Notifies the Contractor that it is no longer required.
- 38.6 If the Contractor fails to provide or maintain any securities required by this clause 38, then the Department may withhold all or part of any payment under this Contract until the Contractor meets those obligations.
- 38.7 If the Department exercises any or all of its rights under the securities provided under this clause 38, the Department will not be liable for, and the Contractor must release the Department from liability for, any resultant loss or damage to the Contractor.
- 38.8 The rights of the Department to recover from the Contractor the balance, after draw down or exercise of the securities provided for under this clause 38, of loss or damage suffered by the Department will not be limited by the Department's exercise of the security.

39 Books and Records

- 39.1 The Contractor must at all times maintain full, true, accurate and up-to-date accounts and records relating to this Contract. Such accounts and records must:
- (a) include appropriate audit trails for transactions performed;
 - (b) record all receipts and expenses in relation to the provision of the Requirement;
 - (c) record all other matters on which the Contractor is required to report by this Contract;
 - (d) be kept in a manner that permits them to be conveniently and properly audited, and enable the Contract Charges and any other amounts payable to be determined;
 - (e) comply with any applicable Australian Accounting Standards; and
 - (f) be made available to the Department as required for:
 - (i) monitoring and reviewing the performance of the Contractor's obligations under this Contract, including being available for audit and access in accordance with clauses 39.5 and 41; and
 - (ii) the Department to satisfy its reporting and record keeping obligations under the *Public Governance, Performance and Accountability Act 2013*.
- 39.2 The Contractor must securely retain, and require its Subcontractors to securely retain, for a period of seven (7) years after termination or expiration of this Contract, all accounts and records referred to in clause 39.1.
- 39.3 The Contractor agrees to comply with any reasonable directions from the Department with respect to any applicable Commonwealth, State or Territory Laws relating to archival requirements.
- 39.4 The Contractor must bear its own costs of complying with this clause **Error! Reference source not found..**
- 39.5 This clause **Error! Reference source not found.** applies for the Term and for a period of seven (7) years from the termination or expiry of this Contract.

40 Access to premises

- 40.1 The Contractor must allow:
- (a) the Department Representative;
 - (b) the Australian National Audit Office;
 - (c) the Privacy Commissioner or his or her delegate;
 - (d) the Australian Information Commissioner or his or her delegate;
 - (e) the Commonwealth Ombudsman or his or her delegate;
 - (f) the Commonwealth Integrity Commissioner or his or her delegate; and
 - (g) other persons authorised by the Department Representative,

to access the Contractor's premises at all reasonable times and to inspect and copy all relevant documentation and records, however stored, in the Contractor's possession or control, for purposes associated with this Contract or any review of performance under the Contract.

- 40.2 The rights referred to in clause 40.1 are subject to:
- (a) the provision of reasonable prior Notice to the Contractor or in the case of the access to a Clinic Location, a minimum of 48 hours prior Notice;
 - (b) compliance with the Contractor's reasonable security procedures;
 - (c) each Party bearing its own cost arising out of or in connection with any access or inspection; and
 - (d) if appropriate, execution of a deed of confidentiality relating to non-disclosure of the Contractor's Confidential Information.
- 40.3 The Contractor must ensure that any Subcontract contains an equivalent clause granting the rights to the Commonwealth that are specified in clause 39.5.
- 40.4 This clause 39.5 applies for the Term and for a period of seven (7) years from the date of expiration or termination of the Contract.

41 Additional Access to Documents

- 41.1 This clause 41 applies only if this Contract is a Commonwealth Contract.
- 41.2 Where the Department has received a request for access to a document created by, or in the possession of, the Contractor or any Subcontractor that relates to the performance of this Contract (but not to the entry into this Contract), the Department may at any time by giving Notice require the Contractor to provide the document to the Department and the Contractor must, at no additional cost to the Department, promptly comply with the Notice but in any event no later than fourteen (14) days from the date of receipt of the Department's request.
- 41.3 The Contractor must include in any Subcontract provision that will enable the Contractor to comply with its obligations under this clause 41.

42 Recovery of Possession of Property

- 42.1 If an Insolvency Event occurs in relation to the Contractor or this Contract is terminated or expires, the Department will be entitled to immediately take possession of any property owned by the Department in the possession of the Contractor or a Subcontractor.
- 42.2 The Contractor grants to the Department a right for any person authorised by the Department to enter any premises occupied by the Contractor to remove any property owned by the Department, in the circumstances contemplated in clause 42.1, including by detaching them from any item to which they may be attached, or by detaching them from any land to which they may be fixed.
- 42.3 The Contractor must ensure that each Subcontractor that has possession of any property owned by the Department grants to the Department a right for a person authorised by the Department to enter any premises occupied by the Subcontractor

on the same terms as clause 42.2.

42.4 This clause 42 survives the termination of this Contract.

43 Variation of this Contract

43.1 No variation of this Contract will be of any force or effect unless it is in writing and signed by the Parties.

43.2 The Parties must follow the processes in Schedule 5 if either Party wishes to vary the Contract.

43.3 Any changes to the Contract Charges and Expenses associated with a variation of this Contract must:

- (a) not exceed any reasonable additional cost; and
- (b) take fully into account any reduction in cost.

43.4 Any variation to this Contract takes effect from the date on which the Parties execute the necessary document to implement that change unless another date for commencement of the variation is specified in that document.

44 Dispute resolution

44.1 The Parties agree that any dispute arising during the course of this Contract will be dealt with as follows:

- (a) the Party claiming that there is a dispute will send to the other a Notice setting out the nature of the dispute;
- (b) the Parties will try to resolve the dispute by direct negotiation, including by referring the matter to senior management of the Parties with authority to intervene and direct some form of resolution;
- (c) the Parties have ten (10) Business Days from the sending of the Notice (or such other time as is agreed by the Parties) to reach a resolution or to agree that the dispute will be referred to mediation or some other form of alternative dispute resolution procedure; and
- (d) either Party may commence legal proceedings if:
 - (i) there is no resolution or agreement within the period referred to in clause 44.1(c) and the Parties have not agreed to refer the dispute to mediation or some other form of alternative dispute resolution procedure; or
 - (ii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within fifteen (15) Business Days of the submission (or such extended time as the Parties may agree in writing before the expiration of the fifteen (15) Business Days).

44.2 Despite the existence of a dispute, the Contractor must continue to provide the Requirement unless Notified otherwise by the Department.

44.3 Clause 44.1 does not apply to:

- (a) action by either Party under or purportedly under clause 45;
- (b) action by the Department under or purportedly under clause 19.6 or 46;
or
- (c) either Party commencing legal proceedings for urgent interlocutory relief.

45 Termination for default

- 45.1 If the Contractor fails to perform any obligation under this Contract, the Department may (without limitation to any other remedy available at Law):
- (a) if it considers that the failure is not capable of remedy – terminate this Contract immediately by Notice; or
 - (b) if it considers that the failure is capable of remedy – give Notice requiring that the failure be remedied within the time specified in the Notice and, if the failure is not remedied within that time, terminate this Contract immediately by giving a second Notice.
- 45.2 The Department may also, by Notice, terminate this Contract immediately (but without prejudice to any prior right of action or remedy which either Party has or may have) if:
- (a) a failure to comply with clause 6 (Transition-In);
 - (b) an Insolvency Event occurs in respect of the Contractor, except to the extent the exercise of a right under this clause 45.2(b) is prevented by Law;
 - (c) the Contractor fails to obtain or ceases to hold any Authorisation required to enable it to provide the Requirement or perform any of its Obligations;
 - (d) if the Contractor ceases for any reason to be able lawfully to provide the Requirement or perform any of its Obligations;
 - (e) if, in the Department's opinion, there is a Change of Control in relation to the Contractor without the prior written consent of the Department;
 - (f) the Contractor assigns its rights under the Contract otherwise than in accordance with the requirements of the Contract;
 - (g) the Contractor novates its rights or obligations under the Contract otherwise than in accordance with the requirements of the Contract; or
 - (h) the Contractor commits any breach for which the Contract provides that a Notice of termination may be given.

46 Termination for convenience

- 46.1 The Department may, at any time by Notice, terminate this Contract or reduce the scope of the Requirement immediately.
- 46.2 Where there has been a termination under clause 46.1, the Department will be liable only:

- (a) to pay any Contract Charges or Expenses relating to those parts of the Requirement conducted before the effective date of termination; and
- (b) to reimburse any expenses reasonably and unavoidably incurred by the Contractor and directly attributable to the termination or reduction,

where the Contractor substantiates these amounts to the satisfaction of the Department Representative.

46.3 For the purposes of clause 46.2 the Contractor is not entitled to claim any loss of profits, loss of business revenue, loss of opportunity, economic loss, indirect, special or consequential loss or any special or punitive damages.

46.4 The Department is not liable to pay compensation under clause 46.2 in an amount which would, in addition to any amounts paid or due or becoming due to the Contractor under this Contract, together exceed the Contract Charges.

47 General termination and scope reduction provisions

47.1 Upon receipt of a Notice of termination or reduction, the Contractor agrees to:

- (a) stop (or reduce) work as specified in the Notice;
- (b) comply with any directions given to the Contractor by the Department;
- (c) take all available steps to minimise Loss resulting from that termination or reduction; and
- (d) continue work on any part of the Requirement not affected by the Notice.

47.2 Where there has been a reduction in the scope of the Requirement, the Department's liability to pay the Contract Charges or Expenses under this Contract will, unless there is agreement in writing to the contrary, abate in accordance with the reduction in the Requirement.

47.3 The Contractor must, and must ensure that all Subcontractors, deliver to the Department (or as directed by the Department) within 20 Business Days after receipt of a Notice of termination or reduction (or such other period agreed by the Department in writing) or upon the expiry of the Contract:

- (a) all documents and data in the possession of the Contractor or its Personnel which contain or relate to any Confidential Information or which are security classified;
- (b) all Commonwealth Material in the possession of the Contractor or its Personnel;
- (c) any other property owned by the Department in the possession of the Contractor or its Personnel.

47.4 The Contractor will not be entitled to compensation for loss of prospective profits.

48 Notices

48.1 A Notice is deemed to be effective if it is in writing and dealt with as follows:

- (a) if given by the Contractor to the Department, addressed and forwarded

to the Department, for the attention of the Department Representative by hand or sent by pre-paid post, facsimile or email to the Department's address indicated in Item 12 of the Contract Details or as otherwise Notified by the Department Representative; and

- (b) if given by the Department to the Contractor, signed by the Department Representative and forwarded to the Contractor by hand or sent by pre-paid post, facsimile or email to the Contractor's address indicated at Item 12 of the Contract Details or as otherwise Notified by the Contractor Representative.

48.2 Any Notice will be deemed to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, on the sixth Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside of Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates message confirming successful transmission of the entire Notice, unless, by 5pm the day next following the day of transmission, the recipient informs the sender that the recipient has not received the entire Notice; and
- (d) if sent by email, when the email enters the address's information system, unless the sender's information system receives a message within one Business Day that the email has not been delivered to the recipient,

but if the receipt, transmission or entry into the information is not on a Business Day or is after 5pm (recipient's local time) on Business Day, the Notice is taken to be received at 9am (recipient's local time) on the next Business Day.

49 Assignment or Novation

- 49.1 The Contractor must not assign, in whole or in part, its rights under this Contract or novate its rights or obligations under this Contract without the prior written consent of the Department.
- 49.2 The Department's consent may be given or withheld in the Department's absolute discretion, and may be given subject to conditions. The Contractor must comply with any such conditions imposed by the Department.
- 49.3 The Contractor must provide the Department with reasonable time to consider any request for consent under clause 49.1.
- 49.4 If the Contractor assigns or novates the Contract other than in accordance with this clause 49, the Department will be entitled to terminate this Contract in accordance with clause 45.2(f) or clause 45.2(g) (as the case may be).

50 Change of Control

- 50.1 Subject to clause 50.2, the Contractor shall seek the Department's prior written consent to any proposed Change of Control by providing Notice to the Department

at least 10 Business Days before the proposed Change of Control is to occur.

50.2 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 Department Representative could not have been obtained in accordance with clause 50.1, the Contractor shall seek that consent by providing Notice to the Department within five (5) Business Days after the Change of Control.

50.3 In any Notice given to the Department seeking consent to a Change of Control, the Contractor shall include the following details:

- (a) the ownership and management arrangements of the Contractor that were in place immediately before the change or, if the change has yet to occur, that were in place at the time the Contractor became aware of the prospective change;
- (b) the ownership and management arrangements of the Contractor 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 Contractor reasonably expects to be put in place if the change occurs;
- (c) the impact (if any) that the change has had on the Contractor's ability to meet its obligations under the Contract or, if the change has yet to occur, that the Contractor reasonably expects the change to have on that ability; and
- (d) the steps the Contractor has taken or proposes to take to minimise the impact of the change or prospective change.

50.4 If there is a Change of Control and the Department does not consent to the Change of Control, then the Department will be entitled to give the Contractor a Notice of termination under clause 45.2(e).

50.5 Nothing in this clause 50 requires the Contractor to act in a manner inconsistent with its obligations under the Corporations Act or equivalent laws and regulations in a foreign jurisdiction.

51 Relationship of the Parties

51.1 The Contractor must not represent itself, and will ensure that its Personnel (including Subcontractors) do not represent themselves, as being Personnel of the Department, or as otherwise able to bind or represent the Department.

51.2 The Contractor is not by virtue of this Contract or for any purpose Personnel of the Department, and does not have any power or authority to bind or represent the Department.

52 Waiver

52.1 A waiver by either Party in respect of any breach of a condition or provision of this Contract will not be deemed to be a waiver in respect of any continuing or subsequent breach of that provision, or breach of any other provision.

52.2 A single or partial exercise by a Party of any right or remedy it holds under this

Contract or at Law does not prevent the Party from exercising the right again or to the extent it has not fully exercised the right.

53 Entire agreement

- 53.1 This Contract records the entire agreement between the Parties in relation to the subject matter with which it deals. To the extent permissible by law, no Party can rely on an earlier agreement, or anything said or done by another Party or by a director, officer, agent or employee of that Party before execution of this Contract.

54 Governing law and jurisdiction

- 54.1 This Contract is governed by the law specified in Item 13 of the Contract Details and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

55 Survivorship

- 55.1 Any provision of this Contract which expressly or by implication from its nature is intended to survive the termination or expiration of this Contract and any rights arising on termination or expiration will survive, including provisions relating to Confidential Information, IPR, rights of the Department to recover money, security, privacy, transition out, and any warranties, guarantees, licences, indemnities.

56 Severability

- 56.1 If any part of this Contract is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of this Contract will not be affected and will be read as if that part had been severed.

57 Consents or approvals

- 57.1 Where this Contract provides for a Party's consent or approval, that consent or approval may be granted, withheld or conditions applied to it, in the Party's absolute discretion, unless the provision states that consent or approval will not be unreasonably withheld.

58 Counterparts

- 58.1 This Contract may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

59 Transition out

- 59.1 In this clause 59:

- (a) **Transition Out Period** means the period which will commence on the earlier of:
- (i) the date on which this Contract is terminated (in whole or in part) pursuant to clause 45 or 46; or
 - (ii) six months before the end of the Term,
- and will continue for six months or until the date on which the Department Notifies the Contractor that it no longer requires transition of the Requirement from the Contractor to the Department or any incoming contractor.

59.2 During the Transition Out Period the Contractor must:

- (a) fully co-operate with the Department and any incoming contractor and do all tasks and things as may be reasonably necessary to ensure the smooth transition of the provision of the Requirement from the Contractor to the incoming contractor or the Department (as the case may be) in a manner which ensures no interruption to provision of the Requirement;
- (b) promptly provide any information and documents relating to the Contractor's provision of the Requirement to the incoming contractor or the Department, as directed by the Department;
- (c) use its best endeavours to resolve any issues arising with the transition from the Contractor to the incoming contractor or the Department;
- (d) transition the Requirement from the Contractor to the Department or any incoming contractor in accordance with the approved Contract Transition-Out Plan.

59.3 The Contractor must return all Commonwealth Material and Contract Material, to the Department during the Transition Out Period, or at any time as requested by the Department, in accordance with the principle of IS016175, in a digital format if requested by the Department.

59.4 The Contractor must comply with all reasonable directions from the Department, having regard to the requirements of the Department for any incoming contractor.

59.5 The Contractor agrees that it will not hinder in any way, the transition of the provision of services and deliverables, including those similar to the Requirement, to any incoming contractor upon termination or expiration of this Contract in whole or in part.

59.6 Subject to clause 59.7, in the event that the Transition Out Period continues for a period of more than six months, the Parties will negotiate in good faith a fee to be paid by the Department to the Contractor for services and deliverables required by the Department to be provided by the Contractor after the initial six month period.

59.7 The Department will not be liable to pay any additional fees to the Contractor in the circumstances referred to in clause 59.6 where the delay in completing the transition out of the Requirement within six months is a result of a failure by the Contractor to do, or not do something.

59.8 This clause 59 will survive the expiration or termination of this Contract.

EXECUTION

SIGNED for and on behalf of the
Commonwealth of Australia as represented
by the Department of Home Affairs
ABN 33 380 054 835 by its duly authorised
representative:

Signature of Witness

Signature of Representative

Full name of Witness

Full name of Representative

Date

Position of Representative

SIGNED on behalf of [Insert Contractor's
name] (ACN [Insert Contractor's ACN])
acting by the following persons, in
accordance with s127 of the *Corporations
Act 2001* (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Date

Schedule 1 Statement of Requirement

[Note to Tenderers: This Schedule will be completed following negotiations with the preferred Tenderer based on the Statement of Requirement in the RFT and the preferred Tenderer's tender response.]

Schedule 2 Contract Charges and Expenses

[Note to Tenderers: This Schedule will be completed following negotiations with the preferred Tenderer based on the preferred Tenderer's response.]

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

Schedule 3 Performance Measures and Pricing Mechanism

[Note to Tenderers: This Schedule will be completed following negotiations with the preferred Tenderer based on the preferred Tenderer's response.]

1. Definitions

In this Schedule 3, unless the contrary intention appears, capitalised terms have the following meaning:

Contract Year means:

- (a) for the first year during the Term, the period commencing from the Planned Commencement of Services until 30 June 2023; and **[Note to Tenderers: Transition-in is intended to be completed by 1 July 2022. However, if there is a delay, the Department intends that the first Contract Year will be shorter to align subsequent Contract Years.]**
- (b) for each subsequent year during the Term, the annual period commencing 1 July each year and ending on 30 June in the following year.

CPL Price Index means the Wage Price Index, Australia, as published by the Australian Bureau of Statistics.

Key Performance Scores or **KPS** means the performance scores calculated in accordance with Part C of this Schedule 3.

Maximum Performance Adjustment equates to 20%.

Performance Indexation Adjustment or **PIA** means the performance-based adjustment to the Client Price List calculated in accordance with this Schedule 3.

PIA Assessment Period means:

- (a) for the first Contract Year, the period commencing from the Planned Commencement of Services until 30 April 2023;
- (b) for each subsequent year during the Term, each period during the Term commencing from 1 May until 30 April in the following year.

Pricing Mechanism means the mechanism to determine pricing as set out in Part A and Part B of this Schedule 3.

2. Introduction

This Schedule is divided into five parts:

- (a) **Part A – Changes to the Client Price List:** this section sets out the principles and formula for calculating any changes to the Client Price List for each Contract Year;
- (b) **Part B – Performance Indexation Adjustment:** this section sets out the principles and formulas for calculating the Performance Indexation Adjustment, which is calculated annually on the dates and in accordance with the process as specified in section D.1 (Calculating the PIA and changes to the Client Price List) and used as part of the determination of Client Price List in the next Contract Year based on performance against the Key Performance Indicators;
- (c) **Part C – KPI Tables and Calculation Parameters:** this section sets out the KPIs, the method for calculating Key Performance Scores, which are calculated for each KPI in each reporting period (e.g. monthly for most KPIs), and calculation parameters which are used in the calculation of the Performance Indexation Adjustment;

- (d) **Part D – Management of the Performance Regime:** this section sets out the relevant arrangements and mechanisms that will enable the Commonwealth and the Contractor to apply the Pricing Mechanism in a productive and effective way through the Term; and
- (e) **Part E – Abatement – Final PIA Period:** this section sets out the Abatement which is payable by the Contractor under Part E.

PART A – Changes to the Client Price List

A.1 Purpose of Pricing Mechanism

The purpose of the Pricing Mechanism is to define how the Client Price List may change for each Contract Year.

Any annual changes to the Client Price List will be the product of two (2) separate elements:

1. indexation in accordance with section A.2 below; and
2. adjustments to reflect the Contractor's performance against the KPIs in the previous Contract Year in accordance with Part B.

No other changes to the Client Price List will apply under the Contract except those defined and calculated using the Pricing Mechanism, unless otherwise agreed by the Parties in accordance with clause 43 of the Contract.

The Pricing Mechanism provides financial incentives to the Contractor to perform the Requirement to the required standards as set out in the KPIs listed in Part C.

A.2 Calculation of annual change to the Client Price List – Indexation

At the start of each Contract Year, the Client Price List may change according to the following formula:

$$CPL_{y+1} = CPL_1 \times \frac{Index_{CPL,y+1}}{Index_{CPL,1}} \times (1 + PIA_y)$$

Where:

CPL_{y+1} is the Client Fee in the subsequent Contract Year

CPL_1 is the Client Fee in the current Contract Year

$Index_{CPL,y+1}$ is the last published value of the CPL Price Index prior to commencement of the next Contract Year

$Index_{CPL,1}$ is the last published value of the CPL Price Index prior to commencement of the current Contract Year of the Contract

PIA is the Performance Indexation Adjustment as calculated in section B.2 below, reflecting the Contractor's performance against the KPIs in the PIA Assessment Period (as defined in section D.1 (Calculating the PIA and changes to the Client Price List)) as applicable.