

Senate Inquiry – Incidents at Manus OPC on 16-18 February 2014

Request 2 (k)

Copies of all contracts the DIBP entered into with G4S, Transfield Services, the Salvation Army, interpreting services and IHMS to manage the Manus Island.

Response 2 (k)

A copy of the following contracts has been provided:

- G4S
- G4S Deed of Variation
- IHMS
- The Salvation Army
- Translating and Interpreting Service Standard Deed
- Transfield Services (Australia) Pty Limited.

CONTRACT

IN RELATION TO THE PROVISION OF SERVICES ON MANUS ISLAND
(PNG)

Commonwealth of Australia represented by Department of Immigration and
Citizenship

G4S Australia Pty Ltd
ACN 100 104 658 ABN 64 100 104 658

Released by DIBP under the
Freedom of Information Act 1982

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CONTRACT

IN RELATION TO THE PROVISION OF SERVICES ON MANUS ISLAND (PNG)

Date

This Contract is made on ~~1 December 2012~~
1 February 2013

Parties

This Contract is made between and binds the following parties:

1. The **Commonwealth of Australia**, acting through and represented by the Department of Immigration and Citizenship ABN 33 380 054 835 (the Department)
2. **G4S Australia Pty Ltd** ABN 64 100 104 658 and ACN 100 104 658 Level 4, 441 St Kilda Road, Melbourne, Victoria, 3004 (the **Service Provider**)

Recitals

This Contract is made in the following context:

- A. The Department wishes to obtain operational and maintenance services for the people being transferred to a Regional Processing Country (Papua New Guinea (PNG) - Manus Island) (Transferees) from October 2012.
- B. The Department has asked the Service Provider to provide these services as a matter of urgency to the Department in respect of Transferees and other persons nominated by the Department on Manus Island (PNG) on the terms of this Contract.
- C. The parties have agreed that the Service Provider will provide services to Transferees and other persons nominated by the Department on Manus Island (PNG) on the terms of this Contract.

Operative Provisions

1. Definitions and interpretation

1.1. Definitions

1.1.1. In this Contract, unless the context indicates otherwise:

Business Day means a weekday other than a public holiday in the place specified or, if no place is specified, in the Australian Capital Territory, Australia;

Code of means the code of conduct provided by the Department to the Service Provider that outlines expectations and

Conduct	guidelines regarding the conduct of the Service Provider and its Personnel;
Commencement Date	means 10 October 2012;
Commonwealth Material	means any Material: <ul style="list-style-type: none"> a. provided by the Department to the Service Provider for the purposes of this Contract; or b. derived at any time from the Material referred to in paragraph a;
Confidential Information (of the Service Provider)	means information that is by its nature confidential and is described in Schedule 5;
Contract Administrator	means the person appointed by the Department Secretary to perform the duties of Contract Administrator and includes any person from time to time acting in that position as notified to the Service Provider in writing;
Contract Authority	means the person occupying the position of First Assistant Secretary, Detention Infrastructure and Services Division;
Contract Material	means any Material: <ul style="list-style-type: none"> a. created for the purposes of this Contract; b. provided or required to be provided to the Department as part of the Services; or c. derived at any time from the Material referred to in paragraphs a or b;
Department	means the Commonwealth of Australia as represented by any department, agency or authority of the Commonwealth which is from time to time responsible for administering this Contract;
Department Operations Team Leader	means the person (or delegate) appointed by the Department to perform the role of Department Operations Team Leader at the Site;
Excluded Items	means items that may not be brought to the Site under an applicable law or policy issued by the Department;
Execution Date	means the date on which the last of the parties executes this Contract;
Excusable Performance Failure Event	means any of the following events: <ul style="list-style-type: none"> a. a fire, flood, earthquake, pandemic, elements of nature or other acts of God; b. war or other state of armed hostilities, national emergency, embargo or action by customs;

- c. unavailability of essential services such as electricity, gas or water for more than 48 hours;
- d. a restraint by any government agency in a Regional Processing Country,
- e. any other event or occurrence beyond the control of the Service Provider,

other than as a result of the acts or omissions of the Service Provider or its Personnel or any of its subcontractors, which prevents or delays the performance of this Contract by the Service Provider;

GST

has the meaning that it has in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Incident

means an activity which threatens, harms or impacts, or has the potential to threaten, harm or impact upon:

- a. the welfare of Transferees;
- b. the good order, safety or security of a Site;
- c. the success of escort/transfer activities; or
- d. immigration processing;

Information Officer

means any of the information officers appointed under the *Australian Information Commissioner Act 2010* (Cth) when performing privacy functions as defined in that Act;

Information Privacy Principle

has the same meaning as it has in the *Privacy Act 1988* (Cth);

In Trust Property

means property of a Transferee that is stored by the Service Provider;

Intellectual Property

includes:

- a. all copyright (including rights in relation to phonograms and broadcasts);
- b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and
- c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,

but does not include:

- d. Moral Rights;
- e. the non-proprietary rights of performers; or
- f. rights in relation to Confidential Information;

Key

means a Key Performance in the Performance Management

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Performance Measure	Framework;
Key Personnel	means the Service Provider Personnel specified under clause 4.4 as Key Personnel;
Maintenance	means work that maintains the functionality to applicable performance specifications (or where there are no specifications, to reasonable, safe operating standards) of the Site and includes preventative maintenance, repairs, replacement of lost or damaged items, refurbishment and restoration of work;
Material	means any thing in relation to which Intellectual Property rights arise;
Migration Act	means the <i>Migration Act 1958</i> (Cth);
Moral Rights	means the following non-proprietary rights of authors of copyright Material: <ul style="list-style-type: none"> a. the right of attribution of authorship; b. the right of integrity of authorship; and c. the right not to have authorship falsely attributed;
National Code of Practice for the Construction Industry	means the National Code of Practice for the Construction Industry 1997, a copy of which can be downloaded from www.deewr.gov.au/building ;
Official Information	means any information developed, received or collected by or on behalf of the Department to which the Service Provider gains access under or in connection with this Contract and the terms of the Contract;
Open Access Licence	means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the material subject to certain restrictions. An Open Access Licence includes any Department or Australian Government open access licence and any Creative Commons Attribution licence (see http://creativecommons.org.au/learn-more/licences);
Pass Through Cost	has the meaning given by Schedule 2 [Fees and Payment];
Performance Management Framework	means the Performance Management Framework developed in accordance with clause 4.4;
Personnel	means: <ul style="list-style-type: none"> a. in relation to the Service Provider - any natural person who is an officer, employee, agent or professional advisor of the Service Provider or of its subcontractors; and

- b. in relation to the Department - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the Commonwealth;

Regional Processing Country	means a country designated by the Minister for Immigration and Citizenship, acting under subsection 198AB(1) of the Migration Act as a regional processing country;
Schedule	means the schedules to this Contract and includes the Schedules as amended or replaced from time to time by agreement in writing between the parties;
Services	means the services described in Schedule 1 [Statement of Work];
Services Fee	has the meaning given in Schedule 2 [Fees and Payment];
Site	means the site notified by the Department to the Service Provider on Manus Island (PNG) and where another site is established on Manus Island, will also include reference to that other site;
Term	has the meaning given by clause 2.4; and
Transferee	means a person transferred to a Regional Processing Country, in relation to this Contract to Manus Island in Papua New Guinea.
WHS Law	means all statutes, regulations, statutory instruments, subordinate legislation, codes of practice and standards (including those of the Commonwealth of Australia and of the location where the Services are being delivered) dealing with or relevant to health and safety in workplaces and of workers and others who may be affected by the carrying out of work and includes any approvals, permits, licences, directions or requirements of an authority exercising regulatory powers in respect of such matters.

- 1.1.2. In this Contract, unless the contrary intention appears:
- a. words importing a gender include any other gender;
 - b. words in the singular include the plural and words in the plural include the singular;
 - c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
 - d. words importing a person include a partnership and a body whether corporate or otherwise;
 - e. a reference to dollars is a reference to Australian dollars;
 - f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;

- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. a reference to an Item is a reference to an Item in the Schedules;
- i. the Schedules and any Attachments form part of this Contract;
- j. if any conflict arises between the terms and conditions contained in the clauses of this Contract and any part of a Schedule (and Attachments if any), the terms and conditions of the clauses prevail;
- k. if any conflict arises between any part of a Schedule and any part of an Attachment, the Schedule prevails; and
- l. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.2. Guidance on construction of Contract

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

2. General

2.1. Contract objectives

- 2.1.1. The primary objectives of this Contract are to:
 - a. provide open, accountable and transparent Services to Transferees on Manus Island (PNG);
 - b. provide Transferees with a standard and range of operational and maintenance services that is the best available in the circumstances, and utilising facilities and personnel on Manus Island (PNG) and that as far as possible (but recognising any unavoidable limitations deriving from the circumstances of Manus Island (PNG)) is broadly comparable with services available within the Australian community; and
 - c. provide the Services identified in Schedule 1 [Statement of Work] to this Contract.

2.2. Cooperation and good faith

- 2.2.1. The parties intend to conduct themselves and perform this Contract in the spirit of cooperation and good faith.
- 2.2.2. For avoidance of doubt, the spirit of cooperation and good faith does not override or limit the provisions of this Contract.
- 2.2.3. The parties acknowledge that the terms of this Contract require them to reach agreement on a range of matters. The Service Provider must take all steps necessary to prepare relevant documentation and respond to any documentation provided by the Department in relation to these matters in a timely manner. For the avoidance of doubt and without limiting clause 15.1 or 15.2, if notwithstanding this, the parties fail to reach agreement, the Department may terminate this Contract in accordance with clause 15.1.

2.3. Papua New Guinea Memorandum of Understanding

- 2.3.1. The Service Provider agrees not to permit any act or omission that causes or may cause the Commonwealth to be in breach of its Memorandum of Understanding with Papua New Guinea or with the related Administrative Arrangements (a copy of which will be provided by the Department to the Service Provider).

2.4. Term

- 2.4.1. This Contract commences on the Commencement Date and, subject to an extension pursuant to clause 2.4.2, continues until the first to occur of:
- a. the Contract is terminated under clause 15; or
 - b. 12 months after the Commencement Date.
- 2.4.2. The Department may extend the term of this Contract beyond the initial Term for one or more periods up to a total of 12 months on the terms and conditions of this Contract then in effect, by providing in each case at least 30 days written notice to the Service Provider.
- 2.4.3. The parties acknowledge that the Service Provider has been providing Services under the terms of a letter of intent from the Department dated 12 October 2012. The parties acknowledge that:
- a. the Service Provider has been providing Services from the Commencement Date in good faith and has relied on the terms of that letter; and
 - b. as from the date that Transferees first arrived at the Site, the Services are to be provided in accordance with Schedule 1 [Statement of Work].

2.5. Transition-in

- 2.5.1. The Service Provider must commence the provision of Services on the Commencement Date and must perform all activities required to ensure it is ready to provide Services in accordance with this Contract on and from that date.

3. Services

3.1. Service obligations

- 3.1.1. Schedule 1 [Statement of Work] of this Contract sets out the specific requirements for the Services to be performed on Manus Island (PNG). The Department may request the Service Provider to provide other services on terms to be agreed. Once agreed, the parties will amend this Contract to include the other services and the other services will be Services for the purposes of this Contract.
- 3.1.2. In accordance with clause 3.3 the Service Provider is required to comply with all applicable laws. The requirements in Schedule 1 are to be read subject to that requirement.
- 3.1.3. The Service Provider agrees to:
- a. provide the Services and meet the requirements described in Schedule 1 [Statement of Work];
 - b. adopt relevant best practice, including any applicable Department, Commonwealth or industry standards and guidelines;
 - c. once agreed, implement and comply with the performance management framework described in Schedule 5 [Performance Management Framework]; and
 - d. submit invoices, and any required supporting documents, in the manner specified in Item 5 of Schedule 2 or as otherwise specified by the Department.

3.2. Facilities and assistance

- 3.2.1. The Department will provide the Service Provider with facilities and assistance specified in Item 6 of Schedule 2 and such other facilities and assistance as agreed between the parties from time to time.
- 3.2.2. The Service Provider acknowledges that:
- a. it will be sharing some of the facilities referred to in clause 3.2.1 with other service providers and the Department personnel; and
 - b. from time to time the Department may require the Service Provider to move out of part of the facilities or otherwise adjust the arrangements that apply to the access to the facilities.

The Service Provider will cooperate with the other service providers and the Department in relation to the management and use of the facilities.

3.3. Compliance with laws

3.3.1. The Service Provider must, in performing its obligations in this Contract, comply, and ensure compliance by all its Personnel, with:

- a. all applicable laws, including those applicable in Papua New Guinea and those Australian laws that are applicable to the Services or the Site; and
- b. all applicable Commonwealth policies as notified to the Service Provider from time to time.

3.3.2. The Service Provider may seek assistance from the Department in complying with clause 3.3.1, for example in respect of Personnel and subcontractor clearances, resources imports and the establishment of facilities and, without limiting the Service Provider's obligations in connection with the Contract, the Department will provide assistance to the extent it is reasonably able to do so.

3.4. Compliance with Fair Work Principles

3.4.1. The Service Provider must in relation to Personnel employed by the Service Provider comply, and as far as practicable must ensure its subcontractors comply, with all relevant requirements of the Fair Work Principles as set out in the Fair Work Principles User Guide (available at <http://www.deewr.gov.au/WorkplaceRelations/Policies/FairWorkPrinciples/Documents/FWPUUserGuide.pdf> including by:

- a. complying with all applicable workplace relations, occupational health and safety and workers' compensation laws;
- b. informing the Department of any adverse court or tribunal decision for a breach of workplace relations law, occupational health and safety laws or workers' compensation laws made against it during the term of this Contract and any remedial action it has taken, or proposes to take, as a result of the decision;
- c. providing the Department any information the Department reasonably requires to confirm that the Service Provider (and any subcontractor) is complying with the Fair Work Principles; and
- d. participating in all compliance activities associated with its legal obligations, including those arising under the Fair Work Principles. Compliance activities may include responding to requests for information and/or audits undertaken by the Commonwealth, its nominees and/or relevant regulators.

3.4.2. Compliance with the Fair Work Principles shall not relieve the Service Provider from its responsibility to comply with its other obligations under this Contract.

3.4.3. If the Service Provider does not comply with the Fair Work Principles, without prejudice to any rights that would otherwise accrue to the Department, the

Department or any other Commonwealth Department, shall be entitled to publish details of the Service Provider's failure to comply (including the Service Provider's name) and to otherwise provide those details to other Commonwealth agencies.

- 3.4.4. As far as practicable, the Service Provider must:
- a. not use a subcontractor in relation to this Contract where the subcontractor would be precluded from contracting directly with the Department under the requirements of the Fair Work Principles; and
 - b. ensure that all subcontracts impose obligations on subcontractors equivalent to the obligations specified in clauses 3.4.1 to 3.4.4.

4. Management and governance

4.1. Project management

- 4.1.1. The Service Provider must comply with the project management and governance arrangements as outlined in Schedule 1 [Statement of Work] of this Contract.

4.2. Department Personnel

- 4.2.1. The Department will appoint a:
- a. Contract Administrator; and
 - b. Department Operations Team Leader.

4.3. Liaison with Contract Administrator

- 4.3.1. The Service Provider agrees:
- a. to liaise with the Contract Administrator and Department Operations Team Leader (if applicable) as reasonably required; and
 - b. to comply with directions of the Contract Administrator that are consistent with this Contract.

4.4. Performance Management Framework

- 4.4.1. The parties will jointly develop and agree a Performance Management Framework as soon as possible after, and in any event within 8 weeks of, the Execution Date. The Performance Management Framework will be consistent with the principles set out in Schedule 6 [Performance Management Framework Principles] and will include:
- a. details of key deliverables and key performance measures;
 - b. processes and procedures for managing and responding to Excusable Performance Failure Events;
 - c. an abatement regime in respect of the level of performance achieved in the performance of the Services; and

- d. details of the format, content and frequency of performance reports to be submitted in accordance with clause 4.5.

4.4.2. Once the Performance Management Framework has been developed and agreed, the parties will implement the Performance Management Framework.

4.4.3. The parties will periodically review the Performance Management Framework to ensure it remains current and relevant to this Contract and the overall operation and management of the Sites.

4.5. Reports

4.5.1. The Service Provider must as part of the Performance Management Framework and in collaboration with other service providers develop a draft performance report format to be used to report on its performance of its obligations under this Contract and the operation and management of the Sites.

4.5.2. The draft performance report format must address the issues set out in Schedule 6 and must be submitted to the Department for approval within 6 weeks of the Execution Date.

4.5.3. Once agreed, the Service Provider must develop and submit performance reports in the agreed performance report format:

- a. on a monthly basis; or
- b. once the Performance Management Framework has been agreed, in accordance with the Performance Management Framework.

5. Service Provider Personnel

5.1. Key Personnel

5.1.1. The Service Provider will notify the Department from time to time of Key Personnel that have been retained in relation to the performance and management of the Services and the Service Provider's obligations under this Contract.

5.1.2. The Service Provider must ensure that each of the Key Personnel occupy the positions and provide the Services advised to the Department.

5.2. Replacement of Key Personnel

5.2.1. Where Key Personnel cease to work in respect of this Contract, the Service Provider must notify the Department immediately and must provide replacement Key Personnel acceptable to the Department at no additional charge and at the earliest opportunity.

5.2.2. If the Service Provider is unable to provide replacement Key Personnel acceptable to the Department within 10 Business Days of their ceasing work in

respect of this Contract, the Department may, at its discretion, terminate this Contract or remove Services from scope in accordance with clause 15.

5.3. Removal of Key Personnel

5.3.1. The Department may, in its absolute discretion, give notice requiring the Service Provider to remove any Key Personnel from work in respect of the Services. The Service Provider must promptly arrange for the removal of such Key Personnel from work in respect of the Services and their replacement with personnel acceptable to the Department and at no additional cost to the Department.

5.4. Service Provider Personnel

5.4.1. The Service Provider must ensure that all Service Provider Personnel that are to carry out work or perform duties under this Contract have signed:

- a. Confidentiality Deed Poll substantially in the form of Schedule 3 (Confidentiality Deed); and
- b. Deed of Non-disclosure of Personal Information substantially in the form of Schedule 4 (Deed of Non-disclosure of Personal Information),

prior to commencing work or performing duties under this Contract or within 2 days of the Execution Date.

5.4.2. The Service Provider must ensure that all Service Provider Personnel:

- a. are, and remain, of good character and good conduct;
- b. are considered suitable by the Department having regard to any issues identified in an Australian Federal Police background check and brought to the attention of the Department;
- c. have a current 'working with children' check or certificate from an Australian jurisdiction or equivalent from the Australian Federal Police or, in the case of any local Personnel, where any similar check or certificate is required by local law taking into account the nature of their involvement in the Services, such check or certificate;
- d. undergo induction, orientation and ongoing training that complies with the Department requirements when commencing employment with the Service Provider or starting work in relation to the Services and during deployment, including training provided by other Service Providers;
- e. are appropriately skilled, trained and qualified to provide the Services described in Schedule 1 [Statement of Work];
- f. are authorised, registered or licensed in accordance with any applicable regulatory requirements for the purposes of or incidental to the performance of the Services;
- g. possess all relevant industry body, supplier, manufacturer accreditation or scheme memberships and professional association membership that might be reasonably expected of providers of the Services, and produce evidence

of such authorisation, registration, license, accreditation or membership to the Department upon request at any time during the term of this Contract; and

h. will be subject to internal disciplinary processes.

5.5. Behaviour of Service Provider Personnel at the Sites

5.5.1. The Service Provider must ensure that all Service Provider Personnel at a Site:

- a. are aware of, and comply with, the Code of Conduct at all times;
- b. comply with the Department's policy on smoking and other occupational health and safety matters as declared from time to time by the Department; and
- c. carry out their duties and behave in such a way as to maximise the seamless interface between the delivery of the Services and:
 - i. any other services provided by other service providers; and
 - ii. the day to day activities of the Department,so that services delivered by multiple service providers give the impression of being delivered by a single provider.

5.5.2. As part of its corporate best practice the Service Provider requires all its Personnel to comply with G4S Group Ethical Policies as they apply from time to time. The Department recognises this and agrees to it provided that those policies are not inconsistent with the requirements of this Contract.

5.6. Illegal workers

5.6.1. The Service Provider must ensure that its Service Provider Personnel do not include any illegal workers and must notify the Department immediately if it becomes aware of any of its Service Provider Personnel being an illegal worker.

5.6.2. For the purposes of clause 5.6.1, an illegal worker is a person who:

- a. has unlawfully entered and remains in Australia or Papua New Guinea;
- b. has lawfully entered Australia or Papua New Guinea but remains in that country after his or her visa has expired; or
- c. is working in breach of his or her visa conditions.

5.7. Removal of Service Provider Personnel

5.7.1. The Department may, in its absolute discretion, give notice requiring the Service Provider to remove any Service Provider Personnel from work in respect of the Services. The Service Provider must promptly arrange for the removal of such Service Provider Personnel from work in respect of the Services and their replacement with Personnel acceptable to the Department and at no additional cost to the Department.

6. Subcontractor arrangements

6.1. Approval of subcontracts

6.1.1. The Service Provider must not enter into a subcontract without the prior written approval of the Department (such approval not to be unreasonably withheld or delayed) s. 47(1)(b)

6.1.2. The Service Provider acknowledges that the Department may consult with the Government of Papua New Guinea in relation to any proposed subcontracts.

6.2. Extension of provisions to subcontractors and Personnel

6.2.1. In this clause 6.2:

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

6.2.2. The Service Provider agrees to ensure that:

- a. its subcontractors and Personnel comply with all relevant Requirements; and
- b. any contract entered into in connection with this Contract imposes all relevant Requirements on the other party.

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

6.3. Copies of subcontracts

6.3.1. The Service Provider must:

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

6.4. Service Provider liability and obligations

6.4.1. The Department's approval of any subcontract does not relieve the Service Provider from any liability or obligation under this Contract.

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

6.4.3. The Service Provider remains responsible for ensuring that:

- a. the work performed by each subcontractor meets the requirements of this Contract; and
- b. no subcontractor further subcontracts any work valued at s. 47(1)(b) or more without the prior written approval of the Department.

6.5. Subcontractor warranty

6.5.1. The Service Provider warrants that each subcontractor:

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

6.6. Service Provider to be the Department's sole point of contact

6.6.1. The Service Provider acknowledges that the Department may, in its absolute discretion, contact any subcontractor directly as and when required in order to obtain information regarding the Services provided by that subcontractor.

6.6.2. Except as provided in clause 6.6.1, the Service Provider will be the Department's sole point of contact regarding the Services, including with respect to payment.

6.7. Locally engaged subcontractors

6.7.1. In accordance with clause 1.2 in Part 1, Schedule 1, the parties intend that the Service Provider will engage some local entities as subcontractors. The parties recognise that it may not be possible for local entities to meet all of the Requirements. The terms on which local entities will be engaged will be agreed between the parties.

7. Document approval

7.1. Plans

7.1.1. The Service Provider will develop, update and deliver all draft plans to the Department in accordance with Schedule 1 [Statement of Work].

7.2. Review and approval of plans

7.2.1. The Department will:

- a. review; and
- b. approve or request changes to,

each draft plan. The Service Provider will promptly address any requested changes and deliver an updated draft plan to the Department in a timely manner. This clause 7.2.1 will apply to any updated draft plan.

- 7.2.2. Once approved, the Service Provider will comply with and perform the Contract in accordance with the approved plans.
- 7.2.3. Approval of a draft plan will:
- a. be construed as no more than an indication that the plan appears to the Department to be capable of being used as a basis for performing the Services;
 - b. not be construed as limiting the Service Provider's responsibility to provide Services in accordance with the requirements of the Contract; and
 - c. not be construed as a waiver of any right under this Contract or any cause of action arising out of any act or omission of the Service Provider or its Personnel or subcontractors.

8. Payments

8.1. Fees

- 8.1.1. Subject to this Contract, and in consideration of the Service Provider performing its obligations under this Contract, the Department agrees to make payment to the Service Provider in accordance with Schedule 2 [Fees and Payment].

8.2. Taxes, duties and government charges

- 8.2.1. Except as provided by this clause 8.2, the Service Provider agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract.
- 8.2.2. Unless otherwise indicated, the fees and all other consideration for any supply made under this Contract is exclusive of any GST imposed on the supply.
- 8.2.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Contract, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 8.2.4. No party may claim or retain from the other party any amount in relation to a supply made under this Contract for which the first party can obtain an input tax credit or decreasing adjustment.

8.3. Currency

- 8.3.1. All payments will be made in Australian Dollars unless otherwise agreed.

9. Confidentiality of Official Information and security

9.1. Interpretation

9.1.1. In this clause 9:

Official Resources includes:

- a. Official Information;
- b. people who work for or with the Department; and
- c. assets belonging to (even if in the possession of contracted providers) or in the possession of the Department;

9.2. Confidentiality of Official Information

9.2.1. The Service Provider will not, without prior written authorisation of the Department, disclose any Official Information to any person (unless required to do so by law).

9.2.2. The Service Provider is authorised, subject to clause 9.3, to provide Official Information to those Personnel and subcontractors who require access for the purposes of this Contract.

9.2.3. The Service Provider agrees to secure all Official Information against loss and unauthorised access, use, modification or disclosure.

9.3. Other security obligations of Service Provider

9.3.1. The Service Provider agrees to comply with any security requirements notified by the Department from time to time.

9.3.2. The Service Provider agrees to implement security procedures to ensure that it meets its obligations under this clause 9 and will provide details of these procedures to the Department on request.

9.4. Management of Copies

9.4.1. In this clause 9.4:

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

9.4.2. The Service Provider agrees, on expiration or termination of this Contract, to deal with all Copies as directed by the Department, subject to any requirement of law binding on the Service Provider.

Released by DIBP under the
Freedom of Information Act 1982

10. Confidential Information of Service Provider

10.1. Confidential Information not to be disclosed

10.1.1. Subject to clause 10.2 the Department will not, without the prior written authorisation of the Service Provider, disclose any Confidential Information of the Service Provider to a third party.

10.2. Exceptions to obligations

10.2.1. The obligations of the Department under this clause 9.4 will not be taken to have been breached to the extent that Confidential Information:

- a. is disclosed by the Department to its Personnel solely in order to comply with its obligations, or to exercise its rights, under this Contract;
- b. is disclosed by the Department to its internal management Personnel, solely to enable effective management or auditing of Contract-related activities;
- c. is disclosed by the Department to the responsible Minister;
- d. is disclosed by the Department in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- e. is shared by the Department within the Department's organisation, or with another Commonwealth Department, where this serves the Commonwealth's legitimate interests;
- f. is authorised or required by law to be disclosed; or
- g. is in the public domain otherwise than due to a breach of this clause 9.4.

10.2.2. Where the Department discloses Confidential Information to another person pursuant to clauses 10.2.1.a - 10.2.1.e, the Department will notify the receiving person that the information is confidential.

10.2.3. In the circumstances referred to in clauses 10.2.1.a, 10.2.1.b, and 10.2.1.e the Department agrees not to provide the information unless the receiving person agrees to keep the information confidential.

10.3. Period of confidentiality

10.3.1. The obligations under this clause 9.4 in relation to an Item of information described in Schedule 5 continue for the period set out there in respect of that Item.

11. Intellectual property

11.1. Use of Commonwealth Material

11.1.1. The Department grants (or will procure) a royalty-free, non-exclusive licence for the Service Provider to use, reproduce and adapt Commonwealth Material provided to the Service Provider for the purposes of this Contract.

- 11.1.2. The Service Provider agrees to use the Commonwealth Material strictly in accordance with any direction from the Department.
- 11.2. Rights in Contract Material**
- 11.2.1. Intellectual Property in all Contract Material vests or will vest in the Department.
- 11.2.2. Clause 11.2.1 does not affect the ownership of Intellectual Property in:
- a. any Commonwealth Material incorporated into Contract Material; or
 - b. any Material in existence at the Commencement Date and specified below
None specified
- 11.2.3. The Service Provider grants to (or will procure for) the Department a perpetual, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, perform, distribute, communicate and exploit any existing Material referred to in clause 11.2.2.b in conjunction with the Contract Material, for any purpose.
- 11.2.4. The Service Provider agrees that the licence granted in clause 11.2.3 includes a right for the Department to licence the existing Material in conjunction with the Contract Material to the public under an Open Access Licence.
- 11.2.5. The Service Provider agrees, on request by the Department, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 11.2.
- 11.2.6. The Service Provider warrants that:
- a. it is entitled; or
 - b. it will be entitled at the relevant time,
- to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause 11.2.
- 11.3. Moral rights**
- 11.3.1. In this clause 11.3:
- 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 or authorship;
 - b. supplementing the Contract Material with any other Material;
 - c. using the Contract Material in a different context to

that originally envisaged;

- d. releasing the Contract Material to the public under an Open Access Licence;

but does not include false attribution of authorship.

11.3.2. The Service Provider agrees:

- a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Department or any person claiming under or through the Department (whether occurring before or after the consent is given) and, on request, to provide the executed original of any such consent to the Department; and
- b. to ensure that each author's attention is drawn to the Department's general policies and practices regarding Moral Rights.

11.3.3. This clause 11.3 does not apply to any Commonwealth Material incorporated in the Contract Material.

12. Indemnity and insurance

12.1. Proportionate liability regimes excluded

12.1.1. To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Service Provider under or in connection with this Contract.

12.2. Indemnity

12.2.1. The Service Provider indemnifies the Department from and against any:

- a. cost or liability incurred by the Department;
- b. loss of or damage to property of the Department; or
- c. loss or expense incurred by the Department in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Department,

arising from either:

- d. a breach by the Service Provider of this Contract; or
- e. an act or omission involving fault on the part of the Service Provider or its Personnel in connection with this Contract.

12.2.2. The Service Provider's liability to indemnify the Department under clause 12.2.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of the Department or its Personnel contributed to the relevant cost, liability, loss, damage or expense.

12.2.3. The right of the Department to be indemnified under this clause 12.2 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Department is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

12.3. Exclusions

12.3.1. Neither party will have any liability to the other party in any circumstances under or in the course of performing this Contract for any loss of profit, business, or contracts, suffered by that party.

12.3.2. The Service Provider will not have any liability to the Department in any circumstances under or in the course of performing this Contract for:

- a. any loss or damage suffered as a result of deliberate damage to property caused by Transferees (other than where a negligent, wilful or illegal act or omission of the Service Provider has caused or contributed to the damage);
- b. any loss of whatsoever nature directly or indirectly caused or contributed to by or arising from ionising radiations or contamination by radioactivity (other than where caused or contributed to by a negligent, wilful or illegal act or omission of the Service Provider or where the item causing the ionising radiations or radioactivity has been brought onto the Site by the Service Provider); or
- c. any loss arising out of or related in any way to asbestos or asbestos-containing materials (other than where caused or contributed to by a negligent, wilful or illegal act or omission of the Service Provider or where the item containing asbestos has been brought onto the Site by the Service Provider).

12.4. Limitation of liability

12.4.1.

s. 47(1)(b) [Redacted text]

12.4.2. Clause 12.4.1 does not apply in relation to liability relating to:

- a. personal injury (including sickness and death);
- b. breach of another person's intellectual property rights;
- c. damage to the property of a person other than the Department;
- d. malicious, wilful or illegal acts or omissions of the Service Provider or its Personnel.

12.4.3. The parties acknowledge that the limitation of liability specified in clause 12.4.1 will be subject to review in the event that the contract is varied or extended.

12.5. Insurance

12.5.1. The Service Provider will be required, prior to the Commencement Date, to effect and maintain insurance cover for the duration of this Contract as follows:

- a. workers compensation insurance, as required by law;
- b. products liability insurance in the amount of s. 47(1)(b) [redacted];
- c. public liability insurance in the amount of s. 47(1)(b) [redacted] to cover the Service Provider and its employees for their respective rights, interests and liabilities to the Department and third parties for loss or damage to any property and injury or death to any person arising from, or in connection with the provision of the Services by the Service Provider;
- d. professional indemnity insurance for the amount of s. 47(1)(b) [redacted] (in respect of any single occurrence and in the aggregate);
- e. health and medical evacuation for all Service Provider Personnel; and
- f. comprehensive motor vehicle insurance in respect of registered vehicles used in the provision of the Services.

12.5.2. The Department may require the Service Provider to obtain additional insurance or higher levels of insurance. If this results in the Service Provider incurring an increased premium, the Department will reimburse the additional premium (without mark up).

12.6. Performance securities

12.6.1. The Service Provider will be required to provide, within 3 Business Days of the Execution Date, financial security (such a bank guarantee/surety bond) in the amount of s. 47(1)(b) [redacted].

12.6.2. The financial security must be unconditional, from a financial institution acceptable to the Department and in a form approved by the Department.

12.6.3. The security will be exercisable by the Commonwealth for either or both of the following:

- a. to obtain compensation for loss suffered in the event that the Service Provider fails to perform the Contract, including upon termination of the Contract; or
- b. to recover any amounts due to the Department in relation to the Contract.

13. Publicity, media and external relationship management

13.1. Publicity and media to be managed by the Department

13.1.1. The Department has, in consultation with the Service Provider and other service providers, developed media and stakeholder engagement protocols. The parties

will implement these protocols in their dealings with and when responding to enquiries from the media and stakeholders.

13.1.2. The Service Provider acknowledges and agrees that the Department will have management and control of:

- a. all publicity, dealings with, inquiries from, comments to or other matters related to the media that are directly or indirectly related to this Contract including, without limitation, regarding the Department and any matter related to the Services, any Transferees, or the relationship or issues between the Service Provider and the Department; and
- b. the relationship and dealings with stakeholders and external parties (including industry groups, special interest or lobby groups, and the community), except to the extent that such contact has been approved by the Department in writing.

13.1.3. Any contact with or release to the media which specifically names the Service Provider is to be approved by the Service Provider prior to any statement being made or material being released, which consent or approval must not be unreasonably withheld or delayed.

13.2. Service Provider not to make public statements

13.2.1. The Service Provider must not, and will ensure that its Personnel and subcontractors do not:

- a. make any public statement;
- b. release any information to, make any statement or comment to, deal with any inquiry from or otherwise assist or advise the media;
- c. publish, distribute or otherwise make available any information or material to third parties,

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

- d. the Department, its Personnel or its subcontractors (whether specifically referred to or not);
- e. the Services;
- f. the relationship between the parties; or
- g. any other matter directly or indirectly related to this Contract,

other than:

- h. to direct any such inquiry to the Department;
- i. as is specifically authorised by and to the minimum extent necessary to fulfil the Service Provider's obligation under this Contract or comply with the Law; or

- j. as may be otherwise specifically authorised in writing by the Department.

14. Dispute resolution

14.1. Procedure for dispute resolution

- 14.1.1. The parties agree that a dispute arising under this Contract will be dealt with as follows:
- a. a party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
 - b. within 5 Business Days of the notice, the Contract Administrator and a senior representative of the Service Provider will meet and try to settle the dispute by direct negotiation between them;
 - c. if the parties are not able to resolve the dispute within a further 15 Business Days, the parties will refer the dispute to the Contract Authority and a more senior representative of the Service Provider who will meet and try to settle the dispute.
- 14.1.2. If the parties have been unable to resolve the dispute within 20 Business Days of the dispute being referred under clause 14.1.1.c:
- a. the parties may agree to refer the dispute to mediation or binding arbitration on terms to be agreed between the parties at the time; or
 - b. where the parties do not agree to refer the dispute to mediation or binding arbitration or, where the dispute is referred to mediation the dispute remains unresolved after 20 Business Days of the dispute being referred, either party may commence legal proceedings in relation to the dispute.
- 14.1.3. Each party will bear its own costs of complying with this clause 14.

14.2. Continued performance

- 14.2.1. Despite the existence of a dispute, the parties will (unless the Department notifies the Service Provider otherwise) continue to perform their obligations under this Contract.

14.3. Exemption

- 14.3.1. This clause 14 does not apply to:
- a. action by the Department under or purportedly under clause 15;
 - b. legal proceedings by either party seeking urgent interlocutory relief.

15. Termination

15.1. Termination without default

15.1.1. In addition to any right to terminate at law, the Department may by written notice and in its absolute discretion:

- a. terminate this Contract, in which case at least 4 weeks notice will be given; or
- b. reduce the scope of the Services, in which case the notice will unless specified otherwise by the Department in the notice take effect immediately.

15.1.2. The Service Provider agrees, on receipt of a notice issued under clause 15.1.1:

- a. to stop or reduce work as specified in the notice;
- b. to take all available steps to minimise loss resulting from that termination or reduction; and
- c. to continue work on any part of the Services not affected by the notice.

15.1.3. In the event of termination under clause 15.1, the Department will be liable only:

- a. to pay any fees and approved Pass-Through Costs relating to Services completed before the effective date of termination; and
- b. to reimburse any expenses the Service Provider unavoidably incurs relating entirely to Services not covered under clause 15.1.3.a including for the avoidance of doubt any demobilisation costs reasonably incurred.

15.1.4. The Department will not be liable to pay amounts under clause 15.1.3.a and 15.1.3.b which would, added to any fees already paid to the Service Provider under this Contract, together exceed the fees set out in Schedule 2 [Fees and Payment].

15.1.5. In the event of a reduction in the scope of the Services under clause 15.1, the Department's liability to pay fees under clause 8 will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Services.

15.1.6. The Service Provider will not be entitled to compensation for loss of prospective profits.

15.2. Termination for default

15.2.1. In addition to any right to terminate at law, if the Service Provider fails to perform any obligation under this Contract, the Department - if it considers that the failure is:

- a. not capable of remedy – may, by notice, terminate this Contract immediately;

- b. capable of remedy – may, by notice require that the failure be remedied within the time specified in the notice (being a reasonable period having regard to the circumstances of the failure) and, if not remedied within that time, may terminate this Contract immediately by giving a second notice.

15.2.2. The Department may also, by notice, terminate this Contract immediately (but without prejudice to any prior right of action or remedy which the Department has or may have) if the Service Provider:

- a. being a corporation, comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001*, or an order has been made for the purpose of placing the corporation under external administration; or
- b. being an individual, becomes bankrupt or enters into a scheme of arrangement with creditors.

15.3. Transition out

15.3.1. If this Contract is terminated for any reason, the Service Provider must comply with any reasonable directions issued by the Department to achieve an orderly transition of the Services to the Department or an alternative provider.

16. Notices

16.1. Format, addressing and delivery

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

- a. if given by the Service Provider to the Department - addressed to the Contract Administrator at the address specified in the definition of Contract Administrator under clause 1 or as otherwise notified by the Department; or
- b. if given by the Department to the Service Provider - given by the Contract Administrator (or any superior officer to the Contract Administrator) and addressed to (and marked for attention) of:

s. 47F(1)

G4S Australia Pty Ltd
Level 4, 441 St Kilda Road
Melbourne, Victoria, 3004

s. 47F(1)

16.1.2. A notice is to be:

- a. signed by the person giving the notice and delivered by hand; or
- b. signed by the person giving the notice and sent by pre-paid post; or
- c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

16.2. When effective

- 16.2.1. A notice is deemed to be effected:
- a. if delivered by hand - upon delivery to the relevant address;
 - b. if sent by post - upon delivery to the relevant address;
 - c. if transmitted electronically - upon actual receipt by the addressee.
- 16.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

17. General provisions

17.1. Excusable performance failure

- 17.1.1. Where an Excusable Performance Failure Event occurs, the Service Provider must immediately notify the Department in writing (including by electronic means) of the event specifying:
- a. the nature of, reason(s) for, and estimated duration of the Excusable Performance Failure Event; and
 - b. the obligations and Key Performance Measures affected by it and the extent of its effect.

A copy of any notice issued under this clause must be provided at the same time it is issued to the Department Operations Team Leader.

- 17.1.2. The Department will notify the Service Provider whether it accepts that an Excusable Performance Failure Event has occurred and the extent of its effect.
- 17.1.3. Where the Department accepts that an Excusable Performance Failure Event has occurred and the extent of its effect, subject to the Service Provider's compliance with its obligations under this clause:
- a. the Service Provider's obligations under this Contract and the relevant Key Performance Measures are suspended for so long as and to the extent they are affected by the Excusable Performance Failure Event (Excusable Performance Failure Period) and no failure or omission by the Service Provider to perform or meet a suspended obligation or Key Performance Measure during the Excusable Performance Failure Period will be a breach of this Contract or result in an abatement of fees under the Performance Management Framework; and
 - b. the Department will continue to pay the fees under this Contract in relation to those Services not suspended during the Excusable Performance Failure Period.
- 17.1.4. During the Excusable Performance Failure Period, the Service Provider must:
- a. use its reasonable endeavours to remove, overcome or minimise the effects of that Excusable Performance Failure Event as quickly as possible;

- b. continue providing the Services and complying with its obligations under this Contract and meeting the Key Performance Measures not affected by the Excusable Performance Failure Event;
- c. implement and comply with the processes and procedures set out in the Performance Management Framework relating to the management of Excusable Performance Failure Events; and
- d. provide the Department Operations Team with daily updates on the Excusable Performance Failure Event and its impact on the performance or meeting of any suspended obligations or Key Performance Measures; and
- e. notify the Department in writing as soon as the Excusable Performance Period ceases.

17.2. Conflict of interest

17.2.1. In this clause 17.1, **Conflict** means any matter, circumstance, interest, or activity affecting the Service Provider, its Personnel or subcontractors which may or may appear to impair the ability of the Service Provider to provide the Services to the Department diligently and independently.

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

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

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

17.3. Work health and safety

17.3.1. The Service Provider must at all times:

- a. comply with, and ensure that its Personnel and subcontractors comply with WHS Law in the provision of the Services;
- b. co-operate and ensure its Personnel and subcontractors co-operate as required with the Department in the Service Provider's performance of its work health and safety obligations under WHS Law, including participating in any consultation and representation required by the Department;
- c. prepare and provide any report required under the WHS Law to the Department;
- d. comply with any direction or requirement of the Department in relation to work health and safety;

- e. not permit any act or omission that causes or may cause the Department to be in breach of the WHS Law;
- f. immediately notify the Department of any notifiable incident as defined in the WHS Law; and
- g. immediately notify the Department of any circumstance which may give rise to a work health and safety risk or a failure by the Service Provider, its Personnel, subcontractors or the Department to comply with WHS Law.

17.4. Privacy

17.4.1. The Service Provider agrees, in providing the Services:

- a. not to do any act or engage in any practice which, if done or engaged in by the Department, would be a breach of an Information Privacy Principle; and
- b. to comply with any directions, guidelines, determinations or recommendations specified by the Department, to the extent that they are consistent with the Information Privacy Principles.

17.4.2. The Service Provider agrees to notify the Department immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 17.4.

17.5. Audit and access

17.5.1. The Service Provider agrees:

- a. to give the Contract Administrator, or any persons authorised in writing by the Contract Administrator, access to premises where the Services are being performed or where Official Resources are located; and
- b. to permit those persons to inspect and take copies of any material relevant to the Services.

17.5.2. The rights referred to in clause 17.5.1 are subject to:

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

17.5.3. The Auditor-General and Information Officer (including their delegates) are persons authorised for the purposes of this clause 17.5.

17.6. Access to documents

17.6.1. In this clause 17.6, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).

- 17.6.2. The Service Provider acknowledges that this Contract is a Commonwealth contract.
- 17.6.3. Where the Department has received a request for access to a document created by, or in the possession of, the Service Provider or any subcontractor that relates to the performance of this Contract (and not to the entry into the Contract), the Department may at any time by written notice require the Service Provider to provide the document to the Department and the Service Provider must, at no additional cost to the Department, promptly comply with the notice.
- 17.6.4. The Service Provider must include in any subcontract relating to the performance of this Contract provisions that will enable the Service Provider to comply with its obligations under this clause 17.6.

17.7. Relationship of parties

- 17.7.1. The Service Provider is not by virtue of this Contract an officer, employee, partner or agent of the Department, nor does the Service Provider have any power or authority to bind or represent the Department.
- 17.7.2. The Service Provider agrees:
- a. not to misrepresent its relationship with the Department; and
 - b. not to engage in any misleading or deceptive conduct in relation to the Services.

17.8. Waiver

- 17.8.1. A failure or delay by a party to exercise any right or remedy it holds under this Contract or at law does not operate as a waiver of that right.
- 17.8.2. 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.

17.9. Variation

- 17.9.1. The Department may, including in response to a suggestion from the Service Provider, request that the Service Provider develop a change proposal to address a proposed variation to the Contract. The Service Provider will prepare a contract change proposal, outlining the impact on the Contract of the proposed variation, including on Schedule 1 [Statement of Work] and Schedule 2 [Fees and Payment]. The parties will discuss any contract change proposal in a timely manner.
- 17.9.2. A variation of this Contract is binding only if agreed in writing and signed by the parties, including any variation in a contract change proposal developed pursuant to clause 17.9.1.

17.10. Assignment

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

17.11. Survival

17.11.1. Unless the contrary intention appears, the expiry or earlier termination of this Contract will not affect the continued operation of any provision relating to:

- a. confidentiality;
- b. privacy;
- c. intellectual property;
- d. audit and access;
- e. an indemnity;

or any other provision which expressly or by implication from its nature is intended to continue.

17.12. Applicable law

17.12.1. This Contract is to be construed in accordance with, and any matter related to it is to be governed by, the law of the State of Victoria.

17.12.2. The parties submit to the jurisdiction of the courts of that State.

SCHEDULE 1 STATEMENT OF WORK

PART 1: NATURE OF THE SERVICES

1. General background and nature of services

1.1. Background

- 1.1.1. The Department has a requirement for the provision of operational and maintenance services, outlined in this Schedule, to Transferees and staff at the Manus Island Regional Processing Centre.
- 1.1.2. Manus Island, part of the Manus Province, is an island in northern Papua New Guinea (PNG) and is the largest of the Admiralty Islands. The population is approximately 43,000. Manus Island is covered by tropical rain forest with temperatures typically varying from 24 to 32 degrees and has no dry season. Manus Island uses the currency of PNG, the Kina. The main industries on Manus Island are coconut production and sea cucumber fishing.
- 1.1.3. It is expected that the temporary facilities will accommodate up to 500 Transferees and the permanent facilities up to 600.
- 1.1.4. The provision of Services to Transferees will require the provider to take a collaborative approach with Australia and the PNG government organisations and any other service providers engaged by the Department. In particular, an integrated approach will need to be taken around security, safety, incident and risk management.
- 1.1.5. The Regional Processing Centres are low security and allow a certain level of freedom for Transferees. Engagement with the local community will be encouraged. Transferees employment within local communities, Transferee relationships with PNG nationals and the management of high risk Transferees will need to be considered once the Department develops a position on these issues.
- 1.1.6. The Department will require the Service Provider to provide Services which primarily relate to operational and maintenance requirements at the Site. The Service Provider will be required to provide Transferees with a standard and range of operational and maintenance services that is the best available in all circumstances and utilising facilities and Personnel on Manus Island, and that as far as possible (but recognising any unavoidable limitations deriving from the circumstances of Manus Island) is broadly comparable with services available with the Australian Community.
- ##### 1.2. Service Provider Personnel
- 1.2.1. The Service Provider will ensure that the Personnel levels at the Site are adequate to deliver the Services.

- 1.2.2. The Service Provider must engage with the local community to employ local personnel or subcontract local businesses who meet the requirements of this Statement of Work. Where local capacity exists the Service Provider will utilise this capacity as far as possible. The Service Provider will achieve by 31 December 2012 the following levels of local engagement, where possible using subcontracting arrangements with local businesses.

Service	Percentage
Security	50%
Cleaning	75%
Gardening	75%

- 1.2.3. In this clause 1.2, 'local' means a person who is resident in or a business based in the Manus Province. The percentages above assume the RPC is operating at full capacity.

1.3. Other service providers

- 1.3.1. Other service providers will be engaged including a Transferee Welfare Support Service Provider and a Health Service Provider, as well as a service provider providing welfare and support services in relation to children and their families. The Service Provider will work cooperatively with the other service providers. Where an obligation is expressed as 'support' in this Statement of Work, this usually denotes that another service provider has primary responsibility for the relevant activity and the Service Provider must provide necessary support to that activity such as transport, security or information.

- 1.3.2. The Service Provider must cooperate with any other service providers appointed by the Department to ensure the integrated and efficient carrying on of the operations of the Site, and must provide such reasonable assistance to the Department, local authorities and other services providers as the Department may reasonably request whether or not this is specifically stated in this Schedule.

1.4. Time for development of plans, procedures and arrangements

- 1.4.1. Where this Statement of Work refers to the development of a plan, arrangement or procedure, unless otherwise stated here or agreed by the parties, it is to be developed, approved and then implemented as soon as possible, and implementation should start no later than 6 weeks from the Execution Date.

1.5. Stakeholder management

- 1.5.1. The Service Provider will have significant stakeholder management and consultation requirements including with the Department and Papua New Guinea

government authorities. The Service Provider must adopt a collaborative approach to the complex stakeholder and governance issues.

- 1.5.2. The Service Provider will be required to work closely with the Centre Administrator appointed by the Government of Papua New Guinea.

PART 2: TRANSFEREE SERVICES

2. General

- 2.1.1. The Service Provider must provide and assist with a range of Transferees Services at the Site, and facilitate and encourage Transferees to access these Services.
- 2.1.2. All service delivery decisions taken by the Service Provider will take account of the individual needs of Transferees, and will aim to improve health and well being outcomes for each Transferee. This will be undertaken in conjunction with other service providers.
- 2.1.3. The Service Provider will, in conjunction with other service providers, provide a range of Services to promote the well-being of Transferees and create an environment that supports security and safety at the Site.
- 2.1.4. The Service Provider must take reasonable steps to ensure that it and all its Personnel and subcontractors treat Transferees equitably and fairly, with dignity and respect.
- 2.1.5. The Service Provider must focus on the well-being of each Transferee and will make every effort to ensure visits from family, friends and support groups are facilitated, while maintaining safety of all Transferees.
- 2.1.6. The Service Provider will encourage interaction between Transferees where safe and appropriate.
- 2.1.7. The Service Provider will facilitate activities in conjunction with other service providers, to enhance the ongoing emotional and mental health of each Transferee.

3. Communication management

3.1. Access to communication services

- 3.1.1. The Service Provider will ensure Transferees have access to communication services where available, including:
- a. telephones - in the Transferee area
 - b. computers and printers - for Transferees to perform functions such as word processing, spreadsheets, internet and email for their private use and for the preparation of documents related to their immigration outcome;

- c. internet services - and ensure appropriate filtering software and other measures as necessary are in place, in accordance with Departmental requirements, to control and limit access at the Site by Transferees to:
 - i. pornographic and other prohibited sites, containing or promoting illegal acts;
 - ii. personal software;
 - iii. file transfer protocol sites, software or data; and
 - iv. prohibited sites in foreign languages.
- d. television and other media - with services covering news, current affairs and other content that the Service Provider or other service providers may recommend to promote the well-being for Transferees; and
- e. mail services.

3.2. Management of access

- 3.2.1. The Service Provider will support other service providers in their management and supervision of access to and use of the communications services by Transferees.
- 3.2.2. Unless otherwise directed by the Department, the Service Provider may allow a Transferee to retain their mobile phone within a Site, provided that the handset does not have a recording capability (either audio or visual).
- 3.2.3. The Service Provider must inform Transferees that their access to communication services may be recorded and/or monitored for security purposes.

3.3. Access and use of mail services and facsimiles

- 3.3.1. The Service Provider must:
 - a. register all received mail and facsimiles which are addressed to a Transferee; and
 - b. ensure mail does not contain prohibited goods.

The welfare and support services provider will be responsible for distributing mail and facsimiles to Transferees.
- 3.3.2. Postage costs for mail sent by Transferees will be at the Transferee's expense except when a Transferee does not have the means to pay for postage, in which case the Service Provider must refer to Department instructions.

3.4. Television and other media

- 3.4.1. The Service Provider must, where available, facilitate access to free-to-air television and other broadcast services, covering news, current affairs and other

content that the Service Provider or other service providers may recommend to promote the well-being for Transferees.

4. Programs and activities

4.1. Overview

4.1.1. The Service Provider will provide support to the Transferee Welfare Support Service Provider to deliver programs and activities through the provision of transport and equipment.

4.2. Families with children

4.2.1. The Service Provider will provide support to the Transferee Welfare Support Service Provider to support families with children to understand and exercise parental responsibility while accommodated at the Site.

4.3. Religious activities

4.3.1. The Service Provider will provide support for religious activities including transport and appropriate equipment.

4.4. Complaints

4.4.1. The Service Provider will:

- a. promote informal early rectification of issues;
- b. clearly inform Transferees of their right to complain and refer complaints to the service provider responsible for managing complaints; and
- c. respond in a timely manner to the service provider responsible for managing complaints where a complaint relates to the Service Provider.

4.5. Private interview rooms

4.5.1. The Service Provider will:

- a. where possible, facilitate Transferee contact in a private interview room with the Australian and the Papua New Guinea government officials and representatives; and
- b. where possible, facilitate contact in a private interview room with any other visitor approved by the Department.

5. Reception, transfer and discharge of Transferees

5.1. General responsibilities

5.1.1. The Service Provider will work with the Transferee Welfare Support Service Provider to coordinate reception, transfer and discharge processes at the Site. The Service Provider must:

- a. conduct reception processes upon the arrival of Transferees at the Site;
- b. provide transfer processes to ready a Transferee for transfer to other locations advised by the Department;
- c. provide discharge processes in a manner that promotes the well-being of Transferees, their dignity and safety; and
- d. ensure that Transferees are regularly informed about what is happening to them in a language they understand through the use of interpreters provided by other service providers if required.

5.2. Processing times

5.2.1. The Service Provider must:

- a. ensure Service Provider Personnel are available to undertake reception, transfer and discharge activities at any time;
- b. have capacity to undertake these processes simultaneously, noting the temporary nature of the facilities at the Commencement Date;
- c. commence the reception process, immediately after a Transferee arrives at the Site and complete the reception process within 12 hours of their arrival at the Site;
- d. commence the induction processes as soon as reasonably practicable after the Transferee's arrival at the Site and complete the induction processes within two days of the Transferee arriving at the Site - the induction process includes providing information regarding how the Site operates and explaining relevant policies, procedures and roles;
- e. undertake transfer and discharge processes in accordance with timeframes determined by the Department on a case by case basis; and
- f. undertake discharge processes where a Transferee is being released immediately after the Service Provider is advised by the Department of the Transferee's release.

5.3. Reception

5.3.1. The Service Provider must:

- a. develop and implement a reception process and checklist;
- b. review, update and, if necessary, reissue identification cards to Transferees;
- c. ensure the reception process is coordinated with the Department and the other service providers;
- d. ensure that Service Provider Personnel involved in the reception process are specifically trained to manage the reception process in a non-threatening and threat-reducing way, with a focus on the well being of Transferees at all times; and

- e. ensure that before new Transferees arrive at the Site, culturally appropriate food is available and other Transferees at the Site are informed of the new arrival/s.

5.4. Transferee health induction assessment

- 5.4.1. The Service Provider will provide all necessary support to enable each Transferee to undergo a health induction assessment during the reception process in conjunction with the other service providers.

5.5. Bedding, clothing and footwear

- 5.5.1. Subject to availability the Service Provider must ensure each Transferee is allocated with the following items during the reception process:
 - a. bedding that is clean and fit for purpose;
 - b. freshly laundered linen that is in good condition and suited to the local climate; and
 - c. where required, clothing and footwear that is new, suited to the local climate and the Transferee's cultural needs; and
 - d. is allocated with a starter pack of toiletries during the Reception process, that includes:
 - i. soap, shampoo and conditioner;
 - ii. toothbrush and toothpaste;
 - iii. hairbrush or comb;
 - iv. deodorant, moisturiser and talcum powder;
 - v. sanitary items (for female Transferees)
 - vi. razor and shaving cream (if required);
 - vii. nail clippers; and
 - viii. sunscreen and insect repellent.

- 5.5.2. Bedding, clothing and footwear is to be replenished as required.

5.6. Arrival phone call

- 5.6.1. As part of the induction process, Transferees will be offered the ability to make a telephone call. The purpose of the telephone call is for the Transferee to advise family, friends or other support networks of their arrival at the Site. The Service Provider will provide support and supervision for the arrival phone call.

5.7. Transferees security risk assessment

- 5.7.1. During the reception process, the Service Provider must conduct a Transferee security risk assessment for each Transferee, which includes an examination of

any previous risk assessments and information about the Transferee that might be provided by the Department or other government agencies.

5.7.2. The Service Provider may:

- a. use a Department provided Transferees security risk assessment framework; or
- b. develop and use an alternative framework, providing it has been developed in accordance with the ASNZS 4360:2004 Standard for Risk Management and has been approved by the Department.

5.7.3. The Service Provider must:

- a. review the security risk assessment for each Transferee at the Site monthly;
- b. re-assess the Transferee's security risk assessment after the Transferee has been involved in any disturbance or received information that may adversely impact on their disposition; and
- c. consider the Transferee's security risk assessment when developing individual management plans and provide information to the relevant service provider when they are conducting accommodation placement reviews.

5.8. Transferee record

5.8.1. Transferee records will be maintained by another service provider. The Service Provider will support the creation and updating of a Transferee record for each Transferee under its care for example by providing necessary information for inclusion in Transferee records and otherwise must comply with Departmental record keeping requirements.

5.9. Induction

5.9.1. The Service Provider will support the induction briefing by providing information relevant to accommodation in the Site including:

- a. a description of facilities and services that are available;
- b. the roles and responsibilities of the Department and Service Provider Personnel, including personnel from other service providers;
- c. how to communicate with Service Provider Personnel;
- d. information on Transferees committees and how to be involved;
- e. photographs of key Service Provider Personnel;
- f. which items are not permitted at the Site and why;
- g. other relevant information as determined by the Service Provider or as notified by the Department.

5.10. Induction booklet

5.10.1. The Service Provider will provide all necessary information to the service provider responsible for the induction booklet.

5.11. Placement review

5.11.1. The Service Provider will:

- a. notify the Department, where the Service Provider believes that existing placement is inappropriate for the Transferee and include reasons why they formed this view; and
- b. support the recording of accommodation details for Transferees.

5.12. Transfer

5.12.1. When notified by the Department, the Service Provider will support preparation by Transferees for their transfer and must:

- a. support preparation of briefing notes for the next party that will take the Transferee into their care that outline any known management or behavioural issues relevant to the Transferee;
- b. ensure that the Transferees security risk assessment has been reviewed and updated;
- c. support the Health Services Provider to ensure that medications and other essential medical items are prepared;
- d. ensure that all personal property of Transferees is transferred with the Transferee and the Transferee signs agreeing as such;
- e. ensure that all hard copy Transferee records are provided to the escort for transfer to the same destination as the Transferee;
- f. take all reasonable steps to ensure that the Transferee has been provided with clothing that is appropriate for the journey and the destination climate; and
- g. co-operate with the Department and any other service providers involved in the Transfer process.

5.13. Discharge

5.13.1. When notified by the Department, the Service Provider will support preparation for discharge of a Transferee from the Site including:

- a. confirming that the identity of the Transferee matches that in the Department's documentation;
- b. take all reasonable steps to ensure the Transferee has been provided with clothing appropriate to the journey and destination climate;

- c. ensure all personal belongings are returned to the Transferee on discharge, or the Transferee's escort if required by Departmental policy.

5.14. Discharge for return

- 5.14.1. When notified by the Department that a Transferee is being returned, the Service Provider must:
 - a. update the Transferee's security risk assessment before they travel and complete the Service Provider assessment of a Transferee for aviation travel;
 - b. organise packing and weighing of the property of Transferees; and
 - c. assist the Department and any other service providers to facilitate the return.

6. Individual management

6.1. General

- 6.1.1. The Service Provider will in cooperation with all service providers:
 - a. promote and maintain an environment conducive to the health and welfare of Transferees where the needs of Transferees are identified and responded to openly and with integrity;
 - b. establish processes to prevent Transferees being subjected to illegal and anti-social behaviour, and where such behaviour becomes apparent, to deal with the issues cooperatively with the local authorities, the Department and other service providers;
 - c. promote a culture in which Service Provider Personnel interact with Transferees on a regular basis in both formal and informal settings, developing trust and effective communication channels in undertaking their duties;
 - d. take all reasonable steps to ensure all interaction between Service Provider Personnel and Transferees is conducted in a culturally appropriate manner; and
 - e. ensure all interaction between Service Provider Personnel and Transferees is conducted in a professional manner.

6.2. Interaction with Transferees

- 6.2.1. The Service Provider will implement and support:
 - a. policies and procedures at the Site that promote high levels of positive and culturally sensitive interaction between Service Provider Personnel and Transferees to deliver a healthy environment and assist Transferees to achieve greater self-sufficiency over their daily routine in preparation for post-release;

- b. policies and procedures that set out the standards and qualities the Service Provider expects of Service Provider Personnel when they interact with Transferees and other stakeholders, including :
 - i. Service Provider Personnel must clearly identify themselves when communicating with Transferees and other stakeholders and wear a name badge; and
 - ii. support Service Provider Personnel to develop communication skills to interact and communicate with Transferees and other stakeholders in a positive and effective manner.

6.2.2. The Service Provider must ensure that all Service Provider Personnel:

- a. read, sign and understand the Code of Conduct provided by the Department;
- b. maintain regular contact with Transferees;
- c. coordinate access by Transferees to available Services;
- d. proactively manage issues relating to Transferees as they arise and before they impact on the Transferee's well being or that of other Transferees in the Site; and
- e. document and report any matters they consider material to the welfare of Transferees in individual management plans and advise the Department.

6.2.3. The Service Provider must ensure that it, and Service Provider Personnel, do not provide any form of advice in relation to the visa status or other migration related matters of any Transferee.

6.3. Individual management plans

6.3.1. The Service Provider will contribute to the development and implementation of individual management plans.

6.4. Provision of Services to people under the age of 18

6.4.1. The Service Provider must, in addition to the Services outlined elsewhere in this schedule, take all reasonable steps to ensure that the best interests of any child/children are taken into account when performing or delivering Services involving children, including cooperating with and supporting other service providers providing welfare and support services in relation to children and their families.

6.5. Referral of Transferee identity issues

6.5.1. The Service Provider must immediately refer any doubts or concerns regarding a Transferee's identity to the Department.

6.5.2. Where the Service Provider identifies that a Transferee that claimed to be 18 or over, is under 18, the Service Provider must manage that Transferee in accordance with any Department instructions.

6.6. Health of Transferees

6.6.1. The Service Provider must ensure that any Transferee who requests, or appears to be in need of medical attention, is referred to the Health Service Provider for appropriate medical attention.

6.6.2. Where it appears that a Transferee requires emergency medical attention, the Service Provider must:

- a. provide first aid;
- b. seek emergency medical attention for the Transferee immediately, including arranging for transport of the Transferee to the nominated medical facility at the Department's cost;
- c. inform the Health Service Provider of the Transferee's condition as soon as the initial response is complete; and
- d. inform the Department of the Transferee's condition as soon as the initial response is complete.

6.7. Transferees under the influence of drugs or alcohol

6.7.1. The Service Provider will :

- a. ensure that a Transferee who appears to be under the influence of drugs or alcohol is supervised by Service Provider Personnel until the Transferee appears to be no longer affected; and
- b. refer the Transferee for assessment by the Health Service Provider within 12 hours, unless emergency medical attention is required in which case paragraph 6.6.2 above will apply.

6.8. Mental health awareness

6.8.1. The Service Provider must ensure all relevant Service Provider Personnel attend mental health awareness training provided by the Department.

6.9. Behavioural management of Transferees

6.9.1. The Service Provider, with input from other service providers where appropriate, must develop and implement a system of Transferees behavioural management strategies that aim to defuse tensions and conflicts before they escalate or become serious or violent. The strategy must outline the steps taken to effect de-escalation.

6.10. Illegal and anti-social behaviour

- 6.10.1. The Service Provider must develop and implement processes, in cooperation with the Department, local authorities and other service providers, for managing instances where Transferees are engaged in behaviour that is illegal, has breached the rules applicable at the Site or is anti-social in nature.
- 6.10.2. For the purposes of this clause undesirable behaviours may include:
- a. bullying;
 - b. verbal abuse;
 - c. sexual or other forms of harassment;
 - d. assault;
 - e. malicious destruction of property; and
 - f. possession of weapons or illegal drugs.
- 6.10.3. The Service Provider must work with the Transferee Welfare Support Provider to communicate the Site policy on anti-social behaviour to all Transferees during the induction process.
- 6.10.4. Where the Service Provider has identified, or suspects, that a Transferee has engaged in illegal, non-compliant or antisocial behaviour, the Service Provider must immediately inform the Department and other relevant service providers with recommendations for:
- a. dealing with the perpetrator(s);
 - b. preventing recurrence.
 - c. The Service Provider must record details of and responses to known or suspected instances of individual illegal, non-compliant or antisocial behaviour by Transferees.
 - d. The Service Provider must take all reasonable steps to ensure that Transferees identified as victims of anti-social behaviour are supported by Service Provider Personnel and other service providers, with relevant details recorded.

The Department will be responsible for involving the police or other authorities as required, except where reporting is mandatory under the law.

7. Property of Transferees

7.1. General

- 7.1.1. The Service Provider will develop and implement a procedure to:
- a. inform Transferees of the procedures for management of their property; and
 - b. manage the secure storage of:

- i. all property of Transferees provided voluntarily by the Transferee for storage; and
- ii. all Excluded Items.

7.2. Storage of and access to In Trust Property of Transferees

- 7.2.1. The Service Provider will develop and implement a procedure to:
- a. securely and separately store In Trust Property of Transferees;
 - b. document all In Trust Property of the Transferee;
 - c. provide Transferees with a receipt for all In Trust Property that is to be stored by the Service Provider;
 - d. provide Transferees with access to their In Trust Property, while ensuring they do not have access to Excluded Items ; and
 - e. maintain a register to record all access to the secure store and ensure that all access is monitored.

7.3. Recording of property of Transferees

- 7.3.1. The Service Provider must in accordance with Departmental guidelines:
- a. record all property of Transferees in the Transferee's presence;
 - b. record all property retained by a Transferee while in the Site;
 - c. record all In Trust Property;
 - d. record all illegal and Excluded Items which have been removed and held in trust; and
 - e. provide a receipt to the Transferee.

7.4. Returning In Trust Property

- 7.4.1. The Service Provider must:
- a. provide the opportunity for Transferees to inspect their In Trust Property on discharge; and
 - b. provide the opportunity for the Transferee to sign a statement indicating their satisfaction or otherwise with the items returned and their condition.

7.5. Lost, stolen or damaged property of Transferees in the care of the Service Provider

- 7.5.1. Where In Trust Property is lost, stolen or damaged, the Service Provider must reimburse, at its own cost, the Transferee for the commercial replacement value of the property.
- 7.5.2. Subject to the above, the Service Provider is not responsible for any property retained by the Transferee at the Site that is lost, stolen or damaged.

7.5.3. The Service Provider is responsible for costs associated with any property retained by the Transferee in the Site that is lost, stolen or damaged where that loss, theft or damage is caused by any breach of this Contract, willful misconduct or negligence on the part of the Service Provider or Service Provider Personnel.

7.6. Excluded Items

7.6.1. The Service Provider must advise Transferees what items are Excluded Items in accordance with any Department policies and procedures notified to the Service Provider. The Service Provider must notify the Department Operations Team Leader if an Excluded Item is observed at the Site or in the possession of a Transferee that has not been surrendered.

7.6.2. Where a Transferee surrenders an Excluded Item, the Service Provider must:

- a. hold the Excluded Item as In Trust Property
- b. record the Excluded Item;
- c. securely store the Excluded Item;
- d. return all Excluded Item that the Transferee may legally possess to the person immediately upon their departure from the Manus Island; and
- e. provide all Excluded Items that the Transferee may legally possess to an escorting officer where required by Departmental policy.

7.7. Illegal items

7.7.1. The Service Provider must notify the Department Operations Team Leader if an illegal item is observed at the Site or in the possession of a Transferee that has not been surrendered.

7.7.2. Where a Transferee surrenders an illegal item, the Service Provider must:

- a. hold the illegal item as In Trust Property
- b. ensure the illegal item does not pose an ongoing safety risk to the Site or any persons at the Site;
- c. notify the Department and local authorities in accordance with the Incident management reporting requirements issued by the Department;
- d. record all identifying details concerning the illegal items; and
- e. securely store the illegal item in a manner that protects the integrity of any evidence until custody of the Illegal Item can be transferred to the relevant authority.

PART 3 - MANAGEMENT AND MAINTENANCE OF ASSETS AND THE SITE

8. Assets

8.1. General

- 8.1.1. The parties intend that the Service Provider will be responsible for a range of maintenance and asset management tasks. During the Term of the Contract, unless additional requirements are notified by the Department, the Service Provider's responsibilities in relation to assets are to:
- a. manage assets at the Site and operate and maintain the assets in a manner that ensures to the greatest extent possible that they achieve their design life and the incidence of emergency and breakdown repairs is minimised having regard to the condition in which the assets were on the Commencement Date and the local conditions such as exposure to weather and proximity to the ocean;
 - b. ensure that the assets are always safe to use and comply with all applicable laws and Australian standards (or are withdrawn from use if they are not);
 - c. procure and manage loose assets (such as sports equipment, books, kitchen utensils, DVDs) to ensure they meet the amenity requirements of the Transferees and as agreed with the Department;
 - d. only dispose of, or write-off, an asset that is owned or paid for by the Department with the prior written approval of the Department; and
 - e. provide details of all new, replacement and written off assets to the Department.

The Service Provider is not responsible for project management of capital works at the Site.

8.2. Service Provider and Department assets

- 8.2.1. The Service Provider must provide all assets required by the Service Provider to perform its obligations under this Contract that are not otherwise provided by the Department. Assets required to perform the Services on Manus Island (PNG) will be at the Department's expense subject to the requirements of Schedule 2. The Department will not be responsible for costs associated with any assets which are used by the Service Provider in Australia or on Manus Island (PNG) in relation to activities of the type covered by the Corporate Overhead Fee.
- 8.2.2. The Service Provider must label its own assets located on Manus Island (PNG) to enable the parties to distinguish between the Service Provider's assets and other assets.
- 8.2.3. Where the Department provides or pays for an asset at the Site (including as a Pass Through Cost), the asset will remain or become the property of the Department.

8.3. Asset register

8.3.1. The Service Provider will work with the Department and other service providers to set up a system for identifying and managing assets at the Site to operate under the Contract to be recorded in an Asset Management Register.

8.4. Maintenance of assets, infrastructure and grounds

8.4.1. The Department acknowledges that the Service Provider is responsible for management and maintenance of infrastructure. The parties agree that the Department is responsible for accepting and commissioning all infrastructure. The Department will ensure that technical manuals and information are available for use at the Site and the Service Provider has received the associated operations, maintenance and safety training inductions and information.

8.4.2. The Service Provider must maintain assets and infrastructure to provide a safe, secure and healthy environment, including:

- a. planning, scheduling and performing maintenance; and
- b. planning, scheduling and performing modifications where approved by the Department.

8.4.3. The Service Provider must manage and maintain all grounds including landscaping, planting and horticultural services and built infrastructure (such as roads, stormwater, drains and fences) to ensure the amenity of the Site is maintained in accordance with local community standards and sound environmental management practices.

8.4.4. A maintenance management plan will be developed by the Service Provider for assets and infrastructure at the temporary Site in accordance with clause 1.4.1 of this Schedule 1. The maintenance management plan will set out arrangements for the Service Provider to maintain all assets at the temporary Site including all building, fittings, plant and equipment, engineering services, grounds and infrastructure elements, taking account of the condition in which the assets were on the Commencement Date and the local conditions such as exposure to weather and proximity to the ocean. The maintenance plan will address all maintenance activities, including inspection, testing and servicing. The Service Provider will be responsible for implementing and managing that plan.

8.4.5. When directed by the Department, the Service Provider will develop a maintenance management plan for the permanent Site for approval. This maintenance management plan will set out arrangements for the Service Provider to maintain all assets at the permanent Site, including all building, fittings, plant and equipment, engineering services, grounds and infrastructure elements, to preserve their functionality and value, by conducting maintenance activities that include all inspection, testing and servicing. The maintenance management plan will also address the integration and management of relevant third party arrangements, including any manufacturer or builder warranties or defects liability obligations, that may apply to the assets.

8.4.6. Once the maintenance management plan has been approved, the Service Provider will be responsible for implementing and managing maintenance in accordance with that plan.

8.5. Emergency and breakdown repairs

8.5.1. The Service Provider must:

- a. repair all Site service breakdowns as soon as possible; and
- b. record all details related to each defect, fault or damage and subsequent action taken in response to emergency breakdowns.

8.6. Alternative arrangements during Maintenance

8.6.1. In the event that an asset is defective or has to be taken out of service for Maintenance, the Service Provider must:

- a. make reasonable alternative arrangements to maintain security, work/occupational health and safety and environmental standards until the asset is returned to service; and
- b. notify the Department of the alternative arrangements and any impact these arrangements may have on provision of the Services.

8.7. Damage by Transferees

8.7.1. If Transferees damage assets, the Service Provider must:

- a. repair or replace the assets as requested by the Department;
- b. notify the Department Operations Team Leader; and
- c. record the cost of repairing or replacing assets damaged by Transferees as a separate item.

8.8. Security systems

8.8.1. The Service Provider must, in accordance with arrangements notified by the Department, maintain and test security systems at the Site to ensure the security systems remain functional at all times.

8.9. Emergency systems

8.9.1. The Service Provider must maintain and test emergency installed systems processes and equipment at the Site in accordance with applicable law, emergency services recommended procedures, manufacturer's instructions and any other requirements notified by the Department.

8.9.2. For the purposes of this section emergency systems include:

- a. fire fighting systems;
- b. alarm systems;

- c. safety and emergency signage;
- d. systems for managing power outages, in particular standby diesel generators and uninterrupted power supplies; and
- e. first aid equipment.

8.10. Work practices

8.10.1. The Service Provider must:

- a. ensure all Maintenance work practices are compatible with the Site; and
- b. where Maintenance or modifications are conducted at the Site:
 - i. maintain safety in the Site;
 - ii. as far as is reasonably practicable, organise for Maintenance or modifications to be done during Business Hours (this requirement does not apply to repairs to critical systems);
 - iii. ensure tools are controlled at all times and remain inaccessible to Transferees; and
 - iv. ensure all Service Provider Personnel abide by any conditions of entry to the Site.

8.10.2. The Service Provider must provide interested Transferees with the ability to participate in gardening activities, and where this occurs the Service Provider must:

- a. as far as reasonably practicable, ensure that all Maintenance tools are controlled by Service Provider Personnel in accordance with a documented control of tools procedure;
- b. closely supervise Transferees during any gardening activities;
- c. develop and implement specific induction procedures to be delivered to Transferees participating in gardening activities; and
- d. satisfy any specific Department requirements regarding the use of tools.

8.11. Communication about Maintenance and modifications

8.11.1. The Service Provider must as far as reasonably practicable:

- a. ensure all people affected by any Maintenance work or modifications being undertaken at a Site are aware of the nature and extent of the activity; and
- b. communicate details of actions required to maintain safety such as:
 - i. prevention of unauthorised access to areas under Maintenance, repair or modification;
 - ii. erecting barriers and signage in accordance with the requirements of all relevant work health and safety laws and Australian Standards; and

- ii. notifying Transferees and other people affected of any alternative arrangements and the duration that they may be in place.

9. Cleaning services

9.1. General

- 9.1.1. The Service Provider is responsible for all routine and non-routine cleaning of the Site to ensure the safety, hygiene and well-being of Transferees, and all other people at the Site.
- 9.1.2. Cleaning includes cleaning of all infrastructure (including temporary arrangements such as tents) that forms part of the Site including areas occupied by the Department, other government agencies and other service providers:
- 9.1.3. The Service Provider must, as far as practicable, conduct all cleaning services in accordance with Commonwealth Work Health and Safety legislation.
- 9.1.4. The Service Provider must undertake routine and non-routine cleaning at the Site, such cleaning must:
 - a. meet the detailed requirements as agreed with the Department; and
 - b. as far as practicable, be in accordance with Commonwealth Work Health and Safety legislation requirements including codes of practice
- 9.1.5. The Service Provider must implement within 14 days of the Execution Date cleaning comment books in appropriate locations throughout the Site, which includes:
 - a. the cleaning schedule for each area;
 - b. a section for 'last cleaned' entry by cleaning Service Provider Personnel; and
 - c. details to allow for a quick assessment of cleaning effectiveness and conformance to the cleaning schedule.

9.2. Cleaning services plan

The parties intend that the Service Provider will develop a cleaning services plan in accordance with clause 1.4.1 of this Schedule 1.

9.3. Non-routine cleaning

- 9.3.1. The Service Provider must respond to non-routine cleaning requirements including outside normal routine cleaning hours, which may be required after:
 - a. accidents;
 - b. equipment malfunction; and
 - c. incidents.

9.3.2. The Service Provider must ensure that training is provided to Service Provider Personnel to ensure that where an emergency cleaning requirement cannot be met by the available cleaning Personnel, contingency plans are enacted to reduce the potential impact on Transferees.

9.4. Cleaning accommodation

9.4.1. The Service Provider is responsible for cleaning all accommodation on the Site, including accommodation occupied by Department, Service Provider and other service provider personnel.

9.4.2. In addition, the Service Provider must clean accommodation occupied by Transferees in the following circumstances:

- a. before a Transferee, or group of Transferees, occupies the accommodation;
- b. after a Transferee, or group of Transferees, vacates the accommodation; and
- c. when it is necessary, especially for Transferees who may not be able to clean their accommodation themselves.

9.4.3. Where non-routine cleaning of Transferee-occupied accommodation is required, the Service Provider must gain the consent of the Transferee prior to conducting the cleaning.

9.5. Provision of cleaning equipment to Transferees

The Service Provider must ensure cleaning equipment is available to Transferees to enable them to self clean their accommodation if appropriate subject to availability.

9.6. Minimise disturbance to Transferees and exposure to hazards

9.6.1. The Service Provider must minimise disturbance to Transferees, and must not expose Transferees or any other person to hazards caused by cleaning activities, including:

- a. coordinating cleaning schedules with the daily routine of Transferees;
- b. placing warning signs where cleaning operations may create a hazard; and
- c. preventing Transferees from accessing areas that are being cleaned or treated.

9.7. Cleaning equipment and chemicals

The Service Provider must take all reasonable steps to ensure all equipment and chemicals used by the Service Provider for cleaning are safe, suitable for purpose, environmentally friendly, including biodegradable, and stored securely when not in use subject to access to secure storage facilities.

10. Environmental management

10.1. Environmental management principles

- 10.1.1. The Service Provider must develop environmental management principles for the Site in accordance with clause 1.4.1 of this Schedule 1 to manage energy consumption, the use of natural resources, waste disposal, and vermin and pest control that include:
- a. objectives for environmental management;
 - b. a risk assessment of the environmental impacts of the individual Site operations;
 - c. measures to manage energy consumption, the use of natural resources, waste disposal and pest control;
 - d. procedures and documentation for the implementation, development, review and continuous improvement of the environmental management principles;
 - e. a self assessment program; and
 - f. a process for independent annual auditing of the environmental management principles.

10.2. Energy and water use

- 10.2.1. The Service Provider must implement any reasonable and cost-effective measures to minimise energy and water use in the Site, including:
- a. identifying and correcting any wasteful operation or practices;
 - b. conducting routine Maintenance of systems to achieve peak operational efficiency;
 - c. promoting the responsible use of energy, natural resources and water to Transferees and Service Provider Personnel to acknowledge the local conditions; and
 - d. complying with any applicable local water restrictions or other water saving measures notified by the Department.

10.3. Waste management

- 10.3.1. The Service Provider will work with the Department to implement cost effective measures to manage, in accordance with all applicable laws, disposal of:
- a. general liquid, sanitary and solid waste;
 - b. non-serviceable or unused fixtures, fittings and equipment (such as white goods, mattresses, and fluorescent light tubes);
 - c. hazardous materials and hazardous waste;
 - d. garden waste; and

- e. when undertaking disposals, seek to maximise recycling and, where applicable, composting of waste.

10.3.2. Waste management practices must acknowledge the surroundings and local conditions.

10.4. Vermin and pest control

10.4.1. The Service Provider must develop and implement a vermin and pest control plan in accordance with clause 1.4.1 of this Schedule 1, that:

- a. is, to the extent practicable, based on Australian Pest Controllers Association best practice;
- b. is compliant with all applicable Law; and
- c. in accordance with Department requirements as notified from time to time, includes measures that must be taken to prevent or eradicate vermin or pest infestations (including mosquitoes, vector, fleas, bed bugs, poisonous animals such as snakes and spiders, rats, mice and other rodents), such as:
 - i. environmental and habitat measures to disrupt breeding and life-cycles;
 - i. low level chemical measures such as localised dusting and misting; and
 - ii. the scope of the measures to be implemented and the frequency.

10.5. Disruption and health implications of vermin or pest control activities

10.5.1. The Service Provider must, to the extent possible having regard to the available infrastructure and facilities, avoid exposing any person to hazards caused by vermin and pest control activities and must minimise disturbance to Transferees caused by vermin and pest control activities by implementing measures including:

- a. coordinating vermin and pest control activities with the daily routine of Transferees;
- b. preventing Transferees from accessing areas that are being treated with hazardous chemicals; and
- c. consulting with the Department before commencing any pest or vermin control activities that will significantly disrupt daily activities in a Site.

11. Work health and safety

11.1. General

11.1.1. The Service Provider must:

- a. develop and implement a work health and safety plan in consultation with other service providers and the Department;
- b. comply with all applicable laws for occupational/work health and safety which include for the avoidance of doubt the Commonwealth Work Health

and Safety Act, regulations and codes of practice as well as any applicable local laws and where there is any conflict in the applicable laws, comply with the highest standard;

- c. participate, with other service providers, in any work health and safety committee established to oversee compliance with work/occupational health and safety requirements for the Site as a whole.

11.1.2. An interim work health and safety plan must be in place within 14 days of the Execution Date. A more detailed work health and safety plan must be developed and implemented in accordance with clause 1.4.1 of this Schedule 1.

11.2. Safety precautions in performing the Services

11.2.1. The Service Provider must take all reasonable steps to ensure all people within the Site observe all the work/occupational health and safety rules for that Site, including rules applicable to:

- a. the storage, transport, and use of materials; and
- b. safe work processes and the incorporation of any safety precautions.

11.2.2. The Service Provider must, and must ensure relevant subcontractors taking into account the nature of their involvement in the Services, provide appropriate employee assistance programs for all Service Provider Personnel. The Service Provider must ensure that all its and relevant subcontractor Personnel are aware of and have access to these programs at all times, particularly while working at a Site and after any deployment.

11.3. Use of hazardous substances and chemicals

11.3.1. The Service Provider must take all reasonable steps and work with the other service providers to ensure that:

- a. Transferees, Visitors, Service Provider Personnel, Service Provider subcontractors, Department Personnel and contractors are not exposed to hazardous chemicals; and
- b. the material safety data sheets of all chemicals used in the delivery of Services are readily available in case of emergency to be available within 28 days of the Execution Date.

11.3.2. For the purposes of this section, hazardous chemicals has the meaning given in the Commonwealth Work Health and Safety legislation.

12. Management of emergencies

12.1. General

12.1.1. The Service Provider must:

- a. subject to clause 2.2.1(b) of the Contract, operate and maintain the Site as a safe and secure environment for people to live and work in; and
- b. comply with all applicable Laws (which may include both Papua New Guinea and Australian laws) and Australian Standards for the control and management of emergencies.

12.1.2. The Service Provider must within 7 days of the Execution Date develop and implement an interim emergency plans to be approved by the Department (that includes the Service Provider's procedures for managing and responding to all emergencies) for the Site, to ensure the safety and security at the Site of all Transferees, visitors, Personnel of all service providers and Department Personnel. A more detailed plan is to be developed in accordance with clause 1.4.1 of this Schedule 1.

12.2. Compliance with Australian and Standards

12.2.1. To the extent practicable, the Service Provider must comply with all applicable Australian Standards including Australian Standard 3745: Emergency Control Organisation and Procedures for Buildings, Structures and Workplaces and any update to that standard.

12.3. Emergency control organisation

12.3.1. The Service Provider must, develop and implement in conjunction with the Department Operations Team Leader and other service providers, establish an emergency control organisation (**Emergency Control Organisation**) at the Site which will be responsible for:

- a. implementing emergency procedures as prescribed in the emergency plan and procedures;
- b. ensuring that all Service Provider Personnel within their area of responsibility are trained for their role in an emergency;
- c. reporting any matters likely to affect the viability of the emergency plan and procedures;
- d. checking on the effectiveness of emergency systems and equipment; and
- e. controlling emergency situations until the appropriate emergency service arrives to take control, at which time, the Emergency Control Organisation will work in conjunction with that service.

The Emergency Control Organisation must meet quarterly and after any emergency.

12.4. Emergency exercises

12.4.1. The Service Provider must in conjunction with other service providers:

- a. conduct all emergency exercises required by law or as directed by the Department Operations Team Leader at the Site; and
- b. maintain records of all emergency exercises conducted.

12.5. Access to the Site

- 12.5.1. The Service Provider must at all times, with or without notice, provide access to any part of the Site to Department Personnel, the Commonwealth and Immigration Ombudsman, the Australian Human Rights Commission, the Auditor-General and the Privacy Commissioner and members of the Council for Immigration Services and Status Resolution.
- 12.5.2. Subject to their compliance with any applicable security requirements, the Service Provider must facilitate access to the Site by representatives of those government agencies who have entered into Memoranda of Understanding with the Department, in order to enable them to provide the Services referred to therein.
- 12.5.3. The Service Provider must not knowingly provide access to the Site for media visits except with the approval of the Department and in accordance with the procedures and conditions specified by the Department.

PART 4 TRANSPORT AND ESCORT

13. Arrangements transport and escort

13.1. General

- 13.1.1. The Service Provider must:
 - a. supply transport and escort services for the Site;
 - b. transport and escort Transferees and their property in accordance with the Department's requests, where the transport is voluntary or due to medical evacuation;
 - c. transport Transferees for the purposes of programs and activities;
 - d. transport via a shuttle bus service for Transferees and Personnel including Personnel of the Department and other service providers, to points of interest within a reasonable vicinity of the Site; and
 - e. transport staff, including staff of the Department and other service providers, to and from staff accommodation facilities for the commencement and end of each shift.
- 13.1.2. Transport and escort tasks conducted by the Service Provider may include:
 - a. transferring Transferees to off-site programs and activities; and
 - b. transferring Transferees to local appointments.

13.2. Delivery of transport and escort Services

13.2.1. The Service Provider must:

- a. deliver transport and escort services in a manner that takes into account the Department's requirements, the needs and wellbeing of Transferees, integrity of other service providers and contingency situations and related risks;
- b. operate appropriate vehicles and inclusions, including communication devices;
- c. provide appropriately trained Service Provider Personnel to undertake the services;
- d. where the transport and escort is for a voluntary return, ensure the Transferee being transported is the person nominated in the transport request before the task commences;
- e. ensure that Transferees are aware of where they are going and the expected time of departure and arrival;
- f. provide all meals, beverages and medications for the transport and escort task, which are appropriate for the Transferee.

Modes of transport applicable for transport could be by air, by sea, or vehicle.

13.3. Vehicles

13.3.1. The Service Provider must:

- a. provide vehicles in types and quantities of vehicles suitable for transporting Transferees and Personnel of the Department and other service providers;
- b. ensure all vehicles:
 - i. comply with applicable laws for passenger transport vehicles;
 - i. are clean and tidy;
 - ii. are appropriate to the number of Transferees being transported; and
 - iii. carry the appropriate equipment, such as a first-aid kit and fire extinguisher.

PART 5 - SECURITY SERVICES

14. Delivery of security services

14.1. Scope of services

14.1.1. The Site needs to provide a safe and secure environment for Transferees, Service Provider Personnel, Department Personnel and all other people at the Site, ensuring that each individual's human rights, dignity and well-being is preserved.

- 14.1.2. The Service Provider must deliver structured security services at the Site that are consistent with the goals of the Site, enable the Service Provider to manage routine events at the Site and respond promptly and flexibly to any Incident.
- 14.1.3. The Department will provide infrastructure at the Site including a perimeter fence, lighting towers and a boom gate.
- 14.1.4. The approach to safety and security must be unobtrusive and ensure that the needs of Transferees are met. The approach and procedures should emphasise communication and interaction strategies that address potential or actual risks before they escalate and effect their de-escalation.

14.2. Integrity of the Site

- 14.2.1. The Service Provider:
- a. must take reasonable steps to ensure Transferees behave at all times in accordance with relevant provisions of the visa granted to them by the government of Papua New Guinea ; and
 - b. immediately notify relevant authorities and the Department if a Transferee does not return to the Site at a time required by local authorities.

14.3. Safety and security plan

- 14.3.1. The Service Provider must develop and implement an interim safety and security plan within 21 days of the Execution Date. The safety and security plan will be approved by the Department and must:
- a. as far as practicable, be based on AS/NZS ISO 31000:2009 Risk management – Principles and guidelines;
 - b. include details of:
 - i. how the Service Provider plans to implement the security services contained in this Schedule; and
 - i. how the Services will be delivered in accordance with the Philosophy contained in this Schedule.
- 14.3.2. A more detailed plan will be developed in accordance with clause 1.4.1 of this Schedule 1.

14.4. Service Provider Personnel

- 14.4.1. The Service Provider must provide trained Service Provider Personnel to:
- a. deliver security services unobtrusively, 24 hours a day and seven days a week at the Site;
 - b. respond effectively to unforeseen Incidents while treating Transferees with dignity and respect; and

- c. engage with Transferees and other stakeholders to detect possible Incidents before they occur.

14.5. Training of Service Provider Personnel providing security services

14.5.1. Service Provider Personnel are responsible for:

- a. collecting biometric information;
- b. operating surveillance systems; and
- c. must have completed a training course developed by a Level IV accredited trainer in security operations prior to commencing work at the Site.

14.5.2. The Service Provider must implement arrangements for refresher training.

14.6. Safety and security information obligation

14.6.1. The Service Provider must:

- a. gather and record safety and security information to inform the development of the Site and Transferees security risk assessments and maintain the safety and security of the Site; and
- b. gather and store safety and security information in accordance with the record keeping obligations, including privacy and confidentiality obligations, set out in the Contract.

14.6.2. Safety and security information includes information to be provided by other service providers and covers amongst other things:

- a. unusual occurrences;
- b. information received from a Transferee;
- c. a Transferee or group of Transferees, acting unusually or out of character;
- d. Incident Reports;
- e. trends in Incidents; and
- f. relevant information received from any source.

14.7. Site security risk assessment

14.7.1. The Service Provider must, within 7 days of the Execution Date, develop an interim security risk assessment for the Site. It is intended that a more detailed security risk assessment which as far as practicable accords with AS 4360 Risk Management Standard will be developed in accordance with clause 1.4.1 of this Schedule 1.

14.7.2. In developing and updating the security risk assessment, the Service Provider must take account of:

- a. the number and risk profile of the Transferees at the Site;

- b. the overall security situation (including any information that might be made available by the Department, other government agencies or other sources), including:
 - i. visits;
 - i. arrivals and departures of Transferees;
 - ii. protests and rallies;
 - iii. special events;
 - iv. significant dates; and
 - v. availability of and response times for emergency services; and
- c. the condition and arrangement of built infrastructure and associated technology including any temporary arrangements for new construction or facilities maintenance.

14.7.3. The Service Provider must review the Site security risk assessment as requested by the Department or following any significant Incident. The Service Provider and the Department will agree on timeframes for periodic review of the assessment.

14.7.4. The Service Provider must provide the Department with a copy of the then current security risk assessment, in the form requested by the Department, within five Business Days of any Department request.

14.7.5. The Service Provider must make available to the Department copies of all Security audits conducted, at the completion of the audit or report, including any operational responses to issues raised in the findings of these audits.

14.8. Rostering of security Personnel

14.8.1. The Service Provider must:

- a. ensure daily rosters of Service Provider Personnel for the Site provide a reasonable number of Service Provider Personnel with the skills, experience and fitness required to manage the security environment in a manner that addresses identified risks in the security risk assessment; and
- b. provide the Department with roosting arrangements at the commencement of each alternate business week for the coming fortnight.

14.9. Communication of safety and security requirements

14.9.1. The Service Provider must communicate Site safety and security requirements to all people on Site (including Transferees, Service Provider Personnel, Department Personnel, and visitors). This communication must:

- a. contain only information required by the target audience;
- b. encourage compliance with the Site safety and security rules;

- c. be in a language and form understood by the target audience; and
- d. accommodate people with special needs, such as illiteracy or visual impairment.

14.9.2. The Service Provider must ensure Transferees and other people in the Site are aware of contingency plans for the Site.

15. Entry control

15.1. General

15.1.1. The Service Provider must facilitate controlled and efficient access to the Site by all persons (including Service Provider Personnel, visitors, personnel from other government agencies, Department Personnel, contractors and Transferees), vehicles and goods in an efficient manner.

15.1.2. The Service Provider must ensure that all visitors to the Site are treated with dignity and respect throughout the entry process.

15.2. Identification

15.2.1. The Service Provider must develop and implement a system to identify all people seeking access to the Site and provide a visual means of readily identifying all people while they remain on the Site, including:

- a. confirming access rights and escort requirements;
- b. creating and issuing identification passes; and
- c. discreetly monitor movement and location of all people on the Site.

15.3. Access to controlled areas

15.3.1. The Service Provider must develop and implement systems to manage access to controlled areas within the Site, including implementing a strict control regime for access keys and locks and static guarding where required. Controlled areas are:

- a. secure storage areas;
- b. administration areas;
- c. hazardous materials stores;
- d. medical facilities;
- e. control room;
- f. tool and vehicle stores;
- g. plant and equipment; and
- h. other areas designated by the Department or the Service Provider as controlled areas.

15.4. Operations logs

15.4.1. The Service Provider must:

- a. maintain operations logs at the Site as needed to record the date, time and location for all security related events and actions taken, and constitute an official record of activities and events within the Site;
- b. ensure operations logs provide a comprehensive and accurate account of all Site operations;
- c. inform the Department Operations Team Leader of the range, intent and scope of operations logs in use, and must advise any changes; and
- d. provide operations logs as soon as is reasonably practicable to the Department Operations Team Leader upon receiving a written request.

15.5. Digital records

15.5.1. The Service Provider must, where practicable, digitally record an audio and visual record of all instances where there is any Incident where the Service Provider, acting reasonably, knows that the Department or local authorities may require evidence of the actions Service Provider Personnel.

15.5.2. Where such recordings have been made, the Service Provider must as soon as practicable:

- a. make an unedited copy of the recording;
- b. label the original and copy of the recording with the date and time of the recording and the names of people who appear in the recording; and
- c. provide the original recording to the Department.

15.6. Incidents

15.6.1. The Service Provider must:

- a. take all reasonable steps to manage all Incidents to ensure the safety and welfare of Transferees and other people at the Sites;
- b. seek to resolve all Incidents using negotiation and other de-escalation techniques; and
- c. restore safety and security in the Site as quickly as possible.

15.7. Checks to verify all Transferees are present and safe

15.7.1. The Service Provider must in conjunction with other service providers verify that all Transferees are present and safe in the Site at least twice each day at times which take account of any curfew arrangements.

15.7.2. The check conducted by the Service Provider must be conducted in a manner that respects the cultural, religious, gender and privacy needs of Transferees.

15.7.3. Service Provider Personnel undertaking checks need to be skilled in identifying Transferees who may be unwell or not coping, including in circumstances where the Transferee may be attempting to hide a problem.

15.7.4. The Service Provider must immediately report to the Department Operations Team Leader any concerns about a Transferee's safety, well-being and security.

15.8. Searches

15.8.1. The Service Provider must only conduct searches within the Site:

- a. with the prior approval of the Department; or
- b. on request of the Department.

15.9. Visitor escorts

15.9.1. The Service Provider will ensure that:

- a. visitors to the Site who are assessed by the Service Provider as requiring a Visitor escort are accompanied by Service Provider Personnel at all times; and
- b. visitor escorts are conducted as discreetly as possible, allowing for private conversations between Transferees and Visitors.

15.10. Perimeter security

15.10.1. The Service Provider must ensure that the security of the perimeter of the Site is maintained at all times in accordance with Departmental policies and procedures as notified from time to time by the Department.

15.11. Contingency plans and procedures

15.11.1. The Service Provider must:

- a. develop and implement an interim contingency plan for the Site with 7 days of the Execution Date for approval by the Department, that details the control arrangements, communications, and other processes and procedures required for the Service Provider to maintain the safety and security of Transferees and other people who may be in the Site at the time;
- b. a more detailed plan is to be developed in accordance with clause 1.4.1 of this Schedule 1. The contingency plan will address a range of plausible contingencies, will be as far as practicable developed and maintained in accordance with ASNZS 3745 and will include:
 - i. procedures for notifying the Department and other service providers that the contingency plan is in effect;
 - ii. coordination procedures with the Department and other service providers and other authorities;

- iii. processes for communicating emergency procedures to Transferees, Service Provider Personnel and all other people at the Site to ensure they understand the emergency procedures;
- iv. plans and arrangements for applicable emergency services (such as ambulance services, fire services, police services, utilities and nominated contractors) to access and move through the Site;
- v. procedures which apply to a variety of emergency situations (to include evacuation where warranted); and
- vi. frequency of emergency drills and tests.

15.12. Safety and security exercises

- 15.12.1. The Service Provider must in conjunction with other service providers:
- a. implement a Department approved schedule of quarterly safety and security exercises to test security and incident response capabilities for Personnel of all service providers; and
 - b. at the conclusion of each safety security exercise, provide a written report to the Department on the outcomes from the exercise including any proposals for continuous improvement.

PART 6 - CATERING

16. Catering

16.1.1. Nutritional and Food Safety

The Service Provider must:

- a. ensure Transferees are provided with access to food and beverages that are sufficient in quantity, offer variety, are nutritious, culturally appropriate, dietary specific (where required);
- b. ensure compliance with all applicable health and food safety regulations.

16.2. Quantity of food and beverages

The Service Provider must provide food and beverages in quantities that are at least 10% more at lunch times and 10% more at dinner times than the quantities identified in the Dietary Guidelines for Australian Adults published by the National Health and Medical Research Council.

16.3. Halal arrangements

- 16.3.1. The Service Provider must ensure that food prepared for Transferees of Islamic faith is Halal, including:
- a. sourcing produce certified as Halal by a recognised Halal food certification organisation; and

- b. preventing any cross-contamination between Halal food and preparation areas and any other food and preparation areas.

16.4. Self-service snacks

- 16.4.1. The Service Provider must provide self-service snacks and refreshments that are available to Transferees at all times.

16.5. Individual Allowance Program and Canteen

- 16.5.1. The Service Provider will support the welfare and support service provider in the operation and management of the Individual Allowance Program and the canteen on the Site as set out in the guidelines issued by the Department from time to time.
- 16.5.2. The Service Provider will be responsible for managing all procurement associated with the operation of the canteen.

16.6. Transport of food beverages

- 16.6.1. The Service Provider must :
 - a. to the extent practicable considering the logistic supply routes comply with all applicable laws as well as Food Safety Standards Australia and New Zealand requirements applying to the transport of food and beverages at all times; and
 - b. clean and maintain hot boxes and eskies used to transport food and beverages.

16.7. Cleaning of food preparation and service areas

- 16.7.1. To the extent practicable, the Service Provider must keep all food transportation, storage preparation, service, dining and waste storage areas (including designated self-catering and barbeque areas) and equipment clean and hygienic in accordance with:
 - a. Food Safety Standards Australia and New Zealand;
 - b. Food Safety Standards applicable on Manus Island (PNG)
 - c. any applicable manufacturer's or suppliers specifications for cleaning and catering equipment.
- 16.7.2. The Service Provider must ensure that sufficient Service Provider Personnel are employed on each shift to allow for efficient cleaning of all food transportation, storage, preparation, service, dining and waste storage areas and equipment.
- 16.7.3. The Service Provider must organise periodic inspections of all catering facilities to ensure standards are maintained.

16.8. Catering

- 16.8.1. Service Provider Personnel responsible for managing catering at the Site must:
- a. hold at least a Certificate III in Hospitality (Kitchen Operations) or equivalent; and
 - b. have acquired at least three years experience in managing a commercial kitchen.
- 16.8.2. All other catering Personnel engaged by the Service Provider for the preparation of food and beverages must hold at least a Certificate II in Hospitality (Kitchen Operations) or equivalent.
- 16.8.3. All staff engaged by the Service Provider for the serving of food and beverages must hold at least a Certificate II in Hospitality, or, have relevant work experience and be supervised by a person holding a Certificate II in Hospitality other than Transferees who volunteer to assist.

16.9. Display of signage

The Service Provider must develop and implement within 21 days of the Execution Date a document that contains instructions for the cleaning and maintenance of hygiene and safety in food preparation and designated self-catering areas in accordance with any Department instructions. Once developed the document must be displayed prominently.

16.10. Dining room

- 16.10.1. The Service Provider must:
- a. provide lunch and dinner in a designated dining room (where a dining room exists in the Site);
 - b. provide breakfast and snacks in a designated common area;
 - c. except where agreed with the Department, open the dining area for lunch – between 1230 and 1400 and dinner – between 1830 and 2000; and
 - d. open the dining area to serve meals to Transferees of the Islamic faith before dawn and after sunset during Ramadan.

16.11. Late Arrivals

- 16.11.1. The Service Provider must provide a meal and beverage, within one hour to the Transferees who arrive at a Site between 1830 and 0600.

PART 7 - GOVERNANCE ARRANGEMENTS

17. Outline

- 17.1.1. This Part:

- a. outlines the Department's governance framework to support the effective delivery of Services under the Contract; and
- b. discusses the partnering approach expected of the Service Provider, the Department and other service providers to build long term relationships and improve service delivery for Transferees; and
- c. describes the contract management structure that will be in place at a Site level, and a national level, including the committees and joint initiatives the Service Provider will be required to participate in.

18. Governance framework

18.1. General

18.1.1. The Department's governance framework has been developed to support the effective delivery of services under this Contract. A key feature of the governance framework is two distinct layers of governance to provide clear pathways to raise, discuss, respond to, and resolve issues:

- a. senior management - to address issues at the strategic/tactical level; and
- b. local management - to address issues at the delivery levels

18.1.2. The Service Provider must cooperate with the Department by actively participating in committees and meetings that have been (or are being) established across both levels of governance.

18.1.3. The Service Provider must cooperate with the Department, other service providers, and stakeholders, to meet the needs of Transferees and assist the Department to meet its obligations.

18.2. Cooperation, collaboration and meetings

18.2.1. The Service Provider must attend the high level monthly strategic/tactical level meetings with the Department senior management as follows:

- a. as an individual service provider every two to three months as required by the Department; and
- b. in a joined-up forum with the Department and representatives of other service providers every six months or as otherwise required by the Department.

Unless otherwise advised by the Department, senior management meetings will be held in Canberra.

18.2.2. The Service Provider must attend the following local management meetings:

- a. morning meeting (daily) with the Department and other service providers;
- b. consultative committee (monthly) with Transferees, other service providers and the Department;

- c. weekly Department and prevention committee review with the Department and other service providers to identify Transferees at risk; and
- d. facility level board (monthly) with the Department and other service providers reviewing the effectiveness of governance arrangements, risks and issues affecting the facility.

Unless otherwise advised by the Department, local management meetings will be held at the Site.

- 18.2.3. The Service Provider must participate in, and action agreed items resulting from all meetings, consultative committees and forums at the request of the Department.
- 18.2.4. In certain situations, and particularly at the local management level of governance, the Service Provider may be required to chair and lead a meeting.
- 18.2.5. The Service Provider must provide updates, reports and briefings for meetings, consultative committees and forums at the request of the Department.
- 18.2.6. The Service Provider with the Department, PNG government and Manus Island communities must :
 - a. participate in and contribute to regular meetings with community leaders; and
 - b. develop and maintain good working relationships with key community members.

PART 8 - LOGISTICS

19. Logistics

- 19.1.1. The Service Provider will work cooperatively with the Department, local authorities and other service providers to ensure that logistics are completed in a timely manner.
- 19.1.2. The Service Provider will enter into a subcontract with a local entity to provide assistance in relation to logistics associated with handling of cargo at the airport on Manus Island relevant to the Service and the operation of the Site.
- 19.1.3. The Service Provider will develop a logistics plan that sets out in more detail the logistics arrangements that will apply at the Site. Once approved, the Service Provider will comply with and implement the plan.

SCHEDULE 2 FEES AND PAYMENT

1. Service Fee

1.1. Elements of the Service Fee

1.1.1. The Service Fee for the Services will comprise the following elements which are described further below:

- a. a Corporate Overhead Fee
- b. a Service Delivery Team Fee
- c. a Pass-Through Cost Fee to be applied to certain costs that may be claimed as pass through costs.

1.1.2. The Corporate Overhead Fee and the Service Delivery Team Fee are payable from the Commencement Date. Pass-Through Costs approved by the Department along with the applicable Pass-Through Cost Fee may be claimed even if incurred prior to the Commencement Date.

1.1.3. The Service Provider is not entitled to any other payments in relation to the delivery of the Services (except where these additional costs have been agreed in writing between the parties).

1.1.4. If the Department extends the Contract in accordance with clause 2.4.2, the Corporate Overhead Fee and the Service Delivery Team Fee will be adjusted in accordance with the annual percentage change of the Australian Bureau of Statistics Wage Price Index 6345. Where relevant, those components of the Service Delivery Team Fee that are calculated by reference to wages applicable in Papua New Guinea (PNG) may be adjusted by reference to an equivalent PNG index.

1.2. Exchange rate adjustment

1.2.1. Where relevant, the exchange rate to be used is 1Kina = A\$0.46. If there is a variation of more than 10% in the exchange rate, either party may seek a review of this exchange rate or any elements of the Service Fee that have been calculated using this exchange rate.

2. Corporate overhead fee

2.1.1. The corporate overhead fee is a monthly fee of s. 47(1)(b) i.

2.1.2. The corporate overhead fee includes the following:

- a. s. 47(1)(b)
- i. [REDACTED]
- ii. [REDACTED]
- iii. [REDACTED]

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3.1.3. Without limiting clause 3.1.1 of this Schedule, the parties recognise that the number of Transferees and Site requirements will vary from time to time. The parties will agree a roster on a fortnightly basis that will set the level of resourcing and the number of working days required for the period of the roster (including any pre- and post- deployment activities) and the daily rates and deployment allowances (where applicable) set out in Attachment A will be used to calculate the Service Delivery Team Fee.

3.1.4. Regardless of the number of Transferees at the Site, the Service Provider must not claim a component of the Service Delivery Team Fee for a position unless a person has been deployed or engaged for deployment to the Site in relation to that position.

3.2. Base daily rate and deployment allowance

3.2.1. The base daily rate includes all staff on-costs, including (but not limited to) insurance, administration, superannuation, as well as all allowances (other than deployment allowance).

3.2.2. Deployment allowance includes all allowances, mark-ups, insurance, administration and other on-costs associated with offshore deployment and taxes other than GST. Where staff who are deployed to the Site are on leave or undertaking on shore training, induction, medicals or debriefing in Australia, or travel to or from the Site, the deployment allowance is not payable.

3.3. Rates for locally engaged staff

3.3.1. Labour rates for locally engaged staff must be consistent with local law and practice for the relevant Site and will be subject to a mark up to be agreed to account for management, supervision, contingency, profit and shift work.

4. Pass-through costs and pass through costs fee

4.1. Approval of all pass-through costs

4.1.1. The Department will reimburse reasonable approved costs incurred by the Service Provider that are not covered by the Corporate Overhead Cost Fee or the Service Delivery Team Fee including but not limited to the following:

- a. s. 47(1)(b) [REDACTED]
- [REDACTED]

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h. s. 47(1)(b) [redacted]

[redacted]

[redacted]

4.1.2. The following limitations apply in relation to Pass-Through Costs:

a. s. 47(1)(b) [redacted]

[redacted]

[redacted]

4.1.3. The Department will reimburse any requirement to replace Transferee property or compensate a Transferee for loss or damage to their own property other than where the loss or damage was caused or contributed to by an act or omission of the Service Provider. No mark up is to be applied to reimbursement of these costs.

4.1.4. The parties will develop a joint procedure for the management, approval and reporting of all procurement and Pass-Through Costs. All Pass-Through Costs must:

- a. be approved by the Department in advance in writing; and
- b. be claimed within 3 months of the date on which the relevant goods or services are provided to the Service Provider.

4.2. Pass-Through Cost Fee

4.2.1. A Pass-through Cost Fee of s. 47(1)(b) is payable on approved Pass-Through Costs other than where this Contract indicates that no mark up is applicable.

5. Payment arrangements

5.1. Invoices

5.1.1. The Service Fee and the approved Pass-Through Costs will be invoiced and submitted as soon as possible and in any event no more than 3 Business Days after the last working day of each month and be paid by the Department monthly in arrears within 30 days of receipt by the Department of a correctly rendered invoice. Unless otherwise agreed, any payments under this Contract will be made by electronic transfer directly to a nominated bank account.

5.1.2. An invoice must:

- a. meet Australian Taxation Office requirements of a tax invoice as required by GST Law;
- b. be accurate;
- c. meet the requirements of the Financial Management and Accountability Act 1997;
- d. provide disclosure of the basis of all components of the Services Fee charged to the Department (including relevant calculations); and
- e. provide full substantiation for any Pass-Through Costs claimed by the Service Provider and include confirmation that the Pass-Through Costs are properly recoverable (including compliance with paragraph 4.1.4 above).

5.2. Disputes about invoices

- 5.2.1. If the Department in good faith disputes the whole or any portion of the amount claimed in an invoice, the Department:
- a. may withhold payment of any part of the Services Fee or any Pass-Through Costs that are in dispute until the dispute is resolved; and
 - b. must notify the Service Provider in writing (within 30 days of receipt of the invoice) of the reasons for disputing the remainder of the invoice.

5.3. Incorrect Invoices

- 5.3.1. If an invoice is found to have been rendered incorrectly, any underpayment or overpayment will be recoverable by or from the Service Provider, as the case may be, and, without limiting recourse to other available remedies, may be off-set against any amount subsequently due from the Department to the Service Provider. In such circumstances the Service Provider must provide to the Department a correctly rendered Tax Adjustment Note.

6. Facilities and other assistance

6.1. Facilities

- 6.1.1. The Department will provide the Service Provider with access to the following facilities for the purposes of providing the Services under this Contract:
- a. accommodation for Service Provider Personnel;
 - b. access to office space;
 - c. transport on Manus Island
- 6.1.2. The Service Provider acknowledges that other service provider and Department personnel will also be accessing and using these facilities as part of the operation and management of the Site. The Service Provider will refer any issues regarding access to or use of the facilities to the Department Operations Team Leader for resolution.

6.2. Other assistance

6.2.1. The Service Provider will be provided with the following assistance:

- a. subsidised meals for Personnel in accordance with Department policy.

Role	FTE*	BDR	Deployment Allowance	TOTAL DR = (BDR + Allowance) x FTE
s. 47(1)(b)				
Manager				
s. 47(1)(b)				
s. 47(1)(b)				

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Role	FTE*	BDR	Deployment Allowance	TOTAL DR = (BDR + Allowance) x FTE
s. 47(1)(b) : [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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SCHEDULE 3 CONFIDENTIALITY DEED

THIS DEED POLL is made the day of 2012 in favour of the **COMMONWEALTH OF AUSTRALIA** represented by the Department of Immigration and Citizenship (the Department)

BY (the **Confidant**)

RECITALS

A The Department and G4S Australia Pty Ltd (**Service Provider**) have entered into a Contract under which the Service Provider will provide the Services to the Department.

B. The performance of the Services requires access to information confidential to the Department.

C. The Confidant will be performing Services.

THE CONFIDANT DECLARES AS FOLLOWS:

1. INTERPRETATION

1.1 All terms used in this Deed have the same meaning as is given to them in the Contract, and in particular, the following terms have the following meaning:

Contract means the Contract between the Department and the Service Provider for the provision of Services on Manus Island (PNG).

Department Confidential Information means information that:

- a. is by its nature confidential;
- b. is designated by the Department or any law as confidential; or
- c. the Confidant knows or ought to know is confidential;

and includes to the extent that it is confidential:

- d. information comprised in or relating to any Intellectual Property of the Department;
- e. information relating to contractors or suppliers to the Department; and
- f. information relating to Department Data,

but does not include information which:

- g. is or becomes public knowledge other than by breach of the Contract or any other confidentiality obligation; or
- h. has been independently developed or acquired by the Confidant as established by

written evidence.

Department Data means all data and information relating to the Department, and its operations, facilities, customers, clients, constituents, personnel, assets and programs in whatever form that information may exist and whether entered into, stored in, generated by or processed through the Services by or on behalf of the Department and any other data in relation to which the Services are provided.

Intellectual Property or IP includes business names, copyrights, and all rights in relation to inventions, patents, registered and unregistered trade marks (including service marks), registered designs, and semi-conductor and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Services means the Services specified in the Contract.

2. NON DISCLOSURE

2.1. Subject to clause 3 of this Deed, the Confidant must not copy, reproduce or disclose any Department Confidential Information without the prior written consent of the Department, which consent the Department may grant or withhold in its absolute discretion.

3. RESTRICTION ON USE

3.1. The Confidant must use Department Confidential Information only for the purpose of performing the Services. In particular the Confidant must not access, use, modify, disclose or retain any Personal Information the Confidant has acquired through the performance of the Services except for the purpose of performing the Services.

4. CRIMES ACT

4.1. The Confidant acknowledges that section 3(1) of the *Crimes Act 1914* (Cth) states that the term "Commonwealth officer" includes a person who "performs services for or on behalf of the Commonwealth".

4.2. The Confidant acknowledges that the publication or communication by the Confidant of any fact or document which has come to their knowledge or into their possession or custody by virtue of the performance of the Contract (other than to a person to whom the Confidant is authorised to publish or disclose the fact or document) may be an offence under the *Crimes Act 1914*, punishment for which may include imprisonment.

5. DELIVERY UP OF DOCUMENTS

5.1. The Department may, at any time and without notice, demand, either orally or in writing, the delivery to the Department of all documents in the possession or control of the Confidant which contain Department Confidential Information.

6. CONFLICT OF INTEREST

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

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

7. SURVIVAL OF OBLIGATIONS

7.1. The obligations in this Deed are perpetual.

8. INDEMNITY

Note: This clause can be deleted where the Confidant is an individual.

8.1. The Confidant indemnifies the Department and its officers, employees and agents against any claim, loss, liability or expense incurred by them which is caused or contributed to by:

- a. the Confidant's failure to comply with this Deed; or
- b. the act or omission of the Confidant's employees, agents or subcontractors in relation to Department Confidential Information.

8.2. The Services Provider agrees that the Department may enforce the indemnity in clause 8.1 in favour of any Department officers, employees or agents.

Executed as a Deed

Drafting Note: Signature block appropriate to the nature of the Confidant to be used.

SIGNED, SEALED and DELIVERED by

[Confidant] in the presence of: _____

Signature of Recipient

Signature of witness

Name

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THE COMMON SEAL of *[Confidant]*, the fixing of which was witnessed by:

Signature of director

Signature of director/secretary

Name

Name

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SCHEDULE 4 DEED OF NON-DISCLOSURE PERSONAL INFORMATION

THIS DEED POLL is made the _____ day of 2012

in favour of the COMMONWEALTH OF AUSTRALIA represented by the Department of Immigration and Citizenship (**the Department**)

BY (the **Confidant**)

1. The Confidant understands that in the course of performing duties in relation to a Contract between the Department and G4S Australia Pty Ltd (**Service Provider**) (**Contract**) for the services on Manus Island, the Confidant may have access to personal information, being information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion (**Personal Information**).
2. The Confidant acknowledges and agrees that it may not access, use, disclose, publish, communicate or retain, or otherwise deal with in any way, Personal Information except in the course of, and for the purpose of, performing its duties in relation to the Contract.
3. The Confidant agrees, with respect to all Personal Information to which it has access in the course of performing duties in relation to the Contract, to:
 - a. not do any act, or engage in any practice that would breach:
 - i. the Services Provider's obligations under the Contract to protect Personal Information if done or engaged in by the Services Provider; or
 - ii. the Information Privacy Principles set out in the *Privacy Act 1988* (Cth) (**Privacy Act**) if done or engaged in by the Department;
 - b. implement all reasonable measures to assist the Department in meeting the obligations under the Privacy Act concerning the security, use and disclosure of information to which the Department is subject in respect of that Personal Information;
 - c. co-operate with any reasonable demands or enquiries made by the Commonwealth Privacy Commissioner;
 - d. not disclose such Personal Information without the written authority of the Department except in the course of, and for the purpose of, performing the Contract, and it will immediately notify the Department where it becomes aware that a disclosure of such information may be required by law;
 - e. ensure that any person who has an access level which would enable that person to obtain access to any information in respect of which the

Department has obligations under the Privacy Act is made aware of, and undertakes in writing, to observe the provisions of this Deed;

- f. take all reasonable measures to ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only Service Provider Personnel have access to it. For the avoidance of doubt, Personal Information must not be used for, or in any way relating to, any direct marketing purpose;
- g. not transfer such Personal Information outside Australia, or allow parties outside Australia to have access to it, without the prior approval of the Department;
- h. inform any person, on his or her request, in writing of the content of any provision of the Contract that is inconsistent with an approved privacy code binding the Service Provider or a National Privacy Principle as set out in the Privacy Act, in accordance with the Service Provider's obligations under section 95C of the Privacy Act;
- i. immediately to notify the Department when the Confidant becomes aware of a breach of any obligation concerning security, use and disclosure of such Personal Information relating by itself or any representative, employee or officer;
- j. notify the Department of, and co-operate with the Department in the resolution of, any complaint alleging an interference with privacy;
- k. give to any person, on his or her request, having taken reasonable steps to satisfy itself of that person's identity, access to that person's Personal Information held by the Service Provider, except to the extent that the Service Provider is required or authorised by law to refuse to provide the person with access to that Personal Information;
- l. if requested to correct or update such Personal Information by a person to whom the Personal Information relates, take reasonable steps to correct or update the Personal Information;
- m. upon written notice from the Department, destroy or permanently de-identify any Personal Information as soon as practicable after it is no longer required for the purpose for which it was originally collected;
- n. not adopt as its own identifier of a person an identifier that has been assigned by the Department, or use or disclose any such identifier except for the purpose of fulfilling its obligations under the Contract, or where required or authorised by law; and if the Personal Information is sensitive information or health information, as those terms are defined in the Privacy Act, not collect, use or disclose such information without the consent of the person to whom that information relates, subject to any exception provided for by law.

4. The Confidant agrees that its obligations under this Deed and to perform duties in relation to the Contract:
 - a. to the extent of any inconsistency with the National Privacy Principles in the *Privacy Act 1988* (Cth) or any privacy codes or privacy principles contained in, authorised by or registered under any law, take priority to the fullest extent permitted by applicable law; and
 - b. to the extent not so inconsistent, are in addition to any obligations the Confidant may have under the *Privacy Act 1988* (Cth) or any privacy codes or privacy principles contained in, authorised by or registered under any law.
5. The Confidant acknowledges that failure by it to comply with the obligations under the Privacy Act in accordance with paragraph 3 may result in the Service Provider or the Department taking action against the Confidant (including, without limitation, disciplinary action).
6. The Confidant acknowledges that any unauthorised access, alteration, removal, addition, possession, control, supply or impediment to the access, reliability, security or operation of data held in any computer (or, in some cases, any storage device) in the course of performing a Contract with the Commonwealth may be an offence under Part 10.7 of the *Criminal Code 1995* (Cth) for which there are a range of penalties, including imprisonment.
7. The Confidant acknowledges that:
 - a. section 3(1) of the *Crimes Act 1914* (Cth) states that the term "Commonwealth officer" includes a person who "performs services for or on behalf of the Commonwealth";
 - b. the publication or communication by the Confidant of any fact or document which has come to its knowledge or into its possession or custody by virtue of the performance of the Contract (other than to a person to whom the Confidant is authorised to publish or disclose the fact or document) may be an offence under the *Crimes Act 1914* (Cth), punishment for which may include imprisonment; and
 - c. it is an offence under Division 137 of the *Criminal Code 1995* (Cth) to give false and misleading information to the Commonwealth or its officers or agents.
8. The Confidant agrees to treat all Personal Information with the utmost care and to protect that information at all times in accordance with all security and privacy requirements imposed by the Contract on persons performing duties in relation to the Contract.
9. The Confidant acknowledges and agrees that this Deed survives the termination or expiry of any contract providing for the performance of services by it (whether directly or indirectly) in relation to the Contract.
10. This Deed will be governed by, and construed in all respects in accordance with, the law of the Australian Capital Territory and the Confidant agrees to

submit to the applicable jurisdiction of the Courts of that Territory in respect of all matters arising under, or in relation to, this Deed.

11. Without limiting the rights of the Department to enforce this Deed, the Department may also enforce this Deed against the Confidant.

Executed as a Deed

SIGNED, SEALED and DELIVERED by

[Confidant] in the presence of: _____

Signature of Recipient

Signature of witness

Name

THE COMMON SEAL of
[Confidant], the fixing of which
was witnessed by:

Signature of director

Name

Signature of director/secretary

Name

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Freedom of Information Act 1982

SCHEDULE 5 SERVICE PROVIDER CONFIDENTIAL INFORMATION

(a) Information contained in Contract:

Item	Period of Confidentiality
The individual components of the Service Fee	Duration of the Contract
The liability limitation arrangements	Duration of the Contract

(b) Information obtained or generated in performing Contract:

Item	Period of Confidentiality
The individual components of the Service Fee	Duration of the Contract
Information regarding Performance Framework such as KPIs, performance against KPIs and abatements	Duration of the Contract

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SCHEDULE 6 PERFORMANCE MANAGEMENT FRAMEWORK PRINCIPLES

1. Joined Up Approach

- 1.1.1. Fundamental to the successful delivery of services to Transferees located at the Sites is a requirement to foster productive working relationships with all other service providers providing services at sites on Regional Processing Countries.
- 1.1.2. The Service Provider is required to engage effectively and positively with local communities and ensure that operational aspects of the Sites are appropriately supported.

2. The Framework

2.1. General

- 2.1.1. The Performance Management Framework will ensure the provision of the Services and the management of performance under this Contract aligns with the vision and outcomes of Transferee and community well-being. This is represented in the diagram below as a Performance Pyramid incorporating the following:

1. Program Vision
2. Program Outcomes
3. Key Deliverables (Performance Indicators)
4. Key Performance Measures.

These four levels highlight the different levels of offshore performance measures and have been developed to monitor, analyse, review and implement the Department's core Transferee, operational and strategic objectives in a single framework.

- 2.1.2. The Service Provider must comply with all processes and timeframes specified in
- a. The Performance Management Framework; and
 - b. Any related documents as agreed between the parties.

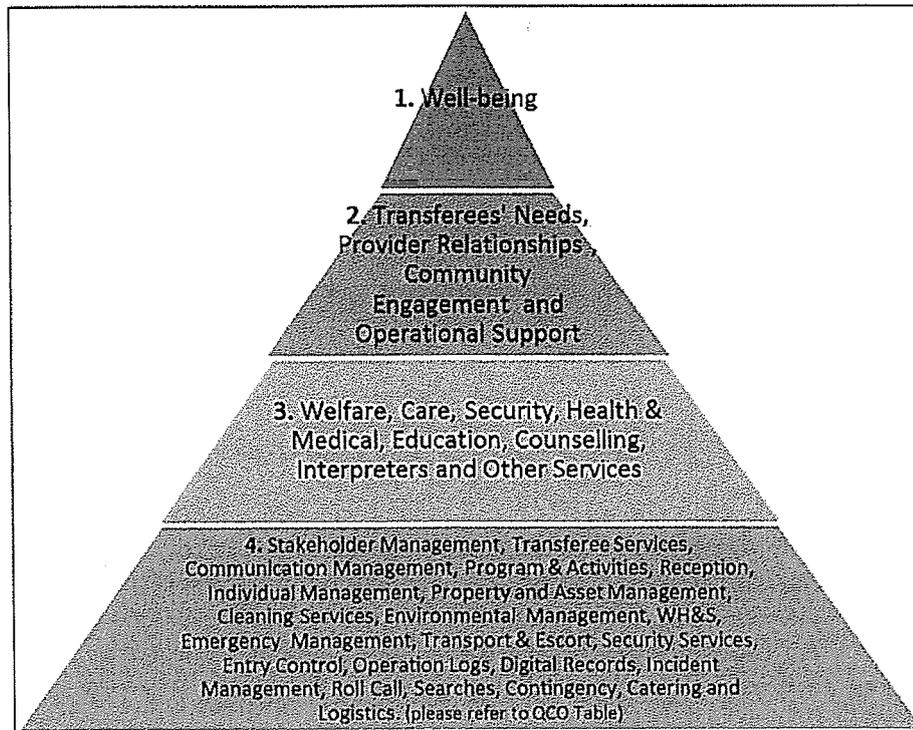


Diagram 1: Performance Pyramid

2.1.3. Level One, the Program Vision, represents the 'Well-being' of the Transferees within a Site on a Regional Processing Country. The well-being of Transferees in a Site is a priority for the Department and the Service Provider. This will be heavily scrutinised in terms of Performance Measurement.

2.1.4. Level Two, Program Outcomes, comprise of:

- Transferees' needs
- Provider relationships; and
- Community engagement and operational support.

It is imperative that the Service Provider acknowledges and addresses the needs of Transferees and fosters productive relationships with all other service providers working in Regional Processing Countries. The Service Provider is expected to engage effectively and positively with local communities and ensure that operational aspects of the Sites are supported.

2.1.5. Level Three, being the Key Performance Indicators represent the eight key areas that frame the Department's expected key deliverables. These areas cover the full scope of services on Site across all service providers.

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- 2.1.6. Level Four represents the specific Key Performance Measures which will be used to measure the success of the programs core objectives. These measures will be specific to each Service Provider and will cover the full scope of services deliverable under each contract. These measures will be developed jointly with the Service Provider within eight weeks of the Execution Date.

2.2. Reporting

- 2.2.1. The Service Provider must work collaboratively with the other service providers to prepare a single Joint Performance Report for the Site.
- 2.2.2. The Joint Performance Report must be delivered to the Department monthly within 10 Business Days of the end of each month. The Report will provide an overview of the operations in the Site.
- 2.2.3. The Report will be prepared in accordance with the agreed template and will include sections dealing with:
- a. Performance against the Key Performance Measures
 - b. Areas of poor performance
 - c. Areas of achievement
 - d. Quality Transferee and community outcomes

2.3. Incentive Regime

- 2.3.1. The Incentive Regime will be implemented at each Site once the Site is in a business-as-usual operating mode as agreed between the Department and the Service Provider.
- 2.3.2. The incentive regime will make use of both financial and non-financial incentives to encourage providers to set their performance goals beyond the minimum expectations of the contract and focus on the key outcomes for transferees.

2.4. Abatement Regime

- 2.4.1. The Abatement Regime will be implemented at each Site once the Site is in a business-as-usual operating mode as agreed between the Department and the Service Provider.
- 2.4.2. The abatement regime to be implemented will include:
- a. a three 'tiered system' – not financially penalising poor performance in the first instance; and
 - b. withholding a percentage of the Management Fee in months where abatement is applicable and in the event of continuous failure.
- 2.4.3. The 'three tiered system' for abatements will be implemented as follows:

- a. An initial failure of a metric – no financial abatement would apply to an area of performance monitoring, however there is an obligation to increase the level and frequency of reporting requirements and a process for the identification of issues / failures on key deliverables
- b. Subsequent failure of the metric – there is no financial abatement however the failure results in increased observations and monitoring by the Department to determine preventative / corrective action
- c. A third failure of the same metric or a failure of any significant metric – a financial abatement is applied in accordance with a methodology yet to be determined.

2.4.4. There will be some situations in which the first and second tier of the three tier system will not apply. This relates to performance failures that DIAC considers 'significant' in terms of not complying against performance measures. Immediate financial abatement will apply in the first instance in the following circumstances:

- a. Breaches of hygiene standards
- b. Breaches of client accountability
- c. Incidents of preventative injury
- d. Others as determined by DIAC (based on an assessment of risk)

3. Excusable Performance Failure

- 3.1.1. The Contract includes provisions dealing with Excusable Performance Failure Events. The Service Provider must comply with the requirements of these provisions.
- 3.1.2. The Service Provider must develop as part of the Performance Management Framework, processes and procedures that will be implemented in the event of a Excusable Performance Failure Event in order to remove, overcome or minimise the effects of that Excusable Performance Failure Event as quickly as possible and that, to the maximum extent possible, the Program Vision, Program Outcomes and Key Performance Indicators continue to be met during the Excusable Performance Failure Period ('Response Processes'). Successful implementation of these Response Processes will be reflected in a least one Key Performance Measure.
- 3.1.3. During the Excusable Performance Failure Period, some of the Key Performance Measures may be suspended. However, the Service Provider's performance against the remaining Key Performance Measures, in particular the Key Performance Measure(s) dealing with implementation of the Response Processes, will continue to be measured and failure to meet any Key Performance Measures that have not been suspended could result in an abatement.

Executed by the
Commonwealth of Australia
represented by Department of
Immigration and Citizenship
by its duly authorised delegate:

s. 47F(1) 
.....
Signature of witness

Mark Painting
.....
Name of witness (print)

s. 47F(1) 
.....
Signature of delegate

KENNETH DOUGLAS
.....
Name of delegate (print)
*FIRST ASSISTANT SECRETARY
RETENTION INFRASTRUCTURE
& SERVICES DIVISION*
.....
Position of delegate (print)

Executed by **G4S Australia Pty
Ltd** by its duly authorised
representative:

s. 47F(1) 
.....
Signature of witness

ANDREW DEWSNAP
.....
Name of witness (print)
*Company Secretary,
G4S Australia Pty Ltd*

s. 47F(1) 
.....
Signature of authorised
representative

DARREN BOYD
.....
Name of authorised
representative (print)
*Managing Director
G4S Australia Pty Ltd*
.....
Position of authorised
representative (print)

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10-16

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Australian Government
Department of Immigration and Citizenship

██████████
G4S Managing Director
Level 4, 441 St Kilda Road
Melbourne, Vic 3004

File ref: ADF2012/37384

Dear ██████████

**Contract Variation relating to the balance of staff adjustment at the Manus Island
Regional Processing Centre**

Thank you for your letter dated 24 July 2013 confirming G4S's agreement to the deed of variation at the Manus Island Regional Processing Centre (RPC).

Please find at Attachment A a signed copy of the deed of variation for your records.

If you have any questions in relation to the above, please contact ██████████ at anthony.kneipp@immi.gov.au

Yours sincerely

██████████
Contract Administrator
5 August 2013

people our business



Australian Government

**Department of Immigration
and Citizenship**

DEED OF VARIATION No 1

BETWEEN

COMMONWEALTH OF AUSTRALIA

**REPRESENTED BY THE DEPARTMENT OF IMMIGRATION AND
CITIZENSHIP**

AND

G4S AUSTRALIA PTY LTD ACN 100 104 658

DEED OF VARIATION

BETWEEN

COMMONWEALTH OF AUSTRALIA (the Commonwealth) represented by the Department of Immigration and Citizenship, of 6 Chan St., Belconnen, ACT 2617 (the Department)

and

G4S Australia Pty Ltd Level 4, 441 St Kilda Road, Melbourne, Victoria, 3004
ACN 100 104 658 and ABN 64 100 104 658 (the Service Provider)

RECITALS:

- (a) The parties entered into a contract dated 1 February 2013 (the Contract) in relation to the provision of services on Manus Island (PNG);
- (b) The parties have agreed variations to the rights and obligations contained in the Contract, and
- (c) The parties wish to formally record those variations in the form of this Deed of Variation (No. 1).

IT IS AGREED:

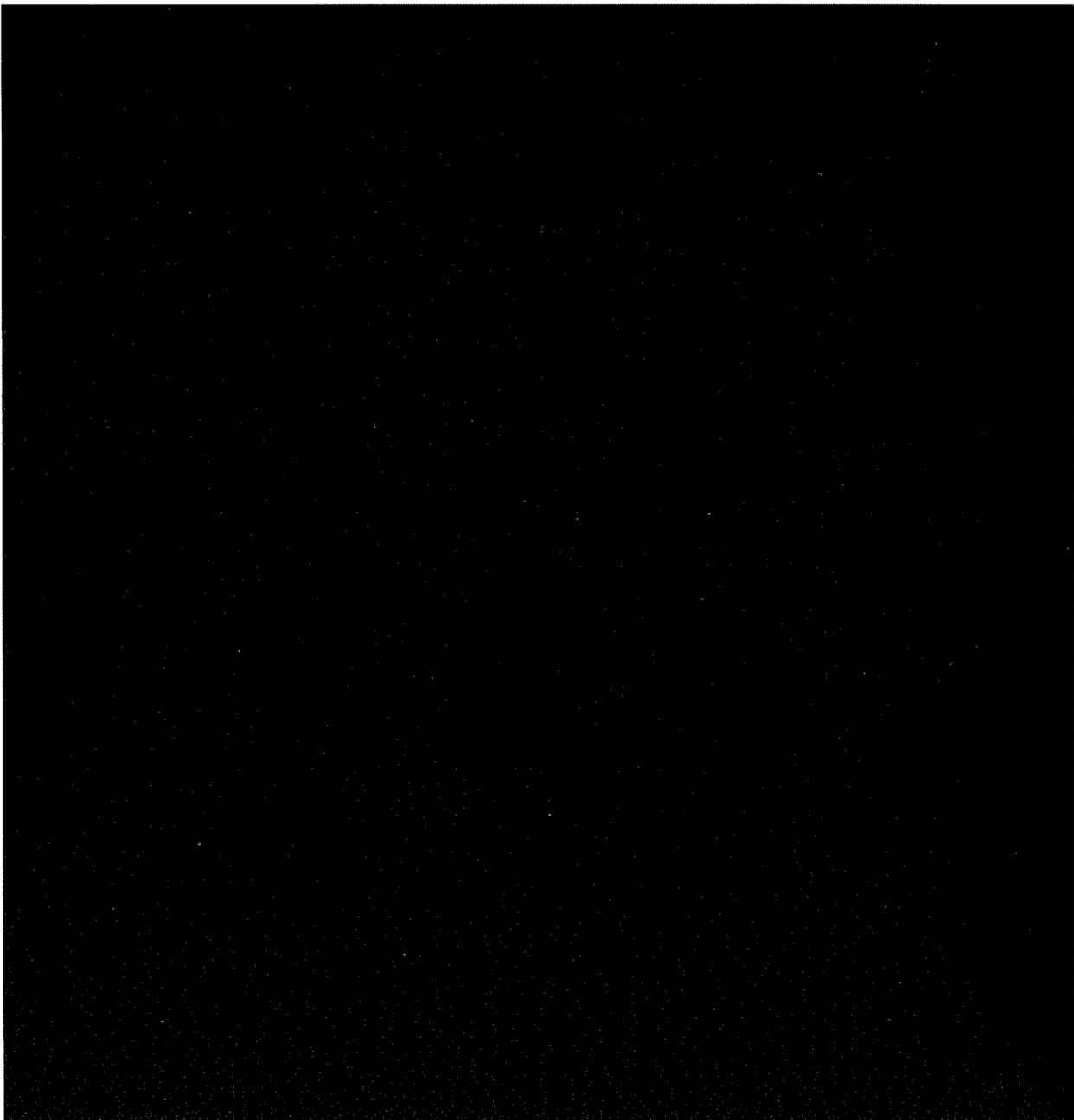
- 1. This Deed:
 - (a) is interpreted and adopts the definitions as specified in the Contract; and
 - (b) is a part of the entire agreement between the parties in relation to the subject matter of the Contract.

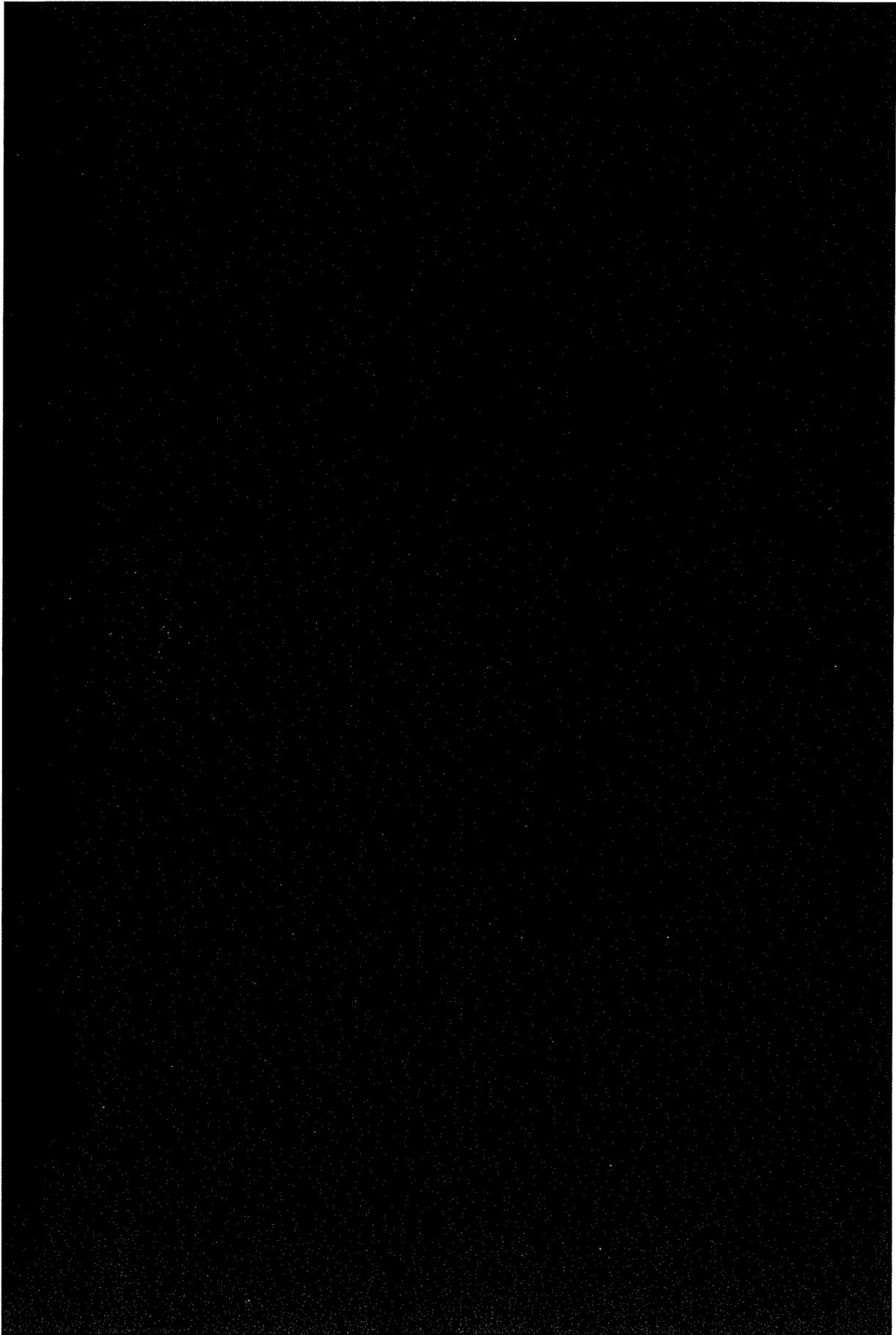
2. Notwithstanding the date this Deed is signed by the Department, the variations to the Contract and the impact upon the provision of the Services by the Service Provider will be deemed to take effect as of 5 July 2013.

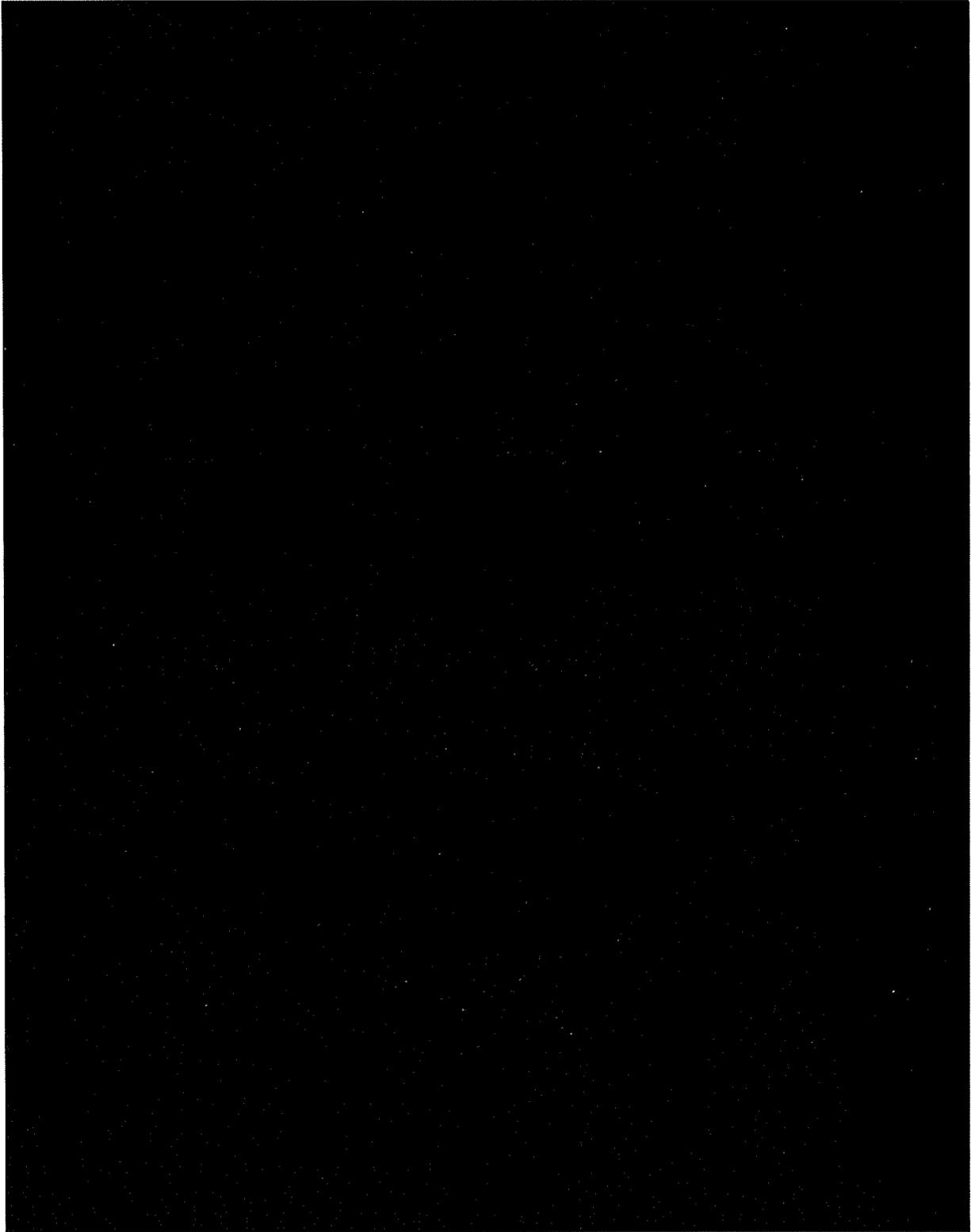
3. This Deed makes the following variations to the Contract:
 - (a) Delete Attachment A to Schedule 2 – Fees and Payment and replace with the following:

Attachment A

Daily rates are set out in the table below:







4. In all other respects the terms and conditions of the Contract remain unaltered.

SIGNED as a Deed for and on behalf of the
COMMONWEALTH OF AUSTRALIA

by

[Redacted]

First Assistant Secretary
Department of Immigration and Citizenship

in the presence of

[Redacted]

Signature

[Redacted]

Please print name

21/8/13

Date

[Redacted]

Signature

21/8/13

Date

Signed as a Deed by G4S Australia
Pty Ltd ACN 100 104 658 in the
presence of

[Redacted]

Signature of Director

[Redacted]

Name of Director (print)

[Redacted]

Signature of ~~Director~~/Company
Secretary
(Please delete as applicable)

[Redacted]

Name of ~~Director~~/Company Secretary
(print)



Australian Government
Department of Immigration and Citizenship

REGIONAL PROCESSING COUNTRIES
HEALTH SERVICES CONTRACT

Commonwealth of Australia
represented by
Department of Immigration and Citizenship

International Health and Medical Services Pty Limited
ABN 40 073 811 131

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Health Services Contract

DATE

PARTIES

Commonwealth of Australia acting through and represented by the **Department of Immigration and Citizenship** of 6 Chan Street Belconnen, ACT, ABN 33 380 054 835 (**Department**)

International Health and Medical Services Pty Limited of Level 3, 45 Clarence Street Sydney, NSW 2000, ABN 40 073 811 131 (**Health Services Manager**)

RECITALS

- A. The parties entered into an interim agreement (**Heads of Agreement**) under which the Health Services Manager has, from September 2012, been providing health services to irregular maritime arrivals transferred to Nauru and Manus Island (**Transferees**) and other persons nominated by the Department from time to time (**Recipients**). The parties agreed in the Heads of Agreement that a more detailed contract for the provision of the Services would be entered into.
- B. This Contract varies the Heads of Agreement to provide the more detailed contractual basis for the provision of health services to Transferees and Recipients.
- C. The Department is committed to providing all Transferees access to health care to a level, standard and timeliness broadly consistent with health care available to the Australian community, taking into account the diverse and potentially complex health needs of Transferees. To this end, this Contract provides for health care to Transferees at the Nauru and Manus Island Facilities.
- D. The Contract also provides for the delivery of health care to Recipients in certain circumstances.
- E. The Department and the Health Services Manager wish to work together in a collaborative manner in connection with the delivery of health care to Transferees and Recipients, and

wish to enter into this Contract which sets out in detail the manner in and terms on which Health Services Manager will provide the Health Services.

OPERATIVE PROVISIONS

PART 1 - INTERPRETATION AND SCOPE

1. DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions

All capitalised words appearing in this Contract have the meaning given in **Schedule 1** (Glossary).

1.2 Rules for Interpreting This Document

The rules to be applied in interpreting this Contract are set out in **clause 68** of this Contract.

2. SCOPE

2.1 Variation to Heads of Agreement

The Parties agree that:

- (a) this Contract operates as a variation to the Heads of Agreement; and
- (b) with effect from the execution of this Contract, the Heads of Agreement will be varied by replacing all of its clauses, schedules and annexures with those contained in this Contract.

For the avoidance of doubt, the terms and conditions of this Contract are not retrospective from the date of execution of this Contract.

PART 2 - IMPLEMENTATION

3. IMPLEMENTATION

3.1 Continuation of Implementation

- (a) The Parties acknowledge and agree that the Health Services Manager commenced

implementing health services to Transferees and Recipients at the Facilities in accordance with a draft implantation plan and the approved Implementation Plan.

- (b) The Parties agree to cooperate to ensure that implementation of the Health Services by the Health Services Manager is completed in a professional, timely and efficient manner consistent with the approved Implementation Plan.

3.2 Implementation of Health Services

- (a) The Health Services Manager must implement the delivery of the Health Services in accordance with the Implementation Plan.

4. SALE OF LOOSE ASSETS

4.1 Loose Assets

- (a) During the Term, the Department may identify Loose Assets for sale to the Health Services Manager. If the Department identifies any Loose Assets, then it may:
 - (i) procure those Loose Assets and instruct the Health Service Manager to purchase those assets from the Department at a price that represents the fair value of those assets; or
 - (ii) instruct the Health Service Manager to purchase those assets directly, in which case the Department will reimburse the purchase price of those Loose Assets as a Pass Through Cost.
- (b) The Health Services Manager will pay the agreed sale price for Loose Assets to the Department, which the Department may agree to set-off against the Health Services Fee payable to the Health Services Manager. The terms and timing of payment of the sale price for any Loose Asset purchased under this **clause 4.1** will be determined by the Department at the relevant time.

4.2 Terms of Sale

If at any time during the Term, the Department agrees to sell, and the Health Services

Manager agrees to purchase Loose Assets, the following terms will apply to the sale:

- (a) full title to, and all risks relating to, the relevant Loose Assets will pass to the Health Services Manager on and from the payment of the sale price;
- (b) the Loose Assets will be deemed to have been delivered by the Department to the Health Services Manager on the date of payment of the sale price;
- (c) the Department sells the Loose Assets to the Health Services Manager on an 'as is, where is' basis and, to the extent permitted by Law, disclaims all liability in respect of the sale and the use of the Loose Assets;
- (d) the Health Services Manager acknowledges that it has had a reasonable opportunity to satisfy itself as to the nature, condition and particulars of the Loose Assets; and
- (e) the Health Services Manager acknowledges that, subject to **clause 4.3**, no representation has been made and no warranty, express or implied, is or has been given by, or on behalf of, the Department in respect of:
 - (i) the condition, state of repair, quality, fitness for purpose or merchantability of any Loose Assets; or
 - (ii) the accuracy, completeness, currency, suitability or efficacy of any Loose Assets.

4.3 The Department's Warranty

For the purposes of this **clause 4**, the Department warrants that as at the date of payment of the sale price it has the legal right to transfer ownership of the Loose Assets.

4.4 Right to Re-purchase Essential Loose Assets

Upon the expiry or earlier termination of the Term, or the removal of any Health Services from the scope of this Contract, the Department may, by notice to the Health Services Manager, require the Health Services Manager to sell the Essential Loose Assets (or, where Essential Loose Assets have been replaced by the Health Services Manager under **clause 23**, the replacement asset) to the Department. In such circumstances, and on a date

specified in that notice, the Health Services Manager will sell, and the Department will purchase, the Essential Loose Assets specified in the notice for fair market value.

PART 3 - TERM

5. TERM

5.1 Commencement

This Contract commences on the Commencement Date and expires twelve (12) months from the Commencement Date (**'Initial Term'**), unless terminated earlier in accordance with this Contract.

5.2 Extensions

The Department may elect to extend the Initial Term (on the same terms and conditions, other than for this **clause 5.2** and any Onsite Health Clinic Fee adjustment) for one (1) further period of up to twelve (12) months ("**Extended Term**"), subject to giving the Health Services Manager at least sixty (60) days' notice before expiry of the Initial Term. The Onsite Health Clinic Fee and any other amounts payable by the Department to the Health Services Manager during any further period under this **clause 5** will be determined in accordance with this Contract and, in particular, **Schedule 5** (Fees and Payments).

PART 4 – LEGAL AND POLICY FRAMEWORK

6. CONTRACT OBJECTIVES

6.1 Objectives

- (a) The primary objectives of this Contract are to:
 - (i) provide an open, accountable and transparent health care service to Transferees and Recipients on Nauru and Manus Island that offers the Department value for money;
 - (ii) provide Transferees and Recipients with a range and standard of Health Care that is the best available in the circumstances, and utilising facilities and

personnel on Nauru and Manus Island, and that as far as possible (but recognising any unavoidable limitations deriving from circumstances of Manus Island and Nauru):

- (A) ensures Transferees and Recipients have access to Health Care, to a level, standard and timeliness broadly comparable with that available within the Australian community, taking into account the particular health needs of Transferees and Recipients;
 - (B) ensures coordinated, high quality, evidence-based Health Care is available to Transferees and Recipients on the basis of clinical need and without any form of discrimination, and with appropriate dignity, humanity, cultural and gender sensitivity and respect for privacy and confidentiality; and
 - (C) empowers Transferees and Recipients with the means to manage and respond to their own health needs (as appropriate for the circumstances of each individual), including by articulating for each Transferee and Recipient (in a manner they are able to easily understand) the range and standard of Health Care that is available to that person under this Contract; and
- (iii) continuously improve the quality, effectiveness and efficiency of performance of the Health Services including by implementing the Service Delivery Model.
- (b) The Health Services Manager must perform (and take all reasonable steps to ensure all Health Services Manager Personnel and Network Providers perform, as applicable) the Health Services with the aim at all times of satisfying the Contract Objectives.
- (c) This **clause 6** describes the intention of the Parties in entering into this Contract. It is not intended to alter the plain meaning of any other provision of this Contract. However, if any provision of this Contract does not address a particular circumstance or is otherwise unclear or ambiguous, that provision is to be

interpreted and construed by reference to the objectives described in this **clause 6.1**.

7. DUTY OF CARE

7.1 Existence of Duties

- (a) The Health Services Manager acknowledges and agrees that:
 - (i) the Department may owe a duty of care to Transferees and Recipients, in addition to any duty of care that the Health Services Manager owes to such people;
 - (ii) the Department relies on the skill and expertise of the Health Services Manager in performing its obligations under the Contract to enable the Department to discharge any duty of care that it may owe to Transferees and Recipients in respect of the provision of Health Care to Transferees and Recipients; and
 - (iii) the Department's duty of care does not in any way detract from the Health Services Manager's obligations under this Contract, any duty of care that the Health Services Manager or any Health Care Provider may separately owe to Transferees and Recipients at Law, or alter the allocation of rights, obligations and liabilities under this Contract.
- (b) The Health Services Manager must take all necessary steps to ensure that it discharges any duty of care that it owes to Transferees and Recipients arising from the performance of this Contract.

8. SERVICE DELIVERY MODEL

8.1 Compliance with Service Delivery Model

- (a) In delivering the Health Services and in all its dealings with the Department, any Health Care Provider, Transferee or Recipient, Department Services Provider and the public, the Health Services Manager will seek to give effect to the Service Delivery Model.
- (b) For the purposes of **clause 8.1(a)**, the Health Services Manager agrees to:
 - (i) comply with, and ensure all Health Services Manager Personnel comply with, the Code of Conduct (as applicable);
 - (ii) align its service delivery with relevant Departmental plans, charters, Department Health Policies, Guidelines and other Australian Government Policy;
 - (iii) consider and manage all health care requests or complaints from Transferees and Recipients in a timely, sensitive and appropriate manner in accordance with this Contract and, in particular, **Schedule 2** (Statement of Work); and
 - (iv) seek timely guidance and advice from the Department on the meaning and application of all Department Health Policies and relevant Australian Government Policies.

9. CONSULTATION, COLLABORATION AND COOPERATION

9.1 Cooperation and Good Faith

- (a) The Parties acknowledge that the success of this Contract will be heavily influenced by their relationship with each other. In recognition of this, the Parties intend to conduct themselves for the purposes of performance of this Contract in a spirit of cooperation and good faith, and commit to establishing and maintaining an environment which encourages honest, open and timely sharing of relevant information.

- (b) For the avoidance of doubt, the principles described in **clause 9.1(a)** are a statement of intent only and do not create rights or impose obligations on either Party.

9.2 Consultation and Cooperation with the Department

- (a) The Health Services Manager will use its best endeavours to ensure that all relevant information is shared with the Department and, at the Department's request or in accordance with this Contract, the Department Services Providers in order to facilitate the early identification of the individual needs of Transferees, and the provision of individual proactive services to Transferees.

9.3 Cooperation with Other Providers

In carrying out the Health Services and performing its other obligations under this Contract, the Health Services Manager must provide all reasonable assistance to, and cooperate and liaise with, the Department and the Department Services Providers (as applicable) to the extent of relevant laws and regulations, and ensure that all Health Services Manager Personnel and Network Providers do the same, with a view to ensuring the integrated, coordinated, timely and efficient delivery of Health Care to Transferees and Recipients.

10. COMMONWEALTH AND IMMIGRATION OMBUDSMAN

10.1 Jurisdiction of Commonwealth and Immigration Ombudsman

The Health Services Manager acknowledges and agrees that, with regard to any decision or recommendation made, or any act done or omitted by the Health Services Manager, any Health Services Manager Personnel or Network Provider:

- (a) the Commonwealth and Immigration Ombudsman may have jurisdiction under the *Ombudsman Act 1976* (Cth) to investigate; and
- (b) in the event that the Commonwealth and Immigration Ombudsman have and exercise any discretion to commence an investigation, the provisions of the *Ombudsman Act 1976* (Cth) will apply.

PART 5 – HEALTH SERVICES MANAGER ROLE AND RESPONSIBILITIES

11. SERVICE OBLIGATIONS

11.1 General

The Health Services Manager must:

- (a) perform, and procure the performance of, the Health Services in accordance with this Contract;
- (b) have and maintain at all times during the Term all necessary registrations, licences, permits or other approvals required to perform the Health Services in accordance with this Contract;
- (c) engage or employ a sufficient number of Health Services Manager Personnel and Network Providers to perform the Health Services in accordance with this Contract;
- (d) ensure that Health Care is made available and delivered to Transferees at each Facility at all times during the Term to the standard, at the times and in the manner set out in this Contract;
- (e) ensure that the health needs of Transferees (as individuals and groups) are anticipated, identified, addressed and managed by suitably qualified and trained Health Care Providers in accordance with Accepted Industry Practice;
- (f) manage, supervise and regularly review the performance of Health Care Providers to ensure the delivery of Health Care in accordance with this Contract;
- (g) ensure that the Department is provided with best value for money for Health Care delivered to Transferees and Recipients, including in respect of all services provided by specialist, hospital and allied Health Care Providers;
- (h) collaborate and participate with the Department and Department Services Providers in the development and review of Department Health Policy, including by undertaking health research, preparing and analysing reports

against Department specified health data sets and attending and contributing to committees, workshops and other meetings, as reasonably requested by the Department from time to time; and

- (i) promptly advise the Department in writing of any circumstance that materially adversely affects the ability of the Health Services Manager to perform the Health Services on the terms set out in this Contract.

11.2 Service Warranties

The Health Services Manager warrants that:

- (a) the Health Services are fit for their intended purpose;
- (b) the Health Services will be provided using a high degree of professionalism, skill, care and diligence and to a standard that is the best available in the circumstances and that is as far as possible (but recognising any unavoidable limitations deriving from the circumstances of Manus Island and Nauru) broadly comparable with health services available within the Australian community;
- (c) all Health Care Providers involved with the delivery of Health Care to Transferees and Recipients, have the necessary and appropriate registrations, accreditations, qualifications, skills, training and experience to provide Health Care to Transferees and Recipients (as applicable); and
- (d) the Health Services comply with all representations made to the Department (whether made by the Health Services Manager before or after the Commencement Date) in relation the standard, quality, pricing or timing of the Health Services.

11.3 Compliance with Laws and Policy Requirements

- (a) The Health Services Manager must comply with, and ensure that all Health Services Manager Personnel and Network Providers comply with:
 - (i) all relevant Laws, including those applicable to Nauru and Manus Island;

- (ii) all relevant international treaties, charters, covenants and agreements, including those set out in **Schedule 15** (Australian Government and Department Health Policies); and
 - (iii) all relevant Australian Government Policy, Department Policy, Department Health Policy and any Guideline issued under **clause 21.1**, including the policies set out in **Schedule 15** (Australian Government and Department Health Policies), made available to the Health Services Manager via the Department's instruction system (Legend) or as notified by the Department from time to time.
- (b) If there is any inconsistency between any Guidelines issued under **clause 21.1** or Australian Government Policy, Department Policy, Department Health Policy set out in **Schedule 15** or as notified from time to time and the laws of Nauru or Manus Island (as applicable), the Health Services Manager must:
- (i) comply with the law of Nauru or Manus Island (to the extent of the inconsistency); and
 - (ii) work with the Department in good faith to understand the nature of the conflict between the law and policy and any way the Australian Government or Department Policy or Guideline can be accommodated or adapted.

11.4 Changes to Department Health Policy

- (a) At any time during the Term, the Contract Administrator may give notice to the Health Services Manager of any change in a Department Health Policy and the Health Services Manager must comply with that change (and ensure all Health Services Manager Personnel and Network Providers do the same) on and from the date of the Department's notice (or any later date as may be agreed with the Department).
- (b) Prior to notifying the Health Services Manager of any change in a Department Health Policy under **clause 11.4(a)**, the Department will endeavour to consult with the Health Services Manager and seek the Health Services Manager's views

on the potential impact of the proposed change on the Health Services Manager's performance of this Contract. The Department will consider the Health Services Manager's view when finalising the terms of the change to the Department Health Policy.

- (c) If, on receiving notice of a change under **clause 11.4(a)**, the Health Services Manager reasonably considers that the change materially impacts on the cost to the Health Services Manager of providing the Health Services, the Health Services Manager may, within ten (10) Business Days of receiving notice of the change, inform the Department of that fact. On being so informed, and without limiting the Health Services Manager's obligation to comply with that change, the Department may direct the Health Services Manager to prepare a Contract Change Proposal in relation to the change for the Department's consideration in accordance with **clause 34**.
- (d) For the purposes of **clause 11.4(c)**:
 - (i) a "change" to Department Health Policy includes the addition of a new health policy, the removal of an existing policy, or any variation to the content of an existing policy referred to in **Schedule 15** (Australian Government Policy and Department Health Policy); and
 - (ii) a material impact on the cost of the Health Services is a cumulative cost increase or decrease of one hundred thousand (\$100,000) dollars or more (when added to the costs of all previous changes to Department Health Policy) in any Financial Year.

11.5 Access and Referral Arrangements

The Health Services Manager must ensure:

- (a) Transferees and Recipients have access to and are able to receive Health Care in accordance with this Contract at all times during the Term;
- (b) all referrals of Transferees and Recipients to any hospital, specialist or allied Health Care Provider are made or arranged in accordance with **Schedule 2**

(Statement of Work) (including all relevant Department Health Policy); and

- (c) no Transferee or Recipient presenting for Health Care within the scope of this Contract is denied or refused that care if clinically appropriate in the circumstances.

11.6 **Health Services Manager Resources**

Except where the Health Services Manager is using Department Assets, the Health Services Manager must provide all equipment (including computers, computer based systems, software, hardware and programmes), supplies, consumables and materials required to perform the Health Services (and all other obligations under this Contract), having regard to the Health Services Manager's right to access Facilities and use Department Assets and Systems under **Part 8** (Facility Access and Department Equipment).

11.7 **Incidental Services or Functions**

The Health Services Manager acknowledges and agrees that if any incidental services or functions are required for the proper performance of the Health Services, they are included in the scope of the Health Services and in the Onsite Health Clinic Fees and other payments specified in **Schedule 5** (Fees and Payments).

12. **OTHER SERVICES PROVIDERS**

The Health Services Manager acknowledges and agrees that:

- (a) it is not the exclusive provider of health services to the Department and the Department may engage other service providers to provide services the same or similar to the Health Services; and
- (b) the Department may independently and directly engage, or arrange for, a provider to directly provide Health Care to a Transferee or Recipient.

13. HEALTH CARE RECORDS

13.1 Existing Health Care Records

- (a) The Department will use its best endeavours to arrange for the Health Services Manager to have timely access to Existing Health Care Records, if any, as reasonably required for the delivery of any Health Care Service.
- (b) The Health Services Manager acknowledges that access under **clause 13.1(a)** is dependent on the Department obtaining the consent of each relevant Transferee or Recipient, and any other consents or approvals required by Law.
- (c) The Department does not warrant or represent that any Existing Health Care Record is fit for its purpose, or is complete or accurate. Any such warranty is excluded to the extent that the Law allows.

13.2 Creation of Health Care Records

The Health Services Manager must create a Health Care Record for each Transferee or Recipient and maintain and use that record in accordance with this Contract, including, in particular, **Schedule 2** (Statement of Work).

13.3 Supply of Health Care Records

To the extent permitted by Law, the Health Services Manager must:

- (a) ensure all Health Care Providers involved with the care or treatment of a Transferee or Recipient receive timely and open access to a Transferee or Recipient's Health Care Record (or sufficient relevant information from that record), with a view to facilitating the delivery of coordinated, continuous and effective care and treatment to that person;
- (b) ensure Transferees and Recipients have access to their Health Care Record in accordance with **clause 10.7(b)(ii)** of **Schedule 2** (Statement of Work); and
- (c) provide the Department with a copy of any Transferee Health Care Record (or a summary of information contained in that record), at the times and in the manner

requested by the Department.

13.4 **Amending or Destroying Health Care Records**

The Health Services Manager must not amend, destroy or dispose of any Health Care Record or Existing Health Care Record without the Department's prior written consent.

14. **CONFLICTING REQUIREMENTS**

- (a) If the Health Services Manager becomes aware of any conflict or inconsistency between any of the Health Services Manager's obligations under this Contract, it must promptly notify the Department and the Department will direct the Health Services Manager as to the manner in which the Health Services Manager should perform this Contract.
- (b) In the case of a conflict or inconsistency between any of the Health Services Manager's obligations, the Health Services Manager will not be in breach of those obligations if it acts in accordance with them subject to any direction from the Department under **clause 14(a)**.

PART 6 – NETWORK PROVIDERS, HEALTH SERVICE MANAGER PERSONNEL AND SUBCONTRACTORS

15. **NETWORK PROVIDERS**

- (a) The Health Services Manager must establish and maintain the HSM Network throughout the Term in accordance with this **clause 15** and **Schedule 2** (Statement of Work), comprising a network of health professionals and other providers sufficient and appropriate to deliver Health Care to Transferees and Recipients in accordance with this Contract.
- (b) The Department may, by notice to the Health Services Manager, require that the Health Services Manager:
 - (i) consider employing, or including in its HSM Network, a provider nominated by the Department for the performance of certain services; or

- (ii) remove a particular Network Provider from the HSM Network.
- (c) A notice provided by the Department under **clause 15(b)(i)** may specify (among other things) the range or type of Health Care to be delivered or performed by the Department's nominated provider, and suggest any other terms for the Health Services Manager's employment or engagement of that provider. If the Department issues a notice under **clause 15(b)(i)**, the Health Services Manager agrees to give due and proper consideration to the Department's proposal.
- (d) If the Department issues a notice under **clause 15(b)(ii)**, the Health Services Manager must comply with the notice, within twenty (20) Business Days of the date of the notice, or such further period as the Parties may agree.
- (e) The Health Services Manager will not be liable for the acts or omissions of the Network Provider or its Network Provider Personnel, except and only to the extent provided in **clause 56**.

16. KEY PERSONNEL

16.1 Key Personnel

The Health Services Manager has nominated the Key Positions and has retained the Key Personnel listed in **Schedule 7** (Key Personnel and Approved Major Subcontractors).

16.2 Retention of Key Positions and Key Personnel

Subject to **clause 16.3**, the Health Services Manager must ensure that each of the Key Positions are maintained, and that Key Personnel occupy and perform the duties or carry out the work attached to these positions as specified in **Schedule 7** (Key Personnel and Approved Major Subcontractors), at all times during the Term.

16.3 Replacement of Key Personnel

- (a) If any Key Personnel ceases to work in respect of this Contract, the Health Services Manager must immediately notify the Department and provide a replacement Key Personnel acceptable to the Department at no additional charge and at the earliest opportunity.

- (b) If the Health Services Manager is unable to provide a replacement Key Personnel acceptable to the Department within one (1) Month of their ceasing work in respect of this Contract, the Department may terminate this Contract in accordance with **clause 62**, or remove certain Health Services from scope in accordance with **clause 32**.

16.4 **Removal of Key Personnel**

The Department may give notice requiring the Health Services Manager to remove any Key Personnel from work in respect of this Contract. The Health Services Manager must promptly arrange for the removal of such Key Personnel and his or her replacement with personnel acceptable to the Department and at no additional cost to the Department.

17. **ILLEGAL WORKERS**

- (a) The Health Services Manager must ensure that all Health Services Manager Personnel and Network Providers used in relation to work under this Contract (including for the delivery of Health Care to Transferees and Recipients) are not illegal workers.
- (b) The Health Services Manager must remove or cause to be removed any illegal worker from any involvement in the performance of work under this Contract and arrange for their replacement at no cost to the Department immediately upon becoming aware of the involvement of the illegal worker. The Health Services Manager must immediately notify the Department of any personnel removed under this **clause 17**.
- (c) For the purposes of **clause 17**, an illegal worker is a person who:
 - (i) has unlawfully entered and remains in Australia, Nauru or Papua New Guinea;
 - (ii) has lawfully entered Australia, Nauru or Papua New Guinea but remains in that country after his or her visa has expired; or
 - (iii) is working in breach of his or her visa conditions.

18. SUBCONTRACTOR ARRANGEMENTS

18.1 Term of Subcontracts

The Health Services Manager may subcontract the performance of this Contract (including by subcontracting the delivery of Health Care to Transferees and Recipients in accordance with this **clause 18**) and **Schedule 2** (Statement of Work).

18.2 Approval of Major Subcontracts

- (a) The Health Services Manager must not enter into a Major Subcontract without the prior written approval of the Department.
- (b) To avoid doubt, any subcontract that is not a Major Subcontract does not require the Department's prior approval.

18.3 Initial Approved Major Subcontractors

Initial Approved Major Subcontractors are specified in **Schedule 7** (Key Personnel and Approved Major Subcontractors).

18.4 Conditions of Major Subcontracts

The Health Services Manager must:

- (a) ensure that each Major Subcontract contains provisions substantially in accordance with the provisions of this Contract, including, in particular, all relevant terms relating to subcontracting, creation and maintenance of Health Care Records and information transfer, Health Care access and delivery arrangements, Australian Government Policies, Department Health Policies, Intellectual Property, audit and access, privacy, confidentiality, indemnities, insurance and termination;
- (b) ensure that each Major Subcontractor executes a Deed of Substitution with the Health Services Manager in the form of **Schedule 3** (Deed of Substitution); and
- (c) promptly provide a copy of the proposed Major Subcontract to the Department,

on request.

18.5 Deed of Substitution

- (a) Each Deed of Substitution executed pursuant to **clause 18.4(b)** must be executed by the Health Services Manager and the Major Subcontractor and provided to the Department by the Health Services Manager within ten (10) Business Days of the commencement of the performance of Services by the approved Major Subcontractor.
- (b) The Department may issue a Notice of Substitution at any time during the Term for one or more of the Major Subcontractors. The Deed of Substitution will take effect on and from the date specified in that Notice.

18.6 Copies of Subcontracts and Network Provider Agreements

The Health Services Manager must provide to the Department a copy of the then current executed version of any Subcontract and the then current executed version of each Network Provider Agreement no later than ten (10) Business Days from the Department's request.

18.7 Department may contact Subcontractors or Network Providers

- (a) The Health Services Manager acknowledges that the Department may, in its absolute discretion, contact any Subcontractor or Network Provider directly as and when required in order to obtain information regarding the services provided by that Subcontractor or Network Provider.
- (b) Except as provided in this **clause 18.7**, the Health Services Manager will be the Department's sole point of contact regarding the Services, including with respect to payment.

18.8 Health Services Manager Liability and Obligations

- (a) The Department's approval of any Subcontractor does not relieve the Health Services Manager from any liability or obligation under this Contract.

- (b) The Health Services Manager will be liable to the Department for the acts, defaults and neglect of any Subcontractor or any representative of the Subcontractor engaged in connection with the performance of the Contract (including the delivery of Health Care to Transferees and Recipients) as fully as if they were the acts, defaults or neglect of the Health Services Manager.
- (c) The Health Services Manager remains responsible for ensuring that:
 - (i) the work performed by each Subcontractor meets the requirements of this Contract; and
 - (ii) no Major Subcontractor further subcontracts any work without the prior written approval of the Department.

18.9 Subcontractor Warranty

The Health Services Manager warrants that each Subcontractor:

- (a) is suitable to carry out the work under the subcontract and (where appropriate) is accredited, registered or qualified in accordance with all applicable Laws and professional or industry standards or requirements;
- (b) meets the requirements of this Contract, Accepted Industry Practice and the Law in respect of insurance; and
- (c) will exercise the standard of skill, care and diligence that would be expected of an expert professional provider of services the same or similar to the services that the Subcontractor has been engaged to provide under the Contract.

18.10 Enforcement of Rights Against Subcontractors

The Health Services Manager must take any action required by the Department to enforce its rights against any Subcontractor engaged by the Health Services Manager in accordance with this **clause 18**.

18.11 Subcontractor to pay all Taxes

The Health Services Manager must pay, and ensure that all Subcontractors pay, all Taxes required to be paid by them by Law in respect of the engagement of any Health Services Manager Personnel. If the Department becomes liable for any Tax in connection with Health Services Manager Personnel, the Health Services Manager must indemnify and pay on demand the Department for such payments (including all legal and other costs, penalties and fines in respect of such payments).

18.12 Payroll Tax and Workers' Compensation Notices

The Health Services Manager must provide the Department with such statements and forms as the Department may reasonably require in relation to compliance by the Health Services Manager with Payroll Tax and Workers' Compensation laws in connection with its Subcontractors, including but not limited to the form required by Part 5 of Schedule 2 of the *Payroll Tax Act 2007* (NSW) and section 175B of the *Workers' Compensation Act 1987* (NSW).

PART 7 – MANAGEMENT AND GOVERNANCE

19. PROJECT MANAGEMENT

The Health Services Manager must provide all administrative and project management services necessary for the performance of the Health Services in accordance with this Contract. At a minimum, the following project management services must be provided:

- (a) implementation of a planned, systematic, efficient and comprehensive approach to the delivery of the Health Services;
- (b) maintenance of a due diligence process to demonstrate compliance with all applicable health, safety, environmental, corporate governance, professional and other relevant legislative requirements;
- (c) identifying and mobilising resources;
- (d) identifying who will perform the work and services, when it is required, and how it will be executed and validated;

- (e) coordinating the activities, outputs and efforts of all relevant persons, including those of the Health Services Manager Personnel and Network Providers;
- (f) monitoring and measuring progress and performance (including that of any Network Provider) in accordance with this Contract;
- (g) efficient decision-making within the Health Services Manager's organisation and advising of decisions required by the Department under this Contract;
- (h) controlling and rectifying faults or other deficiencies or issues that may arise in, or during the performance of, the Health Services (including delivery of Health Care to Transferees and Recipients);
- (i) managing those risks which are the Health Services Manager's responsibility under this Contract;
- (j) coordinating the preparation and approval of all reports, plans, policies and procedures required under this Contract; and
- (k) providing continuous, visible and adequate audit trails.

20. NATIONAL CONTRACT MANAGEMENT REPRESENTATIVES

20.1 The Department Contract Management Representatives

- (a) The Department must appoint one (1) person to fulfil the role of the Contract Authority and another person to fulfil the role of the Contract Administrator, who must each be the duly authorised representatives of the Department in accordance with this Contract.
- (b) The Department must give written notice to the Health Services Manager of the appointment of the Contract Authority and Contract Administrator, and any replacement of those appointees.
- (c) The roles and responsibilities of the Contract Authority and the Contract Administrator are set out in **Schedule 4.2** (Governance).

- (d) The Department may delegate the Contract Administrator's responsibilities under this Contract to any other Department Personnel.

20.2 Health Services Manager Contract Management Representatives

- (a) The Health Services Manager must appoint persons to fulfil the following roles:

- (i) Health Services Authority;
- (ii) Health Services Administrator; and
- (iii) a Health Services Manager for each Facility,

to perform the roles and responsibilities (as applicable) set out in **Schedule 4.2** (Governance).

- (b) The Health Services Manager must give written notice to the Department of the appointment of each person to the roles specified in **clause 20.2(a)**, and any replacement of those appointees.

20.3 Governance Committee Meetings

The Health Services Manager will participate in (including by providing all appropriate and duly authorised representatives for) the governance arrangements set out in **Schedule 4.2** (Governance).

21. FACILITY MANAGEMENT MODEL

21.1 Guidelines

- (a) In addition to **Schedule 2** (Statement of Work), the Health Services must be delivered in compliance with any Guidelines issued by the Department to the Health Services Manager from time to time. The Department will not issue Guidelines that relate to the provision of Health Care by the Health Services Manager but may issue Guidelines relating to any other aspect of the delivery of the Health Services.

- (b) Without limiting **clause 11.7**, but in addition to its rights under **clause 11.4**, the

Health Services Manager may request an increase in the amount of the payments set out in **Schedule 5** (Fees and Payments), where the Health Services Manager incurs additional costs exceeding \$100,000 in delivering the Health Services in accordance with any Guidelines issued by the Department under this **clause 21.1**. The Department will consider any such request to increase the amount of the payments under this **clause 21.1** in good faith.

21.2 **Directions Power**

Subject to **clause 21.3**, a Department Executive may give a Direction to the Health Services Manager for the benefit of Transferees and Recipients or operations with respect to:

- (a) the manner in which Health Care is accessed by Transferees and Recipients;
- (b) interface issues with Department Services Providers;
- (c) the scope and fulfilment of the Department's duty of care; or
- (d) any Department requirement for additional or expanded services under **clause 33**.

21.3 **Limits on Directions Power**

A Department Executive must not give a Direction under **clause 21.1** that:

- (a) is clinical in nature;
- (b) limits or restricts the clinical independence or professional integrity of a Health Care Provider;
- (c) is inconsistent with the terms and conditions of this Contract; or
- (d) would result in the Health Services Manager (or any Health Care Provider) breaching any Law.

21.4 Procedure for Giving and Recording Directions

All Directions given under this **clause 21** must be given to the Health Services Manager in writing, or if given orally, recorded in writing within twenty four (24) hours and a copy of the Direction provided to the Health Services Manager.

21.5 Compliance with Directions

The Health Services Manager must comply with and implement any Direction within the period reasonably specified by the Direction, or if no period is specified, as soon as reasonably practicable in the circumstances.

PART 8 – FACILITY ACCESS AND DEPARTMENT EQUIPMENT

22. ACCESS TO FACILITIES

22.1 Access

- (a) The Department grants the Health Services Manager:
 - (i) access to the Facilities for the purposes of performing this Contract; and
 - (ii) a right to provide any Health Services Manager Personnel and Network Providers access to a Facility for the purpose referred to in **clause 22.1(a)(i)**.
- (b) The Health Services Manager must ensure that a Facility is only accessed and used for performance of the Contract in accordance with this **clause 22**.
- (c) The Health Services Manager must ensure that all Health Services Manager Personnel and Network Providers accessing and using any Facility:
 - (i) comply with all safety and security requirements notified by the Department or the relevant Facility Services Provider when accessing or using a Facility;
 - (ii) carry at all times suitable identification, as reasonably determined by the Department from time to time;

- (iii) do not examine, disturb, remove or engage with any person or thing on or in a Facility, except for a purpose specified in **clause 22.1(a)(i)**; and
 - (iv) comply with any direction given by the Department in relation to access or use of a Facility.
- (d) The Health Services Manager acknowledges and agrees that any rights granted under this **clause 22**:
- (i) are personal to the Health Services Manager and rest in contract only and may not be assigned; and
 - (ii) do not confer any exclusive right to occupy a Facility, or any part of a Facility.

22.2 Condition of Facilities

- (a) The Health Services Manager must promptly notify the Department:
- (i) of any destruction or damage to a Facility (or any part of a Facility) of which it is aware; and
 - (ii) if it reasonably considers that the condition or state of repair of any building or part of a building at a Facility that is used for the delivery of Health Care is not fit to be used for that purpose.
- (b) The Health Services Manager is:
- (i) responsible for any damage to or destruction of a Facility that is caused by the Health Services Manager or any Network Provider, except for fair wear and tear; and
 - (ii) indemnifies the Department in respect of any such damage or destruction to a Facility in accordance with **clause 56**.

23. DEPARTMENT ASSETS AND SYSTEMS

23.1 Use of Department Assets and Department Systems

- (a) The Department grants the Health Services Manager a right to use the Department Assets and Department Systems (and a right to allow Health Services Manager Personnel and Network Providers to do the same) for the sole purpose of performing this Contract. The Health Services Manager must not, and must ensure no Health Services Manager Personnel or Network Provider uses Department Assets and the Department Systems for any other purpose.
- (b) The Health Services Manager must ensure all Department Assets and Department Systems are used and operated by appropriately trained and skilled personnel in accordance with all relevant operating manuals or instructions or, in the absence of such manuals or instructions, in accordance with Accepted Industry Practice.

23.2 Maintenance and Replacement of Department Assets and Systems

- (a) The Health Services Manager must:
 - (i) maintain the Department Assets and Department Systems and keep them in good working order and condition at all times during the Term in accordance with **Schedule 2** (Statement of Work) and this **clause 23**;
 - (ii) take all reasonable precautions and measures to prevent any damage, interference, unauthorised use or loss to any Department Assets and Systems;
 - (iii) not modify, alter, change or remove from a Facility any Department Assets and Systems, except for a purpose related to this **clause 23**;
 - (iv) promptly notify the Department of any damage or loss to any Department Assets and Department Systems; and
 - (v) at the request of the Department, replace any Department Asset (as a Pass Through Cost) which is irreparably damaged or has reached the end of its

useful life. Unless otherwise agreed in writing with the Department, the Department will own any replacement asset purchased by the Health Services Manager, and funded by the Department, under this **clause 23**.

- (b) The Health Services Manager is
 - (i) responsible for any damage to, loss of or destruction of any Department Asset or System that is caused by the Health Services Manager or any Health Services Manager Personnel; and
 - (ii) indemnifies the Department in respect of any such damage or destruction to a Department asset or System in accordance with **clause 56**.

23.3 Condition of Facilities and Department Assets

- (a) No claim will be accepted by the Department from the Health Services Manager concerning the condition of the Facilities, Department Assets or the Department Systems. The Department Assets and Department Systems are licensed to the Health Services Manager as is.
- (b) To the extent permitted by Law,
 - (i) the Department provides no warranty as to the actual condition or fitness for purpose of any Facility or Department Asset or Department Systems;
 - (ii) the Health Services Manager waives, releases, and renounces any warranty, condition, representation or terms which would or might otherwise be implied by Law in respect of the condition of any Facility, Department Asset or Department System; and
 - (iii) the Department is not liable to the Health Services Manager in respect of any loss or damage which the Health Services Manager suffers or incurs directly or indirectly from the use or occupation (as applicable) of any Facility, Department Asset or Department Systems.

24. HEALTH SERVICES MANAGER ASSETS

- (a) Without limiting **clause 16** of **Schedule 2** (Statement of Work) and subject to **clauses 4** and **23**, the Health Services Manager must provide any Health Services Manager assets which, in addition to the Loose Assets sold to the Health Services Manager and the Department Assets licensed to the Health Services Manager, are reasonably required to perform the Health Services in accordance with this Contract.
- (b) The Health Services Manager must maintain and repair the Health Services Manager's assets (including the Loose Assets and equipment and supplies provided under **Schedule 2** (Statement of Work)) in order to ensure they remain functional, fit for purpose and available for the performance of this Contract at all times. At the end of a Loose Asset's useful life, or if such asset is lost or irreparably damaged prior to this time, the Health Services Manager must promptly replace that asset with an asset of comparable functionality and quality.

25. ASSET REGISTER

25.1 Asset Register

- (a) The Health Services Manager must:
 - (i) maintain a full and accurate register setting out all Assets (**Asset Register**); the owner or custodian of the Assets; location of the Assets; condition of the Assets; details of any encumbrances or relevant limitations on the Assets; any information relevant to the Assets; and any information in relation to the Assets that is requested by the Department from time to time;
 - (ii) review and update the Asset Register as necessary to reflect all changes to the Assets, e.g. if Assets are created, acquired, written-off or disposed of during the Term, this information must be included in the Asset Register;
 - (iii) provide the Department with access to the Asset Register upon request.

- (b) The Asset Register must separate the Assets in two categories:
 - (i) Assets with a cost of \$2,000.00 (GST exclusive) or more; and
 - (ii) Assets with a cost less than \$2,000.00 (GST exclusive).
- (c) The Department may, at its sole discretion:
 - (i) distribute the Health Services Manager's Asset Register to Third Parties (including providers engaged by the Department); or
 - (ii) incorporate information in the Health Services Manager's Asset Register in a master Asset Register, and, if required by the Department, provide Third Parties with access to this master Asset Register.

25.2 Errors in the Asset Register

If the Department discovers that the Asset Register is not accurate, the Department may, at its sole discretion, require the Health Services Manager to correct the error(s) and/or conduct a review of its record keeping processes; or

25.3 Survival

This **clause 25** survives the expiration or termination of this Contract.

25.4 Record keeping obligations

For the avoidance of doubt, this **clause 25** does not limit any record keeping obligations the Health Services Manager has under this Contract or any Law.

PART 9 – PERFORMANCE MANAGEMENT

26. PERFORMANCE MEASURES

The Health Services Manager acknowledges and agrees that:

- (a) the purpose of the Performance Measures is to:
 - (i) provide the Health Services Manager with focus and direction on

certain key performance areas:

- (ii) specify performance goals and minimum standards or levels of performance which, if not achieved, may result in abatement;
 - (iii) assist the Health Services Manager to foster and promote integrated service delivery and optimal Health Care for Transferees, by identifying any lapses in the Health Services and areas for improvement;
 - (iv) highlight the areas of service delivery which potentially have the most significant impact on achievement of the Contract Objectives; and
 - (v) assist Health Services Manager to propose an action plan in direct response to failure to achieve the minimum threshold performance level set out for each Performance Measure.
- (b) the Performance Measures do not modify or reduce any express obligation of the Parties under this Contract;
- (c) the Performance Measures may be progressively developed, assessed, refined, adjusted or otherwise varied by the Parties over the Term in accordance with **Schedule 4.1** (Performance Management Manual); and
- (d) except as expressly provided in this Contract (including **clause 56**), the Health Services Manager:
- (i) bears the risk of all delays, disruptions, events or circumstances affecting the provision of the Health Services and the Health Services Manager's ability to meet or achieve any Performance Measure; and
 - (ii) is not relieved of any obligation to meet or achieve a Performance Measure notwithstanding any such delay, disruption, event or circumstance.

27. **PERFORMANCE MONITORING**

27.1 **Measuring and Monitoring of Performance**

The Health Services Manager must measure and monitor its performance against the requirements of this Contract (including the Performance Measures) in accordance with **Schedule 4.1** (Performance Management Manual), and implement any action plans or other remedial action agreed by the Parties under that schedule.

27.2 **Reporting on Performance**

The Health Services Manager must report on its performance against the requirements of this Contract (including the Performance Measures) at the times and manner detailed in **Schedule 4.1** (Performance Management Manual).

28. **ABATEMENTS**

28.1 **Non-Financial Abatements**

The Health Services Manager acknowledges that sub-standard performance assessed in accordance with **Schedule 4.1** (Performance Management Manual) may result in non-financial abatement.

29. **REVIEWS AND MEETINGS**

29.1 **Meetings**

The Health Services Manager must ensure that suitably qualified, experienced and authorised Health Services Manager Personnel attend and actively participate in a spirit of cooperation and good faith in all reviews, meetings, committees and other workshops referred to in this Contract, including **Schedule 4.1** (Performance Management Manual) and **Schedule 4.2** (Governance).

PART 10 – CHANGE MANAGEMENT AND CHANGE CONTROL

30. CHANGE MANAGEMENT

30.1 Change Management Clauses

This Contract contains the following clauses dealing with change management:

- (a) **clause 11.4** enables the Contract Administrator to give notice to the Health Services Manager of a change in a Department Health Policy;
- (b) **clause 21.1** enables the Department to issue Guidelines to the Health Services Manager relating to any aspect of the delivery of the Health Services, except the provision of health care;
- (c) **clause 21.2** enables the Department to issue Directions for the benefit of Transferees and Recipients or operations, providing those Directions do not relate to the clinical or professional delivery of the Health Services and do not change the terms of this Contract;
- (d) **clause 31** requires the Health Services Manager to increase or decrease the scope of the Health Services where the Department decides to deactivate, reactivate or close facilities and provides for reductions and increases in the Fees and Payments;
- (e) **clause 31.6** enables the Department to give notice of a change in a specific provision in the Contract, for which the Health Services Manager may be compensated if that change has a material impact on the cost of providing the Health Services;
- (f) **clause 33** enables the Department to give notice increasing the scope or volume of the Health Services or providing additional services; and
- (g) **clause 34** sets out the process for making any other changes to the terms of the Contract.

31. DEACTIVATING AND REACTIVATING A FACILITY

31.1 Department's Rights

The Department may advise the Health Services Manager at any time in writing of its decision to:

- (a) reactivate a Facility, whereupon it will become an Operational Facility;
- (b) deactivate a Facility in accordance with **clause 31.3**, whereupon it will become a Contingency or a Hot Contingency, as notified by the Department; or
- (c) close a Facility by removing it from scope in accordance with **clause 32**.

31.2 Reactivation of a Facility

On receiving notice from the Department that any Contingency or Hot Contingency Facility is to become Operational, the Health Services Manager must progressively ramp up its service delivery so that it delivers Basic Health Services (as that term is defined in **clause 31.5**) and full scope Health Services (as the case may be) with respect to that Facility in accordance with the following timeframes:

- (a) in the case of a Facility that is a Hot Contingency Facility, the Health Services Manager must start delivering Basic Health Services to Transferees and Recipients at that Facility within twenty four (24) hours of receiving notice from the Department, and full scope Health Services within five (5) Business Days of the Department's notice; and
- (b) in the case of any Facility that is not a Hot Contingency Facility, the Health Services Manager must start delivering full scope Health Services within five (5) Business Days of receiving notice from the Department.

31.3 Deactivation of a Facility

Within two (2) Months of receiving notice from the Department that any Operational Facility is to become a Contingency or Hot Contingency Facility, the Health Services Manager is to ramp down its service delivery at the Facility in accordance with the terms

of the Department's notice and **clause 32** will otherwise apply.

31.4 Payments Relating to the Department's Decision to Reactivate or Deactivate a Facility

If the Department gives the Health Services Manager a notice pursuant to **clause 31.1** or **clause 31.3**, the Department will, in respect of the relevant Facility, be liable only for:

- (a) where a Facility is reactivated:
 - (i) payment of the Onsite Health Clinic Fee for services (whether Basic Health Services or the full scope Health Services) rendered from the date of the notice referred to in **clause 31.1**; and
 - (ii) actual direct ramp-up costs incurred by the Health Services Manager as a Pass Through Cost in accordance with **Schedule 5** (Fees and Payments);
- (b) where a Facility is deactivated:
 - (i) payment of the Onsite Health Clinic Fee and Pass Through Costs for Health Services rendered before, and for three (3) Months after, the date of the notice referred to in **clause 31.1**; and
 - (ii) actual direct ramp-down costs incurred by the Health Services Manager as a Pass Through Cost in accordance with **Schedule 5** (Fees and Payments).

31.5 Definitions

For the purposes of this **clause 31**, the terms "Basic Health Services" and "full scope" Health Services have the following meanings:

- (a) "Basic Health Services" comprise:
 - (i) the set up and operation of an on site nurse clinic and general practice clinic sufficient to provide triage services to Transferees and Recipients;
 - (ii) the preparation and delivery of a contingency plan outlining how the Health Services Manager will ramp up to the delivery of full scope Health Services at the Facility in accordance with **this clause 31**;

- (iii) establishment of clinical pathways with local hospitals to ensure Transferees and Recipients have access to acute or emergency Health Care;
 - (iv) establishment of basic protocols for liaising with the Department and the Facility Services Provider; and
 - (v) the completion of induction training in accordance with **Schedule 2** (Statement of Work) for all Health Services Manager Personnel and Network Providers involved with the delivery of any of the services described in this **clause 31.5(a)**; and
- (b) "full scope" Health Services means the performance of all of the Health Services Manager's obligations under the Contract with respect to the relevant Facility.

31.6 Change Control

- (a) At any time during the Term, the Contract Administrator may give notice to the Health Services Manager of a change to specific provisions within the Contract and the Health Services Manager must comply with that change (and ensure all Health Services Manager Personnel and Network Providers do the same), as far as is practicable and reasonable, on and from the date of the Department's notice (or any later date as may be agreed with the Department).
- (b) Prior to notifying the Health Services Manager of any change to specific provisions within the Contract under **clause 31.6(a)**, the Department will endeavour to consult with the Health Services Manager and seek the Health Services Manager's views on the potential impact of the proposed change on the Health Services Manager's performance of this Contract. The Department will consider the Health Services Manager's view when finalising the terms of the change to the terms of this Contract.
- (c) If, on receiving notice of a change under **clause 31.6(a)**, the Health Services Manager reasonably considers that the change materially impacts on the cost to the Health Services Manager of providing the Health Services, the Health Services Manager may, within ten (10) Business Days of receiving notice of the change, inform the Department of that fact. On being so informed, and without

limiting the Health Services Manager's obligation to comply with that change, the Department may direct the Health Services Manager to prepare a Contract Change Proposal in relation to the change for the Department's consideration in accordance with **clause 34**.

- (d) For the purposes of **clause 31.6(c)**:
 - (i) a "change" to specific provisions within the Contract includes the removal of an existing provision, or any variation to the content of an existing clause within this Contract; and
 - (ii) a material impact on the cost of the Health Services is a cumulative cost increase or decrease of one hundred thousand (\$100,000) dollars or more (when added to the costs of all previous changes made to the provisions of this Contract under this **clause 31.6**) during the Term) in any Financial Year.

32. REMOVAL OF HEALTH SERVICES FROM SCOPE

32.1 Notice Requiring Removal of Health Services

The Department may at any time, by notice to the Health Services Manager, require the Health Services Manager to remove any Health Service from the scope of this Contract (including by reducing the volume or scope of any Health Service) (**Removed Services**), in which case:

- (a) the Removed Services no longer form part of the Health Services from the date specified in the notice;
- (b) the Department must pay the Health Services Manager for any Removed Service that was performed in accordance with this Contract prior to the date specified in the notice;
- (c) on and from the date of the notice, the Onsite Health Clinic Fee will be equitably adjusted to reflect the reduced costs incurred by the Health Services Manager in supplying the remaining Health Services, and any unit charges (including

relevant fees or rates) for the remaining Health Services will not be increased;

- (d) the Department will be liable to compensate the Health Services Manager for any substantiated unavoidable loss reasonably incurred by the Health Services Manager as a direct result of the Removed Services in accordance with **clause 63.4**; and
- (e) each Party will comply with its obligations in the Transition Out Plan (where applicable) in respect of the Removed Services.

32.2 **Limits on Removal of Health Services from Scope**

The Department must not give a notice under **clause 32.1** that would have the effect of terminating all, or substantially all, of the Health Services, but, where a Facility is to be closed or deactivated, the Department may give a notice which has the effect of removing that Facility from the scope of this Contract.

33. **ADDITIONAL OR EXPANDED SERVICES**

33.1 **Notification**

The Department may at any time by notice to the Health Services Manager require the Health Services Manager to:

- (a) increase the scope or volume of the Health Services (or any part of them); or
- (b) provide an additional service (provided that that additional service is of a type or nature contemplated by this Contract).

33.2 **Compliance with Notice**

The Health Services Manager must comply with a notice received under **clause 33.1** by:

- (a) in the case of a notice under **clause 33.1(a)** - expanding the scope or volume of the Health Services from the date specified in the notice, and
- (b) in the case of a notice under **clause 33.1(b)** - performing the additional service from the date specified in the notice.

33.3 Health Services Fee Adjustment

The Parties agree that the pricing for any additional or expanded services provided under this **clause 33** will be determined in accordance with **Schedule 5** (Fees and Payments).

33.4 Proof of Reasonable Charges

The Health Services Manager must provide the Department with documentary proof to the Department's reasonable satisfaction, supporting any pricing claims calculated in accordance with **clause 33.3**. This evidence or proof must be provided to the Department, within thirty (30) days of the Department's request.

33.5 Health Service Manager may Suggest Expanded or Additional Services

- (a) The Health Services Manager may at any time offer to expand the Health Services (by scope or volume) or provide an additional service which, in the opinion of the Health Service Manager would enhance the Contract objectives or achieve improved health outcomes for Transferees and Recipients.
- (b) In response to the Health Services Manager's proposal under **clause 33.5(a)** the Department may provide a notice to the Health Services Manager:
 - (i) under **clause 33.1** – requiring the Health Services Manager to provide the expanded or additional service in accordance with this **clause 33**; or
 - (ii) under **clause 34.2** – requiring the Health Services Manager to prepare a Contract Change Proposal.

33.6 Additional Services Become Part of the Health Services

- (a) Unless otherwise agreed by the Parties, all additional services provided under this **clause 33** form part of the Health Services:
 - (i) for the period specified in the Department's notice under **clause 33.1**; or
 - (ii) if no period is specified, from the date of the Department's notice until the Department notifies the Health Services Manager that it no longer requires

the additional services to be delivered.

- (b) The Department will update **Schedule 2** (Statement of Work) and, as necessary, **Schedule 5** (Fees and Payments) in order to incorporate and reflect the additional services and additional charges and fees (if any) determined under this **clause 33**.

33.7 **Original Service Obligations Unaffected**

For avoidance of doubt, the Parties agree that any additional or expanded services provided under this **clause 33**:

- (a) do not include any Health Services described in **Schedule 2** (Statement of Work) as at the date of the notice under **clause 33.1**, nor anything required to remedy a failure by the Health Services Manager to perform those services in accordance with this Contract; and
- (b) unless otherwise agreed by the Parties, do not affect the Health Services Manager's obligation to provide the Health Services in accordance with this Contract.

34. **CONTRACT CHANGE PROCEDURE**

34.1 **Variations to this Contract**

The Parties must not vary this Contract (other than changes to the Health Services under **clauses 31, 32 or 33**), except in accordance with this **clause 34**.

34.2 **Notification**

If the Department at any time wishes to vary this Contract, the Department will notify the Health Services Manager in writing (**Contract Change Notice**) requesting that the Health Services Manager prepare a proposal signed by a director of the Health Services Manager in accordance with **clause 34.3 (Contract Change Proposal)**.

34.3 Health Services Manager Obligations

- (a) Within twenty (20) Business Days of receiving a Contract Change Notice, the Health Services Manager must provide the Department with a Contract Change Proposal, setting out:
 - (i) details of the change and its extent (nature, scope, scale and technology employed);
 - (ii) a statement of reasons supporting the change;
 - (iii) the steps required to implement the Contract Change Proposal;
 - (iv) the timeframe within which the Health Services Manager proposes to implement the Contract Change Proposal;
 - (v) the impact of the Contract Change Proposal on the delivery of the Health Services, including any necessary amendments to this Contract or the Policy and Procedures Manual;
 - (vi) the changes to the Onsite Health Clinic Fee (or any fees or rates specified in **Schedule 5** (Fees and Payments)) which the Health Services Manager proposes to apply to the change, supported by reasons for the price change and relevant measurements or documents which support or validate the Health Services Manager's claims;
 - (vii) a financial statement outlining the financial cost impact to the Health Services Manager as a result of the Contract Change Proposal, certified by an accountant independent of the Health Services Manager declaring:
 - (A) the Contract Change Proposal cannot be accommodated within the existing **Schedule 5** (Fees and Payments); and
 - (B) the accuracy and currency of the financial information provided to the Department;
 - (viii) details of the review the Health Services Manager has undertaken to allow

the Contract Change Proposal to be accommodated within the existing requirements (including agreed fees and rates) of this Contract;

- (ix) any reduction to the Onsite Health Clinic Fee or other fees or rates specified in **Schedule 5** (Fees and Payments) which the Health Services Manager proposes as a result of the Contract Change Notice, in order to reflect all cost savings to the Health Services Manager resulting from any changes to the Health Services Manager's then current arrangements or operations for the provision of the Health Services;
 - (x) the adjustments (if any) to the Performance Measures which the Health Services Manager proposes as a result of the Contract Change Notice, and reasons for the adjustments;
 - (xi) any risks associated with the proposed change and the Health Services Manager's recommendations for minimising and managing those risks; and
 - (xii) the Health Services Manager's reasonable costs of preparing the Contract Change Proposal.
- (b) The Contract Change Proposal must contain a full cost breakdown and a warranty from the Health Services Manager that all costs are reasonable and profit does not exceed that used in the determination of the original Onsite Health Clinic Fee (and other fees and rates) and take account of any savings on other aspects of the Health Services affected by the Contract Change Proposal. The Health Services Manager must give the Department's financial representatives full access to the Health Services Manager's financial records to investigate the reasonableness of any pricing claims under this **clause 34**. Such information will be treated as strictly confidential.

34.4 Costs

The Department agrees to reimburse the Health Services Manager for reasonable direct costs incurred by the Health Services Manager in preparing a Contract Change Proposal, subject to the Health Services Manager substantiating those costs to the Department's reasonable satisfaction.

34.5 Acceptance

- (a) The Department may:
 - (i) accept the Contract Change Proposal by having it signed by the Contract Administrator and sending a copy to the Health Services Administrator;
 - (ii) reject the Contract Change Proposal by notice in writing to the Health Services Manager including reasons for its decision, in which case the Parties must negotiate in good faith to resolve agreement to the Contract Change Proposal;
 - (iii) if the Parties are unable to agree within five (5) Business Days of the Health Services Manager receiving a rejection notice under **clause 34.5(a)(ii)**, refer the matter to dispute resolution under **clause 60**; or
 - (iv) withdraw the Contract Change Notice.
- (b) If the Department withdraws the Contract Change Notice, the Health Services Manager is not required to comply with the Contract Change Notice.

34.6 Implementation

If:

- (a) the Department accepts the Contract Change Proposal;
- (b) the Department and the Health Services Manager negotiate an agreed outcome (following rejection of the Contract Change Proposal by the Department); or
- (c) the Department refers the matter to dispute resolution and the dispute is resolved under **clause 60** and the Department does not, within five (5) Business Days of resolution of the dispute, withdraw the Contract Change Notice,

then:

- (d) the Parties must within thirty (30) days formalise their agreement to the Contract Change Proposal in a deed in the form of **Schedule 14 (Change Control)**;

- (e) the Health Services Manager must implement the changes in compliance with the proposals in the Contract Change Proposal or those proposals agreed or determined. Such implementation must be completed within six (6) weeks, or such further time as may be agreed, of the acceptance of the Contract Change Proposal or resolution of any dispute under **clause 60** unless, in the case of the latter, the Contract Change Notice is withdrawn; and
- (f) **Schedule 5** (Fees and Payments) is adjusted in accordance with the Contract Change Proposal or, if the Contract Change Proposal is amended by mutual agreement, the amended Contract Change Proposal, or the amount determined as a result of the dispute resolution process.

34.7 Effect of Variations

- (a) A Contract Change Proposal will only take effect to vary this Contract once both Parties have signed a formal deed of amendment to this Contract in the form set out in **Schedule 14** (Change Control).
- (b) The Department will be responsible for the preparation of new pages or a new agreement (as the case may be) incorporating the effects of the agreed Contract variation.

PART 11 – PAYMENTS

35. HEALTH SERVICES FEE AND OTHER PAYMENTS

Subject to this Contract, and in consideration of the Health Services Manager performing its obligations under this Contract, the Department agrees to pay the fees to the Health Services Manager in accordance with this **Part 11** (Payments) and **Schedule 5** (Fees and Payments). The fees payable to the Health Services Manager under this Contract include the following components:

- (a) Onsite Health Clinic Fees;
- (b) Pass Through Costs;
- (c) IT Transition-In Fees;

- (d) Establishment Costs;
- (e) Site Health Review Fee; and
- (f) Additional Fees.

36. ADJUSTMENT OF ONSITE HEALTH CLINIC FEE

36.1 Annual Adjustment

The fees and rates set out in **Annexure A** (Pricing Tables) to **Schedule 5** (Health Services Fee and Other Payments) that are used to calculate the Health Services Fee must be adjusted annually during the Term on each anniversary of the Commencement Date in accordance with **Schedule 5** (Fees and Payments).

36.2 Monthly Adjustment

The Department may adjust the amount payable to the Health Services Manager under an invoice to take account of:

- (a) payment of the agreed sale price for any Loose Assets in accordance with **clause 4**;
- (b) the withholding by the Department of any disputed amount in accordance with **clause 38.3**;
- (c) the off-setting by the Department of any under or over payment from a previous invoicing period; and
- (d) any other right the Department may have under this Contract to withhold payment of any amount otherwise due to the Health Services Manager.

37. TIMING AND MANNER OF PAYMENT

- (a) All amounts payable to the Health Services Manager under this **Part 11** (Payments) will be paid by the Department Monthly in arrears, within thirty (30) days of the Department's receipt of an invoice correctly rendered in accordance with this **Part 11** (Payments).

- (b) Unless otherwise agreed, any payments under this Contract will be made by electronic transfer directly to the Health Services Manager's nominated bank account. All payments will be made in Australia and in Australian dollars.

38. INVOICES

38.1 Timing of Invoices

- (a) The Health Services Manager must invoice the Department Monthly in arrears for the Onsite Health Clinic Fees, any Pass Through Costs and other amounts payable to the Health Services Manager under this Contract.
- (b) The Department acknowledges that the Health Services Manager relies on data from the Department to prepare the Onsite Health Clinic Fees in accordance with **Schedule 5** (Fees and Payments). Where the Health Services Manager is not provided with the requisite data within five (5) Business Days of the last day of a Month, it is entitled to provide the Department with an invoice for the Deemed Amount.
- (c) If, following provision of the relevant data by the Department, the Health Services Manager determines that the Deemed Amount is:
 - (i) greater than what Health Service Manager would have been entitled to, the Department may set-off the difference against the next Onsite Health Clinic Fee payable to the Health Services Manager; or
 - (ii) less than what Health Service Manager would have been entitled to, the Department will make the additional payment at the time it pays the Onsite Health Clinic Fee for the following Month to the Health Services Manager.

38.2 Form and Timing of Invoice

An invoice must:

- (a) be in the form approved by the Department and comply with all relevant requirements specified in **Schedule 5** (Fees and Payments);

- (b) be provided to the Department on or by the date which is ten (10) Business Days after the end of the Month to which the invoice relates; and
- (c) to the extent that it relates to a taxable supply, be a tax invoice.

38.3 Disputes Relating to Invoices

If the Department in good faith disputes the whole or any portion of the amount claimed in an invoice, the Department:

- (a) may withhold payment of any part of the invoiced amount that is in dispute until the dispute is resolved; and
- (b) must notify the Health Services Manager (within thirty (30) days of receipt of the invoice) of the reasons for disputing any invoiced amount.

38.4 Incorrect Invoices

If an invoice is found to have been rendered incorrectly, any underpayment or overpayment will be recoverable by or from the Health Services Manager, as the case may be, and, without limiting recourse to other available remedies, may be offset against any amount subsequently due from the Department to the Health Services Manager. In such circumstances the Health Services Manager must provide to the Department a correctly rendered adjustment note.

39. RIGHT OF THE DEPARTMENT TO RECOVER MONEY

39.1 Deductions

Without limiting the Department's rights under any clause of this Contract, any payment or debt owed by the Health Services Manager to the Department under this Contract may be deducted by the Department from the amount of any invoice or from:

- (a) any other moneys payable or due to the Health Services Manager; or
- (b) any security under **clause 58** or a guarantor under a performance guarantee issued under **clause 59**.

39.2 Notice of Deductions

If the Department deducts the amount of a debt or payment, it must provide notice to the Health Services Manager that it has done so.

40. GOODS AND SERVICES TAX

40.1 Taxes and Duties Generally

Subject to this **clause 40**, all government, local government and semi-governmental taxes, duties and charges imposed or levied in Australia or overseas in connection with this Contract will be borne by the Health Services Manager and are included within the Onsite Health Clinic Fee and other rates and fees specified in **Schedule 5** (Fees and Payments).

40.2 GST

- (a) Words defined in the GST Law have the same meaning in clauses concerning GST, unless the context makes it clear that a different meaning is intended.
- (b) The Onsite Health Clinic Fee, Pass Through Costs, Additional Fees and all other payments and fees specified in **Schedule 5** (Fees and Payments) are inclusive of GST, where applicable, unless specified otherwise.
- (c) If GST is or will be imposed on a supply made under or in connection with this Contract, to the extent that the consideration otherwise provided for that supply under this Contract is not stated to include an amount in respect of GST on the supply:
 - (i) the consideration otherwise provided for that supply under this Contract is increased by the amount of that GST; and
 - (ii) the recipient must make payment of the increase at the same time as the consideration is provided.
- (d) The recipient's obligation to pay the GST component of the price or consideration is subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment.

- (e) If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST already recovered by the supplier, either as part of or in addition to the other amounts payable, the supplier within fourteen (14) days of becoming aware of the adjustment event:
 - (i) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount already recovered by giving seven (7) days written notice; or
 - (ii) must refund to the recipient the amount by which the amount already recovered exceeds the amount of GST on the supply; and
 - (iii) must issue an adjustment note or tax invoice reflecting the adjustment event in relation to the supply to the recipient within twenty eight (28) days of the adjustment event.
- (f) If a Party provides a payment for or any satisfaction of a claim or a right to claim under or in connection with this Contract (for example, for misleading or deceptive conduct or for misrepresentation or for a breach of any warranty or for indemnity or for reimbursement of any expense) which gives rise to a liability for GST, the provider must pay, and indemnify the claimant against the amount of that GST.
- (g) If a Party has a claim under or in connection with this Contract for a cost on which that party must pay an amount for GST, the claim is for the cost plus the amount for GST (except any amount for GST for which that Party is entitled to an input tax credit).
- (h) If a Party has a claim under or in connection with this Contract whose amount depends on actual or estimated revenue or which is for loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).
- (i) If there is a change in the GST rate after the date of this Contract, the Parties will

adjust any consideration that expressly includes GST to reflect the change in rate on a "no win no loss" basis.

- (j) If the GST payable in relation to a supply is less than the amount that the recipient has paid the supplier under **clause 40.2(b)** and **40.2(d)** (or is not payable), the supplier must refund to recipient the difference (or the amount of GST) within seven (7) days of becoming aware of the refund by any means. For the avoidance of doubt, this **clause 40.2(j)** does not apply in relation to adjustment events.
- (k) This clause will survive the termination of this agreement by any party.

PART 12 – CONTRACT AND SERVICE MANAGEMENT

41. REPORTING REQUIREMENTS

- (a) The Health Services Manager must submit the reports described in **Schedule 4.3** (Reporting) at the times and in the form described in that schedule, or as otherwise agreed with the Department.
- (b) The Department may require the Health Services Manager to prepare and submit additional reports to those identified in **Schedule 4.3** (Reporting). In that event, the Parties will agree on the scope and timing of such reports.
- (c) The Health Services Manager must regularly liaise with, and promptly and fully respond to any questions of, the Contract Administrator in relation to any reports submitted under this **clause 41**.
- (d) The Department may, at its own cost, seek to independently verify any reports provided by the Health Services Manager under this **clause 41** and, in which case, the Health Services Manager must provide all reasonable cooperation requested by the Contract Administrator.

42. FINANCIAL MANAGEMENT

42.1 Accounts and Other Records

- (a) The Health Services Manager must ensure that all expenditure (and revenue, if any) in respect of or in connection with the performance of this Contract is recorded and accounted for correctly.
- (b) The Health Services Manager must at all times maintain full, true, separate and up to date accounts and records in relation to the performance of this Contract, including details relating to the calculation of the Onsite Health Clinic Fee and in support of any Pass Through Costs claimed for payment by the Health Services Manager. Such accounts and records must:
 - (i) be kept in accordance with **Schedule 2** (Statement of Work) and include all matters relevant to the determination of invoices under **Schedule 5** (Fees and Payments);
 - (ii) include appropriate audit trails for transactions performed and payments made;
 - (iii) separately record all receipts and expenses in relation to the Health Services for the Department;
 - (iv) be kept in a manner that permits them to be conveniently and properly audited;
 - (v) be drawn in accordance with any applicable Australian Accounting Standards;
 - (vi) be kept in accordance with the *Taxation Administration Act 1953* (Cth) and *A New Tax System (Goods and Services Tax) Act 1999* (Cth), except to the extent otherwise stipulated by **clause 42.1(c)**; and
 - (vii) in the case of any Health Services performed on a time and materials or cost plus basis, identify the time spent by Health Services Manager's Personnel in performing those Health Services; and

- (viii) enable the extraction of all information relevant to the performance of this Contract for the Department (including as against the Department specified health data sets).
- (c) The accounts and records required to be held under this **clause 42.1** must be held for the Term and for a period of seven (7) years from the date of expiry or termination of this Contract, or any further period specified in advance by the Department.

42.2 **Open Book Accounting**

The Health Services Manager must:

- (a) maintain all accounts, transaction information and source documents, financial systems and records, business records and other information and material relating to the Health Services on an open book and stand alone basis;
- (b) have the accounts referred to in **clause 42.2(a)** independently audited on an annual basis within three (3) Months of the end of the Financial Year (or, where the Health Service Manager's audit year does not coincide with the Financial Year, within three (3) Months of the end of the audit year end date);
- (c) make the accounts referred to in **clause 42.2(a)** available for inspection at any time by the Department;
- (d) provide all reasonable assistance that the Department (or its nominee) may reasonably require in respect of access in accordance with **clause 42.2** including by providing an explanation of the Health Services Manager's systems, policies, procedures or record keeping practices; and
- (e) provide such reports as reasonably requested by the Contract Administrator to assist in ensuring that the Department is receiving at all times the best possible value for money.

42.3 **Audited Financial Statements**

- (a) The Health Services Manager must provide to the Department a copy of the
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audited financial statement of the Health Services Manager in respect of the previous audit year:

- (i) where the Health Services Manager's audit year coincides with the Financial Year, by 1 October in each year during the Term; or
 - (ii) where the Health Services Manager's audit year does not coincide with the Financial Year, within three (3) Months of the end of the audit year end date.
- (b) The audited financial statement must be signed by a person who is registered as an auditor under the *Corporations Act 2001*(Cth) or a member of the Institute of Chartered Accountants in Australia or the Australian Society of Certified Practising Accountants, and must certify that the person is satisfied that the accounts and monies held by the Health Services Manager or paid to the Health Services Manager are held or dealt with in accordance with this Contract and current Australian Accounting Standards.

42.4 **Provision of Information Relevant to Future Market Testing**

The Health Services Manager must within thirty (30) days after receipt of a written request from the Contract Administrator provide to the Department all information that the Contract Administrator may reasonably require concerning the performance of this Contract for the purposes of assisting the Department to market test services similar to the Health Services, including to produce and publish one or more requests for tender for all or any part of those services.

42.5 **Records Regarding Location of Department Assets**

The Health Services Manager must keep full and accurate records of the location of all Department Assets and Department Material.

43. **AUDIT**

43.1 **Subject of Audits**

An audit under **clause 43.2** of part or all of this Contract may be conducted at any time by

the Department or its nominee. These audits may include:

- (a) the Health Services Manager's operational or clinical practices and procedures as they relate to this Contract, including security procedures;
- (b) the efficiency, safety and quality of the Health Services Manager's operations in relation to the provision of the Health Services;
- (c) agreements, arrangements, payments and other dealings with any Health Care Provider;
- (d) the accuracy of the Health Services Manager's invoices and reports in relation to the provision of the Health Services and the calculation and payment of the Onsite Health Clinic Fee, Pass Through Costs and any other relevant fees or payments;
- (e) the Health Services Manager's compliance with applicable Laws, including those applicable to Nauru and Manus Island, Guidelines, Australian Government Policy and Department Health Policy;
- (f) the Health Services Manager's compliance with its confidentiality, privacy and security obligations, particularly as regards Health Care Records; and
- (g) any other matters determined by the Department to be relevant to the performance of the Health Services or the Contract, including the Health Services Manager's ongoing financial viability.

43.2 Conduct of Audits

- (a) Except for those circumstances in which notice is not practicable (for example, caused by a regulatory request with shorter notice or investigation of suspected theft or breach of Contract), the Department must give the Health Services Manager not less than ten (10) Business Days' notice of an audit and a list of the documents which the auditor will reasonably require.
- (b) The Health Services Manager must participate cooperatively in audits of this Contract at the frequency and in relation to the matters specified by the

Department, including on an ad hoc basis if requested by the Department, for the purpose of ensuring that this Contract is being properly performed and administered.

- (c) The requirement for, and participation in, audits does not in any way reduce the Health Services Manager's responsibility to perform its obligations in accordance with this Contract.
- (d) The Department may appoint an independent person to assist in or conduct audits on the Department's behalf. The Department will require its nominee to execute a confidentiality undertaking. Without limiting the Department's right to make such an appointment, the Department will consult with the Health Services Manager before it appoints a person to assist who is not the Auditor-General for the Commonwealth or a member of the staff of the Australian National Audit Office (as defined in section 40 of the *Auditor-General Act 1997* (Cth)).
- (e) Each Party must bear its own costs of any audits.

44. ACCESS TO THE HEALTH SERVICES MANAGER'S PREMISES AND RECORDS

44.1 Grant of Access

- (a) For the purposes of **clause 42.2** and **clause 42.4**, the Health Services Manager must, and must ensure that all Health Services Manager Personnel and Network Providers (as applicable), grant the Department and its nominees access as required by the Department, to:
 - (i) the Health Services Manager's or Health Services Manager Personnel's or Network Provider's premises; and
 - (ii) data, records, accounts and other financial material or material relevant to the performance of this Contract, however and wherever stored or located, under the Health Services Manager's or any Health Services Manager Personnel's or Network Provider's custody, possession or control for

inspection and/or copying.

- (b) In the exercise of the rights granted by **clause 44.1**, the Department will use reasonable endeavours not to unreasonably delay or disrupt the Health Services Manager's performance of this Contract in any material respect.
- (c) The Health Services Manager must provide the Department access to the Health Services Manager's computer hardware and software to the extent necessary for the Department to exercise its rights under this clause, and provide the Department with any reasonable assistance requested by the Department to use that hardware and software.

44.2 Assistance to be Made Available

- (a) In the case of documents or records stored on a medium other than in writing, the Health Services Manager (including any Health Services Manager Personnel and Network Providers) must make available on request at no additional cost to the Department:
 - (i) those documents or records in a data format and storage medium accessible by the Department by use of the Department's existing computer hardware and software; and
 - (ii) such reasonable facilities as may be necessary to enable a legible reproduction to be created.
- (b) The Department may require assistance in respect of any inquiry into or concerning the Health Services or this Contract. For the purposes of this **clause 44.2(b)**, an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Department), any request for information directed to the Customer, and any inquiry conducted by Parliament or any Parliamentary committee.

44.3 Commonwealth and Immigration Ombudsman, Auditor-General, Privacy Commissioner and Australian Information Commissioner

- (a) Subject to **clause 43.2(a)** and without limiting any other provision of this Contract, the Commonwealth and Immigration Ombudsman or a delegate of the Commonwealth and Immigration Ombudsman, the Commonwealth Auditor-General or a delegate of the Auditor-General, or the Privacy Commissioner or a delegate of the Privacy Commissioner or the Australian Information Commissioner or a delegate of the Australian Information Commissioner may, at all reasonable times and for the purpose of performing the Commonwealth and Immigration Ombudsman's, Commonwealth Auditor-General's or Privacy Commissioner's or Australian Information Commissioner's statutory functions and/or powers respectively:
- (i) access the premises of the Health Services Manager;
 - (ii) contact and engage with the Health Services Manager, Health Services Manager Personnel and Network Providers;
 - (iii) require the provision by the Health Services Manager, any Health Services Manager Personnel and Network Provider, of records, assets and other information which are related to this Contract; and
 - (iv) access, inspect and copy documentation, records, assets or any other matter relevant to the Health Services Manager's obligations or performance of this Contract, however stored, in the custody or under the control of the Health Services Manager, Health Services Manager Personnel or Network Providers.
- (b) The Health Services Manager must, and must ensure that Health Services Manager Personnel, cooperate with any enquiries or investigations undertaken in accordance with this **clause 44.3**.
- (c) The Health Services Manager must do all things necessary to comply with any requirements of the Commonwealth and Immigration Ombudsman or a delegate of the Commonwealth and Immigration Ombudsman, the Commonwealth

Auditor-General or a delegate of the Auditor-General, the Privacy Commissioner or a delegate of the Privacy Commissioner, or the Australian Information Commissioner or a delegate of the Australian Information Commissioner, provided such requirements are legally enforceable and within the power of the Commonwealth and Immigration Ombudsman, the Auditor-General, the Privacy Commissioner or the Australian Information Commissioner.

- (d) Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Commonwealth and Immigration Ombudsman or a delegate of the Commonwealth and Immigration Ombudsman, Commonwealth Auditor-General or a delegate of the Commonwealth Auditor-General, the Privacy Commissioner or a delegate of the Privacy Commissioner or the Australian Information Commissioner or a delegate of the Australian Information Commissioner. The rights of the Department under this Contract are in addition to any other power, right or entitlement of the Commonwealth and Immigration Ombudsman, the Commonwealth Auditor-General, the Privacy Commissioner, the Australian Information Commissioner, or the delegates of those persons.

44.4 **Survival of Clause**

This **clause 44** applies for the Term and for a period of seven (7) years from the date of its expiration or termination.

PART 13 - INFORMATION MANAGEMENT

45. **INTELLECTUAL PROPERTY**

45.1 **Intellectual Property Rights**

- (a) Intellectual Property rights in any Contract Material, other than CHIRON, vest immediately upon its creation in the Department.
- (b) The Parties acknowledge that:

- (i) the provision of Department Material to the Health Services Manager does not in any way affect the ownership of any Intellectual Property rights in Department Material; and
- (ii) except as specified in this Contract, the provision of Health Services Manager Material (including CHIRON) does not in any way affect the ownership of any Intellectual Property rights in that Material.

45.2 **Grant of Licences**

- (a) The Health Services Manager grants to the Department a royalty-free, irrevocable, world-wide, perpetual, non-exclusive licence, including the right to sublicense, to use, reproduce, modify and adapt any Intellectual Property rights in any Health Services Manager Material, excluding CHIRON, in conjunction with any Contract Material.
- (b) The Health Services Manager must obtain from any relevant person, permission to use any and all Intellectual Property which may be required in order for the Health Services Manager to perform the Health Services. Such permission to use Intellectual Property includes all necessary licences and other government approvals.
- (c) The Health Services Manager must ensure that the Department is granted a licence from any Health Services Manager Personnel on the same terms as **clause 45.2(a)**.
- (d) The Department grants the Health Services Manager for the Term a royalty-free, world-wide, non-exclusive licence, including the right to sublicense, to use, reproduce, modify and adapt any Intellectual Property rights in the Contract Material and the Department Material to the extent necessary and for the sole purpose of performing its obligations under this Contract.

45.3 **Moral Rights**

Each Party:

- (a) acknowledges that Moral Rights will accrue to the relevant individual authors of copyright material, which may include their respective employees and the authors of copyright material obtained from their respective contractors; and
- (b) must obtain consents from relevant Moral Rights holders to ensure that the Parties and any other person who may at any time acquire a right in respect of the copyright material may use that material for or treat the work in any manner they desire in respect of the uses for which that copyright material was created without infringing Moral Rights.

45.4 Intellectual Property Warranty

The Health Services Manager warrants that the exercise by the Department of any of its rights under this Contract or in relation to Intellectual Property comprised in the Material provided to the Department, or otherwise licensed by the Health Services Manager to the Department pursuant to this Contract does not and will not infringe the Intellectual Property rights of any person.

45.5 Intellectual Property Indemnity

- (a) The Health Services Manager must indemnify the Department, and any other person acting on the Department's behalf (**Indemnified Persons**), against any and all liability, loss, damage, costs (including the costs of any settlement and legal costs and expenses on a solicitor/client basis), compensation or expense whatsoever incurred by any Indemnified Person, arising out of any action, claim, demand or proceeding brought or made against an Indemnified Person, by any person in respect of any infringement or alleged infringement of that person's Intellectual Property rights, if and to the extent that the infringement or alleged infringement is caused by any breach by the Health Services Manager of the warranty in **clause 45.4**.
- (b) For the purposes of **clause 45.4** "infringement" includes authorised acts which would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 96 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth), and section 25 of the *Circuits Layout Act 1989* (Cth), constitute an infringement.

45.6 Intellectual Property rights for CHIRON

- (a) Intellectual Property rights in CHIRON, vest immediately upon its creation in the Health Services Manager.
- (b) The Health Services Manager grants to the Department a royalty-free, irrevocable, world-wide, perpetual, non-exclusive licence to use, reproduce, modify and adapt any Intellectual Property rights in CHIRON in conjunction with any Contract Material. This licence confers no right for the Department to sublicense or otherwise permit any person other than the Department, Department Personnel and internal subcontractors (excluding any subcontractors providing services similar to the Health Services) to use, reproduce, modify and adapt any Intellectual Property rights in CHIRON.

45.7 Survival of Clause

This **clause 45** survives the expiration or termination of this Contract.

46. HEALTH SERVICES MANAGER'S CONFIDENTIAL INFORMATION

46.1 Protection of Health Services Manager Confidential Information

- (a) The Department will take all reasonable steps to ensure that it does not make public or disclose the Health Services Manager's Confidential Information listed in **Schedule 10** (Confidential Information).
- (b) This **clause 46** does not prevent the Department from disclosing any information provided by the Health Services Manager:
 - (i) to its auditors and professional advisers on terms consistent with the terms on which the receiving Party makes available its own confidential information to such persons and (to the extent they provide for a higher level of duty) the confidentiality terms of this Contract;
 - (ii) to the Department's internal management personnel, solely to enable effective management or auditing of Contract-related activities;

- (iii) to any Government Agency;
 - (iv) to any Commonwealth Minister;
 - (v) to any House or Committee of the Parliament of the Commonwealth of Australia; or
 - (vi) in accordance with any relevant Australian Government Policy;
- (c) If any Health Services Manager Confidential Information is disclosed under **clause 46.1(b)**, the Department will take all reasonable steps to ensure that such information is treated as confidential by such Government Agencies and their personnel.
- (d) For the avoidance of doubt, the Parties acknowledge that the terms and conditions of this Contract are not the Health Services Manager's Confidential Information.

47. DEPARTMENT INFORMATION

47.1 Protection of the Department Information

The Health Services Manager must not, and must ensure that all Health Services Manager Personnel and Network Providers do not, release any information relating to any aspect of:

- (a) Health Services provided under this Contract;
- (b) this Contract, including the Schedules and Annexures; or
- (c) any of the Department's Confidential Information,

without the prior written approval of the Contract Administrator.

47.2 Provision of the Department Information to Health Services Manager Personnel

- (a) The Health Services Manager must not permit any Health Services Manager Personnel or Network Provider to have access to Department Confidential Information until such time as the relevant Personnel or providers has entered

into a Confidentiality Deed and a Deed of Non-Disclosure of Personal Information substantially in the form of **Schedule 11** (Confidentiality Deed) and **Schedule 12** (Deed of Non-Disclosure of Personal Information), respectively.

- (b) The Contract Administrator may at any time require the Health Services Manager to provide the original version of any undertaking signed by a Health Services Manager Personnel or Network Provider under this **clause 47.2**.
- (c) The Health Services Manager must:
 - (i) at its cost, take all reasonable steps to ensure that Department Confidential Information and all records of it are kept under the Health Services Manager's effective control and are secure from theft, loss, damage and unauthorised access, modification, use and disclosure; and
 - (ii) notify the Department in writing immediately if the Health Services Manager becomes aware of:
 - (A) any actual, suspected or likely breach by the Health Services Manager of this **clause 47**; or
 - (B) any actual, suspected, likely or threatened theft, loss, damage or unauthorised access, modification, use or disclosure of any Department Confidential Information.

47.3 Scope and Survival of Confidentiality Obligations

- (a) The obligations of the Parties under **clauses 46** and **47** will not be taken to have been breached to the extent that the relevant Confidential Information:
 - (i) is disclosed by a Party to its Personnel solely in order to comply with obligations or to exercise rights under this Contract and, in the case of Health Services Manager Personnel, they have signed the undertakings specified in **clause 47.2(a)**;
 - (ii) is in the public domain otherwise than as a result of a breach of an obligation of confidentiality; or

- (iii) is required by Law to be disclosed, or by an order of any court or tribunal of competent jurisdiction.
- (b) Where a Party discloses Confidential Information to another person pursuant to **clause 47(a)(i)** above, that Party must notify the receiving person of the confidential nature of the information being disclosed.
- (c) If a Party is required to disclose any Confidential Information in the circumstances outlined in **clause 47(a)(iii)**, each Party must:
 - (i) notify the other in writing with details of the Confidential Information required to be disclosed and the person to whom disclosure is to be made, so that other Party has sufficient notice, at its option, to oppose or restrict disclosure or seek a protective order or other means of preserving the confidentiality of the Confidential Information or agree on the form and content of disclosure; and
 - (ii) if disclosure cannot be avoided:
 - (A) only disclose the Confidential Information to the extent legally required;
 - (B) use its best endeavours to ensure that any Confidential Information is kept confidential; and
 - (C) follow any reasonable directions of the other Party concerning the disclosure.
- (d) The obligations under **clauses 46** and **47** above continue, notwithstanding the expiry or termination of this Contract.
- (e) For the avoidance of doubt, nothing in **clauses 46** and **47** above derogates from any obligation which the Health Services Manager may have in relation to Personal Information (as defined in the *Privacy Act 1988* (Cth)) under this Contract in relation to the protection of Personal Information, as defined in that Act.

48. PRIVACY

48.1 Definitions

The following definitions apply to and are used in this **clause 48**.

- (a) **Permitted Purpose** means a purpose for which the Health Services Manager may collect, use, disclose or handle Personal Information as specified or contemplated in this Contract;
- (b) **Personal Information** has the same meaning as in the Privacy Act, which at the date of entering into this contract means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;
- (c) **Personal Information of the Department** means Personal Information held by the Department and provided to the Health Services Manager by the Department in connection with this Contract or otherwise accessed by or disclosed to the Health Services Manager in the course of providing the Health Services, including Personal Information about any Transferee;
- (d) **Privacy Act** means the *Privacy Act 1988* (Cth); and
- (e) **Privacy Legislation** means the Privacy Act and any other privacy legislation applicable to the performance of this Contract by the Health Services Manager.

48.2 Privacy Obligations

The Health Services Manager acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the Privacy Act and must:

- (a) use or disclose Personal Information obtained during the course of providing the Health Services only for the purposes of this Contract;
- (b) comply with the Information Privacy Principles set out in section 14 of the Privacy Act which concern the security, use and disclosure of Personal

Information of the Department with respect to any act done or practice engaged in by the Health Services Manager for the purposes of this Contract, in the same way and to the same extent as if it were a Government Agency;

- (c) comply with its obligations arising under or in connection with the Privacy Legislation in respect of any information that comprises Personal Information of the Department; and
- (d) comply with any Australian Government Policy and Department Health Policy issued by the Department or the Privacy Commissioner from time-to-time relating to the handling, collection, storage, access, alteration, use or disclosure of any Personal Information (including health information of Transferees and Recipients).

48.3 Permitted Disclosures

- (a) The Health Services Manager must not disclose any Personal Information of the Department to any person without first obtaining the Department's written consent, except:
 - (i) to the extent necessary for a Permitted Purpose; and
 - (ii) in accordance with its rights or obligations under this Contract.
- (b) Despite the restrictions otherwise set out in this Contract, the Health Services Manager's obligations of confidence do not apply to any Personal Information that the Health Services Manager is required to disclose:
 - (i) by Law or by an order of any court or tribunal of competent jurisdiction; or
 - (ii) by any Government Agency, stock exchange or other regulatory body having the legal right to require the disclosure.
- (c) In relation to a disclosure or proposed disclosure referred to in **clause 48.3(b)**, the Health Services Manager must:
 - (i) immediately upon becoming aware that it may be required to disclose

Personal Information, notify the Department in writing with details of the Personal Information required to be disclosed and the person to whom disclosure is to be made, so that the Department has sufficient notice, at its option, to oppose or restrict disclosure or seek a protective order or other means of preserving the confidentiality of the Personal Information or agree on the form and content of disclosure; and

- (ii) if disclosure cannot be avoided:
 - (A) only disclose Personal Information of the Department to the extent legally required;
 - (B) use its best endeavours to ensure that any Personal Information of the Department is kept private and confidential; and
 - (C) follow any reasonable directions of the Department concerning the disclosure.

48.4 Permitted Uses

The Health Services Manager must not use any Personal Information of the Department, without first obtaining the Department's written consent, except:

- (a) to the extent necessary for one or more of the Permitted Purposes; or
- (b) in accordance with its rights and obligations under this Contract.

48.5 Copies and Other Records

The Health Services Manager may make records of the Personal Information of the Department, or allow records to be made, but only to the extent necessary for a Permitted Purpose.

48.6 Security

The Health Services Manager must, at its cost:

- (a) take all reasonable steps to ensure that the Personal Information of the

Department and all records of it are kept under the Health Services Manager's effective control and are secure from theft, loss, damage and unauthorised access, modification, use and disclosure; and

- (b) notify the Department in writing immediately if the Health Services Manager becomes aware of:
 - (i) any actual, suspected or likely breach by the Health Services Manager of this **clause 48** or the National Privacy Principles; or
 - (ii) any actual, suspected, likely or threatened theft, loss, damage or unauthorised access, modification, use or disclosure of any Personal Information of the Department.

48.7 Privacy Commissioner and Australian Information Commissioner

- (a) The Health Services Manager is to advise the Contract Administrator within two (2) Business Days of it becoming aware of the Privacy Commissioner or the Australian Information Commissioner initiating any action under the Privacy Act relevant to the Health Services Manager and its performance under this Contract including:
 - (i) advice from the Privacy Commissioner's or Australian Information Commissioner's office that it is investigating a complaint against the Health Services Manager;
 - (ii) an audit by the Privacy Commissioner or Australian Information Commissioner;
 - (iii) a request by the Privacy Commissioner or Australian Information Commissioner to be provided access to the Health Services Manager's premises; and
 - (iv) an injunction against the Health Services Manager being sought by the Privacy Commissioner or Australian Information Commissioner.
- (b) The Health Services Manager must cooperate with any reasonable demands or

inquiries made by the Privacy Commissioner or Australian Information Commissioner.

- (c) The Health Services Manager must keep the Contract Administrator informed of the conduct, progress and outcome of any action, including but not limited to any determination made by the Privacy Commissioner or Australian Information Commissioner.
- (d) The Health Services Manager agrees to comply with any direction from the Contract Administrator to comply with a determination made by the Privacy Commissioner or Australian Information Commissioner.
- (e) If the Health Services Manager has not complied with the determination made by the Privacy Commissioner or Australian Information Commissioner within ten (10) Business Days, the Department may, to the extent possible and at the Health Services Manager's cost, comply with the determination on the Health Services Manager's behalf.

48.8 **Return or Destruction of Records**

- (a) On the earlier of:
 - (i) the Department's request;
 - (ii) when no longer required for a Permitted Purpose; and
 - (iii) the expiry or termination of this Contract,the Health Services Manager must as soon as practicable, at its cost:
 - (iv) stop using and disclosing (and ensure all Health Services Manager Personnel and Network Providers do the same) any Personal Information of the Department; and
 - (v) deliver to the Department, or, at the Department's request and direction, destroy, erase or de-identify, all Records of the Personal Information of the Department (whether prepared by or for the Health Services Manager or

the Department or any other person) in the possession, custody or control of the Health Services Manager or any person to whom it has given access to these Records, whether or not in accordance with this Contract.

- (b) The Department must retain the Records that the Health Services Manager delivers to the Department in accordance with **clause 48.8(a)(v)** for a period of seven (7) years after their delivery by the Health Services Manager (or, in the case of Records concerning a minor, a period commensurate with the statutory limitation period for actions by that minor).
- (c) The Department must grant the Health Services Manager any access to these Records which the Health Services Manager reasonably requires in connection with any legal proceedings or threatened legal proceedings to which the Health Service Manager is a party.

48.9 No Release

The Health Services Manager's compliance with this **clause 48** does not release it from any of its other obligations under this Contract or otherwise.

48.10 Indemnity for breach of Privacy Obligations

The Health Services Manager indemnifies the Department against any loss, liability or expense suffered or incurred by the Department which arises directly or indirectly from a breach of this **clause 48**.

48.11 Survival of Clause

The provisions of this **clause 48** survive the termination or expiration of this Contract.

49. RECORDS MANAGEMENT

49.1 Department Records

- (a) The Health Services Manager must create, maintain, store, disclose and archive all Records required by this Contract in an orderly and efficient manner and in accordance with the requirements of this Contract, relevant Australian Government

Policy and Department Health Policy and applicable Laws.

- (b) Unless otherwise agreed between the Contract Administrator and the Health Services Manager in relation to a particular Record or type of Record, all Records created pursuant to this Contract become upon their creation and remain the property of the Department. All such Records will be deemed to be Department Records.
- (c) The Contract Administrator may at any time inspect Department Records or require that they be transferred to the custody of the Contract Administrator.
- (d) The Health Services Manager must not arrange for, nor effect, a transfer of custody or the ownership of any Department Record without the prior written approval of the Contract Administrator, nor will the Health Services Manager remove any such Record, without the prior written approval of the Contract Administrator.
- (e) Where the Contract Administrator authorises the transfer of custody of Department Records to the Health Services Manager, the Health Services Manager must comply in every respect with the requirements of the *Archives Act 1983* (Cth) or guidelines issued by the National Archives of Australia and/or the Department.
- (f) The Health Services Manager must comply with any direction given by the Department for the purpose of transferring Department Records to the Department.

50. **ARCHIVES ACT**

- (a) The Health Services Manager must at all times comply with the requirements of the *Archives Act 1983* (Cth) relating to the Health Services Manager's dealings with Department Records (as that phrase is defined in the *Archives Act 1983* (Cth)).
- (b) Without limiting the obligation in **clause 50(a)**, the Health Services Manager must, in particular, comply with the requirements of section 24 of the *Archives Act 1983* (Cth) dealing with the disposal, destruction or transfer of Department Records and such dealings must accord with the requirements of the National Archives of Australia.

51. DATA SECURITY

51.1 Acknowledgement

The Health Services Manager acknowledges and agrees that:

- (a) the Department holds and deals with highly sensitive information; and
- (b) the Department is concerned that such information is not improperly used or disclosed contrary to this Contract or any Laws.

51.2 Use of the Department Data

The Health Services Manager must:

- (a) use Department Data only for purposes directly in relation to the performance of the Health Services and the performance of its obligations under this Contract;
- (b) not make any Department Data available to any third party other than a Health Services Manager Personnel or Network Provider in accordance with this Contract, and then only to the extent necessary to enable the third party to perform its part of the Health Services;
- (c) keeping Department Data in its possession, or under its control, safe and secure;
- (d) prevent the theft, loss, damage, destruction, alteration and unauthorised access, use and disclosure of Department Data in its possession, including by the establishment and maintenance of safeguards, that:
 - (i) are no less rigorous than those maintained by:
 - (A) the Health Services Manager in respect of Health Services Manager's Confidential Information; and
 - (B) the Department; and
 - (ii) comply with all procedures specified in this Contract, including:

- (A) all data management and any security requirements specified in **Schedule 2** (Statement of Work); and
- (B) all applicable Laws, Australian Government Policy and Department Health Policy.

51.3 Compliance with Security Requirements

The Health Services Manager must:

- (a) comply with all Australian Government and Department Data security requirements, as notified by the Department from time to time, in respect of access to, use or disclosure of Department Data;
- (b) prohibit and prevent any person who does not have the appropriate level of security clearance from gaining access to Department Data; and
- (c) notify the Department immediately and comply with all directions of the Department if the Health Services Manager becomes aware of any contravention of Australian Government or Department Data security requirements.

51.4 Records

- (a) The Health Services Manager must keep full and accurate Records of the location of all Department Data and, at the Department's request, provide the Department with sufficient information to ensure the Department is kept fully informed about the nature and location of any database containing Department Data.
- (b) The Health Services Manager must, on request by the Department at any time, provide to the Department any Department Data which relates to Transferees and Recipients, which Data may be used, copied, modified or disclosed for Department purposes. For the avoidance of doubt, Recipient data will only be provided by the Health Services Manager to the Department after Recipient approval to release the data has been given to the Health Services Manager. The Health Services Manager undertakes to make reasonable efforts to attain such approval as required.

52. PROVISION OF INFORMATION

52.1 Sharing of Information

The Parties are seeking to foster an open environment where, subject to the requirements of **clauses 48, 49, 50 and 51**, information regarding Transferees is shared between the Department and the Health Services Manager in a proactive manner, in order to enhance the health outcomes of Transferees.

52.2 Department Systems

- (a) The Department will provide certain Health Services Manager Personnel and Network Providers on an "as needed" basis with access to the functionality of the Department System relevant to their role, as reasonably determined by the Department for the performance of the Health Services.
- (b) The Department may require that certain Health Services Manager Personnel and Network Providers obtain a higher level of security clearance than may otherwise be required prior to providing access to any of the functionality of the Department System. The Health Services Manager must ensure that these Health Services Manager Personnel and Network Providers provide the information required by the Department in order to obtain the relevant security clearance, and the cost of the security clearance will be borne by the Department.
- (c) The Health Services Manager must provide any computers, hardware, software, peripherals and other devices which are not provided by the Department which are required in order to access, interface with and use the Department System, in accordance with **clause 52.2(a)**, as necessary to perform the Health Services and any other obligations under this Contract.
- (d) The Department does not warrant the efficacy of the Department System, or the currency or accuracy of the information contained in it, and the Health Services Manager will not be relieved of any obligation under this Contract as a result of its reliance on information obtained from the Department System.

53. PUBLICITY, MEDIA AND EXTERNAL RELATIONSHIP MANAGEMENT

53.1 Publicity and Media to be Managed by the Department

- (a) The Health Services Manager acknowledges and agrees that the Department will have management and control of:
 - (i) all publicity, dealings with, inquiries from, comments to or other matters related to the media that are directly or indirectly related to this Contract including, without limitation, regarding the Department and any matter related to the Health Services, or any Transferee, Health Care Provider or the relationship or issues between the Health Services Manager, Health Care Providers, Transferees and the Department; and
 - (ii) the relationship and dealings with Department Services Providers and other external parties (including industry groups, special interest or lobby groups, and the community), except to the extent that such contact has been approved in advance by the Department in writing.
- (b) Any contact with or release to the media which specifically names the Health Services Manager is to be approved by the Department prior to any statement being made or material being released, which consent or approval must not be unreasonably withheld or delayed.

53.2 Health Services Manager Not to Make Public Statements

The Health Services Manager must not, and will ensure that all Health Services Manager Personnel do not:

- (a) make any public statement;
- (b) release any information to, make any statement or comment to, deal with any inquiry from or otherwise assist or advise the media; or
- (c) publish, distribute or otherwise make available any information or material to third parties;

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

- (d) the Department, or Department Personnel (whether specifically referred to or not);
- (e) the Health Services;
- (f) the relationship between the Parties or any Department Services Provider; or
- (g) any other matter directly or indirectly related to this Contract.

other than:

- (h) to direct any such inquiry to the Department;
- (i) as is specifically authorised by and to the minimum extent necessary to fulfil the Health Services Manager's obligation under this Contract or comply with any Law; or
- (j) as may be otherwise specifically authorised in writing by the Department.

PART 14 - INTERRUPTIONS TO SERVICE DELIVERY

54. FORCE MAJEURE

54.1 Force Majeure Notice

If the Health Services Manager becomes aware of any matter likely to constitute a Force Majeure Event affecting its performance of its obligations under this Contract, the Health Services Manager must provide notice of that fact to the Contract Administrator, together with particulars of its probable impact on Contract performance, within the twenty four (24) hours of becoming so aware.

54.2 Suspension Notice

In addition to any notice given under **clause 54.1** above, the Health Services Manager must give the Contract Administrator a suspension notice as soon as possible, but not later than two (2) days, after any Force Majeure Event occurs, containing:

- (a) full particulars of the Force Majeure Event;
- (b) its nature and an estimate of its likely duration; and
- (c) the obligations affected by it, and the nature and extent of its effect on those obligations.

54.3 Management of Force Majeure Event

- (a) The Health Services Manager must comply with all directions of the Contract Administrator, or a Department Executive, in relation to the Force Majeure Event, or the effects of the Force Majeure Event.
- (b) Subject to **clause 54.3(a)** the Health Services Manager must take all reasonable steps to avoid being, or to mitigate the extent to which it is, prevented from meeting its obligations under this Contract.

54.4 Meeting Between the Parties

The Parties will meet within three (3) days of the suspension notice being issued to discuss any additional measures that may be necessary to maintain as much as possible the effective and timely performance of the Health Services.

54.5 Suspension of Obligations

- (a) Subject to **clause 54.5(b)**, if the Health Services Manager is prevented from performing an obligation under this Contract by reason of the Force Majeure Event, the obligation will be suspended from the date the Health Services Manager gives a suspension notice in respect of that Force Majeure Event until the cessation of the Force Majeure Event.
- (b) If an obligation is suspended pursuant to **clause 54.5(a)** the Health Services Manager will be entitled to:
 - (i) an extension of any time limit for the performance of such obligation under this Contract; and

- (ii) an adjustment of the measurement of the Health Services Manager's performance against any relevant Performance Measures;

providing that the Health Services Manager has complied fully with the requirements of this **clause 54** and can demonstrate to the satisfaction of the Contract Administrator that the obligations affected by the claimed Force Majeure Event cannot be reasonably accommodated within the existing applicable timeframe or rescheduled.

54.6 Termination for Force Majeure

- (a) If the Health Services Manager is prevented by a Force Majeure Event (or a series of Force Majeure Events) from performing obligations under this Contract that is continuing for a period of sixty (60) days or more:
 - (i) the Department may terminate this Contract by providing the Health Services Manager with five (5) Business Days written notice; and
 - (ii) neither Party has any right to damages from the other for any loss it suffers because of the termination (but this does not affect rights in respect of breaches before termination) and each Party will bear its own costs incurred as a result of the termination under this **clause 54.6**.
- (b) The Health Services Manager's rights to payment of fees, as described in **clause 1.1** of **Schedule 5** (Fees and Payments), accrued up to the date of the termination are not affected by the termination under this **clause 54.6**.

54.7 Health Services Manager Must Update Contract Administrator

- (a) The Health Services Manager must keep the Contract Administrator informed at reasonable intervals during any suspension and upon the request of the Contract Administrator, provide written advice to the Contract Administrator of:
 - (i) the estimate of the likely duration of the Force Majeure Event;
 - (ii) the action taken and the action proposed by the Health Services Manager to mitigate or minimise the effects of that Force Majeure Event including

any temporary measures; and

(iii) any other matter relevant to the Force Majeure Event or the Health Services Manager's obligations.

(b) The Health Services Manager must give immediate notice to the Contract Administrator of the cessation of a Force Majeure Event and must as soon as reasonably possible after cessation of that Force Majeure Event, resume performance of any obligation suspended as a result of it.

54.8 **Alternative Supply and Onsite Health Clinic Fee Reduction**

During the suspension of any obligation, the Contract Administrator may:

(a) make alternative arrangements for the performance, whether by another person or otherwise, of any obligation so suspended without incurring any legal liability to the Health Services Manager; and

(b) reduce the Onsite Health Clinic Fee to exclude any amount otherwise payable for the suspended obligation.

54.9 **Payments, Financial Undertaking and Performance Guarantee**

This **clause 54** does not apply to any obligation by the Health Services Manager to pay money or provide a Financial Undertaking or Performance Guarantee.

PART 15 - REPRESENTATIONS AND WARRANTIES

55. **REPRESENTATIONS AND WARRANTIES**

55.1 **Health Services Manager Representations and Warranties**

The Health Services Manager represents and warrants that:

(a) **(Status)** it is a company limited by shares under the *Corporations Act 2001* (Cth);

- (b) **(Power)** it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into this Contract and to carry out the transactions that this Contract contemplates;
- (c) **(Corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this Contract and its carrying out the transactions that this Contract contemplates;
- (d) **(Authorisations)** it holds each authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this Contract and to carry out the transactions that this Contract contemplates;
 - (ii) ensure that this Contract is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business,and it is complying with any conditions to which any of these authorisations is subject;
- (e) **(Documents effective)** this Contract constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and Laws affecting creditors' rights generally);
- (f) **(No contravention)** neither its execution of this Contract nor the carrying out by it of the transactions that this Contract contemplates, does or will:
 - (i) contravene any Law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
 - (ii) contravene any authorisation;

- (iii) contravene any undertaking or instrument binding on it or any of its property;
 - (iv) contravene its constitution; or
 - (v) require it to make any payment or delivery in respect of any financial indebtedness before it would otherwise be obliged to do so;
- (g) **(No litigation)** no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of any of its officers after due inquiry, threatened which, if adversely decided, could have an adverse effect on it;
- (h) **(Accounts):**
- (i) the accounts and any other financial statements and reports that it has given to the Department have been prepared in accordance with the Laws of Australia and (unless inconsistent with those Laws) generally accepted accounting principles consistently applied;
 - (ii) the accounts that it has given to the Department give a true and fair view of the financial condition of it and its subsidiaries as at the date to which they are made up and of the results of operations of it and its subsidiaries for the period that they cover; and
 - (iii) there has been no change since the date of the most recent accounts that it has given to the Department that could have an adverse effect on it;
- (i) **(Other information):**
- (i) the other information and reports that it has given to the Department in connection with this Contract are true and accurate in all material respects and not misleading in any material respect (including by omission); and
 - (ii) any forecasts and opinions in them are fair and reasonable (and were made or formed after due inquiry and consideration by appropriate officers of the Health Services Manager),

as at the Commencement Date or, if given later, when given;

- (j) **(Disclosure of relevant information)** it has disclosed to the Department all the information that is material to an assessment by the Department of the risks that it assumes by entering into this Contract;
- (k) **(No filings or Taxes)** it is not necessary or desirable, to ensure that this Contract is legal, valid, binding or admissible in evidence, that this Contract or any other document be filed or registered with any Government Authority, or that any Taxes be paid;
- (l) **(No default)** no breach of this Contract has occurred and is continuing, and it is not in breach of any other document or agreement in a manner that could have a material adverse effect on it or any of its subsidiaries;
- (m) **(No security interest)** it will not create or permit to exist, and will ensure that none of its subsidiaries creates or permits to exist, any Security Interest over any of its property, other than a Permitted Security Interest;
- (n) **(No trust)** it is not entering into this Contract as trustee of any trust or settlement; and
- (o) **(ABN and GST registration)** it has an Australian Business Number and is registered for GST.

55.2 Repetition of Representations and Warranties

The representations and warranties in this **clause 55** are taken to be repeated every six (6) Months from the Commencement Date, on the basis of the facts and circumstances as at that date.

55.3 Reliance on Representations and Warranties

The Health Services Manager acknowledges that the Department has executed this Contract and agreed to take part in the transactions that this document contemplates in reliance on the representations and warranties that are made or repeated in this **clause 55**.

55.4 No Representations by the Department

The Health Services Manager acknowledges that it has not relied and will not rely on any representation, statement or promise made by or on behalf of the Department in deciding to enter into this document or to exercise any right or perform any obligation under it.

PART 16 – INDEMNITY AND INSURANCE

56. LIABILITY

56.1 Indemnity

The Health Services Manager agrees to indemnify the Department from and against any:

- (a) cost or liability incurred by the Department;
- (b) loss of or damage to any property of the Department (including any Facility, Department Asset or Department System); and
- (c) loss or expense incurred by the Department in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of the time spent, resources used or disbursements paid by the Department,

arising from

- (d) any negligent, wilful, unlawful or reckless act or omission on the part of the Health Services Manager or any Health Services Manager Personnel;
- (e) any breach by the Health Services Manager of its obligations or warranties under this Contract; or
- (f) any negligent, wilful, unlawful or reckless act or omission on the part of a Network Provider or a GP where the Health Services Manager has failed to comply with any of its obligations listed in **clause 56.3** in relation to that Network Provider or a GP,

including any circumstances where the act, omission, neglect or breach results in a breach by the Department of its non-delegable duty of care to a Transferee.

56.2 Health Services Manager's Limit on Liability for Network Providers

The Health Services Manager will not be liable to the Department under **clause 56.1** for any cost, liability, loss or expense incurred by the Department, or loss or damage to any property of the Department, where that cost, liability, loss, expense or damage arises from any act or omission on the part of a Network Provider, or its GP, or its Network Provider Personnel:

- (a) if that Network Provider is a public hospital or a public health care provider funded by a Government (which may or may not, in its circumstances, employ or engage GPs or Network Provider Personnel);
- (b) if the Department has directed the Health Services Manager to appoint that Network Provider, Network Provider Personnel or GP to the Network;
- (c) if that Network Provider, Network Provider Personnel or GP provided Health Care in a public hospital and then provides continuing care outside a public hospital; or
- (d) in all other cases, subject only to the exceptions set out in **clause 56.3**.

56.3 Exceptions to the Health Services Manager's Limit on Liability for Network Providers

The limit on liability referred to in **clause 56.2** does not apply to the extent that the cost, liability, loss, expense or damage arises directly from a failure of the Health Services Manager to do any of the following:

Enter into Network Provider Agreement

- (a) enter into a Network Provider Agreement with that Network Provider in accordance with **clause 5.4** of **Schedule 2** (Statement of Work), where required to do so under that clause;

Review Network Provider's Qualifications, Skills, Registration and Insurance

- (b) on the following dates, sight and review documents that evidence that the

Network Provider is licensed and registered with the relevant registration board, college or other relevant body to deliver the Health Care for which it has been referred:

- (i) immediately prior to appointing that Network Provider to the HSM Network;
 - (ii) where that licence or registration has a recurring renewal date, on each such renewal date; and
 - (iii) at any other time where it would be reasonable for the Health Services Manager to suspect that there may be a problem with that Network Provider's licence or registration;
- (c) ensure that where a Network Provider, other than an Excepted Network Provider, employs or engages General Practitioners, that:
- (i) the Network Provider's medical practice is accredited against the Royal Australian College of General Practitioners then current standards for general practices; or
 - (ii) if the practice is not accredited in accordance with **clause 56.3(c)(i)**, the Department has in writing approved that entity being appointed to the HSM Network as a Network Provider (and has not subsequently withdrawn that approval); or
 - (iii) in the case of services provided through the Republic of Nauru Hospital, Lorengau Hospital and other Department approved practice, the Department has in writing approved that entity being used for the provision of health services commensurate with the laws of the country in which the health care is being provided.
- (d) on the following dates, sight and review evidence that the Network Provider has the insurance coverage specified in **Schedule 13A** (Network Provider Insurance):

- (i) immediately prior to appointing that Network Provider to the HSM Network; and
- (ii) where an insurance policy effected in accordance with **Schedule 13A** (Network Provider Insurance) has a renewal date, on each such renewal date throughout the Term;

Ensure Compliance with Delivery Conditions

- (e) ensure that where that Network Provider, other than an Excepted Network Provider, employs or engages General Practitioners, only a GP delivers Health Care to a Transferee or Recipient;
- (f) ensure that that the Network Provider, and where applicable the GP, to whom a Transferee or Recipient is referred is qualified, licensed, registered or insured to deliver the specific Health Care for which they are referred;
- (g) ensure that neither the Network Provider nor its Network Provider Personnel deliver Health Care on site at a Facility unless that Network Provider and the relevant Network Provider Personnel have successfully undergone an Australian Federal Police background check (or, where applicable, an equivalent check in the country where the Network Provider and Network Provider Personnel normally operate) within the twelve (12) Months immediately prior to delivering that Health Care on site at a Facility;
- (h) ensure that before the Network Provider or its, other than an Excepted Network Provider's, GP has or have contact with children in relation to the Contract, the Network Provider and those GPs, has or have undergone the appropriate "Working with Children" checks as required by any applicable Laws.

Deliver Induction, Training and Provision of Information

- (i) deliver the pre-service induction, support and ongoing training programs for the Network Provider and its, other than an Excepted Network Providers, GPs to the extent required under **clause 5.2** and **clause 6.1** of **Schedule 2** (Statement of Work);
- (j) ensure that that Network Provider and its, other than an Excepted Network Providers, GPs:
 - (i) are kept informed of all relevant changes to the Contract, Department Health Policy and the Policy and Procedures Manual; and
 - (ii) have access at all times (whether in hardcopy or electronic form) to the Policy and Procedures Manual and relevant Department Health Policy;
- (k) maintain a complete and up to date record of the training completed by that Network Provider, other than an Excepted Network Providers, showing details of training made available to and acknowledged by the Network Provider and the GPs (as applicable) as having been undertaken;

Investigate

- (l) at any time where it would be reasonable for the Health Services Manager to suspect that there may be a problem with that Network Provider or following a reasonable request by the Department to do so, promptly:
 - (i) investigate the suitability of that Network Provider; and
 - (ii) provide the results or findings of such investigations to the Department on concluding the investigation or within five (5) Business Days of any Department request, whichever is the earlier;

Removal from HSM Network

- (m) immediately remove that Network Provider from the HSM Network upon becoming aware that the Network Provider or any of its GPs is not qualified, licensed or registered with the relevant registration board, college or other relevant body;
- (n) immediately remove that Network Provider from the HSM Network upon becoming aware that the Network Provider GP does not have the insurances specified in **Schedule 13A** (Network Provider Insurance);

56.4 Department's Limited Recourse

- (a) The Health Services Manager is released from any cost, liability, loss, expense or damage arising under **clause 56.3** to the extent of any amount that exceeds the sum of the following:
 - (i) the amount for which the Health Service Manager is indemnified under the Professional Indemnity Policy of Insurance, net of any GST payable by the Health Service Manager on the insurance proceeds; and
 - (ii) the amount of any retention, excess or deductible that applies to each payment made by an insurer in accordance with **clause 56.4(a)(i)**.
- (b) **Clause 56.4(a)** does not limit recourse by the Department against the Health Service Manager if the Health Service Manager is not indemnified under the Professional Indemnity Policy of Insurance due to:
 - (i) a failure by the Health Service Manager to take out or maintain the Professional Indemnity Policy of Insurance;
 - (ii) a breach by the Health Service Manager of the terms and conditions of the Professional Indemnity Policy of Insurance;
 - (iii) the operation of an exclusion in the Professional Indemnity Policy of Insurance relating to an unlawful act by the Health Services Manager or Health Services Manager Personnel;

- (iv) a failure by the Health Services Manager to diligently pursue indemnity under the Professional Indemnity Policy of Insurance; or
 - (v) the Health Services Manager compromising its right to indemnity under the Professional Indemnity Policy of Insurance without the written consent of the Department, which consent will not be unreasonably withheld.
- (c) **Clause 56.4(a)** does not limit recourse by the Department against the Health Service Manager for any cost, liability, loss expense or damage suffered by Department to the extent that in the absence of **clause 56.4(a)** the Health Service Manager would be entitled to an indemnity from the insurer of its Professional Indemnity Policy of Insurance and, the Health Service Manager agrees not to raise **clause 56.4(a)** in such circumstances as a defence to any action by the Department against the Health Service Manager but the Health Service Manager shall be relieved of liability where the insurer cannot make good its obligation to indemnify the Health Service Manager due to reasons of insolvency of the Insurer.

56.5 **Consequential Loss**

- (a) The Health Services Manager is released from liability for any Consequential Loss arising under this Contract to the extent of any amount that exceeds the sum of the following:
 - (i) the amounts for which the Health Service Manager is indemnified under any policy effected in accordance with **Schedule 13** (Health Services Manager Insurance) for Consequential Loss, net of any GST payable by the Health Service Manager on the insurance proceeds;
 - (ii) the amount of any retention, excess or deductible that applies to each payment made by an insurer in accordance with **clause 56.5(a)(i)**; and
 - (iii) the amount available under the Financial Undertaking.

- (b) If the Health Services Manager is liable to the Department for Consequential Loss, the Health Services Manager must:
 - (i) promptly make a claim on any applicable insurance policy effected in accordance with **Schedule 13** (Health Services Manager Insurance) and diligently pursue indemnity; and
 - (ii) compensate the Department for the Consequential Loss by using all amounts paid out by its insurer for the liability for Consequential Loss and by paying the retention, excess or deductible amount.

- (c) If the Health Services Manager is liable to the Department for a Consequential Loss and the Health Services Manager is not entitled or unable to recover an amount equal to the Consequential Loss in accordance with **clause 56.5(b)**, the Health Services Manager must provide the Department with a written notice that:
 - (i) sets out the amount that is available (if any) to be recovered from insurers; and
 - (ii) confirms that none of the events referred to in **clauses 56.5(d)(i) to (v)** have occurred.

- (d) **Clause 56.5(a)(i)** does not limit recourse by the Department against the Health Service Manager if the Health Service Manager is not indemnified under any insurance policy required to be effected in accordance with **Schedule 13** (Health Services Manager Insurance) due to:
 - (i) a failure by the Health Service Manager to take out or maintain the relevant insurance policy;
 - (ii) a breach by the Health Service Manager of the terms and conditions of the relevant insurance policy;
 - (iii) the operation of an exclusion in the relevant insurance policy relating to an unlawful act by the Health Services Manager or Health Services Manager

Personnel;

- (iv) a failure by the Health Services Manager to diligently pursue indemnity under the relevant insurance policy; or
 - (v) the Health Services Manager compromising its right to indemnity without the written consent of the Department, which consent will not be unreasonably withheld.
- (e) **Clause 56.5(a)** does not limit recourse by the Department against the Health Service Manager for any cost, liability, loss expense or damage suffered by Department to the extent that in the absence of **clause 56.5(a)** the Health Service Manager would be entitled to indemnity from the insurer of its Professional Indemnity Policy of Insurance and, the Health Service Manager agrees not to raise **clause 56.5(a)** in such circumstances as a defence to any action by the Department against the Health Service Manager but the Health Service Manager shall be relieved of liability where the insurer cannot make good its obligation to indemnify the Health Service Manager due to reasons of insolvency of the Insurer.

56.6 Limit on Department's Liability

The Department's liability to the Health Services Manager arising under or in relation to this Contract is limited to \$500,000 in the aggregate for the following losses:

- (f) loss, or anticipated loss, of opportunity by the Health Services Manager, whether or not flowing directly or indirectly from the act or omission in question;
- (g) loss or anticipated loss of revenue by the Health Services Manager, whether or not flowing directly or indirectly from the act or omission in question; and
- (h) legal costs incurred by the Health Services Manager in relation to a claim arising from, or in connection with, an act or omission of the Department or Department Personnel.

56.7 No limitation on liability for unlawful acts

For avoidance of doubt, any limitation on, or release from, liability do not apply to the liability of either Party for any breach of statute or any wilfully wrong act or omission of a Party or its Personnel, including an act or omission that constitutes a repudiation of the Contract.

56.8 Proportionate Reduction of Liability to Indemnify

The Health Services Manager's liability to indemnify the Department under **clause 56.1** will be reduced proportionately to the extent that:

- (a) other service providers engaged by the Department or the employees, agents or subcontractors of those service providers; or
- (b) any breach of this Contract by the Department or any act or omission on the part of the Department (other than a breach of the Department's non delegable duty of care caused, or contributed to, by the Health Services Manager),

contributed to the relevant cost, liability, loss, damage, or expense.

56.9 Non-Exclusive Remedy

The right of the Department to be indemnified under this **clause 56** is in addition to, and not exclusive of, any other right, power or remedy provided by Law, but the Department is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage, or expense.

56.10 Meaning of "the Department" in this Clause

The Health Services Manager acknowledges and agrees that:

- (c) in this **clause 56**, "the Department" includes Department Personnel; and
- (d) the Department may enforce the indemnity on behalf of Department Personnel.

56.11 Survival of Clause

Clause 56 will survive for the period of seven (7) years following the expiration or termination of this Contract. The expiry of the seven (7) year period will not affect any other right, power or remedy provided by Law to the Department.

57. INSURANCE

57.1 Health Services Manager Must Insure

The Health Services Manager must effect and maintain, or cause to be effected and maintained, the insurances as specified in **Schedule 13** (Health Services Manager Insurance) on terms (including as to levels of excess or deductibles) approved by the Department, such approval not to be unreasonably withheld.

57.2 Duration of Insurance

The Health Services Manager must ensure that each of the insurances required by **clause 57.1** is maintained from the Commencement Date until the earlier of the performance of all Health Services or the termination of this Contract, except for medical malpractice and professional indemnity insurance which must be maintained for at least fifteen years following the completion of all Health Services.

57.3 Reputable and Solvent Insurer

The Health Services Manager must ensure that each of the insurances required by **clause 57.1** (except statutory insurances and insurances effected through a medical defence union) is taken out with reputable solvent insurers with a credit security rating of A- or better by Standard and Poors or an equivalent rating with another reputable rating agency acceptable to the Department.

57.4 Terms of Insurance

- (a) The Health Services Manager must ensure that the insurance required by **clauses 1(e) and 2(e) of Schedule 13** (Health Services Manager Insurance) is effected for the benefit of the Health Services Manager and another party, for their respective rights and interests and includes:

- (i) a non-imputation clause, whereby the insurer agrees that any failure by any insured to observe and fulfil the terms of the policy or to comply with the terms of the policy or to comply with the insured's duty of disclosure does not prejudice the interests of any other insured; and
 - (ii) a clause whereby notice of a claim given to the insurer by any insured will be accepted by the insurer as notice of a claim given by all the insureds.
- (b) The Health Services Manager must ensure that the insurance required by **clauses 1(a) and 2(a) of Schedule 13** (Health Services Manager Insurance) is effected in the name of the Health Services Manager, Health Services Manager Personnel, and the Department (but only for its vicarious liability and its liability for breach of its non delegable duty of care arising from the acts and omissions of other insureds) and includes:
- (i) a cross liability clause, whereby the insurer agrees that the policy shall be construed as if a separate and distinct policy has been issued to each insured;
 - (ii) a waiver of subrogation clause, whereby the insurer agrees to waive all rights of subrogation, remedies or action to which it might become entitled by subrogation, contribution or assignment, against all or any of the persons comprising the insureds to the extent they are insured under the policy;
 - (iii) a non-imputation clause, whereby the insurer agrees that any failure by any insured to observe and fulfil the terms of the policy or to comply with the terms of the policy or to comply with the insured's duty of disclosure does not prejudice the interests of any other insured; and
 - (iv) a clause whereby notice of a claim given to the insurer by any insured will be accepted by the insurer as notice of a claim given by all the insureds.
- (c) The Health Services Manager must ensure that the insurances required by **clauses 1(c) and 2(c)** (Professional Indemnity or Errors and Omissions Insurance) and **1(d) and 2(d)** (Medical Malpractice Insurance) of **Schedule 13**

(Health Services Manager Insurance) is effected and maintained solely in relation to the provision of the Health Services.

57.5 Copies of Insurances and Certificates of Currency

By the Commencement Date, and thereafter upon each policy renewal, and on the Contract Administrator's reasonable written request, the Health Services Manager must provide to the Contract Administrator a copy of the policy (except for statutory insurances) and a certificate of currency in respect of the insurances referred to in **clause 57.5** evidencing compliance with the requirements of **clause 57** and **Schedule 13** (Health Services Manager Insurance).

57.6 Health Services Manager's Insurance Obligations

In relation to the insurance required by **clause 57.1**, the Health Services Manager must:

- (a) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance;
- (b) punctually pay or cause to be paid all premiums when due;
- (c) comply with and abide by all the terms and conditions of the policies;
- (d) not do anything that would entitle the insurers to void, cancel or reduce their liability in respect of any claim;
- (e) not cancel, vary or allow any insurance policy to expire without the prior written consent of the Department;
- (f) reinstate or cause to be reinstated a policy if it lapses; and
- (g) do everything reasonably required to claim and to collect or recover monies due under any policy.

57.7 Health Services Manager's Notification Obligations

The Health Services Manager must notify the Contract Administrator immediately when

the Health Services Manager:

- (a) becomes aware of any actual, threatened or likely claim under any of the insurances which the Health Services Manager is obliged to effect and maintain under **clause 57.1**, which could materially reduce the available limits or involve the Department and must reinstate any reduced aggregate limit if required by the Contract Administrator;
- (b) receives a notice of cancellation in respect of any of the insurances which the Health Services Manager is obliged to effect and maintain under **clause 57.1**; or
- (c) becomes aware that an insurer's security rating has fallen below A- with Standard and Poors or the equivalent rating with another recognised rating agency, and if requested by the Department, seek alternative equivalent insurance to replace the insurance held with such an insurer without unreasonable delay.

57.8 Subcontractors' Insurance

The Health Services Manager must ensure that each Subcontractor retained by it to perform work or deliver any Health Care in connection with this Contract is insured as required by **clause 57.1** as is appropriate given the nature of the work to be performed by each such Subcontractor (including as to limits of indemnity).

57.9 Network Provider Insurance

The Health Services Manager must ensure that each Network Provider and GP effects and maintains, or causes to be effected and maintained, the insurances as specified in **Schedule 13A** (Network Provider Insurance).

57.10 Health Services Manager's Liability Not Limited

For the avoidance of doubt the provisions of this **clause 57** and **Schedule 13** (Health Services Manager Insurance) are not to be read so as to reduce a Party's liability under any other provision of this Contract and compliance by the Health Services Manager with the provisions of this **clause 57** and **Schedule 13** (Health Services Manager Insurance) does

not limit the Health Services Manager's liability under any other provision of this Contract, at common law, or other applicable statute.

PART 17 – PERFORMANCE SECURITIES

58. FINANCIAL UNDERTAKING

58.1 Provision of Financial Undertaking

- (a) The Health Services Manager must, at its expense, provide to the Department within five (5) Business Days of the Commencement Date security in the form of an unconditional and irrevocable financial undertaking (**the Financial Undertaking**) which must:
 - (i) have been executed by a financial institution approved by the Department (**the Financial Institution**) and be stamped;
 - (ii) be substantially in the form of the financial undertaking appearing at **Part A of Schedule 9** (Performance Securities);
 - (iii) be for the sum of \$700,000; and
 - (iv) expire no earlier than seven (7) years after the expiry of the Initial Term.

58.2 Extension of Financial Undertaking

For each extension of the Term, the Health Services Manager must, at its expense, provide a new or amended Financial Undertaking to the Department that meets the conditions referred to in **clause 58.1** and which expires no earlier than seven (7) years after the expiry of the extended Term.

58.3 Amounts Covered by Financial Undertaking

The Financial Undertaking is for the purpose of ensuring the due and proper performance of this Contract by the Health Services Manager and the Department may demand any sum under the Financial Undertaking (up to a maximum amount as contemplated at **clause 58.1(a)(iii)**) from the Financial Institution in respect of:

- (a) amounts owed to the Department by the Health Services Manager;
- (b) damages suffered by the Department, or Department Personnel as a result of a breach of this Contract by the Health Services Manager; and/or
- (c) any loss suffered by the Department or Department Personnel that is the subject of an indemnity under this Contract.

58.4 Replacement of Financial Undertaking

In any of the following events:

- (a) the Financial Undertaking expires (or is due to expire within ten (10) Business Days);
- (b) the Financial Undertaking is otherwise terminated;
- (c) the Financial Institution fails to meet a proper demand made by the Department in accordance with its terms; or
- (d) the Department exercises an option to extend the Term of this Contract in circumstances where the Department has previously made a demand under the Financial Undertaking,

the following provisions apply:

- (e) the Department may give notice to the Health Services Manager that it requires a replacement Financial Undertaking in which event the Health Services Manager will, within ten (10) Business Days of that notice, provide to the Department that replacement Financial Undertaking in accordance with **clauses 58.1** and **58.3**;

and

- (f) the Health Services Manager may (even if the Department has not given it notice to do so) provide a replacement Financial Undertaking in accordance with **clauses 58.1 and 58.3**.

58.5 Monies Paid but not Demanded

If the Financial Institution pays to the Department any monies not demanded by the Department for the purposes of terminating the Financial Undertaking:

- (a) the Department may retain those monies and any interest accrued as substitute security for the matters described in **clause 58.3** and appropriate those monies (and any interest accrued) for itself in execution of that security; and
- (b) within thirty (30) days after this Contract is terminated and all obligations on the part of the Health Services Manager and claims made by the Department under it have been met and satisfied or (if earlier) within fourteen (14) days after receiving the replacement Financial Undertaking under **clause 58.4**, the Department will account to the Health Services Manager for the balance of those monies and interest which has not been appropriated under this **clause 58.5**. The repayment of any monies to the Health Services Manager under this **clause 58** will not be deemed to waive any rights on the part of the Department in respect of any outstanding obligations of, or claims against, the Health Services Manager.

58.6 Meaning of Financial Undertaking

For the purpose of this **clause 58**, where appropriate, "Financial Undertaking" includes each or any Financial Undertaking and any replacement Financial Undertaking provided under **clause 58**.

58.7 Consideration

For the avoidance of doubt, the amount of consideration described in **clause 58** is payable once only, and not on the occasion of providing any replacement Financial Undertaking.

59. PERFORMANCE GUARANTEE

- (a) The Health Services Manager must, at its expense, provide to the Department, within ten (10) Business Days of the Commencement Date, a performance guarantee executed by a guarantor acceptable to the Department, guaranteeing the performance by the Health Services Manager of its obligations under this Contract, which must be substantially in the form of the performance guarantee appearing at **Part B** (Performance Guarantee) of **Schedule 9** (Performance Securities).
- (b) The Health Services Manager must notify the Department within twenty (20) Business Days of any proposal that might result in either the Health Services Manager or the guarantor suffering a change in control or ownership.
- (c) If either the Health Services Manager or the guarantor suffers a change in control or ownership, the Department may require the Health Services Manager to obtain an alternative performance guarantee, executed by an alternative guarantor, on the same terms as set out in **clause 59(a)**.

PART 18 – DISPUTE RESOLUTION

60. DISPUTE RESOLUTION

60.1 Application

Subject to the application of a relevant limitation period, a Party must not commence proceedings in any court or tribunal in relation to any Dispute unless:

- (a) that Party has complied with the requirements of this **clause 60** and the Dispute remains unresolved in accordance with **clause 60.4**; or
- (b) the proceedings are brought in accordance with **clause 60.9**.

60.2 Conditions Precedent to a Dispute Being Dealt With Under This Clause

- (a) If a Dispute arises, a Party must give the other Party an Initial Notice in respect of the Dispute. From the giving of the Initial Notice, the Parties have forty (40) Business Days to resolve the Dispute by negotiation.
- (b) If a Dispute is resolved in accordance with **clause 60.2(a)**, the Parties must immediately detail the agreement in writing. The agreement must clearly state the Dispute and basis upon which it has been resolved. If only part of the Dispute is resolved, the agreement must state which part of the Dispute has been resolved and the basis upon which that part has been resolved.
- (c) If a written agreement is not produced pursuant to **clause 60.2(b)** in relation to all or part of the Dispute within forty (40) Business Days after the giving of the Initial Notice, the Dispute (or that part of the Dispute in respect of which there is no written agreement) is deemed to be unresolved.
- (d) Where an Initial Notice has been given under **clause 60.2(a)** by either Party, the Department may, at any time prior to the expiration of forty (40) Business Days, give to the Health Services Manager an expedition notice requiring a Dispute Notice to be issued in accordance with **clause 60.3(b)**.

60.3 Negotiation Between Health Service Authority and the Contract Authority

- (a) If a Dispute or part of a Dispute is unresolved in accordance with **clause 60.2(c)**, or if an expedition notice has been given under **clause 60.2(d)**, the Party who gave the Initial Notice must give to the other Party a Dispute Notice in accordance with **clause 60.3(b)**.
- (b) The Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is given pursuant to this **clause 60.3**;
 - (iii) include or be accompanied by reasonable particulars of the Dispute including:

- (A) a brief description of the circumstances in which the Dispute arose;
 - (B) references to any:
 - (I) provisions of the Contract;
 - (II) direction, instruction or document; or
 - (III) acts or omissions of any person,
relevant to the Dispute;
 - (C) the amount in dispute (whether a monetary amount, or expressed by reference to some other commodity) and, if not known, the best estimate available; and
 - (D) if part of the Dispute has been resolved, a copy of the agreement pursuant to **clause 60.2(b)**; and
- (iv) be given no later than ten (10) Business Days after the Dispute or part of the Dispute is deemed to be unresolved in accordance with **clause 60.2(c)** or the date on which an expedition notice has been given under **clause 60.2(d)**.
- (c) Within twenty (20) Business Days of the giving of a Dispute Notice, the Health Services Authority and the Contract Authority must meet at places and times agreed by them to attempt to resolve the Dispute.
 - (d) The Parties must ensure that their representatives at all meetings make genuine efforts to resolve the Dispute.
 - (e) If the Dispute or part of the Dispute is resolved within twenty (20) Business Days of the giving of the Dispute Notice, the Health Services Authority and the Contract Authority must immediately detail the agreement in writing. The agreement must clearly state the Dispute and the basis upon which it has been resolved. If only part of the Dispute is resolved, the agreement must state which part of the Dispute has been resolved and the basis upon which that part has

been resolved.

- (f) If a written agreement is not produced pursuant to **clause 60.3(e)** in relation to all or part of the Dispute within twenty (20) Business Days after the giving of the Dispute Notice, the Dispute or that part of the Dispute in respect of which there is no written agreement is deemed to be unresolved.

60.4 Negotiation by Health Services Manager's Chief Executive Officer and the Department's Deputy Secretary (together, Senior Managers)

- (a) If a Dispute or part of a Dispute is unresolved as detailed in **clause 60.3(f)**, the Party who gave the Dispute Notice must give a Second Dispute Notice in accordance with **clause 60.4(b)**.
- (b) The Second Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is made pursuant to this **clause 60.4**;
 - (iii) annex a copy of the Dispute Notice (and any accompanying documents) given pursuant to **clause 60.3(b)** together with any documents which the Party giving the Second Dispute Notice considers would further assist the Senior Managers in resolving the Dispute;
 - (iv) if part of the Dispute has been resolved, annex a copy of the agreement prepared pursuant to **clause 60.2(b)** or **clause 60.3(e)**; and
 - (v) be given no later than ten (10) Business Days after a Dispute or part of a Dispute is deemed to be unresolved in accordance with **clause 60.3(f)**.
- (c) Within twenty (20) Business Days of the giving of a Second Dispute Notice, the Senior Managers must meet at places and times agreed by them to attempt to resolve the Dispute.
- (d) Each Party must ensure that their Senior Manager makes genuine efforts to resolve the Dispute.

- (e) If the Dispute or part of the Dispute is resolved within twenty (20) Business Days of the giving of the Second Dispute Notice, the Senior Managers must immediately detail the agreement in writing. The agreement must clearly state the Dispute and the basis upon which it has been resolved. If only part of the Dispute is resolved, the agreement must state which part of the Dispute has been resolved and the basis upon which that part has been resolved.
- (f) If a written agreement is not produced pursuant to **clause 60.4(e)** in relation to all or part of the Dispute within twenty (20) Business Days after the giving of the Second Dispute Notice, the Department's Deputy Secretary may, within forty (40) Business Days of the Second Dispute Notice, give notice to the Health Services Manager that the Dispute or any part of the Dispute is thereby:
 - (i) referred for expert determination in accordance with **clause 60.5**;
 - (ii) referred for expedited arbitration in accordance with **clause 60.6**; or
 - (iii) referred for mediation in accordance with **clause 60.7**.
- (g) If:
 - (i) there is no referral under **clause 60.4(f)** within forty (40) Business Days of the giving of the Second Dispute Notice;
 - (ii) the referral under **clause 60.4(f)** does not deal with part of the Dispute, or
 - (iii) the Parties have fully complied with **clause 60.5**, **clause 60.6** and/or **clause 60.7**;

the Dispute, or that part of the Dispute that is not dealt with, is deemed to be unresolved.

60.5 **Expert Determination**

- (a) The expert determination must be conducted in accordance with the Institute of Arbitrators and Mediators Australia (**IAMA**) Expert Determination Rules as published from time to time.

- (b) The expert determination must be conducted:
 - (i) by an expert agreed upon between the Parties, with that agreement to be reached within five (5) Business Days of the referral pursuant to **clause 60.4(f)(i)** or such further period as the Department's Deputy Secretary may reasonably determine; or
 - (ii) if the Parties are unable to agree on the identity of the expert to be appointed within the time period detailed in this **clause 60.5(b)** - on the application of either Party, by an expert nominated by the President for the time being of IAMA, or such person authorised by the President to make the appointment, where that expert accepts appointment as an expert.
- (c) The Parties must promptly sign whatever reasonable terms of engagement the expert requires (including any indemnity), but if one of them does not so sign, the other may engage the expert by itself.
- (d) In respect of any Dispute or part of a Dispute that is referred to Expert Determination:
 - (i) the Parties must agree on the terms of reference and the matters to be determined by the Expert within ten (10) Business Days of the referral pursuant to **clause 60.4(f)(i)**, failing which the terms of reference will be clarified in accordance with the IAMA Expert Determination Rules; and
 - (ii) each Party will bear their own costs associated with the Expert Determination (and share the costs of the Expert Determination equally), unless the Parties agree otherwise in the terms of reference.
- (e) Any information which either Party obtains from the other under this **clause 60.5** is taken to be Confidential Information for the purposes of **clause 46** and **47**.
- (f) The expert determination will be final and binding on both Parties.
- (g) Nothing in this **clause 60.5** ousts the jurisdiction of a court to hear any

proceeding brought by either Party in relation to a Dispute or part of a Dispute.

- (h) The Parties have not fully complied with this **clause 60.5** until the earlier of:
 - (i) the conclusion, or termination by agreement, of the expert determination;
or
 - (ii) the expiration of forty (40) Business Days from the date of appointment of an expert if the Dispute or part of the Dispute is not resolved by Expert Determination at this date.

60.6 **Expedited Arbitration Procedure**

- (a) Within ten (10) Business Days of the referral pursuant to **clause 60.4(f)(ii)** or within such further period as the Department's Deputy Secretary may reasonably determine, the Parties must arrange for the appointment of an arbitrator, to be appointed by IAMA.
- (b) The Parties must, within five (5) Business Days of the appointment of the arbitrator, sign whatever reasonable terms of engagement the arbitrator requires (including any indemnity), but if one of them does not so sign, the other may engage the arbitrator by itself.
- (c) The Parties agree that:
 - (i) the expedited arbitration must be conducted in accordance with the IAMA Rules for the Determination of Commercial Arbitration, specifically, **Schedule 2** (Statement of Work), as published from time to time (**EA Rules**);
 - (ii) they must abide by the EA Rules and must procure the arbitrator's agreement to conduct the expedited arbitration according to the EA Rules;
 - (iii) they may be represented by legal counsel at the expedited arbitration; and
 - (iv) for the purposes of interpreting the EA Rules, a reference to the Notice of Dispute in the EA Rules shall be a reference to the notice in **clause 60.4(f)**.

- (d) Costs of the expedited arbitration will be determined by the arbitrator in accordance with subrule 15(2) of the EA Rules.
- (e) Any information which either Party obtains from the other under this **clause 60.6** is taken to be Confidential Information for the purposes of **clause 46** and **47**.
- (f) The Parties have not fully complied with this **clause 60.6** until the earlier of:
 - (i) the conclusion, or termination by agreement, of the expedited arbitration; or
 - (ii) the expiration of forty (40) Business Days from the date of appointment of an arbitrator if the Dispute or part of the Dispute is not resolved by expedited arbitration at this date.

60.7 Mediation Procedure

- (a) Within ten (10) Business Days of the referral pursuant to **clause 60.4(f)(iii)**, the Parties must arrange for the appointment of a mediator, to be mutually agreed between the Parties.
- (b) If the Parties are unable to agree on the identity of the mediator to be appointed within the time period detailed in **clause 60.7(a)**, a mediator must be nominated by the President for the time being of the Institute of Arbitrators and Mediators Australia (**IAMA**), or such person authorised by the President to make the appointment, on the application of the Department and provided the person nominated agrees to act as mediator.
- (c) The Parties must, within five (5) Business Days of the appointment of the mediator, sign whatever reasonable terms of engagement the mediator requires (including any indemnity), but if one Party does not so sign, the other Party may engage the mediator by itself.
- (d) Within twenty (20) Business Days of the referral pursuant to **clause 60.4(f)(iii)** the Parties must hold a preliminary conference in that mediation, in the presence

of the mediator.

- (e) The Parties agree that:
 - (i) the mediation must be conducted in accordance with the IAMA Mediation Rules as in force from time to time (**Mediation Rules**);
 - (ii) they must abide by the Mediation Rules and must procure the mediator's agreement to conduct the mediation according to the Mediation Rules;
 - (iii) they may be represented by legal counsel at the mediation;
 - (iv) they must act in good faith and use their best endeavours to achieve the resolution of the Dispute, or the part or parts of the Dispute, at the mediation; and
 - (v) for the purposes of interpreting the Mediation Rules, a reference to the Notice of Dispute in the Mediation Rules shall be a reference to the notice referred to in **clause 60.4(f)**.
- (f) Each Party will bear its own costs of the mediation procedure, unless otherwise agreed between the Parties.
- (g) The Parties have not fully complied with this **clause 60.7** until the earlier of:
 - (i) the conclusion, or termination by agreement, of the mediation; or
 - (ii) the expiration of forty (40) Business Days from the date of appointment of a mediator if the Dispute or part of the Dispute is not resolved by mediation at this date.

60.8 Continuation of Performance

Despite the existence of a Dispute, the Parties must continue to perform their respective obligations under the Contract and any related agreements.

60.9 Summary or Urgent Relief

Nothing in this **clause 60** will prevent either Party from instituting proceedings to seek enforcement of any payment due under the Contract or to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

60.10 Continuance of Obligations

(a) The whole of the Parties' obligations under this **clause 60** continue notwithstanding that the Dispute relates to proceedings that have been commenced by:

- (i) a third party against the Health Services Manager and/or the Commonwealth; or
- (ii) the Health Services Manager and/or the Commonwealth against a third party.

60.11 Termination

This **clause 60** does not apply to an action by either Party to terminate this Contract under **clauses 62 or 63**.

PART 19 – DEFAULT AND TERMINATION

61. DEFAULT

61.1 Notification

The Health Services Manager must notify the Contract Administrator of the occurrence of a Default as soon as it becomes aware of the occurrence of the Default.

61.2 The Department Rights

If a Default occurs (whether or not the Health Services Manager has notified the Contract Administrator of that Default), the Department may:

- (a) give the Health Services Manager a Default Notice; and

- (b) issue a certificate and reduce the Onsite Health Clinic Fee (or other payments due under the Contract) in accordance with **clause 36**.

61.3 Cure

- (a) The Department may, in its absolute discretion, specify in the Default Notice that it requires the Health Services Manager to remedy the Default, in which case, upon receipt of a Default Notice, the Health Services Manager:
 - (i) will have the time specified in the Default Notice (**Cure Period**) from the date of the Default Notice to remedy the Default; and
 - (ii) must submit a Cure Plan within five (5) Business Days of the Default Notice, or such other period agreed between the Parties, setting out how the Health Services Manager will cure the Default within the Cure Period.
- (b) Where the Department specifies in a Default Notice that it requires the Health Services Manager to remedy a Default, the Health Services Manager must remedy the Default, including the identification, assessment and rectification of any systemic issues contributing to the Default, within the Cure Period or such extended period as is agreed by the Department following submission of a Cure Plan.

61.4 Remedies

- (a) If a Default has occurred and the Health Services Manager fails to remedy the Default within the Cure Period or such extended period as is agreed by the Department following submission of a Cure Plan, the Department may exercise all or any of the following remedies:
 - (i) deduct money from amounts payable under **clause 35** or call on the Financial Undertaking to cover the costs arising directly or indirectly from the Default, including but not limited to any costs incurred in remedying the Default;
 - (ii) sue the Health Services Manager for compensation arising directly or

indirectly out of that Default; or

(iii) any other remedies available to the Contract Administrator under this Contract or in law or equity.

(b) The use of any of the above remedies will be without prejudice and are in addition to any other rights provided for and conferred by this Contract with respect to that Default, including without limitation any action under **clauses 29** and **62**.

62. TERMINATION FOR DEFAULT

62.1 Termination by the Department

Where the Department seeks to terminate this Contract in accordance with this **clause 62**, it must give written notice (**Termination Notice**) to the Health Services Manager specifying at least:

- (a) the reasons for termination; and
- (b) the date of termination.

62.2 Termination Events

Without prejudice to its rights at common law or any other right which has accrued or may accrue to the Department (including any right of the Department to damages), the Department may, by giving a Termination Notice to the Health Services Manager, immediately terminate this Contract if:

- (a) the Health Services Manager fails to comply with this Contract (which failure is capable of remedy) and the Health Services Manager fails to remedy the failure within the Cure Period specified in a Default Notice;
- (b) the Health Services Manager fails to comply with this Contract (which failure is not capable of remedy);
- (c) a termination event specified in **clause 62.3** occurs;

- (d) the Health Services Manager commits a breach, or breaches, of this Contract that at common law entitles the Department to terminate this Contract;
- (e) the Health Services Manager fails to replace any Key Personnel, in accordance with **clause 16**, with replacements acceptable to the Department;
- (f) the Health Services Manager commits a breach of **clause 48** or fails to comply with the any of the Department's data security requirements in **clause 51**, and **Schedule 2** (Statement of Work);
- (g) any of the representations or warranties in **clause 55** ceases to be true;
- (h) the Health Services Manager breaches **clause 66.1** and where the breach has a material adverse affect on the Department as determined by the Department acting reasonably, but only to the extent that that breach does not fall within **clause 62.2(a)**; or
- (i) the Health Services Manager does not provide the Financial Undertaking in accordance with **clause 58.1**.

62.3 Insolvency and Other Events

Without prejudice to its rights at common law or any other right which has accrued or may accrue to the Department under **clauses 62.2(a)**, **62.2(c)** or otherwise, the following events are termination events for the purposes of **clause 62.2(c)**:

- (a) the Health Services Manager suspends payment of its debts or becomes insolvent;
- (b) a receiver, receiver and manager, administrator (including a voluntary administrator), trustee or similar official is appointed over the whole or a substantial part of the assets or undertaking of the Health Services Manager;
- (c) the Health Services Manager makes an assignment of its estate for the benefit of creditors (or any class of them) or enters into any arrangement, compromise or composition with its creditors (or any class of them);

- (d) an application (other than a vexatious or frivolous application) or order is made for the winding up or dissolution of, or the appointment of a provisional liquidator to, the Health Services Manager, or the Health Services Manager goes into liquidation or passes a resolution to go into liquidation, otherwise than for the purpose of reconstruction, or becomes subject to any petition or proceedings in a court for its compulsory winding-up or becomes subject to supervision of a court either voluntarily or otherwise;
- (e) the Health Services Manager suffers any execution against its assets having adverse effect on its ability to perform this Contract;
- (f) the Health Services Manager ceases, or threatens to cease, to carry on its business;
- (g) the Health Services Manager assigns its rights otherwise than in accordance with the requirements of this Contract;
- (h) any matter relating to the Health Services Manager or any of its subsidiaries becomes subject to a direction under, or having effect as if it were a direction under, section 14 of the *Australian Securities and Investments Commission Act 2001* (Cth), or to an investigation under, or taken to be under, that Act; or
- (i) the Health Services Manager suffers a change in control or ownership which in the reasonable opinion of the Department, adversely affects the Health Service Manager's ability to perform the Health Services.

62.4 Repayment on Termination

Where, before termination of this Contract, the Department has made any payment in advance to the Health Services Manager for which it has not received any Health Services, the amount of that payment must be repaid by the Health Services Manager to the Department immediately on termination and, if not repaid, is recoverable by the Department from the Health Services Manager as a debt.

62.5 Consequences of Termination for Default

If this Contract is terminated under this **clause 62**:

- (a) subject to this Contract and **clause 65** in particular, the Parties are relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
- (b) subject to the requirement for the Health Services Manager to perform the Health Services in accordance with **clause 65**, all licences and Authorisations granted to the Health Services Manager by the Department, terminate immediately despite anything to the contrary contained in the relevant licence or authorisation;
- (c) the Health Services Manager must comply with **clause 65**; and
- (d) the Department must pay the Health Services Manager for any Health Services that were performed in accordance with this Contract prior to the date of termination.

62.6 Health Services Manager's Acknowledgement

The Health Services Manager acknowledges that the performance of the Health Services is critical to the performance of the functions of the Department and that the Department will incur expenses in seeking a new service provider and transferring the Health Services to a new service provider.

63. TERMINATION FOR CONVENIENCE

63.1 The Department may Terminate for Convenience

In addition to any other rights it has under this Contract, the Department may terminate this Contract, by notifying the Health Services Manager in writing that this Contract is terminated from the date specified in the notice (**date of termination**) and, in that event, the Department may give to the Health Services Manager such directions as it thinks fit in relation to subsequent performance of this Contract.

63.2 Transition Out Obligations

Notwithstanding that the Health Services Manager may have received a notice under **clause 63.1**, the Health Services Manager must comply with its obligations under **clause 65** and with any directions given by the Contract Administrator.

63.3 Payment for Health Services Rendered Prior to Termination

The Department must pay the Health Services Manager for any Health Services that were performed in accordance with this Contract prior to the date of termination.

63.4 Compensation for Unavoidable Losses

- (a) The Department is liable to the Health Services Manager for any substantiated unavoidable loss incurred by the Health Services Manager in connection with this Contract to the extent that the unavoidable loss was incurred as a direct consequence of termination of this Contract in accordance with this **clause 63**, or removal of any Health Services from scope in accordance with **clause 32**.
- (b) For the purposes of this **clause 63.4** and **clause 32.1** "unavoidable loss":
 - (i) is limited to reasonable wind-down expenses (for example, redundancy expenses);
 - (ii) must not include any amount on account of loss of profits; and
 - (iii) must not exceed the amount that would have been payable if the Department had not terminated this Contract pursuant to **clause 63.1**, or in the case of **clause 32.1(d)**, had not removed the Health Services from scope.

63.5 Termination of Subcontracts for Convenience

The Health Services Manager must, in each subcontract or order to the value of \$20,000 or more placed with any Subcontractor for the purpose of this Contract, reserve a right of termination to take account of the Department's right of termination under this **clause 63** and the Health Services Manager must, where appropriate, make use of such rights to

mitigate losses in the event of termination by the Department under the provisions of this **clause 63**.

63.6 Unfettered Discretion

For the avoidance of doubt, the Department has an unfettered discretion to terminate this Contract in accordance with this **clause 63**.

64. DEEMED TERMINATION FOR CONVENIENCE

If a purported termination for Default by the Department under **clause 62** is determined by a competent authority not to be properly a termination for Default, then that termination by the Department will be deemed to be a termination for convenience under **clause 63** which termination has effect from the date of the notice of termination.

65. TRANSITION OUT

65.1 Development of Transition Out Plan

- (a) By 28th February 2013, the Health Services Manager must develop, in consultation with and for approval by the Department, a Transition Out Plan that will provide for the Transition Out of Health Services from the Health Services Manager to the Department or its nominee as a result of:
 - (i) any Health Services being removed from the scope of this Contract;
 - (ii) termination of this Contract; or
 - (iii) the expiration of this Contract.
- (b) The Transition Out Plan must, without limitation, provide for the matters referred to in this **clause 65** and must not be inconsistent with this **clause 65**.

- (c) The Transition Out Plan must set out the obligations to be performed by each Party in connection with the orderly transition of service delivery from the Health Services Manager to the Department or its nominee, including obligations in relation to:
 - (i) the transfer to the Department or its nominee, or management of:
 - (A) Health Care Records;
 - (B) Department Material;
 - (C) the Contract Material (other than CHIRON); and
 - (D) Essential Loose Assets; and
 - (ii) the transfer of employees who wish to transfer to the new service provider, and if applicable the provision of relevant information to enable the new service provider to ascertain the accrued rights and benefits of those employees.

65.2 Transition Out Period

- (a) The Transition Out period will commence on the earlier of:
 - (i) one (1) Months prior to the expiry of the Term (or such earlier date as the Department may reasonably request); and
 - (ii) the date on which:
 - (A) a Termination Notice is given by the Department under **clause 62**;
 - (B) the Department terminates the Contract in accordance with **clause 63**; or
 - (C) a notice of removal of Health Services from scope under **clause 32**,
- and will continue until:

- (b) in the case of expiry of the Term, expiry of the Term; and
- (c) in the case of a Termination Notice, termination for convenience under **clause 63**, or removal of Health Services from scope under **clause 32**, the earlier of:
 - (i) one (1) Months after the date of the Termination notice, date of termination of convenience, or date of notice of removal of Health Services from scope; and
 - (ii) the date on which the Department notifies the Health Services Manager that the Department no longer requires Transition Out assistance.

65.3 Compliance with Transition Out Plan

- (a) The Health Services Manager must comply with the Transition Out Plan and provide all reasonable assistance and cooperation necessary during the Transition Out period in order to transfer the Health Services to the Department or an alternative service provider in a manner which ensures continued provision of services similar to the Health Services (as the case may be) in accordance with the requirements of this Contract.
- (b) In particular the Health Services Manager must, in accordance with the Transition Out Plan:
 - (i) deliver to the Department (or an alternative service provider) in an orderly manner:
 - (A) complete Department Records (including all data that has been entered into CHIRON for the purposes of this Contract), in a format that is readable by the Department, and any other Department property including Department Material and Department Assets;
 - (B) all Department Confidential Information;
 - (C) all information about Transferees and Recipients contained in any database or file;

- (D) training fees to be agreed on the Department's request;
 - (E) any statistical data or information contained in any table, schedule or database prepared in the performance of the Health Services;
 - (F) a detailed statement of resources setting out information on equipment, technology, Health Services Manager Personnel, Network Providers and facilities and equipment used by the Health Services Manager to perform the Health Services; and
 - (G) to the extent the material is Contract Material, business process flow charts, procedures manuals, plans, reports, pro-forma documentation, activity schedules, work product examples, organisational charts, skills details for Health Services Manager Personnel and Network Providers and any other documents of a similar nature necessary for an alternative service provider to assume responsibility for providing the Health Services.
- (ii) except with the consent of the Department or as required to comply with this **clause 65**, cease accessing any of the Department's Assets and the Department System;
 - (iii) at the Department's request, and to the extent it is permitted to do so, novate any contracts relating to the Health Services to the Department or its nominee at no additional charge to the Department;
 - (iv) perform its other obligations under the Transition Out Plan;
 - (v) allow the Department to audit compliance with this **clause 65**; and
 - (vi) allow new service providers to access Facilities where relevant to assist in the orderly transition of the Health Services.

65.4 Transition of Health Services Removed from Scope

If any Health Services are removed from scope, the obligations of the Health Services Manager under **clause 65.2** in respect of that termination, apply only to the extent

necessary to ensure the orderly transition to the Department or other service provider of services similar to the Health Services which have been removed from scope. In that event, the Health Services Manager will be entitled to payment for those Transition Services on a Pass Through Cost basis in accordance with **Schedule 5** (Fees and Payments).

65.5 **Department Assets**

- (a) Upon the expiration or earlier termination of this Contract, the Health Services Manager must return to the Department (or as the Department may direct to a successor), Department Assets licensed to the Health Services Manager by the Department pursuant to **clause 23**, or any replacement Department Assets, which are functional and fit for purpose.
- (b) Immediately prior to the expiration or immediately following the earlier termination of this Contract, a stocktake and inspection shall be conducted of the equipment to be returned pursuant to **clause 65.5(a)**. The Contract Administrator will conduct this inspection in conjunction with the Health Services Manager and the Parties will jointly prepare and agree a report of the outcome of the inspection.
- (c) In the event of any deficiency in the value of the equipment to be returned by the Health Services Manager pursuant to **clause 65.5(a)** from the value of the Department Assets licensed by the Department to the Health Services Manager pursuant to **clause 23** (allowing for Consumer Price Index adjustment), the Health Services Manager will immediately pay that difference to the Department or to a successor as the Department may direct.

65.6 **Update and Review of Transition Out Plan**

- (a) On or before 28 February each year of the Term, (and not less than six (6) Months before the scheduled expiration of this Contract,) the Health Services Manager must:
 - (i) review and, if necessary, update the Transition Out Plan to ensure it is consistent with the Health Services and **Schedule 2** (Statement of Work) and facilitates the most efficient succession to an alternative service

provider; and

- (ii) submit an updated Transition Out Plan to the Department for consideration and approval or advise the Department that it does not consider that any amendments to the existing Transition Out Plan are required. If the Department considers that amendments to the Transition Out Plan (as updated by the Health Services Manager if applicable) are reasonably required to ensure it remains appropriate to the circumstances of the Department, it may require the Health Services Manager to make those amendments and resubmit an updated Transition Out Plan to the Department for consideration and approval in accordance with this clause.
- (b) Once approved by the Department, this Contract will apply in respect of any updated Transition Out Plan.

65.7 Fees for Transition Out Services

- (a) Upon the expiry of the Term by the effluxion of time or termination under **clause 63**, the Department will pay the Health Services Manger the Transition Out Fee specified in **Schedule 5** (Fees and Payments).
- (b) Where this Contract is terminated under **clause 62** but without limiting any damages that the Department may be entitled to, the Department will pay the Health Services Manager the Onsite Health Clinic Fee and other payments for the Health Services that the Health Services Manager provides in complying with its obligations under this **clause 65**, and the Health Services Manager will not be entitled to payment of the Transition Out Fee.
- (c) The Parties agree that the Terms and Conditions of this Contract, including the Onsite Health Clinic Fee, apply to any Health Services performed by the Health Services Manager during any Transition Out period under **clause 65**.

65.8 Health Services Manager Must not Hinder Transition

The Health Services Manager agrees that it will not hinder in any way, the transition of the provision of services similar to the Health Services to a new service provider upon

termination or expiration of this Contract or removal of Health Services from scope under **clause 32**.

65.9 Survival of Clause

This **clause 65** survives the expiration or termination of this Contract.

66. MISCELLANEOUS

66.1 Industry Development

The Health Services Manager:

- (a) acknowledges that the Department is committed to sourcing (directly or indirectly) at least ten (10) per cent of the total value of its purchases from Small to Medium Enterprises; and
- (b) must provide, upon request by the Department, a report to the Department that sets out the following:
 - (i) the level of direct or indirect participation of Small to Medium Enterprises (expressed as a percentage of the total annual value of this Contract) in the delivery of the Health Services for the current calendar year; and
 - (ii) any issues that, in the Health Services Manager's opinion, are relevant to the maintenance or improvement of the level of participation of Small to Medium Enterprises in delivery of the Health Services for the next calendar year.

66.2 Conflict of Interest

- (a) The Health Services Manager warrants that to the best of its knowledge after making diligent inquiry, at the Commencement Date and at all times during the Term, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract by itself, by Health Services Manager Personnel or by any Network Provider and that based upon reasonable inquiry it has no reason to believe that any Health Services Manager Personnel or Network Provider has such

a conflict.

- (b) If during the Term a conflict or risk of conflict of interest arises, the Health Services Manager undertakes to notify the Department immediately after the conflict or risk of conflict becomes known.
- (c) The Health Services Manager must not, and must use its best efforts to ensure that any Health Services Manager Personnel and Network Provider does not, during the Term, engage in any activity or obtain any interest likely to conflict with, or restrict the fair and independent performance of obligations under this Contract and must immediately disclose to the Department such activity or interest.
- (d) If the Health Services Manager fails to notify the Department or is unable or unwilling to resolve or deal with the conflict as required, the Department may terminate this Contract in accordance with the provisions of **clause 62**.

66.3 Negation of Employment, Partnership and Agency

- (a) The Health Services Manager must not represent itself, and must use reasonable endeavours to ensure that any Health Services Manager Personnel or Network Provider does not represent themselves, as being an officer, employee, partner or agent of the Department, or as otherwise able to bind or represent the Department.
- (b) Except as specifically provided for in this Contract, the Health Services Manager is not by virtue of this Contract an officer, employee, partner or agent of the Department, nor does the Health Services Manager have any power or authority to bind or represent the Department.

66.4 Waiver

- (a) If a Party does not exercise (or delays in exercising) any of its rights, that failure (or delay) does not operate as a waiver of those rights.
- (b) A single or partial exercise by a Party of any of its rights does not prevent the further exercise of any right.

66.5 Assignment and Novation

- (a) The Health Services Manager must not novate its obligations, and agrees not to assign its rights, under this Contract without, in either case, prior approval in writing from the Contract Authority, which approval must not be unreasonably withheld.
- (b) The Health Services Manager must not consult with any other person for the purposes of entering into an arrangement that will require novation of this Contract without first consulting the Contract Authority.

66.6 Applicable Law

This Contract will be governed by the Law for the time being in force in the Australian Capital Territory, and the Parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

66.7 Entire Agreement

This agreement constitutes the entire agreement between the Parties in relation to the provision of the Health Services, and (except as otherwise expressly provided for in this Contract) supersedes all communications, negotiations, arrangements and agreements, either oral or written, between the Parties with respect to the subject matter of this Contract.

66.8 Department Representatives

- (a) The Contract Authority, Contract Administrator and Department Executive are each Department Representatives in discharging their respective functions as set out in this Contract. The Health Services Manager acknowledges that Department Representatives do not:
 - (i) owe any direct duty to the Health Services Manager under this Contract (whether to review, accept or reject any Health Services or any Material submitted by the Health Services Manager under this Contract or otherwise); and
 - (ii) provide any form of certification, declaration or other representation

that the Health Services or any Health Services Manager Materials comply with any Law, industry standards or are otherwise fit for purpose.

- (b) Unless expressly provided in this Contract, any directions, reviews, rejections, consents, approvals or other comments made by Department Representatives in relation to any thing done or provided under the Contract, or the use of any Health Services Manager Material under this Contract, do not relieve the Health Services Manager from, or alter or affect the Health Services Manager's, liabilities or responsibilities under this Contract or otherwise.
- (c) The Contract Authority, Contract Administrator and Department Executive may at any time by written notice to the Health Services Manager nominate additional persons to fulfil their respective functions set out in this Contract, other than the functions of the Contract Authority and the Contract Administrator in relation to:
 - (i) dispute resolution in accordance with **clause 60**; or
 - (ii) issuing a notice of termination under **clauses 54.6, 62 or 63**.

66.9 Counterparts

This Contract may be executed in any number of counterparts and all counterparts taken together will constitute one and the same instrument.

66.10 Severability

- (a) Each provision of, or any Schedule or Annexure of or to this Contract and each part of such provision, will, unless the context otherwise necessarily requires it, be read and construed as a separate and severable provision or part. If any provision or part of a provision is void or otherwise unenforceable for any reason, then that provision or part (as the case may be) will be severed and the remainder will be read and construed as if the severable provision or part had never existed.

- (b) For the avoidance of doubt, **clause 66.10(a)** applies to each Schedule and Annexure of or to this Contract.

66.11 Further Assurance

Each Party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Contract.

66.12 Consent

Whenever the consent or approval of a Party is required under this Contract to be effective, it must be in writing and signed by a representative of the Party who is authorised to give that consent or approval.

66.13 Equal Employment Opportunity

- (a) The Health Services Manager must comply with its obligations, if any, under the *Equal Employment Opportunity for Women in the Workplace Act 1999 (Cth)* (**EEOWW Act**).
- (b) The Health Services Manager must not enter into a subcontract under this Contract with a Subcontractor or Network Provider named by the Director of Equal Opportunity for Women in the Workplace as an employer currently not complying with the EEOWW Act.
- (c) To the extent required by Law, any subcontract must include a provision which requires the Subcontractor or Network Provider to notify the Equal Opportunity for Women in the Workplace Agency of any failure to comply with the EEOWW Act.

66.14 Fair Work Principles

- (a) The Health Services Manager must:
 - (i) in performing its obligations under this Contract, comply; and
 - (ii) as far as practicable ensure that its Subcontractors comply,

with all relevant requirements of the Fair Work Principles (as set out in the Fair Work Principles User Guide - available at www.deewr.gov.au/fairworkprinciples), including by:

- (iii) complying with all applicable workplace relations, work health and safety, and workers' compensation Laws;
 - (iv) informing the Department of any adverse court or tribunal decision for a breach of workplace relations Law, work health and safety Laws, or workers' compensation Laws made against it during the Term and any remedial action it has taken, or proposes to take, as a result of the decision;
 - (v) providing to the Department any information they reasonably require to confirm that the Health Services Manager (and any Subcontractor) is complying with the Fair Work Principles; and
 - (vi) participating in all compliance activities associated with its legal obligations, including those arising under the Fair Work Principles (such as requests for information and audits undertaken by the Commonwealth, its nominees or relevant regulators).
- (b) The Health Services Manager's compliance with the Fair Work Principles will not relieve the Health Services Manager from its responsibility to comply with its other obligations pursuant to this Contract.
- (c) If the Health Services Manager does not comply with the Fair Work Principles, without prejudice to any rights of the Department, the Department will be entitled to publish details of the Health Services Manager's failure to comply (including the Health Services Manager's name) and to otherwise provide those details to other agencies.
- (d) The Health Services Manager must, as far as practicable:
- (i) not use a Subcontractor if the Subcontractor would be precluded from contracting directly with the Department or another Commonwealth Agency under the requirements of the Fair Work Principles; and

- (ii) ensure that all Subcontracts impose obligations on Subcontractors equivalent to the obligations under this **clause 66.14**.

66.15 Work Health and Safety

- (a) In this **clause 66.15**:
 - (i) **Act** means the *Work Health and Safety Act 2011* (Cth).
 - (ii) **Person Conducting a Business or Undertaking (PCBU)** as defined by the Act means a person conducting a business or undertaking:
 - (A) whether the person conducts the business or undertaking alone or with others; and
 - (B) whether or not the business or undertaking is conducted for profit or gain.
- (b) The Health Services Manager must ensure, as far as is practicable and within the Health Services Manager's control under the terms of this Contract, that the Health Services are provided in a manner that does not pose any avoidable health or safety risk to the Health Services Manager's Personnel, to the Department's Personnel or to any other person.
- (c) Without limiting in any way the work health and safety obligations that the Health Services Manager has under this Contract, including those that apply due to the operation of Commonwealth and State or Territory Laws, the Health Services Manager must:
 - (i) ensure that a PCBU meets the primary duty of care requirements of section 19 of the Act;
 - (ii) comply with any reasonable safety directions given by the Department;
 - (iii) ensure the Department is notified immediately after a notifiable incident has occurred in accordance with section 38 of the Act; and

- (iv) promptly notify the Department of:
 - (A) any work related injury that causes death or serious personal injury;
 - (B) any notifiable incident as defined at sections 35, 36 and 37 of the Act; and
 - (C) each occasion it reports to, or notifies, a regulatory authority of a notifiable incident authority under the Act, the *Occupational Health and Safety Act 2004* (Vic), the *Occupational Health and Safety Regulations 2007* (Vic), the *Occupational Health, Safety and Welfare Act 1986* (SA), the *Occupational Health, Safety and Welfare Regulations 2010* (SA)

within one (1) Business Day after the incident has occurred or within two (2) hours if the injury causes death.

- (d) At the Department's request, the Health Services Manager must provide reasonable assistance to the Department or Comcare (including giving the Department, Comcare and their agents access to the Health Services Manager's premises, files, information technology systems and the Health Services Manager Personnel) in connection with any monitoring, inspection, investigation or audit of work health and safety matters arising in relation to the provision of the Health Services.

66.16 **Environmental Protection**

- (a) In providing the Health Services, the Health Services Manager must:
 - (i) ensure that its activities and areas of responsibility under this Contract are undertaken in a manner which plans for, and implements, appropriate practices and procedures which minimise or prevent any actual or potential damage to the environment;
 - (ii) cooperate with Other Service Providers in relation to the planning, implementation and management of environmental hazards;

- (iii) perform its obligations under this Contract in such a way as to ensure that the Department is not in breach of any environmental requirement described in the Contract or at Law; and
- (iv) promptly advise the Department (and Other Service Providers if necessary) if it is aware of any actual, potential or suspected breach of the Department's environmental policy or procedures in connection with the Health Services, and generally advise the Department of any matter, fact or circumstance in connection with the Health Services that the Health Services Manager believes is or may not be adequately dealt with by the Department's environmental policies or procedures or their related training, awareness and compliance programmes.

67. NOTICES

67.1 Address for Notices

Unless otherwise provided, any notice, request or other communication to be given under this Contract is to be in writing and dealt with as follows:

- (a) if given by the Health Services Manager to the Department, signed by the Health Services Authority or the Health Services Administrator and marked for the attention of the Contract Authority or the Contract Administrator at the address set out in **clause 67.2** or as otherwise notified from time to time by the Department; or
- (b) if given by the Department to the Health Services Manager, signed by the Contract Authority or the Contract Administrator and marked for the attention of the Health Services Authority or the Health Services Administrator at the address set out in **clause 67.2** or as otherwise notified from time to time by the Health Services Manager.

67.2 Addresses

- (a) The address for the Department:
Contract Authority – Health Services Contract

Ken Douglas
First Assistant Secretary, Detention Infrastructure and Services Division
PO Box 25
Belconnen ACT 2616
Facsimile: 61 2 6264 1100
Email: ken.douglas@immi.gov.au

Contract Administrator – Health Services Contract
Paul Windsor
Assistant Secretary, Detention Health Services Branch
PO Box 25
Belconnen ACT 2616
Facsimile: 61 2 6264 1100
Email: paul.windsor@immi.gov.au

(b) The address for the Health Services Manager:
Health Services Authority – Regional Processing Countries Health Services Contract
Liz Paslawsky
Level 3
45 Clarence Street
Sydney, NSW 2000
Facsimile: 612 9372 2576
Email: liz.paslawsky@ihms.com.au

Health Services Administrator – Detention Services Contract

Ian Gilbert

Level 3

45 Clarence Street

Sydney, NSW 2000

Facsimile: 612 9372 2576

Email: ian.gilbert@ihms.com.au

67.3 Delivery of Notices

Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically, and if it is sent or transmitted electronically a copy is to be sent to the addressee by pre-paid post.

67.4 Receipt of Notices

A notice, request or other communication will be deemed to be received:

- (a) if delivered by hand, upon delivery;
- (b) if sent by prepaid ordinary post within Australia, upon the expiration of two (2) Business Days after the date on which it was sent;
- (c) if sent by prepaid ordinary post outside Australia, upon the expiration of five (5) Business Days after the date on which it was sent; and
- (d) if transmitted by facsimile, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

68. INTERPRETATION

68.1 Interpretation

In this Contract, unless the context indicates a contrary intention:

- (a) a word suggesting a gender includes all genders;

- (b) a singular word includes the plural, and vice versa;
- (c) headings are for convenience only, and do not affect interpretation;
- (d) the word **person** includes any type of entity or body of persons (including a body politic), whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
- (e) an amount in dollars, \$AUD or \$AU is to that amount in Australian dollars;
- (f) a reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as, from time to time, amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) subject to **clause 34**, a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as, from time to time, amended, supplemented, replaced or novated;
 - (iii) any body is:
 - (A) if that body is replaced by another organisation, deemed to refer to that organisation; and
 - (B) if that body ceases to exist, deemed to refer to the organisation which most nearly or substantially serves the same purposes or objects of that body;
 - (iv) a **recital, clause, sub-clause, Part, Schedule** or **Annexure** is to the respective recital, clause, sub-clause, Part, Schedule or Annexure of or to this Contract as varied from time to time;
 - (v) to a **clause** includes a reference to a sub-clause of that clause;
 - (vi) to a **Schedule** includes the Annexures to that Schedule and any attachments;

- (vii) a person holding the Department or the Health Services Manager office includes any person from time to time holding, occupying or performing the duties of that office; and
- (viii) the Department or the Health Services Manager office includes, if that office is abolished, the holder of any other office at the same or equivalent level which has the same or similar responsibilities;
- (g) if a Party to this Contract is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST which the representative member of the GST group is liable and input tax credits to which the representative member is entitled;
- (h) references to GST extend to any notional liability of a person for GST and to any amount which is treated as GST under the GST Law, and references to an input tax credit extend to any notional input tax credit to which any person is entitled;
- (i) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a Party to this Contract or any other document or arrangement includes that Party's permitted substitute or a permitted assign of that Party;
- (k) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;
- (l) the word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing;
- (m) references to a General Practitioner being employed or engaged by a Network Provider include a General Practitioner that is self-employed and/or operates his or her own practice; and

- (n) references in these main terms and conditions to a "Part" or "clause" are to the Part or clause of these main terms and conditions, unless otherwise stated.

68.2 Inconsistency

If there is any inconsistency between any part of the Contract, a descending order of precedence will be accorded to:

- (a) **clauses 1 to 68.3** of these main terms and conditions and **Schedule 1** (Glossary);
- (b) **Schedule 2** (Statement of Work), including any Annexure or attachment to that Schedule;
- (c) the Schedules other than **Schedule 1** (Glossary) or **Schedule 2** (Statement of Work), including any Annexure or attachment to those Schedules; and
- (d) any other document incorporated by express reference or otherwise referenced as part of the Contract,

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

68.3 Consents

Where this Contract contemplates that the Department may agree or consent to something (however it is described), the Department may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions,

unless this Contract expressly contemplates otherwise.

EXECUTED as an agreement

SIGNED for and on behalf of
Commonwealth of Australia

By:



Signature of Witness



Name of Witness in full



Signature

Date:

EXECUTED by [*Health Services Manager*]:

[Redacted Signature]
Signature of director

[Redacted Signature]
Signature of Witness

[Redacted Name]
Name

[Redacted Name]
Name

Date: 29/1/2013



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 1

GLOSSARY

In the Contract, unless the contrary intention appears, the following definitions apply.

Term	Definition
Accepted Industry Practice	means, at any time, the exercise of that degree of care and skill which would reasonably be expected at that time in Australia from a skilled, competent and experienced provider of services of the same kind or type being provided under the Contract.
Additional Fees	means fees for any additional or expanded services provided under clause 33 of the Contract, determined in accordance with clause 8 of Schedule 5 (Fee and Payments).
After Hours Service	means the Services operated and managed by the Health Services Manager which: <ul style="list-style-type: none"> (i) involve the provision of a health triage service and initial health advice to Transferees and Recipients in accordance with clause 28 of Schedule 2 (Statement of Work); and (ii) must be available for all Transferees on Nauru and Manus Island; and (iii) must be available at all times during which any General Practitioner clinics on Nauru and Manus Island are not open.
Approved Major Subcontract	a contract between the Health Services Manager and a Major Subcontractor entered into in accordance with clause 18 of the Contract.
Approved Major Subcontractor	means a party (other than the Health Services Manager) to an Approved Subcontract.
Asset	means any item of tangible property, leased, created, or otherwise brought into existence either wholly or in part in providing the Health Services and performing the Health Services Manager's obligations under this Contract (including Department Assets, Health Services Manager Assets and Department Material), but does not include perishable items such as food or consumables (including medicines).
Australian Accounting Standards	are those adopted by the Australian Accounting Standards Board (AASB) and (where applicable) the Corporations Act 2001 of the Commonwealth of Australia

Term	Definition
Australian Federal Police Background Check	means the National Police Check provided by the Australian Federal Police to individuals who have a right to work in Australia, have applied for the National Police Check, and have met the relevant application requirements. More information on how to apply for a National Police Check is available at: http://www.protectivesecurity.gov.au .
Australian Government Policy	is any Australian Government policy listed in Schedule 15 (Australian Government and Department Health Policies) of the Contract, or as otherwise notified in writing by the Department to the Health Services Manager as applicable to the Contract, but excludes Department Health Policy and Guidelines.
Authorisation	means any approval, authorisation, consent, exemption, filing, licence, notarisation, registration or waiver however described and any renewal of or variation to any of them.
Base Period	means the base period outlined in Schedule 4.1 (Performance Management Manual).
Business Day	any day that is not a Saturday, Sunday, bank holiday or public holiday in the place where an act is to be performed or a payment is to be made.
Change Control Procedure	means the change control procedure outlined in clause 34 of the Regional Processing Countries Health Services Contract.

Term	Definition
CHIRON	<p>means the medical software package, including user guides, specification documents and source code, used by the Health Services Manager for the management of the Facilities and Health Services, and includes</p> <p>(a) all Material, including Third Party Software, that is:</p> <ul style="list-style-type: none"> (i) embodied in or attaches to CHIRON at any time during the Term; or (ii) is otherwise necessarily related to or required for the functioning, operation, maintenance or other use of CHIRON, at any time during Term, <p>including Material that is incorporated in CHIRON after the Commencement Date; and</p> <p>(b) all changes, updates or enhancements made to CHIRON , at any time during the Term, including changes updates or enhancements made to:</p> <ul style="list-style-type: none"> (i) any Material embodied in or attached to CHIRON; (ii) any Material that is otherwise necessarily related to or required for the functioning, operation, maintenance or other use of CHIRON; and (iii) any related software owned by the Health Services Manager.
Clinical Governance Team	means the nominated team of Health Services Manager Personnel who are responsible for overseeing the appropriate and professional delivery of the clinical component of the Health Services to Transferees and Recipients at a Facility.
Code of Conduct	the code attached as Annexure A of Schedule 4.2 (Governance).
Commencement Date	the date on which the Contract is signed by both Parties
Commonwealth	means the Commonwealth of Australia.
Confidential Information	means Department Confidential Information or Health Services Manager Confidential Information.

Consequential Loss	<p>means any cost, liability, loss, expense or damage , whether arising in contract, tort, statute or otherwise, and whether or not in the contemplation of the Parties at the date of this Contract relating to:</p> <ul style="list-style-type: none"> (a) loss, or anticipated loss, of opportunity by the Department or a Transferee or Recipient, whether or not flowing directly or indirectly from the act or omission in question; (b) all costs incurred by the Department in re-tendering or negotiating with an alternative providers, alternative health services providers and alternative contractors; (c) all costs incurred by the Department in establishing the HSM Network or similar networks; (d) all losses that are incurred as a consequence of the Department awarding the Contract or similar contracts to an alternative health services provider or contractor for part or the whole of the Health Services; (e) all losses that are incurred by the Department in engaging other services providers to provide health services the same or similar to the Health Services; (f) loss or anticipated loss of revenue by the Department, whether or not flowing directly or indirectly from the act or omission in question; (g) lost or anticipated loss of savings by the Department, whether or not flowing directly or indirectly from the act or omission in question; (h) loss of expectation by the Department of faster and more efficient systems and provision of Health Care Services, whether or not flowing directly or indirectly from the act or omission in question; (i) wages incurred by Departmental employees and fees incurred for Departmental contractors, should the Contract be terminated in part or whole by the Department and the Department engages other service providers to provide health services the same or similar to the Health Services; (j) internal Departmental overheads; (k) Departmental legal costs in responding to claims by Transferee or Recipient; and
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	<p>(l) legal costs of a Transferee or Recipient or a third party in relation to a claim arising from, or in connection with, an act or omission of the Health Services Manager or Health Services Manager Personnel.</p> <p>For the avoidance of doubt, Consequential Loss does not include any cost, liability, loss, expense or damage incurred by the Department relating to:</p> <p>(m) a claim by a Transferee or Recipient arising from, or in connection with, an act or omission of the Health Services Manager or Health Services Manager Personnel, for:</p> <ul style="list-style-type: none"> (i) medical expenses; (ii) loss of amenity; (iii) pain and suffering; or <p>(n) a claim by a third party arising from, or in connection with an act or omission of the Health Services Manager or Health Services Manager Personnel, for:</p> <ul style="list-style-type: none"> (i) medical expenses; (ii) loss of amenity; (iii) pain and suffering; or (iv) repair or replacement costs of third party property.
Contact Day	<p>in respect of each onsite health clinic required to be provided at a Facility, is any day that the clinic is required to be open for Health Care in accordance with Annexure B (Onsite Health Services) of Schedule 2 (Statement of Work).</p>
Contingency	<p>a Facility that has been deactivated and contains no Transferees, but in relation to which the Health Services Manager may be required to "ramp-up" to provide services in accordance with clause 31 of the Contract main terms and conditions. For the avoidance of doubt, at the Commencement Date there are no Contingency Facilities under this Contract.</p>

Continuous Performance Measure Failure	where the Health Services Manager has been assessed as having a Performance Failure for the same Performance Measure for three (3) consecutive months (or other reporting period in the case of those metrics not measured monthly).
Contract	means the agreement between the Parties for the performance of the Regional Processing Countries Health Services, comprising the main terms and conditions, and all schedules annexure and attachments that are attached or referred to in the main terms and conditions.
Contract Administrator	the Contract Administrator appointed by the Secretary and any other persons nominated by the Contract Administrator from time to time to fulfil the role of Contract Administrator.
Contract Authority	the Contract Authority appointed by the Secretary, and any other persons nominated by the Contractor Authority from time to time to fulfil the role of Contract Authority.
Contract Change Notice	has the meaning given to it in clause 34.2 of the Contract main terms and conditions.
Contract Change Proposal	a written proposal to effect a variation of the Contract lodged in accordance with clause 34 of the Contract.
Contract Material	any material or information: (a) created under the Contract or as a consequence of the Contract; or (b) which is copied or derived from that material.
Critical Health Services	are any of the services required to be provided on site at a Facility from a nurse clinic, general practice clinic or mental health clinic under Schedule 2 (Statement of Work), but excludes psychiatry and dental services.
Critical Incident	has the meaning given to that term in Annexure A (Incidents) of Schedule 2 (Statement of Work).
Data	includes all information stored on magnetic tapes, disks or in written form of any kind.

Data Collection and Reporting Manual	is the manual referred to in Schedule 15 (Australian Government and Department Health Policies).
Deemed Amount	is the amount of the Monthly Onsite Health Clinic Fee invoiced to the Department for the previous Month under the circumstances considered in Schedule 5 (Fees and Payments).
Default	a failure to perform the Health Services in accordance with, or other failure to comply with, requirements of the Contract.
Default Notice	a notice issued by the Contract Administrator under clause 61.2 of the Contract.
Department	the Commonwealth represented by the Department of Immigration and Citizenship.
Department Assets	includes assets owned by the Department and listed in Schedule 8 (Department Assets).
Department Confidential Information	any Department Material which is either: (a) listed as Department Confidential Information in Schedule 10 (Confidential Information) of the Contract, (b) is information that is by its nature confidential; or (c) a party knows or ought to know is confidential, but does not include: (d) information which is or becomes public knowledge other than by breach of the Contract or any other confidentiality obligation.
Department Data	has the meaning given to it in clause 1.1 of Schedule 11 (Confidentiality Deed)
Department Executive	the person(s) the Department notifies the Health Services Manager from time to time are person(s) with the authority to exercise the power of the "Department Executive" for the purposes of the Contract.

Department Health Policy	any Department health related policy: (a) available on the Department's instruction system (Legend); (b) listed in Schedule 15 (Australian Government and Department Health Policies); or (c) notified by the Department to the Health Services Manager in accordance with clause 11.4 of the Contract.
Department Health Policy Manual	the document of that name described in Schedule 15 (Australian Government and Department Health Policies)
Department Material	any material or information provided by the Department to the Health Services Manager for the purposes of the Contract or which is copied or derived from that material or information.
Department Personnel	the officers, employees, agents, advisers and contractors of the Department (other than the Health Services Manager and Health Services Manager Personnel) and excludes any Department Services Provider and their respective officers, employees, agents, advisers and contractors of the Department Services Providers.
Department Policy	any Department policy relating to immigration detention: (a) available on the Department's instruction system (Legend); (b) listed in Schedule 15 (Australian Government and Department Health Policies); or (c) notified by the Department to the Health Services Manager from time to time as applicable to the Contract, but excludes Australian Government Policy and Department Health Policy and Guidelines.
Department Records	records created by either Party or delivered to it by a third party for the purposes of the Contract, and includes records relating to matters between either of the parties, and any Health Services Manager Personnel and Network Providers, or any of them, but not including those records which are specifically created and maintained by the Health Service Manager or any Health Services Manager Personnel or Network Providers solely for its own use.

Department Representatives	has the meaning given to it by clause 66.8 of the Health Services Contract.
Department Services Providers	comprise: (i) Services Providers; and (ii) any other service provider the Department notifies the Health Services Manager is a “Department Services Provider” providing services in relation to Transferees.
Department System	the Department's information technology systems that may be used by the Health Services Manager for the provision of the Health Services and includes all hardware and software and documentation specified in it . .
Direction	a direction issued to the Health Services Manager in accordance with clause 21 of the Contract.
Discharge	the Removal or Release of a Transferee from a Facility.
Dispute	any dispute or difference between the Department and the Health Services Manager arising out of or in connection with the Contract or the Health Services, including any dispute arising out of proceedings brought by: (a) a third party against the Health Services Manager; or (b) the Department or by the Health Services Manager or the Department against a third party.
Dispute Notice	the notice referred to in clause 60.3 of the Contract.
Essential Loose Assets	those assets identified by the Department as essential Loose Assets for the purposes of the Contract

Excepted Network Provider	means either: (a) a public hospital or a public health care provider funded by a Government; or (ii) a Network Provider for which, in relation to the relevant obligation of the Health Services Manager for that Network Provider, the Department has agreed in writing to a specific exception directly referable to the clause or context in which the term is used.
Existing Health Care Record	health records that are in existence at the Commencement Date for those people that are designated as Transferees on or after the Commencement Date.
Extended Term	means an extension to the Term under clause 5.2 of the Contract main terms and conditions
Expert Determination	determination by an expert as described in clause 60.5 of the Contract main terms and conditions.
Facility	means a facility for processing Transferees located on Nauru or Manus Island.
Financial Indebtedness	any actual or contingent present or future obligation of a person to pay any money in respect of any moneys borrowed or raised by that person.
Financial Undertaking	the Financial Undertaking in Schedule 9 (Performance Securities).
Financial Year	a period of one year commencing on 1 July and ending on 30 June.
Force Majeure Event	act of war (whether declared or not), military conflict, invasion, act of terrorism, act of foreign enemies, hostilities (whether or not war has been declared), civil war, civil commotion or riots (except where caused within a Facility), rebellion, revolution, insurrection, military or usurped power or martial law or confiscation by order of any foreign government, or peace-keeping operation, accidental fire, disaster, flood, catastrophic weather condition, earthquake, or act of God, rain in areas with reactive clay soils preventing passage, strike or other industrial action not specific to or attributable to any action of the Health Services Manager, embargo, or a loss or limitation of essential services such as electricity and water supply.

General Practitioner	means a medical practitioner who holds a qualification of a similar standing to Australian qualifications and are capable of providing health care to a standard comparable with Australian standards.
GP	means a General Practitioner.
GST Law	the same as "GST Law" means in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Government Agency	a State or Australian Government or government department or agency, or a state or federal governmental, semi-governmental person (whether autonomous or not) charged with the administration of any applicable law or governmental executive function.
Guidelines	means the Guidelines issued by the Department under clause 21.1 of this Contract.
Heads of Agreement	means the interim agreement, signed by the Parties on 14 September 2012, under which the Health Services Manager has been providing health services to Transferees and Recipients.
Health Care	means any health procedure, treatment, assessment, investigation or other clinical health service available or provided to a Transferee or Recipient.
Health Care Provider	means: (a) any health professional employed by the Health Services Manager to provide Health Care to Transferees or Recipients under the Contract; (b) any Network Provider; or (c) health professional employed or engaged by a Network Provider.
Health Care Record	means a health care record of a Transferee or Recipient created and maintained by the Health Services Manager under the clause 13.2 of the Contract.
Health Discharge Assessment	the assessment conducted by the Health Services Manager under Part 2 of Schedule 2 (Statement of Work).
Health Induction Assessment	the assessment referred to in Schedule 2 (Statement of Work) and conducted under a separate Contract.

Health Services	are any or all of the services described in Schedule 2 (Statement of Work) and any other obligation that the Health Services Manager is required to perform under the Contract, as changed from time to time in accordance with the Contract.
Health Services Administrator	the administrator appointed by the Health Services Manager in accordance with the Contract, and any replacement notified to the Health Services Manager in writing by the Department from time to time.
Health Services Authority	the authority appointed by the Health Services Manager in accordance with the Contract, and any replacement notified to the Health Services Manager in writing by the Department from time to time.
Health Services Manager	includes, as the context requires, Health Services Manager Personnel.
Health Services Manager Confidential Information	the information listed as Health Services Manager Confidential Information in Schedule 10 (Confidential Information).
Health Services Manager Material	any material or information provided by the Health Services Manager to the Department for the purposes of the Contract, or which is copied or derived from that material or information.
Health Services Manager Personnel	means the officers, employees and agents of the Health Services Manager, and their respective officers, employees and agents, engaged or involved in performing the Health Services or other activities associated with performance of the Contract, but does not include Network Providers or Network Provider Personnel.
Health Services Regional Manager	the regional manager appointed by the Health Services Manager and identified in Schedule 4.2 (Governance) having responsibility for the day to day performance of Health Services in a specified Facility.
Hot Contingency	is any Facility which is not Operational and which the Department identifies to the Health Services Manager as a "hot contingency" Facility. For the avoidance of doubt, at the Commencement Date there are no Hot Contingency Facilities under this Contract.

HSM Network	means the Health Care Provider network established by the Health Services Manager under clause 15 of the Contract main terms and conditions and clause 5.1 of Schedule 2 (Statement of Work)
Implementation Plan	means the plan prepared by the Health Services Manager and Approved by the Department that details the process the Health Services Manager will follow prior to the commencing provision of the Health Services at a Facility.
Incident	is any Critical Incident or Other Incident
Incident Report	means a report from the Health Services Manager to the Department (in the form specified in the Procedures Manual) in relation to a Critical or Other Incident at a Facility.
Information Privacy Principles	has the same meaning as in the Privacy Act.
Infrastructure Failure	Means a failure in any infrastructure required to deliver the Health Services that was beyond the reasonable control of the Health Services Manager,
Initial Approved Major Subcontractors	those subcontractors listed in Schedule 7 (Key Personnel and Approved Major Subcontractors) of the Contract.
Initial Notice	the notice referred to in clause 60.2 of the Contract.
Initial Term	has the meaning given in clause 5.1 of the Contract.
Instructions	the list of instructions described as such in Schedule 15 (Australian Government and Department Health Policies).

Intellectual Property	<p>all present and future rights conferred by law in or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable.</p> <p>These rights include:</p> <p>(a) all rights in all applications to register these rights;</p> <p>(b) all renewals and extensions of these rights; and</p> <p>(c) all rights in the nature of these rights, excluding moral rights.</p>
Key Personnel	is any of the Personnel described in Schedule 4.2 (Governance).
Key Position	is any key position described in Schedule 4.2 (Governance).
Laws	<p>(a) the requirements of all applicable Legislation and all regulations and requirements made under such Legislation;</p> <p>(b) the legal requirements of any applicable Commonwealth, State, Territory or Local government department, agency, body, authority or instrumentality, including statutory tribunals or commissions and similar governmental bodies;</p> <p>(c) treaties, conventions, agreements, compacts and similar instruments that have been ratified or adopted by the Australian Government or by a relevant foreign government;</p> <p>(d) court decisions, common law and equity; and</p> <p>(e) guidelines, policies and codes of the Commonwealth, States and Territories,</p> <p>with which the Health Services Manager or the Department is legally required to comply.</p>
Legislation	includes all Commonwealth, State, Territory or local or other legislation, including regulations, legislative instruments, by-laws and other subordinate legislation.
Local Hospital	means a hospital that is located on Nauru or Manus Island that is operated primarily for the treatment of the citizens of Nauru or Papua New Guinea.

Loose Assets	assets that the Department reasonably considers necessary for the delivery of Health Services to Transferees and Recipients on Nauru and Manus Island.
Major Subcontract	a contract between the Health Services Manager and a subcontractor of the Health Services Manager for the performance of work under the Contract, with a total value greater than \$250,000.
Major Subcontractor	a person who has entered into a Major Subcontract with the Health Services Manager.
Manus Island	means the island that forms part of the Manus Province in northern Papua New Guinea.
Material	includes documents, equipment, software, reports, goods, information, plans, charts, drawings, calculations, tables, and data stored by any means including all copies and extracts.
Medical Director	the Medical Director specified in Schedule 7 (Key Personnel and Approved Major Subcontractors).
Mental Health Team Leader	an appropriately qualified Health Care Provider employed by the Health Services Manager to coordinate mental Health Care for Transferees.
Minimum Clinic Hours	in respect of each Onsite Health Clinic, is the minimum number of hours that the clinic is required to be open to deliver Health Care in accordance with Annexure B (Onsite Health Services) of Schedule 2 (Statement of Work).
Minister	the Minister for Immigration and Citizenship.
Month	a calendar month.
Moral Rights	means any right of attribution or authorship, right not to have authorship falsely attributed, or right of integrity of authorship, or other analogous rights arising under any applicable Law.
National Privacy Principles	has the same meaning as in the Privacy Act.

Network Provider	means the Health Care Provider organisations or entities that the Health Services Manager appoints or proposes to appoint to the HSM Network.
Network Provider Agreement	means an agreement between the Health Services Manager and a Network Provider that gives effect to the requirements specified in clause 5.4 of Schedule 2 (Statement of Work) and that is in a form agreed between the Parties.
Network Provider Personnel	means persons employed or engaged by a Network Provider.
Non Disclosure Deed Poll	the form of deed poll set out in Schedule 12 (Deed of Non-Disclosure of Personal Information).
Occupational Health and Safety Management Plan	the document of that name to be developed by the Health Services Manager as described in Schedule 2 (Statement of Work).
Regional Processing Countries Health Services	means the Health Services that are delivered outside Australia and its External Territories.
Onsite Health Clinic	Health Care delivered by the Health Services Manager to Persons in Detention at a Facility in accordance with Schedule 2 (Statement of Work) and Annexure B (Minimum Onsite Health Services) of Schedule 2 , and includes: (a) registered nurse clinics; (b) general practitioner clinics; (c) mental health clinics; and (d) dental clinics.
Operational	any Facility that contains Transferees.
Other Incident	has the meaning given to that term in Annexure A of Schedule 2 (Statement of Work).
Party	means a party to this Contract, including any permitted assignees.
Pass Through Cost	has the meaning given to it in clause 4 of Schedule 5 (Fees and Payments).

Performance Failure	when the Health Services Manager fails to achieve the relevant minimum performance threshold for a performance measure as outlined in Schedule 4.1 (Performance Management Manual) .
Performance Measures	means the service levels, performance indicators or other measures of the performance of the Health Services Manager under this Agreement, as set out or described in Schedule 4.1 (Performance Management Manual) .
Performance Measure Threshold	is the minimum performance level, below which a performance failure has occurred.
Permitted Security Interest	<p>(a) a Security Interest in respect of which full details have been given to the Secretary in writing at least two Business Days before the date of the Contract, or a Security Interest created after the date of the Contract, if:</p> <ul style="list-style-type: none"> (i) the Secretary has consented (such consent not to be unreasonably withheld having regard to the affect which that Security Interest may have on the ongoing solvency of the Health Services Manager) to that Security Interest and to a maximum amount which at any time it may secure; and (ii) the amount secured by that Security Interest (other than costs, fees and uncapitalised interest or monies in the nature of interest (such as discounts on bills of exchange)) does not increase beyond the amount in respect of which the Secretary has consented; or <p>(b) a lien or right of set off which arises solely by operation of law in the ordinary course of ordinary business, where the amount secured is not overdue for payment or where the amount secured is not being contested on reasonable grounds in good faith.</p>
Personal Information	has the meaning in clause 48.1 of the Contract.
Personnel	means any Health Services Manager Personnel or Department Personnel (as appropriate).
Personnel shortfall	means a shortfall in the number of appropriately skilled Health Services Manager Personnel required to perform the Health Services at a Facility that is beyond the reasonable control of the Health Services Manager.

Policy and Procedures Manual	is the manual of standard operating policies, procedures and processes developed by the Health Services Manager under Schedule 2 (Statement of Work).
Professional Indemnity Policy of Insurance	means the policy or policies that the Health Services Manager must effect and maintain under clause 1(c) (professional indemnity or errors and omissions insurance) of Schedule 13 (Health Services Manager Insurance).
Privacy Act	the <i>Privacy Act 1988</i> (Cth).
Protective Security Manual	the Australian Government's Protective Security Manual issued by the Attorney-General's Department, as amended from time to time.
Quarter	each successive period of three (3) months, the first of which commences on the Commencement Date if the Commencement Date is the first date of a month, and otherwise on the first day of the month immediately following the Commencement Date.
Recipient	means a person, other than a Transferee, nominated by the Department from time to time to receive Health Services at a Facility.
Record	any document, writing or material (including tapes or other electronic matter) including records of Transferees, business records, and any other records created, developed or required for the purpose of performing the Health Services and may include biometric data and/or personal identifiers.
Release	the release of a person from a Facility into the Australian community under a valid visa.
Removal	means the repatriation of a Transferee to his or her country of origin or any other country that accepts the Transferee for processing or settlement.
Remove	has the same meaning as Removal.

Retained Withholding Fee	the portion of the Withholding Fee that is attributed to the weighting of the relevant performance measures where the performance threshold was not achieved and will be retained by the Department.
S4 or S4 medication	Means a prescription only medicine as listed in Schedule 4 of the Standard for the Uniform Scheduling of Medicines and Poisons.
S8, S8 medication or S8 drug	Means a Controlled Drug as listed in Schedule 8 of the Standard for the Uniform Scheduling of Medicines and Poisons.
Secretary	the Secretary of the Department.
Security Interest	<p>(a) any bill of sale, mortgage, charge, pledge, hypothecation, title retention arrangement, trust or power as or in effect as security for the payment of a monetary obligation or the observance of any other obligations;</p> <p>(b) any lien, profit à prendre, easement, restrictive covenant, any equity or interest in the nature of an encumbrance, garnishee order, writ of execution, right of set-off, lease, licence to use or occupy, assignment of income or monetary claim; or</p> <p>(c) an agreement to create or give any arrangement referred to in paragraphs (a) or (b) of this definition.</p>
Services	means the Health Services.
Services Network	the service delivery network for Nauru and Manus Island.
Services Providers	the entity or entities that the Department notifies the Health Services Manager are providing services to the Department (other than the Health Services) at each Facility.
Service Delivery Model	the document of that name described in Schedule 15 (Australian Government and Department Health Policies).
Statement of Work	comprises Schedule 2 (Statement of Work), as amended from time to time in accordance with the Contract.

Subcontractor	means any person, other than the Department or a Network Provider, that directly or indirectly provides goods or services, for the purposes of the Contract, to the Health Services Manager; and "Subcontract" has a corresponding meaning.
Tax	any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding (together with any related interest, penalty, fine or expense in connection with any of them) levied or imposed by any Government Agency, other than any imposed on net overall income.
Term	means the Initial Term and includes any extension of that period provided for under clause 5 of the Contract.
Termination Notice	the notice referred to in clause 62.1 of the Contract.
Third Party	a person or entity other than the Department or the Health Services Manager.
Third Party Software	any Software in which a Third Party holds Intellectual Property rights.
Third Party Software Provider	any Third Party that provides software that the Health Services Manager will use to deliver the Health Services under the Contract.
Transfer	the transfer of a Transferee from placement in one Facility to another Facility or to Australia for detention in the Immigration Detention Network.
Transferee	means an irregular maritime arrival who is transferred to a Facility.
Transferee Population Groups	has the meaning given to that term in the Data Collection and Reporting Manual, as described in Schedule 15 (Australian Government and Department Health Policies).
Transition Out	the process of preparing for handover of the Health Services from the Health Services Manager to any new provider of health services to the Department.

Transition Out Plan	the plan prepared by the Health Services Manager under clause 65.1 of the Contract, detailing how the Health Services Manager proposes to disengage on expiry or earlier termination of the Contract.
Vector Control	means the vector control management referred to in clause 16.3 of Schedule 2 (Statement of Work).
Withholding Fee	is the five (5) per cent of the monthly Onsite Health Clinic Fee to be retained by the Department until the Monthly Performance Report has been submitted.
Withholding Rebate	the portion of the Withholding Fee that is attributed to the weighting of the relevant performance measures where the performance threshold was not achieved and will be retained by the Department.



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 2
STATEMENT OF WORK

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INTRODUCTION

1. PHILOSOPHY

The overarching philosophy of Health Care provided on Nauru and Manus Island is to ensure that Transferees and Recipients have access to clinically recommended care, that is the best available in the circumstances and broadly comparable with health services available within the Australian community, taking into account the diverse and potentially complex health needs of Transferees. Health Care must be delivered in accordance with the principles underpinning the Service Delivery Model.

The Statement of Work requires the Health Services Manager to provide Health Care to both Transferees and Recipients. **Part 1** of this **Schedule 2** sets out the general requirements for the delivery of Health Services to both Recipients and Transferees. Where general services are to be delivered to both Transferees and, under limited circumstances, to Recipients, this is specified by referring to "Transferees and Recipients". Where general services are to be delivered to Transferees only, this is specified by referring to "Transferees" only. The specific Health Care to be delivered to Transferees is set out in **Part 2** of this **Schedule 2**. The specific Health Care to be delivered to Recipients is set out in **Part 3** of this **Schedule 2**.

Health Care must be coordinated, high quality, safe and prioritised on the basis of clinical need. It should also be delivered without any form of discrimination, and with appropriate dignity, humanity, cultural and gender sensitivity, and respect for privacy and confidentiality.

The Health Services Manager has responsibility for managing and organising the delivery of Health Care to Transferees and Recipients by a multi-disciplinary team of Health Care Providers. The Health Services Manager will directly provide Critical Health Care Services to Transferees and Recipients, and establish the HSM Network of credentialed providers for the delivery of other Health Care to Transferees and Recipients.

In delivering Health Care to Transferees and Recipients, the Health Services Manager will be required to liaise and work co-operatively with the Department and the Department Services Providers, with the aim of providing integrated, coordinated and effective service delivery to Transferees and Recipients.

A primary focus of the Health Services Manager must be to ensure ease of access for Transferees and Recipients to primary level Health Care. The Health Services Manager will be required to facilitate and coordinate the delivery of clinically necessary specialist, health and allied health services to Transferees and Recipients. The Health Services Manager must ensure that Health Care delivered to Transferees and Recipients is continuous and coordinated, during each episode of care and for the duration of their time on Nauru and Manus Island.

The delivery of coordinated quality and safe Health Care will be facilitated and supported by the Health Services Manager developing and implementing appropriate corporate, clinical and operational policies, procedures and processes.

PART 1: HEALTH MANAGEMENT SERVICES

2. CORPORATE AND CLINICAL GOVERNANCE**2.1 Corporate Governance**

The Health Services Manager must develop, implement and manage corporate governance arrangements that give effect to and support the delivery of the Health Services in accordance with the Contract. Without limitation, these arrangements must be capable of:

- (a) fostering cooperative, coordinated and professional working relationships with the Department, Health Care Providers and Department Services Providers;
- (b) respecting and giving effect to the competing values of medical impartiality, clinical autonomy and collaborative service delivery; and
- (c) promoting and supporting effective Agreement and relationship management arrangements consistent with the Contract and which ensure the coordinated and continuous delivery of Health Care to Transferees and Recipients on Nauru and Manus Island (the Facilities).

2.2 Clinical Governance

- (a) The Health Services Manager must develop, implement and manage a system of clinical governance for the delivery of Health Care to Transferees and Recipients.
- (b) This system must provide a systematic approach to assuring and continuously improving the standard and quality of Health Care delivered to Transferees and Recipients. These arrangements must be consistent with and support performance of the Contract, and include:
 - (i) transparent processes and defined lines of accountability for the overall quality and standard of Health Care provided to Transferees and Recipients;
 - (ii) clearly defined and articulated consultation, coordination, information exchange and reporting arrangements between Health Services Manager Personnel and Network Providers to facilitate and support the delivery of coordinated and continuous Health Care to Transferees and Recipients;
 - (iii) a comprehensive programme of quality assurance, risk management and continuous improvement activities, including any programs described or required by the Contract; and
 - (iv) operational level policies and procedures aimed at ensuring consistency in the quality and standard of Health Care delivered to Transferees and Recipients.

3. POLICY AND PROCEDURES MANUAL

3.1 Development of Manual

- (a) For the purposes of Regional Processing Countries Health Services, the Health Services Manager will use the existing draft Policy and Procedures Manual in accordance with this **clause 3**, until such time as the final Policy and Procedures Manual has been completed. The final Policy and Procedures Manual must:
- (i) describe in detail the range of operational and clinical policies, procedures and processes necessary and appropriate for the day to day delivery of Health Care to Transferees and Recipients in accordance with the Contract, including all policies and procedures expressly required under this **Schedule 2**;
 - (ii) adapt and tailor the policies and procedures developed under this **clause 3.1(a)** as appropriate for Nauru and Manus Island and each Transferee Population Group; and
 - (iii) be consistent (and support compliance) with the Contract, applicable Health Standards, Department Health Policy, codes of ethics of relevant professional bodies, societies and associations, and the mandatory registration requirements of Health Care Providers.
- (b) The Health Services Manager must consult with the Department in a timely manner during preparation of the final Policy and Procedures Manual for the purpose of ensuring completion of that manual in a form (and with content) acceptable to the Department (including by having obtained Department approval for any policy or procedure for which such approval is required under this **Schedule 2**).

3.2 Compliance with Manual

The Health Services Manager must comply with, and ensure all Health Services Manager Personnel and Network Providers comply with the draft Policy and Procedures Manual on and from handover of the Health Services in accordance with the Contract until a final Policy and Procedures Manual is completed in accordance with this **clause 3**. Following its completion, the Health Services Manager must comply with, and ensure all Health Services Manager Personnel and Network Providers comply with the final Policy and Procedures Manual.

4. IMPLEMENTATION PLAN

4.1 Development of Implementation Plan

- (a) The Health Services Manager must provide the Department with a draft Implementation Plan prior to the provision of health services on Nauru and Manus Island.

- (b) The Health Services Manager will provide an updated Nauru Implementation Plan for approval to the Department by 30 September 2012 or such later date as advised by the Department.
- (c) The Manus Island Implementation Plan must be provided to the Department, for approval, by 22 November 2012 or such later date as advised by the Department.

5. HSM NETWORK

5.1 Establishment of HSM Network

The Health Services Manager must:

- (a) establish and maintain over the Term the HSM Network comprising health care professionals and other providers that is sufficient and appropriate to deliver Health Services to Transferees and Recipients in accordance with the Contract. The HSM Network must include a sufficient number of appropriately qualified and experienced nurses (including mental health nurses), General Practitioners, psychologists, psychiatrists and other medical specialists, pharmacists, dentists, optometrists, paramedics, pathologists and other appropriate allied health professionals;
- (b) ensure that the HSM Network:
 - (i) has the capacity, gender mix and specialist diversity to meet the potentially complex health needs (including mental health) of culturally diverse Transferees;
 - (ii) comprises only providers that have been credentialed by the Health Services Manager, and confirmed as having all appropriate, work permits and visas; and
 - (iii) provides the Department value for money for the delivery of Health Services to Transferees and Recipients, including by ensuring all Network Provider fee schedules are benchmarked in accordance with **Schedule 5** (Fees and Payments) and by scrutinising invoices received from providers to identify any instances of potential over servicing and errors in the calculation of invoice amounts;
- (c) enter into a written agreement with each Network Provider in accordance with **clause 5.4** of this **Schedule 2**;

5.2 Support and training of Network Providers

The Health Services Manager must ensure all Network Providers are provided access to appropriate support and training (including through the provision of induction and continuing education training and advice), with a view to ensuring all providers understand:

- (a) the specific health needs and risks of Transferees and the environment of Nauru

and Manus Island;

- (b) their role and responsibilities in the delivery of Health Care to Transferees and Recipients, including by having a detailed working knowledge of the following requirements of this **Schedule 2**:
 - (i) *referral processes*, noting that providers of general practitioner services must facilitate and coordinate services with other Network Providers and have responsibility for referring Transferees and Recipients to other Health Care Providers for any (and only) clinically necessary Health Care, including in instances where a referral is not normally required (for example, for dental, optometry and other allied health services) (see **clause 10.2** of this **Schedule 2**);
 - (ii) *Transferee and Recipient consent processes* for the transfer of health information between relevant Health Care Providers and the Health Services Manager for the purpose of maintaining a comprehensive, contemporaneous Health Care Record for each Transferee and Recipient (see **clause 10.4** of this **Schedule 2**);
 - (iii) *exception processes*, noting the requirement for prior Department approval for any recommended or referred Health Care that falls outside the scope of Department Health Policy (see **clause 10.2** of this **Schedule 2**); and
 - (iv) *administrative processes* such as invoicing and payment arrangements, including the maintenance of a "cashless" transaction system for the provision of Health Care to Transferees and Recipients.

5.3 Review and update of HSM Network

The Health Services Manager must regularly monitor and review the performance and composition of the HSM Network. Following each review, the Health Services Manager must:

- (a) immediately seek to expand or change the mix of Health Care Providers to address any identified access or other service delivery issues; and
- (b) promptly remove from the HSM Network any provider that the Health Services Manager identifies as responsible for frequent or serious service failures or other service issues.

5.4 Network Provider Agreements

- (a) Prior to appointing a Network Provider to the HSM Network, the Health Services Manager must use reasonable endeavours to enter into a Network Provider Agreement with all other Network Providers.
- (b) For the avoidance of doubt, where:
 - (i) the Network Provider:

- (A) is a public hospital or a public health care provider funded by the Government; and
- (B) the Health Services Manager has used its reasonable endeavours to enter into a Network Provider Agreement with that Network Provider,

the Health Services Manager may nevertheless appoint that Network Provider to the HSM Network.

An example of where the Department might agree that a Network Provider does not need to enter into a Network Provider Agreement prior to being appointed to the HSM Network is where there is no other provider of general practitioner services in the area or immediate region in which that type of Health Care service for Transferees and Recipients is required that:

- (A) meets the minimum requirements and standards concerning the provision of the relevant specified Health Care to Transferees and Recipients; and
- (B) is willing to provide the specified Health Care to Transferees and Recipients and to enter into a Network Provider Agreement.

- (c) Unless otherwise agreed by the Department in writing, each Network Provider Agreement entered into by the Health Services Manager under **clause 5.4** must:
 - (i) describe the range of Health Care that the Network Provider has agreed to provide to Transferees and Recipients and specify the fee or rate (or reference to a scale of fees or rates published elsewhere) for the performance of the Health Care services the Network Provider will most commonly provide;
 - (ii) require the Network Provider to comply with the Policy and Procedures Manual as amended from time to time;
 - (iii) be signed by the Network Provider and the Health Services Manager before the Network Provider commences providing any Health Care to Transferees and Recipients;
 - (iv) allow the Health Services Manager to immediately terminate the Network Provider Agreement in the event of:
 - (A) any service failing on the part of the Network Provider or Network Provider Personnel;
 - (B) if the Network Provider is considered to no longer represent value for money for Health Care provided to Transferees and Recipients; or

- (C) in the event of a relevant change in scope or termination of this Agreement;
- (v) require the Network Provider to participate in pre-service induction training and ongoing training, as required from time to time by the Health Services Manager, and completed relevant training records, showing details of training provided and acknowledged by the relevant training recipients;
- (vi) require the Network Provider, once it becomes aware of a Critical Incident, to notify the Health Services Manager within two (2) hours of it becoming aware of that Critical Incident;
- (vii) describe the range of training and support to be provided to the Network Provider with a view to assisting the Network Provider understanding:
 - (A) the specific health needs and risks of Transferees and the environment of Nauru and Manus Island; and
 - (B) its role and responsibilities in the delivery of Health Care to Transferees and Recipients, including the referral processes, Transferee and Recipient consent processes, the exception processes and the administrative processes, as described in **clause 5.2** of this **Schedule 2**;
- (viii) require the Network Provider to participate in any investigation requested by the Department into that Network Provider's suitability;
- (ix) where a Network Provider might be required to deliver Health Care onsite at each Facility, require the Network Provider to ensure that it and each of its Network Provider Personnel that might be required to be onsite at each Facility, to undergo or have undergone an Australian Federal Police background check, or, where applicable, an equivalent check in the country where the Network provider and Network provider Personnel normally provides health services, within the twelve (12) Months immediately prior to delivering that Health Care on Nauru or Manus Island;
- (x) where a Network Provider might have contact with children in relation to this Agreement, require the Network Provider to ensure that, prior to having such contact, its personnel has successfully undergo or have undergone a relevant Working with Children Check.
- (xi) require the Network Provider to comply with any Occupational Health and Safety Management Plan developed by the Health Services Manager for the Facilities;
- (xii) require the Network Provider to maintain professional indemnity or errors and omissions (or similar) insurance for the duration of the Network Agreement and until the expiry of at least seven (7) years thereafter; and

(xiii) require the Network Provider to agree that it will not:

- (A) make any public statement;
- (B) release any information to, make any statement or comment to, deal with any inquiry from or otherwise assist or advise the media; or
- (C) publish, distribute or otherwise make available any information or material to third parties;

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

- (D) the Department, or Department Personnel (whether specifically referred to or not);
- (E) the Health Services;
- (F) the relationship between any of the Department, Health Services Manager, Network Provider or any other Department Services Provider; or
- (G) any other matter directly or indirectly related to the Network Provider Agreement,

other than:

- (H) to direct any such inquiry to the Department;
- (I) as is specifically authorised by and to the minimum extent necessary to fulfil the Network Provider's obligation under the Network Provider Agreement or comply with any Law; or
- (J) as may be otherwise specifically authorised in writing by the Department.

(d) The Health Services Manager must take reasonable steps to enforce each Network Provider's compliance with the conditions specified in **clause 5.4(c)** above.

6. HUMAN RESOURCE MANAGEMENT

6.1 Induction Programme and Ongoing Training

(a) The Health Services Manager must develop and deliver pre-service induction and ongoing training programs for all Health Services Manager Personnel and Network Providers that are sufficiently tailored for the different roles and

responsibilities of individual personnel and providers. These programmes must inform and explain personnel and providers of (as applicable):

- (i) the requirements of the Contract, including the referral, consent, exception and administrative processes referred to in **clause 5.2** of this **Schedule 2** and the operation of Department Health Policy;
 - (ii) the Health Services Manager's service delivery models and arrangements;
 - (iii) relevant content of the Policy and Procedures Manual;
 - (iv) cultural, race, gender and specific health issues, risks and sensitivities relevant to the delivery of Health Care to Transferees; and
 - (v) any other matter that the Department reasonably notifies to the Health Services Manager as the subject of (or content for) a training or education program.
- (b) The Health Services Manager must provide the Department with copies or details of any training program (including course materials) developed under this **clause 6.1**, within five (5) Business Days of any Department request. If the Department (acting reasonably) does not consider that a training programme (or course materials) meets the requirements of this **clause 6.1**, the Health Services Manager must update the program or materials to take account of the Department's comments.
- (c) The Health Services Manager must ensure that all Health Services Manager Personnel and Network Providers:
- (i) complete induction training appropriate for the individual before commencing any work or delivering Health Care under the Contract;
 - (ii) are kept informed on a timely basis of all relevant changes to the Contract, Department Health Policy and the Policy and Procedures Manual; and
 - (iii) have access at all times (whether in hardcopy or electronic form) to the Policy and Procedures Manual and relevant Department Health Policy.
- (d) The Health Services Manager must ensure there are either Health Services Manager Personnel or Network Providers on Nauru and Manus Island with appropriate training or qualifications in providing torture and trauma support services to Transferees.
- (e) The Health Services Manager must maintain complete and up to date training records for all Health Services Manager Personnel and Network Providers showing details of training offered to, and completed by personnel and providers. The Health Services Manager must provide the Department with a copy of the training records kept under this **clause 6.1**, within five (5) Business Days of any Department request.

6.2 Qualifications, Skills, Registration and Insurance Requirements for Health Care Providers

- (a) The Health Services Manager must ensure that all Health Services Manager Personnel and Network Providers, who deliver Health Care to Transferees and Recipients:
- (i) are (as applicable) appropriately licensed, qualified and registered to practice with the relevant body (and observe any conditions or requirements imposed on their licence or registration), before delivering any Health Care to Transferees and Recipients;
 - (ii) maintain their registration as current for so long as they continue to provide Health Care to Transferees and Recipients;
 - (iii) are appropriately insured in accordance with the Contract, the Law and professional and industry best practice and standards at all times when delivering Health Care to Transferees and Recipients; and
 - (iv) are actively involved in maintaining and updating their professional skills and standards through regular training and education, including by completing any training developed and made available by the Health Services Manager under this **Schedule 2**.
- (b) The Parties agree that the Health Services Manager may discharge its obligations in relation to Network Providers under **clause 6.2(a)** by sighting and reviewing documents that evidence that:
- (i) for licence, qualification or registration:
 - (A) the Network Provider is licensed and registered with the relevant registration board, college or other relevant body to deliver the Health Care for which it has been appointed to the HSM Network to deliver; and

on the following dates:

 - (B) immediately prior to appointing that Network Provider to the HSM Network;
 - (C) where that licence or registration has a recurring renewal date, on each such renewal date; and
 - (D) at any other time where it would be reasonable for the Health Services Manager to suspect that there may be a problem with that Network Provider's licence or registration.
 - (ii) for insurances:
 - (A) the Network Provider has the appropriate insurance coverage, on the following dates:

- (B) immediately prior to appointing that Network Provider to the Network; and
 - (C) where an insurance policy effected has a renewal date, on each such renewal date throughout the Term.
- (c) The Health Services Manager must ensure that the Network Provider to whom a Transferee and Recipient is referred is qualified, licensed, registered and insured to deliver the specific Health Care for which they are referred.

6.3 Clearances and Checks

- (a) Prior to and as a condition of their employment or engagement in connection with the Contract, the Health Services Manager must make appropriate and reasonable investigations of the suitability of prospective Health Services Manager Personnel and Network Providers, other than an Excepted Network Provider's. These investigations must comprise (at the Health Services Manager's cost) a review of each individual's criminal, medical, professional and employment history. The results or findings of such investigations must be provided to the Department, within five (5) Business Days of any Department request.
- (b) The Health Services Manager must certify that each non-Australian clinician:
- (i) has obtained qualifications of a similar standing to the Australian qualifications for that category of clinician; and
 - (ii) are capable of providing health care to a standard comparable with Australian standards.

The certification must be provided by the Health Services Manager's Clinical Governance Team prior to the person's deployment to Nauru or Manus Island and must be kept on their clinician staff record.

- (c) Without limiting **clause 6.3(a)**, the Health Services Manager must ensure:
- (i) all Health Services Manager Personnel, Network Providers and Network Provider Personnel working onsite at a Facility successfully undergo or have undergone within the twelve (12) Months immediately prior to delivering that Health Care onsite at a Facility, an Australian Federal Police background check, or, where applicable, an equivalent check in the country where the person normally provides health services, before commencing any work or delivering any Health Care in connection with the Contract, and annually thereafter; and
 - (ii) all Health Services Manager Personnel, Network Providers and GPs who may have contact with children undergo a Working with Children Check before commencing any work or delivering any Health Care in connection with the Contract.

- (d) The Health Services Manager must promptly refer details of any offences or other issues identified by an Australian Federal Police Background Check, or equivalent check, or a Working with Children Check to the Department. The Department may refuse to allow any person who the Department considers is unsuitable on the basis of any such checks access to a Facility, a Transferee or a Recipient.
- (e) At any time where it would be reasonable for the Health Services Manager to suspect that there may be a problem with a Network Provider, or following a reasonable request by the Department to do so, the Health Services Manager must promptly:
 - (i) investigate the suitability of that Network Provider; and
 - (ii) provide the results or findings of such investigations to the Department on concluding the investigation or within five (5) Business Days of any Department request, whichever is the earlier.

6.4 Clinician Staff Records

- (a) The Health Services Manager must maintain and update staff records for each person who:
 - (i) is employed by the Health Services Manager and holds a clinical role detailed in **Annexure B** of this **Schedule 2** and whose principal place of work is Nauru or Manus Island; and
 - (ii) clinicians employed by the Health Services Manager who visit Nauru and Manus Island for regular but limited periods for the purpose of providing health care to Transferees.
- (b) The clinician staff record must include:
 - (i) personal contact details including phone number, residential address, email and emergency contact details;
 - (ii) expiry date of the person's professional registration details in accordance with **clause 6.2(a)(i)**;
 - (iii) expiry date of the person's Australian Federal Police background check;
 - (iv) expiry date of the person's Working with Children checks; and
 - (v) for non-Australian clinicians, a copy of the certification issued by the Health Services Manager Clinical Governance Team in accordance with **clause 6.3(b)**.

6.5 Occupational Health and Safety

- (a) The Health Services Manager must develop and implement at Nauru and Manus

Island an Occupational Health and Safety Management Plan tailored to each Facility. The Occupational Health and Safety Management Plan must be developed and implemented in collaboration with the Department Services Providers and the Department.

- (b) Each Occupational Health and Safety Management Plan developed under this **clause 6.5** must have as its objective the goal of ensuring the health and safety of all Health Services Manager Personnel and Network Provider Personnel using or visiting medical facilities at each Facility. Each plan must include policies and procedures relating to:
- (i) hazard and infection control;
 - (ii) occupational hygiene;
 - (iii) safety and security of persons working at each Facility;
 - (iv) occupational health and safety training requirements for Health Services Manager Personnel and Network Provider Personnel providing health care to Transferees and Recipients; and
 - (v) post Incident management and debrief activities.
- (c) The Occupational Health and Safety Management Plan developed under this **clause 6.5** must be incorporated into the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**.

7. COLLABORATIVE WORKING ARRANGEMENTS

7.1 General

The Health Services Manager must develop, implement and manage appropriate policies and procedures that foster open, co-operative, constructive and professional working relationships with the Department and Department Services Providers. These policies and procedures must give effect to the requirements of **clause 7.2** of this **Schedule 2** and be incorporated in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**.

7.2 Working with the Department and Department Services Providers

- (a) The Health Services Manager must at all relevant times deal and work co-operatively with the Department and the Department Services Providers for the primary purpose of ensuring the delivery of continuous, coordinated, efficient, effective and safe Health Care to Transferees.
- (b) For the purposes of **clause 7.2(a)**, the Health Services Manager must:
- (i) at the Department's request, cooperate with and assist the Department Services Providers to manage and respond to Transferees health or behavioural management issues or occurrences at each Facility, including by providing specialist health advice, education and support, assisting

with the preparation and review of individual management plans and prevention plans and attending appropriate meetings, at the times and in the manner described in the Contract or as otherwise notified by the Department at the relevant time;

- (ii) develop and work with the Department Services Providers in the preparation, communication, implementation and review of Critical Incident and emergency management plans and procedures at each Facility;
- (iii) assist the Department Services Providers to respond to and manage emergencies or Critical Incidents at each Facility by providing an appropriate Health Care response consistent with the procedures developed under **clause 7.2(b)(ii)**;
- (iv) cooperate and assist the Department to respond to inquiries, investigations, complaints or reviews undertaken by the Minister, any House or Committee of the Parliament of the Commonwealth of Australia, the Commonwealth Auditor-General, the Privacy Commissioner, or other relevant stakeholder (including the Commonwealth and Immigration Ombudsman, and advocates for Transferees). This response may take the form of the provision of oral or written (as requested by the Department) advice or information on any matter relevant to the Contract and must address the matters requested by the Department;
- (v) at the Department's request, provide training, education or advice to the Department or Department Services Providers on health concerns or issues relevant to the care or management of Transferees; and
- (vi) work closely with the Department Services Providers to identify and develop (as applicable) operational procedures and structured hand-over processes for all co-dependent, shared activities and service interfaces relevant to performance of the Contract. These policies and procedures must be approved by the Department before being incorporated in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**.

8. ENVIRONMENTAL HEALTH SERVICES

8.1 The Health Services Manager must:

- (a) monitor and provide medical advice, upon the Department's request, on the health impacts of climate change on Transferees, Department personnel and Department Services Providers personnel;
- (b) manage medical waste and its disposal, in accordance with **clause 16.5** of this **Schedule 2**;

- (c) where possible, manage unnecessary exposure of Transferees and other personnel to radiation, including regular servicing of the x-ray machine in accordance with Accepted Industry Practice;
- (d) engage with Department Services Providers in the prevention of recreational water illness, including educating Transferees on water safety; and
- (e) engage with Department Services Providers in the prevention of lead poisoning in children, including notifying the Department of a lead poisoning incident once the health services manager becomes aware of the incident.

9. INCIDENT NOTIFICATION

9.1 Development of system

- (a) The Health Services Manager must develop and implement a Critical and Other Incident management system for the timely identification, communication and reporting to the Department of Critical and Other Incidents at each Facility or which otherwise involve a Transferee.
- (b) The system developed under this **clause 9.1** must be incorporated in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**, ensure the Health Services Manager's compliance with the requirements of **clause 9.2**, and include controls such as retrospective reviews and examination of trends by the Clinical Governance Team. The Policy and Procedures Manual must attach the pro forma Incident Report that must be used for reporting Critical and Other Incidents to the Department, and prominently identify the Department's email address for the submission of all such reports.

9.2 Notification and reporting

- (a) The Health Services Manager must:
 - (i) in the event the Health Services Manager or any Health Services Manager Personnel becomes aware of a Critical Incident:
 - (A) immediately inform (but no later than one (1) hour after first becoming aware of the Critical Incident) the Department of the Critical Incident; and
 - (B) provide the Department with a written report of the Critical Incident in accordance with **clause 9.2(b)**, within four (4) hours of notifying the Critical Incident under **clause 9.2(a)(i)(A)**;
 - (ii) in the event the Health Services Manager or any Health Services Manager Personnel becomes aware of an Other Incident, provide the Department with a written report of that Other Incident in accordance with **clause 9.2(b)**, within twenty four (24) hours of first becoming aware of the Other Incident.
 - (iii) For the purpose of **clause 9** of this **Schedule 2**, Critical and Other Incidents

are defined in **Annexure A** of this **Schedule 2**.

- (b) An Incident Report provided to the Department under **clause 9.2(a)** must:
- (i) describe the background, participants and sequence of events relevant to the Critical or Other Incident being reported;
 - (ii) describe all action taken by Health Services Manager Personnel, Network Provider or Network Provider Personnel in response to the Critical or Other Incident; and
 - (iii) be in the form approved by the Department and submitted electronically to the Department's nominated email address.
- (c) Any Incident Report (and other information provided to the Department in response to an Incident) must be provided in accordance with relevant Laws and Department Health Policy.

9.3 **Corrective or follow up action**

Following notification of a Critical or Other Incident under this **clause 9**, the Health Services Manager must take such corrective or review action as agreed with the Department.

10. **HEALTH MANAGEMENT**

10.1 **Delivery of Health Care**

- (a) The Health Services Manager must:
- (i) ensure that Transferees and Recipients are able to access and receive Health Care in accordance with the Contract, including at the times and in the manner described in **Part 2** and **Part 3** of this **Schedule 2**;
 - (ii) ensure no Transferee is denied or fails to receive (other than by reason of that person's own choosing) any clinically necessary Health Care, except where the recommended Health Care falls outside the scope of Department Health Policy; and
 - (iii) seek to ensure that Transferees take on shared responsibility for the management of their own health, whilst remaining alert and responsive to any Transferee with a chronic or serious health condition, who does not fully understand or accept the concept of self responsibility for management of their own health, or who is not reasonably capable of managing their own health.
- (b) The Health Services Manager must ensure:
- (i) all providers of Critical Health Services are current employees of the Health Services Manager, excluding disciplines which, for practical

purposes, may be served by visiting specialists, such as optometrists and radiologists; and

- (ii) all other providers of Health Care to Transferees and Recipients are employees of the Health Services Manager, except in the following circumstances when a provider that is not an employee of the Health Services Manager may be used by the Health Services Manager to deliver Health Care to Transferees and Recipients:
 - (A) where the Department has consented to the use of that other provider;
 - (B) where a Transferee requests another provider and the Health Services Manager arranges for the Transferee to see that provider solely at the person's own risk and cost in accordance with **clause 10.7(b)(ii)** of this **Schedule 2**; or
 - (C) in any case where the Department has separately agreed terms with a provider for the delivery of certain services and the Health Services Manager uses the Department's negotiated arrangement for the delivery of those services, in circumstances where the Health Services Manager demonstrates to the Department's satisfaction that the Department's negotiated arrangement offers the Department best value for money for the relevant services.
- (c) Without limiting the Health Services Manager's obligations under **clause 10** of this **Schedule 2**, the Health Services Manager must use its best endeavours to ensure consistency of Health Care Providers for Transferees during each episode of care, and for the duration of their time on Nauru and Manus Island.

10.2 Access to Specialist, Hospital and Allied Health Care

- (a) The Health Services Manager must ensure that no Transferee or Recipient accesses specialist, hospital (other than in a medical emergency) and allied health services (including all dental services, optometry services and pharmacy services) without a referral (or other written authority) from the person's GP or a nurse (as agreed with the Department). All referrals by a GP or a nurse (as agreed with the Department) must be on the basis of established clinical need. If a person's GP or a nurse (as agreed with the Department) recommends or provides a referral for Health Care outside the scope of Department Health Policy the Health Services Manager must obtain the Department's prior consent before actioning that referral.
- (b) If any Transferee at a Facility receives a referral for any specialist, hospital or allied Health Care, the Health Services Manager must ensure:
 - (i) an appointment is made for the person with the relevant Health Care Provider within an appropriate timeframe; and
 - (ii) the timing of the appointment scheduled under **clause 10.2(b)(i)** is

appropriate and sufficient to ensure the delivery of relevant Health Care within a clinically appropriate timeframe.

10.3 Coordination and follow up

- (a) The Health Services Manager must maintain an up to date electronic register for each Facility of all Transferee and Recipient referrals to, and appointments and consultations with, Health Care Providers of specialist, hospital and allied health services. Each Facility and Health Services Manager must regularly monitor and review the register with a view to confirming:
 - (i) the actioning and arranging of referrals in accordance with **clause 10.2**;
 - (ii) Transferees attendance at scheduled appointments or consultations;
 - (iii) the complete and timely transfer of relevant health information between treating Health Care Providers in accordance with this **Schedule 2**;
 - (iv) the provision of clinically appropriate follow up care by a Transferee's GP following that person's referral to a specialist, hospital or allied Health Care Provider; and
 - (v) that referral patterns and practices within each Facility are consistent with the requirements of the Contract (including this **clause 10**).
- (b) The Health Services Manager must:
 - (i) promptly investigate, and take steps to address, any referral patterns or practices identified or suspected as not complying with the Contract;
 - (ii) notify the Department of all such referral patterns or practices identified or suspected under **clause 10.3(b)(i)**, and steps taken (or proposed to be taken) by the Health Services Manager with a view to confirming or addressing such matters, within ten (10) Business Days of the Health Services Manager completing its review under **clause 10.3(a)**; and
 - (iii) provide the Department with access to information contained in the register maintained under **clause 10.3(a)**, at the times and in the form reasonably requested by the Department.

10.4 Transfer and sharing of Transferee Health Information

- (a) The Health Services Manager must develop and implement appropriate policies, procedures and processes for the timely, complete and lawful exchange of Transferee health related information. These policies, procedures and processes must:
 - (i) provide for the sharing and transfer of all relevant Transferee health related information in accordance with the Contract (including this **clause 10.4**), irrespective of the person's geographic location or identity of treating Health Care Provider;

- (ii) contain a link to a template "Release of Medical Information" consent form in the form approved by the Department;
 - (iii) where a Transferee declines to give consent to the release or transfer of his or her health information, describe policies and procedures for the management of that person's Health Care Record; and
 - (iv) recognise that Transferee health information may be exchanged or transferred at any time during a person's time on Nauru or Manus Island and also following their Release or Removal;
- (b) A draft of the policies and procedures developed under this **clause 10** must be incorporated in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**. These policies and procedures must be approved by the Department before being incorporated in the Policy and Procedures Manual.
- (c) The Health Services Manager must ensure all treating Health Care Providers seek a Transferee's consent to the transfer of his or her health information using the template "Release of Medical Information" included in the Policy and Procedures Manual.
- (d) In all cases where a Transferee agrees to the release of his or her health information, the Health Services Manager must:
- (i) include a copy of the relevant signed consent form in the person's Health Care Record;
 - (ii) ensure all health information concerning the person is exchanged and transferred in accordance with terms of the consent and the policies and procedures developed under this clause;
 - (iii) actively pursue and follow up with any Health Care Provider who fails to transfer and exchange Transferee health information in accordance with **clause 10.4(d)(ii)**; and
 - (iv) withhold payment of any Network Provider invoice for Health Care provided to a Transferee pending that Network Provider's compliance with **clause 10.4(d)(ii)**.
- (e) If a Transferee declines to provide his or her consent (or consents to the release of information on terms substantially different to those approved by the Department), the Health Services Manager must notify the Department in accordance with **clause 9** of this **Schedule 2**, and manage that person's Health Care Record in accordance with the policies and procedures developed under this **clause 10.4**, or as agreed with the Department at the relevant time. The Health Services Manager must ensure that a Transferee is not denied any clinically necessary Health Care on the basis of his or her refusal to provide consent to the release of his or her health information.

10.5 Communicating with Transferees

The Health Services Manager must:

- (a) implement a communications policy (consistent with this **clause 10.5**) that sets out the standards and qualities that it expects of Health Services Manager Personnel, and Network Providers when interacting and dealing with Transferees. This policy must be incorporated in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**;
- (b) ensure all documentation and other written material or advice (for example, consent forms and health orientation and advice information that the Health Services Manager gives, prepares for distribution or directs to Transferees) is translated into each of the various key languages specified by the Department. If a Transferee is from a language group that is not represented by one of the key languages or is illiterate, the Health Services Manager must make suitable alternative arrangements for the communication of the information or material to the Transferee. This could include having the document or material read to the Transferee in their own language;
- (c) arrange, unless the Department has arranged separately, for the presence of 'face to face' interpreter services for any onsite health consultation or interaction with a Transferee that involves a complex or sensitive health issue and clear communication with the Transferee is of paramount importance (for example, where a Transferee needs to decide whether to pursue cancer treatment in Australia or return home to family in his or her country of origin);
- (d) at the Department's request, arrange for the presence of 'face to face' interpreter services at each Facility; and
- (e) in all cases where 'face to face' interpreter services are not available to a Transferee at the time of a health consultation or other scheduled interaction with a Health Care Provider, ensure the person has access, on request, to the services of a qualified and accredited telephone interpreter service. Each Transferee must be informed of available interpreter services (and given details of how to access those services) at the time of the person's arrival on Nauru or Manus Island.

10.6 Informed Consent for Delivery of Health Care

- (a) The Health Services Manager must ensure that Transferees and Recipients are fully informed about their health and Health Care options, consent to the delivery of all Health Care, and participate as far as reasonably possible in the management of their own health. The expressed wishes of a Transferee or Recipient who is considered reasonably capable of making informed decisions with regard to his or her own health must be respected. For this purpose, appropriate interpreter services must be used in accordance with **clause 10.5** to ensure that language or communication difficulties are not a factor for Transferee effectively participating in their health management.

- (b) The Health Services Manager must ensure that:
 - (i) a Transferee or Recipient's informed consent is sought in accordance with all relevant Laws and Department Health Policy;
 - (ii) if a Transferee or Recipient declines to give his or her consent for any recommended Health Care; and the person's health is thereby placed at serious risk, the Department is notified of that refusal in accordance with **clause 9** of this **Schedule 2**; and
 - (iii) any involuntary treatment of a Transferee or Recipient is in accordance with all relevant Laws and accepted professional standards and practice.

10.7 Transferee Requests

- (a) The Health Services Manager must develop and implement policies and procedures that allow Transferees to make requests in relation to their Health Care, and for the management of such requests in accordance with this **clause 10.7**. These policies and procedures must be incorporated in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**.
- (b) These systems and processes must ensure:
 - (i) *if a Transferee requests a second medical opinion* - this opinion is obtained only where it has been clinically recommended;
 - (ii) *if a Transferee requests access to his or her Health Care Record (or any information contained in that record)* – access is provided in accordance with relevant Laws, together with an explanation aimed at ensuring the person understands the information being provided.
- (c) The Health Services Manager must ensure all Transferee health related requests are acknowledged, responded to and actioned (as appropriate) in a timely and reasonable manner in accordance with the policies and procedures developed under this **clause 10.7**. If a request is of a kind mentioned in **clause 10.7(b)**, the Health Services Manager must action the request in accordance with the response described in that clause.

11. INFORMATION AND HEALTH CARE RECORDS MANAGEMENT

11.1 Transferee Health Care Records

- (a) Subject to the availability of appropriate communication services provided by the Department at each Facility pursuant to **clause 13.1** of this **Schedule 2**, the Health Services Manager must maintain a secure network of individual electronic Health Care Records for all Transferees. This network must be capable of collecting, storing, retrieving and exchanging relevant up-to-date health information for all Transferees, irrespective of their location. The system must allow multiple providers within a multi-disciplinary health team to simultaneously input and access data and information on a "need to know" basis. It must also

provide for the collecting, sorting and archiving of scanned documents from Network Providers to ensure a holistic medical record is available for each person at any given time.

- (b) The Health Care Record maintained for each Transferee must:
- (i) contain a contemporaneous record of all mental health and individual management plans, health consultations and appointments attended by the person during his or her time in Australia and on Nauru or Manus Island, including consultation notes, test results, referrals, specialist reports and vaccination history, so as to provide an up to date and accurate picture of the person's health status at any given point in time;
 - (ii) contain copies of all signed consent forms and details of any instances in which the person did not consent (whether to clinically recommended Health Care, or to the release and transfer of his or her health information);
 - (iii) contain an up-to-date health summary consistent with applicable Health Standards and otherwise, Accepted Industry Practice, and must contain as a minimum the following information for each consultation with a *Transferee*:
 - (A) date and time of consultation;
 - (B) full name and position/title of health professional;
 - (C) *Transferee's* symptoms (if any);
 - (D) examinations/tests undertaken;
 - (E) clinical findings, provisional diagnosis or differential diagnosis;
 - (F) allergies and immunisation plan;
 - (G) treatment plan (if required); and
 - (H) review date (if required);
 - (iv) be securely stored, protected against unauthorised access, theft and damage and readily accessible by Health Services Manager Personnel;
 - (v) contain fields and classification indices that are capable of rapidly retrieving and sorting health data and other information and for ease of reporting to the Department; and
 - (vi) be otherwise created, maintained and used in accordance with the *Archives Act 1983*, AS ISO 15489-2002 Australian Standard for Records Management, and relevant Department Health Policy and applicable Law.
- (c) The Health Services Manager must ensure all health information received from a

Network Provider in accordance with **clause 10.4** of this **Schedule 2** and any medical results collected in accordance with **clause 24.2** of this **Schedule 2** are incorporated into the relevant Transferee's Health Care Record, within twenty four (24) hours of the Health Services Manager receiving the information.

- (d) The Health Services Manager must conduct regular audits of Health Care Records maintained under this **clause 11.1** to verify compliance with this clause. These audits must be conducted at intervals agreed with the Department (but no less than Quarterly) and applying Department approved methodologies and processes.

11.2 Information Management and Exchange

The Health Services Manager must develop and implement health information collection, storage and exchange policies and practices that:

- (a) are consistent with the *Archives Act 1983* (Cth) and AS ISO 23081 Information and Documentation-Records Management Processes - Metadata for Records;
- (b) facilitate and support the timely and complete exchange of all relevant Transferee and Recipient health information in accordance with the Contract;
- (c) ensure Transferees and Recipients have access to their own health information and records in accordance with relevant Laws; and
- (d) allow for the generation and production (as applicable) of Transferee health summaries, health data, reports and other material and information required by the Contract, including this **Schedule 2** and **Schedule 4.3** (Reporting).

12. FINANCIAL MANAGEMENT

The Health Services Manager must develop and implement a financial management system that:

- (a) itemises and records the cost of Health Care delivered to Transferees and Recipients (including the cost of individual investigations, treatments or procedures or other services) in accordance with **Schedules 4.3** (Reporting) and **Schedule 5** (Fees and Payments);
- (b) maintains and supports a "cashless" transaction system for the delivery of Health Care to Transferees and Recipients, and supports the billing and fee arrangements agreed with each Network Provider;
- (c) itemises and records all Network Provider transactions (on the basis of "service type/category", "identity/location/speciality of Health Care Provider" and "Regional/Facility/placement"); and
- (d) links financial and itemised cost information to the Health Services Manager's information technology system in a manner which enables the automatic

extraction and download of cost and service utilisation information and data to facilitate and support reporting to the Department.

13. INFORMATION AND TECHNOLOGY REQUIREMENTS

13.1 Information Technology Requirements

- (a) The Health Services Manager must provide, install, manage and support information technology systems that:
- (i) have the software, hardware, encryption and scanning capacity and functionality to support compliance with the Contract;
 - (ii) are capable of collecting, storing, downloading and reporting health information and health data in accordance with the Contract;
 - (iii) comply with the logical security requirements of the Australian Government Information Security Manual, with the exception of components provided by the Department, in which case the Department is responsible for compliance with the Australian Government Protective Security Policy Framework in relation to those components;
 - (iv) meet the Department's security and privacy requirements for data and information protection, including by encrypting information classified as sensitive;
 - (v) are housed in secure locations adequate to prevent unauthorised access. Where a location for information technology systems is provided by the Department, the Department will be responsible for that location's security except to the extent that an act or omission of the Health Services Manager results in a breach of security;
 - (vi) are appropriately licensed at all times;
 - (vii) have the capacity and flexibility to respond to fluctuations in service demand and volumes;
 - (viii) are properly maintained, supported and available at all necessary times for performance of the Health Services;
 - (ix) are updated and maintained on a regular basis;
 - (x) minimise multiple *Transferee* records; and
 - (xi) are in all respects suitable and appropriate for the performance of the Health Services, and are able to be easily used by appropriately trained Health Services Manager Personnel.
- (b) Before the end of each day, the Health Services Manager must produce a back up of all electronic data created or used in connection with the Contract, and store that data in a secure and safe location.

- (c) The Health Services Manager must provide appropriate and timely training for Health Services Manager Personnel in the use of information technology relevant to their role and responsibilities in connection with the Contract.

13.2 Removal of Hardware

Unless otherwise agreed, the Health Services Manager must ensure that any information technology storage media, including hard drives, located at each Facility or at the Health Services Manager headquarters, that has at any time held Health Care Record or other health information relevant to a Transferee or Recipient, or other Department Confidential Information, is sanitised in accordance with the Australian Government Protective Security Policy Framework prior to leaving the Facility or the Health Services Manager's headquarters.

13.3 Access to Information Technology Systems

The Health Services Manager must ensure that only Health Services Manager Personnel approved or authorised by the Department have access to the Health Services Manager's information technology systems containing Transferee Health Care Records or other Transferee Information.

14. QUALITY MANAGEMENT AND CONTINUOUS IMPROVEMENT

14.1 Quality Management System

- (a) The Health Services Manager must develop, implement and maintain a quality management system for performance of the Health Services. This system must identify and analyse service delivery and other performance issues or failures across the Facilities and contain a systematic process for managing and responding to any identified service issues or failures. The objective of this system must be the continuous improvement of service delivery in order to maximise value for money and achievement of the Department's Contract objectives.

15. COMPLAINTS AND FEEDBACK

15.1 Managing Complaints and Feedback of Transferees

- (a) The Health Services Manager must develop, implement and manage a system that allows Transferees to make a complaint or provide feedback on matters relevant to their Health Care, including the performance of any Health Care Provider or Health Services Manager Personnel. This system must specify policies and procedures that enable and support the management, response and resolution of Transferee complaints or feedback in a responsive, fair, open and timely manner.
- (b) The Health Services Manager must incorporate the complaints management system developed under this **clause 15.1** in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**. These policies and procedures must be approved by the Department before being incorporated in the Policy and

Procedures Manual. The Health Services Manager must include material concerning the objectives and operation of this system in the induction and ongoing education training programs developed under **clause 6.1** of this **Schedule 2**.

- (c) The complaints management system must record the following information:
 - (i) the date the complaint or feedback was received;
 - (ii) the nature of the complaint or feedback; and
 - (iii) status of the complaint.
- (d) The Health Services Manager must keep the Department informed of complaints in accordance with **Schedule 4.3** (Reporting) of this Contract.

15.2 Feedback from Health Care Providers

- (a) The Health Services Manager must establish, implement and manage a system that enables Health Care Providers to raise, in confidence and without prejudice to their position or fear of negative repercussions, concerns over any aspect of Health Services delivery, or Health Care delivered to a Transferee. The Health Services Manager must notify the Department of any concerns notified by a Health Care Provider and, at the Department's option, work co-operatively with the Department and the relevant Health Care Provider in an attempt to address those concerns.
- (b) The Health Services Manager must incorporate the Health Care Provider feedback system developed under this **clause 15.2** in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**.

16. HEALTH FACILITIES, EQUIPMENT AND CONSUMABLES

16.1 Supply of Medical Equipment, Consumables and Other Supplies

- (a) The Health Services Manager must ensure that any areas or buildings (or parts of buildings) within the Facility that are used to deliver Health Care to Transferees and Recipients:
 - (i) are equipped, with supporting equipment maintenance arrangements, to the level and standard necessary to deliver Health Care to Transferees and Recipients in accordance with the Contract, Department Health Policy, applicable Health Standards (where applicable), and otherwise, Accepted Industry Practice. This includes ensuring access at each Facility to all medical equipment necessary to provide comprehensive primary health care and resuscitation services, including access to an automated external defibrillator at each Facility;
 - (ii) provide a safe and effective working environment for all Health Services

Manager Personnel and Network Provider Personnel; and

- (iii) have available for use and consumption at all times all necessary medical consumables and supplies (including medicines, vaccines and other products) to deliver Health Care onsite at each Facility in accordance with the Contract.
- (b) The Health Services Manager must ensure that all assets and medical equipment that it has available for use at a Facility are kept in sound working condition and maintained and repaired in accordance with relevant Australian standards, applicable Health Standards and any manufacturers' recommendations. The Health Services Manager is responsible for the cleaning and sterilisation of all medical equipment. All consumables and supplies (including medicines and vaccines) must be kept in a usable condition, securely and safely stored and used or dispensed in accordance with all applicable Laws, the applicable Health Standards (where applicable), and otherwise, Accepted Industry Practice.
- (c) The Health Services Manager must conduct Quarterly audits (or more frequently where indicated) of medical equipment, consumables and supplies stocks at each Facility to ensure the safe and continuous supply of such items for the delivery of Health Care at each Facility. The Health Services Manager must ensure replacement equipment, consumables and supplies are anticipated and planned to ensure compliance with this **clause 16.1** at all times.

16.2 Management and Maintenance of Department Assets

- (a) The Health Services Manager must manage and maintain all Department owned assets that the Department makes available to the Health Services Manager for performance of the Health Services. The Department's assets must be managed and maintained:
 - (i) in accordance with any Department instructions, manufacturers' recommendation or otherwise, Accepted Industry Practice; and
 - (ii) with the aim of ensuring each asset achieves its design life and that the incidence of breakdowns and repairs of those assets is minimised.
- (b) At the Department's request, the Health Services Manager must conduct an annual physical stock take of all Department owned assets at each Facility that have been provided to the Health Services Manager in connection with the Contract. The Health Services Manager must provide the Department with a current complete asset listing at the times and in the form reasonably requested by the Department.
- (c) The Health Services Manager must promptly report to the Department any breakdown, loss of or damage to any Department owned asset, providing details of any known cause and the extent of the damage and estimated time and cost of repair or replacement. The Health Services Manager must arrange for the repair, or replacement of a Department asset with an asset of comparable quality and

value, in accordance with any Department request.

16.3 Vector Control Management

- (a) The Health Services Manager will develop, implement and maintain an Integrated Vector Management Program (IVMP) to manage the risk of vector-borne infection in Transferees and Recipients, particularly in relation to Malaria and Dengue Fever on Manus Island. The term of the IVMP (IVMP Term) will be for the duration of the Contract or with an earlier expiration if the Department deems appropriate.
- (b) Within one month of the IVMP under the terms of this Contract being approved by the Department the Health Services Manager will conduct a malaria risk assessment that will design a malaria control program responsive to local circumstances.
- (c) As a minimum, the IVMP will include the following:
 - (i) Primary prevention: activities will focus on reducing vector activity and density as well as vector-human contact, including:
 - (A) Environmental Management of vectors;
 - (B) Establishment of a buffer zone;
 - (C) Environmental modifications;
 - (D) Environmental manipulation;
 - (E) Chemical Management of vectors;
 - (ii) Secondary prevention: reduction of individual risk by using a full range of personal protection and behaviour modification measures, including:
 - (A) Awareness;
 - (B) Bite prevention;
 - (C) Chemoprophylaxis; and
- (d) Where the Department requests a change to add Vector Control Services to the Health Services, the Health Services Manager must provide a Contract Change Proposal by the date reasonably specified by the Department in that request and not the timeframe set out in **clause 34** of the Contract.

16.4 Disease Prevention and Infection Control

- (a) The Health Services Manager must develop and implement at each Facility policies and procedures for the prevention, control and management of infectious and communicable disease outbreaks at each Facility. These arrangements must comply with all relevant Laws, Australian Government Policy and Department Health Policy, be developed in collaboration with the Department and the Department Services Provider, and be incorporated in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**.
- (b) In any case where a Transferee or Recipient at either Facility has been identified with an infectious or communicable disease the Health Services Manager must

ensure that the person is immediately isolated and the Department and the Department Services Providers are immediately notified of the situation in accordance with **clause 9** of this **Schedule 2** and the relevant health authorities are notified in accordance with relevant Law. At this same time, the Health Services Manager must, in collaboration with the Department Services Providers and the Department, develop and implement an appropriate prevention and containment program for the relevant Facility. This program must be aimed at allaying fears of exposure and provide appropriate containment measures for any likely contacts.

- (c) The Health Services Manager must provide the Department and the Department Services Providers with advice and assistance reasonably requested by the Department to assist with the prevention and management of infection or disease outbreaks at a Facility. This assistance may extend to the Health Services Manager providing advice on appropriate containment measures and indications for quarantine, being responsible for ongoing communications with the respective health authorities, taking a coordination role in working with all parties involved in managing contact tracing and developing and implementing immunisation and vaccination programmes for Transferees and Recipients.

16.5 Disposal of Clinical Waste

The Health Services Manager must safely store and dispose of all medical waste at each Facility at which it provides onsite Health Care to Transferees and Recipients, in accordance with all relevant Laws and applicable Health Standards (where applicable) and otherwise, Accepted Industry Practice.

16.6 Supply and management of Pharmaceuticals (and other medicines)

- (a) The Health Services Manager must ensure:
- (i) each Transferee has timely access to pharmaceuticals and non-prescription ("over the counter") medicines that have been prescribed or authorised for the person by a Health Care Provider in accordance with this **clause 16.6**;
 - (ii) for Transferees, "over the counter" medicines may be obtained from the Facility;
 - (iii) all pharmaceuticals and other medicines for Transferees are sourced from pharmacists within the Health Services Manager's network of providers established under **clause 5.1** of this **Schedule 2**;
 - (iv) the Department receives value for money in the procurement and supply of all pharmaceuticals and other medicines to Transferees; and
 - (v) all restricted medicines (S4 and S8) are stored, secured and dispensed at a Facility in accordance with all applicable Laws, applicable Health Standards (where applicable) and otherwise, Accepted Industry Practice.
- (b) The Health Services Manager must develop, in consultation with the Department,

a standard formulary for use by relevant Health Care Providers whenever prescribing medicines for Transferees. This list must ensure the use of generic medicines wherever possible. The Health Services Manager must ensure only medicines included on this list are prescribed and supplied to Transferee. Other medicines (not included on the list) may only be supplied to a Transferee with the Department's prior written approval. The Health Services Manager must provide the Department with a copy of the standard formulary developed under this **clause 16.5**, within five (5) Business Days of any Department request.

- (c) The Health Services Manager must store and administer pharmaceuticals. The Health Services Manager must work with the Department to develop appropriate policies and procedures for the storage, administration and dispensing of pharmaceuticals. These policies and procedures must be included in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**.
- (d) The Health Services Manager must ensure that the storage, recording and management of S8 and S4 medications are in accordance with applicable Health Standards, Department Health Policy and all relevant Laws. The Health Services Manager must ensure that any Transferee who requires treatment with S8 and S4 drugs are notified to Department and that the person is registered with the appropriate Health Department.

PART 2: HEALTH CARE DELIVERY TO TRANSFEREES**17. DELIVERY OF HEALTH CARE TO TRANSFEREES**

The Health Services Manager must ensure that Transferees have access to, and are able to obtain, Health Care on the terms, at the locations and times described in this **Part 2** of this **Schedule 2**. The Health Services Manager must structure and tailor its access and service delivery arrangements to reflect the characteristics and requirements of Nauru and Manus Island and the Transferee Population Groups.

18. PERFORMANCE STANDARDS

18.1 The Health Services Manager must ensure that:

- (a) the quality and standard of Health Care provided to Transferees during their time on Nauru and Manus Island is sufficient to maintain optimal health for Transferees while at the Facilities and is the best available in the circumstances and broadly comparable with health services available within the Australian community;
- (b) Health Care provided to Transferees:
 - (i) is provided with a cultural appreciation and understanding of the issues and concerns which may impact on the health of Transferees;
 - (ii) is provided without any form of discrimination and with respect for individual patient rights; and
 - (iii) is based on best available evidence and prioritised according to clinical need;
- (c) Transferees have direct and continuous access to health practitioner services for the duration of their time on Nauru or Manus Island;
- (d) a Transferee has a consultation with a health care practitioner within seventy two (72) hours of a request for a medical consultation;
- (e) Transferees on Nauru or Manus Island are able to access, and receive, the services described in **clause 27.1** of **Part 2** of this **Schedule 2**, onsite at each Facility, except for in the following circumstances where such services may be delivered offsite:
 - (i) with the Department's prior written approval; or
 - (ii) where the Health Services Manager demonstrates to the Department's reasonable satisfaction that the person could not have been safely and effectively treated onsite at the Facility (other than for any reason related to the Health Services Manager's failure to comply with any provision of the Contract); or
 - (iii) where the Department has agreed that the service will be physically

located at a different Facility (e.g. Dental, Radiology).

19. SCOPE

The Health Services Manager must provide in accordance with the Contract:

- (a) a Health Discharge Assessment (refer **clauses 21**);
- (b) a vaccination program and diabetes management (refer **clause 22** and **23**);
- (c) continuing Health Care, including health management and periodic mental health screening and assessment (refer **clauses 24** and **25**);
- (d) medical escort and evacuation services (refer **clause 26**);
- (e) at Nauru and Manus Island, the services described in **clause 27.1**;
- (f) an After Hours Service, as described in **clause 28**.

20. HEALTH CARE RECORDS AND INFORMATION

20.1 Creation of Health Care Record for Transferees

The Health Services Manager must ensure that each Transferee has an up-to-date individual Health Care Record. Transferee Health Care Records will be available to the Health Services Manager on Nauru and Manus Island. At the time of completion of the person's Health Induction Assessment, this record must:

- (a) note the date and location of the assessment and the name of the Health Care Provider conducting the assessment;
- (b) contain an accurate and complete summary of the person's clinical history;
- (c) comprehensively describe all stages of the assessment and the findings or conclusions of each stage;
- (d) contain details of all recommended follow up action, including copies of referrals to other Health Care Providers;
- (e) include a copy of all consents obtained from the person and details of any consents the person declined to provide; and
- (f) include an alert notifying of any special requirements pertaining to the care and management of the person, including any requirement for interpreter services.

20.2 Provision of Health Services Information

- (a) At the time of arrival on Nauru or Manus Island, the Health Services Manager must ensure the Transferee is provided with clear and accurate information about

the person's available Health Care and access arrangements relevant to the provision of that care. This information must include:

- (i) detailed information about the range of available Health Services, and how and when the services may be accessed (including, as applicable to each Facility, Scheduled Clinic Times for each Onsite Health Clinic, details of emergency arrangements when the Onsite Health Clinics are not operating);
 - (ii) details of key Health Care Providers (for example, the person's dedicated general practitioner service);
 - (iii) an explanation of the arrangements in place for the provision of interpreter services and how those services may be accessed by the person;
 - (iv) an explanation of how the person may provide feedback or lodge a complaint about any health related matter;
 - (v) the Health Services Manager's policy on the use and treatment of personal health information; and
 - (vi) a Business Hours contact for the provision of further information.
- (b) For any Transferee, the information provided under this **clause 20.2(a)** must be in writing (except for where the person is illiterate), in a form agreed between the Parties and translated (where necessary) into a language appropriate for the person. If the person is illiterate, the information must be conveyed using an alternative communication method appropriate for the person. For Transferee in each Facility, the information referred to in **clause 20.2(a)** must also be reinforced and promoted at every reasonable opportunity, including through the use of public displays on common noticeboards and other prominent signage at each Facility.
- (c) The Health Services Manager must ensure that information provided to Transferees under this **clause 20.2(a)** is kept up to date and current at all times, including by providing replacement or additional information in response to any material change to a person's Health Care arrangements. Any replacement or additional health information provided under this **clause 20.2** must be provided within seventy two (72) hours of the relevant change taking effect or, in the case of a person's Transfer, within seventy two (72) hours of the Health Services Manager receiving notice of the Transfer.

21. HEALTH DISCHARGE ASSESSMENT

21.1 Design of process

- (a) The Health Services Manager must develop and manage a Health Discharge Assessment process aimed at establishing a Transferee's health status at the time of his or her Discharge, and which facilitates continuity of Health Care on a Transferee's Discharge.

- (b) The health discharge process designed under this **clause 21.1** must:
- (i) be based on current best available evidence and consistent with Accepted Industry Practice;
 - (ii) reflect the health risk profile and health status of the individual being Discharged;
 - (iii) satisfy the requirements of this **clause 21**, Department Health Policy and all relevant Laws; and
 - (iv) be incorporated in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**.
- (c) Subject to Department Health Policy, the Health Discharge Assessment process designed under this **clause 21.1** must comprise the following elements:
- (i) a desk review of the Transferee's Health Care Record to determine his or her health status for Discharge, to assist with establishing the remaining elements of the person's Health Discharge Assessment, to identify any potential health issues or concerns that may prevent the person's Discharge and any requirements the person may have for ongoing health care or treatment after his or her Discharge;
 - (ii) a physical examination of the person in the circumstances described in **clause 21.1(d)**;
 - (iii) if the person is being Discharged, determination of the person's "fitness to travel" by aircraft;
 - (iv) determination of any medical escort requirement for the person;
 - (v) the preparation and supply of a Health Discharge Assessment to the Transferee and the Department. This assessment must be sufficient to inform any future health services providers of the person's clinical history, treatment received during their time on Nauru and Manus Island, any ongoing treatment regimes and health Critical Incidents that occurred during the person's time on Nauru and Manus Island. When preparing this assessment, the Health Services Manager must seek input, as appropriate, from all treating Health Care Providers. For any person being Removed, the assessment must be translated into a language appropriate for the person and his or her destination;
 - (vi) the provision of a fourteen (14) days supply (or supply for such longer period as approved by the Department) of all clinically indicated medication, including instructions (translated where necessary) regarding the safe storage and administration of that medication; and

- (vii) where required, clinical handover arrangements, including the provision of referrals for any continuing treatment. As part of the handover arrangements, the Health Services Manager must provide contact details of an appropriate Health Care Provider who can respond to questions and requests for further information about the Transferee's health status and medical history following the person's Discharge; and

21.2 Conduct and Timing of the Health Discharge Assessment

- (a) The Health Services Manager must ensure a Health Discharge Assessment is completed for each Transferee who is being transferred from Nauru and Manus Island. This assessment must:
 - (i) be in accordance with the discharge process designed under **clause 21.1**; and
 - (ii) be appropriately tailored and structured for the person's individual health risk profile, health status and Discharge destination.
- (b) The Health Discharge Assessment for each Transferee must be completed within seventy two (72) hours of the Health Services Manager receiving notice from the Department.
- (c) The Health Services Manager must ensure each Health Discharge Assessment is properly completed. This includes:
 - (i) providing a response in each field of the Health Discharge Assessment; and
 - (ii) where the Health Services Manager determines that a field is not applicable to a particular Transferee, marking the field as "not applicable".
- (d) A Health Discharge Assessment will not be regarded as complete until:
 - (i) the Transferee's Health Care Record is updated to include all relevant details regarding the person's Health Discharge Assessment; and
 - (ii) the Department is provided with a copy of the Transferee's Health Discharge Assessment.
- (e) The Health Services Manager must immediately notify the Department of any clinical recommendation of a Health Care Provider that advises against a person's Discharge for medical reasons. For any person being Discharged, the notice must include supporting reasons relevant to the person's "fitness to travel".
- (f) If a Transferee is being Released, at the time of that Person's Health Discharge Assessment the Health Services Manager will provide reasonable assistance to the Department's Settlement Area to assist the continuity of the person's health care.

Manager may source an alternative escort, with the Department's prior written consent. The escort must be extensively briefed by the Medical Director on the medical issues of the case (including any equipment, medication and special care requirements), prior to commencement of the relevant medical escort task.

26.4 Notification of requirement

The Health Services Manager must advise the Department (giving reasons and as much notice as possible) of any instance where a Health Care Provider considers that a Transferee may require a medical escort. Any advice provided by the Health Services Manager under this **clause 26.4** must be confirmed by the Medical Director for clinical appropriateness before being given to the Department.

27. HEALTH CARE ARRANGEMENTS

27.1 Nauru and Manus Island

(a) *General*

- (i) The Health Services Manager must provide Health Care to Transferees at each Facility by operating and managing the range of health services described in this **clause 27.1**.
- (ii) The Health Services Manager will make available a scheduled number of clinic hours to be delivered on a weekly basis and at staffing levels in accordance with **Schedule 2 Annexure B** (Onsite Health Services). The Health Services Manager will liaise and agree the allocation of these hours with the Department at each Facility, based on the anticipated and actual demand on the Health Services.
- (iii) In the case of any Transferee with serious or complex health problems that require specialised skills and facilities which are not available onsite at a clinic, the Health Services Manager must ensure those people are referred by a GP to a clinically appropriate specialist. The Health Services Manager must also notify the Department if the requirement to refer to a specialist service will result in a transfer to a hospital service. However, in the case of a medical emergency, a Transferee may be taken directly to the hospital.

(b) *Range of health services*

- (i) The Health Services Manager must operate and manage, in accordance with this **Schedule 2** and **Annexure B** (Onsite Health Services) of this **Schedule 2**, the following services:
 - (A) registered nurse clinics;
 - (B) nurse immunisation and vaccination services;
 - (C) health promotion services;

week basis and provided within the timeframes reasonably specified by the Department at the time of each request.

- (b) The specific requirements of this service will be determined by the Department in consultation with the Health Services Manager at the time of each request, and may include (at the Department's option), any or all of the following:
 - (i) the provision of advice to the Department by the Medical Director on the health risks and medical needs of the person being transported;
 - (ii) attendance of an appropriate Health Care Provider in accordance with **clause 26.2** to provide medical care and support for the person during his or her transportation;
 - (iii) the supply of medical equipment and medication recommended by the Medical Director as necessary for the care and support of the person being transported; and
 - (iv) assistance with arranging/facilitating the provision of appropriate follow up or continuing Health Care and conducting clinical handover in accordance with Accepted Industry Practice for the person at his or her destination.

26.2 Requirement for medical evacuation

- (a) At the Department's request, the Health Services Manager must obtain, coordinate and ensure the provision of medical evacuation services for Transferees and Recipients. This service must be available on a twenty four (24) hours a day, seven (7) days a week basis and must be provided within the timeframes specified by the Department at the time of each request.
- (b) The Health Services Manager must provide emergency observation and treatment of Transferees and Recipients, especially critically ill patients for up to 20 hours, including artificial ventilation, before the Transferee or Recipient is to be evacuated.

26.3 Pool of medical escorts

- (a) The Health Services Manager must maintain a pool of suitably qualified Health Care Providers who are available to act as medical escorts in response to a Department request under **clause 26.1(a)**. The pool must include an appropriate number of suitably trained and experienced registered nurses, GPs, mental health nurses, psychologists and specialist medical providers. The Health Services Manager must ensure all escorts are extensively trained and have a detailed working knowledge of the Department's "fitness to travel" requirements.
- (b) Wherever possible, the selected escort must be a Health Care Provider known and trusted by the person being transported. If the Health Services Manager reasonably considers that a clinically appropriate escort is not available from the Transferee's known and trusted Health Care Providers, the Health Services

Item	Required timeframe	Processes/Tools
1	Within 10 - 30 days after person's arrival on Nauru or Manus Island.	Screening MSE General Health Questionnaire (GHQ30) Depression Anxiety Stress Scales (DASS21)
2	Within 5-6 months after person's arrival on Nauru or Manus Island.	Screening MSE General Health Questionnaire (GHQ30) Depression Anxiety Stress Scales (DASS21)
3	Within 11-12 months after person's arrival on Nauru or Manus Island.	Screening MSE General Health Questionnaire (GHQ30) Depression Anxiety Stress Scales (DASS21)
4	Within 17-18 months after person's arrival on Nauru and Manus Island.	Note – the 18 month re-screening must be a comprehensive psychiatric assessment conducted by an external psychiatrist.

- (c) The Health Services Manager must:
- (i) screen Transferees in accordance with the policies and procedures developed under **clause 25.2(a)** to identify signs and symptoms of torture and trauma; and
 - (ii) for each person presenting with signs and symptoms of torture and trauma, deliver appropriate treatment, which may include referral to a specialist torture and trauma service, and follow up as appropriate.
- (d) The Health Services Manager must consider and use (as appropriate) the results or findings of any mental health screening and assessments conducted under this **clause 25.2** to develop appropriate management strategies (including treatment plans) for Transferees who are identified as having, or at risk of having, mental health concerns. At the Department's option (and without impinging on any relevant professional or ethical requirements or Laws), management strategies and treatment plans must be developed, implemented and reviewed collaboratively with the Department and the Department Services Providers.

26. MEDICAL ESCORT AND EVACUATION SERVICES (LOCAL OR INTERNATIONAL)

26.1 Requirement for medical escort

- (a) At the Department's request, the Health Services Manager must provide medical escort services for Transferees, including for their Removal or Release. This service must be available on a twenty four (24) hours a day, seven (7) days a

referred to the nearest public hospital. However, in the case of voluntary treatment, the person may be referred to a Network Provider that provides clinically appropriate private hospital services with the Department's prior written notice.

- (d) If a Transferee requires involuntary assessment and treatment under mental health legislation:
- (i) the Health Services Manager must notify the Department that the Transferee requires involuntary assessment and treatment, such notification to be given in accordance with the Critical Incident notification procedures set out in **clause 9.2(a)(i)** of this **Schedule 2**; and
 - (ii) the involuntary assessment and treatment must be done by a person authorised under the relevant legislation and who is either a Health Services Manager Personnel or a Network Provider, in consultation with the Medical Director and in accordance with relevant Laws.

25.2 Mental Health Screening and Assessment

- (a) The Health Services Manager must develop, implement and manage policies, procedures and processes for the monitoring and periodic assessment of the mental health of Transferees on Nauru and Manus Island. These policies and procedures must:
- (i) be flexible and able to respond to changes in the mental health status of Transferees at any time during their time on Nauru or Manus Island;
 - (ii) be adapted and tailored to address the mental health risk profile and status of the various Transferee Population Groups;
 - (iii) be consistent with and implement relevant Department Health Policy;
 - (iv) include a description of the tools (including screening instruments) methodologies and Health Care Providers involved with the conduct of mental health screening and assessment;
 - (v) be developed and implemented in consultation with the Department and, at the Department's request, the Department Services Providers; and
 - (vi) be incorporated in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**.
- (b) The Health Services Manager must deliver mental health screening and assessment services to all Transferees in accordance with the policies and procedures developed under **clause 25.2(a)** and within the following timeframes:

- (c) If clinically indicated, a treatment plan must be developed by the Transferee's GP in collaboration with (and as appropriate for) the Transferee and thereafter reviewed and updated, in a manner consistent with Accepted Industry Practice. The Health Services Manager must ensure the person's GP initiates and coordinates the development, implementation and review of any clinically appropriate treatment plan and involves, as necessary, other Health Care Providers.
- (d) The Health Services Manager must ensure any Transferee who has been on Nauru or Manus Island for longer than twelve (12) Months, and has not had contact with his or her GP for more than a continuous twelve (12) Month period, is offered an annual physical health check by his or her GP on expiry of each relevant twelve (12) Month period. This annual check must be conducted in accordance with relevant Department Health Policy and accepted professional and Accepted Industry Practice.
- (e) The Health Services Manager must ensure that any medication programs prescribed to a Transferee are regularly monitored, reviewed and amended in accordance with Accepted Industry Practice.

24.2 Collection of Medical Results

Upon receiving written notification that medical results (including pathology and radiology test results) are ready for collection from a Network Provider, the Health Services Manager must collect the medical results within 72 hours.

25. MENTAL HEALTH CARE

25.1 General

- (a) The Health Services Manager must ensure that the mental health needs of Transferees are adequately and appropriately identified, monitored and treated at all times during their time on Nauru and Manus Island, including by the conduct of periodic and indicated mental health screening, assessment and treatment services in accordance with this **clause 25**.
- (b) If any Transferee is identified at risk of, or as having, a mental health concern (whether at the time of his or her Health Induction Assessment or any subsequent time), the Health Services Manager must ensure that person is provided with a targeted mental health management plan, drawing on the expertise of a multidisciplinary team of specialist mental Health Care Providers. As appropriate for the person, this team may comprise mental health nurses, psychologists, senior counsellors, GPs and psychiatrists.
- (c) In any case where a Transferee requires in-patient mental health treatment, this must be arranged by the Health Services Manager through clinical pathways established with a public hospital, or a private hospital that is a Network Provider, in accordance with the Contract. This will generally involve the person being

22. VACCINATION PROGRAM

- (a) The Health Services Manager must provide Transferees with the opportunity to obtain appropriate vaccinations during their time on Nauru or Manus Island.
- (b) The Health Services Manager must allocate each Transferee into one of the following four categories within forty-eight (48) hours of their arrival on Nauru or Manus Island and conduct the subsequent action depending on the category:

Category	Description
A	Transferees who agree to receiving vaccinations. The initial vaccinations will commence being administered to the Transferee within one week of being categorised.
B	Transferees who decline vaccinations.
C	Transferees who do not require any further vaccinations because they can provide documentary evidence of previous and up-to-date vaccinations.
D	Transferees who claim to be able to obtain documentary evidence of previous vaccinations within one month (failure to produce evidence will result in the Health Services Manager requesting to commence initial vaccinations).

23. DIABETES MANAGEMENT

- (a) The Health Services Manager must ensure all Transferees are tested for diabetes as soon as possible after being detained in Australia this may involve testing on Nauru or Manus Island.
- (b) Once a Transferee has been diagnosed with diabetes they must be placed on an appropriate care plan within forty-eight (48) hours of diagnosis of diabetes or within forty-eight hours (48) hours of arrival on Nauru or Manus Island, whichever is the later.

24. CONTINUING HEALTH CARE

24.1 Health management

- (a) The Health Services Manager must ensure that if a Transferee presents, or is identified with, a health condition or problem (whether at the time of his or her Health Induction Assessment or at any subsequent time) that person is provided with a clinically appropriate Health Care response in accordance with the Contract. This response may take the form of further assessment, treatment, monitoring or case management by a multidisciplinary team of Health Care Providers.
- (b) Any changes to a Transferee's health status in relation to **clause 16.4** must be appropriately notified and managed.

- (D) radiography-trained nursing services;
 - (E) GP clinics;
 - (F) preventative health services;
 - (G) emergency observation and treatment of critically ill Transferees and Recipients;
 - (H) minor surgical procedures; and
 - (I) mental health clinics, comprising:
 - (I) counselling;
 - (II) clinical psychology;
 - (III) mental health nursing; and
 - (IV) psychiatry.
- (ii) For the purpose of **clause 27.1(b)(i)(H)**, minor surgical procedures includes routine, non-urgent surgery provided by a GP in a clinic using local anaesthetic and no respiratory support.
- (iii) At the Dental Facility, the Health Services Manager must ensure the provision of a Dental Service in accordance with this **Schedule 2**.
- (iv) The Health Service Manager must provide after hours emergency response service through the provision of appropriately trained paramedics in accordance with this **Schedule 2**.
- (v) **Annexure B (Onsite Health Services)** of this **Schedule 2** describes the staffing levels, according to the population of Transferees on Manus Island and Nauru, required to deliver the Health Services. The Health Services Manager must ensure that staffing on Manus Island and Nauru complies with **Annexure B (Onsite Health Services)** of this **Schedule 2**.
- (vi) The Health Services Manager must ensure that, in accordance with **Annexure B (Onsite Health Services)** to this **Schedule 2**, during the clinical hours allocated for each profession, the relevant Health Care Provider is reallocated to different Facilities or deferred to alternate days in the same week if:
- (I) the Health Services Manager acting reasonably is required to respond to an unplanned event; or
 - (II) the Department and the Health Services Manager agree the clinic hours should be reallocated.
- (vii) Onsite Health Clinics will be delivered during the twelve hour clinic

opening times, and the Health Services Manager is only entitled to be paid the fixed fee per day specified in **Schedule 5** (Fees and Payments) in addition to any services that may be classified as Pass Through Costs.

- (viii) For dental, pathology, optometry, radiography, clinical psychological and psychiatric services, the Health Services Manager must ensure Transferees and Recipients can access services only via referral from a GP or a nurse (as agreed with the Department).
- (ix) A Transferee in a Facility must be able to access services from the registered nurse clinic at the relevant Facility, within seventy two (72) hours of making a request for a consultation at that Onsite Health Clinic. The Health Services Manager must implement and maintain a system for collecting requests for consultations from Transferees and must collect requests at least daily.

(c) ***Registered Nurse Clinics***

The range of services that must be available from the onsite registered nurse clinic at each Facility include:

- (i) Health Discharge Assessment (including “fitness to travel” certification);
- (ii) triage (including for referral to a GP clinic) and assessment and initial treatment services (with an emphasis on early intervention);
- (iii) prescribing, sourcing and administering medications in accordance with **clause 16.6** of this **Schedule 2**;
- (iv) medication management, storage and administration;
- (v) referral, coordination and follow up services (including management and follow up of clinic appointments, referral to general practitioner services and to other Health Care Providers);
- (vi) health protection (including development and implementation of infection control programmes, infections outbreak management, testing and treatment for infectious diseases, immunisation and vaccination services, and reporting of notifiable diseases);
- (vii) management and maintenance of medical equipment and supplies (including stocktake, ordering of supplies, checking expiry dates, maintenance of vaccine cold chain, sharps and medical waste disposal and management);
- (viii) primary care level first aid and emergency response;
- (ix) health education, awareness and promotion (including preventative care, education and support to promote Transferee self care, developing and delivering mental health awareness programs for non-clinical staff and other personnel); and

- (x) any other services of a kind routinely provided by a community general practice nurse.

(d) ***GP Clinics***

The range of services that must be available from the onsite GP clinic at each Facility include:

- (i) Health Discharge Assessment (including "fitness to travel" certification);
- (ii) assessment (including assessment necessary for a visa application), treatment and monitoring (including individual treatment planning, review and update for patients with chronic or complex health conditions);
- (iii) medication management, review and prescription services (for prescription and over the counter medications);
- (iv) oversight of health education, awareness and promotion (including preventative care, education and support to promote Transferee self care, developing and delivering mental health awareness programs for non-clinical staff and other personnel);
- (v) coordination, management and follow up of referrals to other Health Care Providers (including referrals to Mental Health Team, and off site specialists, allied health professionals and hospitals);
- (vi) primary care level first aid and emergency response while on duty and in cooperation with the paramedics;
- (vii) health protection (including development and implementation of infection control programmes, infections outbreak management plans, testing and treatment for infectious diseases, reporting of notifiable diseases);
- (viii) primary care mental health services (including, as part of Mental Health Team, managing and treating Transferee with mild to moderate mental health conditions normally dealt with in a primary care setting, ongoing periodic assessment and monitoring of mental health of Transferees as per treatment plans); and
- (ix) any other service required or contemplated by the mandatory requirements of applicable Health Standards.

(e) ***Mental Health Clinics***

Each mental health clinic must be managed by a Mental Health Team Leader and be staffed by a mental health team comprising the mix of mental health professionals specified in **clause 27.1** of this **Schedule 2** and **Annexure B** (Onsite Health Services) to this **Schedule 2**. Access to services of the onsite mental health clinic other than counselling services, must be via referral of the Mental Health Team Leader or the onsite GP clinic.

The range of services that must be available from each onsite mental health clinic at each Facility, include:

- (i) coordination, management and review of mental health case load by Mental Health Team Leader;
 - (ii) developing and delivering mental health awareness and education programs;
 - (iii) attendance by Mental Health Team Leader at appropriate meetings;
 - (iv) provision of advice by Mental Health Team Leader to Department on placement and behavioural management issues for Transferees;
 - (v) general counselling services in the form of confidential face to face individual and group counselling sessions for Transferees;
 - (vi) psychological services in the form of clinical assessment, treatment, management and referral to other clinically appropriate Health Care Providers;
 - (vii) specialist psychiatric services (including assessment, treatment, report preparation and liaison with other members of Mental Health Team). In addition to onsite attendance for consultations with referred Transferees, psychiatrists must also be available to provide telephone advice and assistance, as needed; and
 - (viii) behavioural management advice services (including providing advice, education and support to the Department Services Providers and Department on behavioural management issues; attendance and participation at appropriate workshops, committees and meetings).
- (f) ***Dental Clinic***
- (i) Subject to the availability of appropriate clinical infrastructure, the Health Services Manager must ensure the provision of Dental Services to Transferees in accordance with this **clause 27.1** and **Annexure B** (Onsite Health Services) to this **Schedule 2**, including:
 - (A) a dental practitioner with a minimum qualification of Bachelor of Dental Surgery;
 - (B) a Dental Assistant with a minimum qualification of Certificate of Dental Assisting; and
 - (C) general dentistry services, including scaling, cleaning and restorative procedures in accordance with Department Health Policy.
 - (ii) In a medical emergency or in any case where a Transferee has a complex

dental problem that necessitates further specialised care or treatment, the person may be referred for specialist treatment. The Health Services Manager must also notify the Department if the requirement to refer to a specialist service will result in a transfer to a mainland dental service. However, in the case of a medical emergency, a Transferee may be taken directly to the hospital.

- (iii) The Health Services Manager must supply all consumables necessary to provide the dental services, which will be reimbursed in accordance with **Schedule 5** (Fees and Payments).

(g) ***Radiography Services***

- (i) Upon the acquisition of an x-ray machine on Nauru and Manus Island, the Health Services Manager ensure the provision of radiography services to Transferees in accordance with this **clause 27.1**, including:
 - (A) a registered nurse with appropriate training in radiography imaging from the relevant State or Territory registration board or overseas equivalent;
 - (B) general radiography services, chest x-ray and limb x-ray procedures in accordance with Department Health Policy; and
 - (C) a Radiography service, ensuring that only clinicians with a minimum qualification of an accredited university programme that directly satisfies the Australian Institute of Radiography requirements for a validated statement of accreditation provide the service.
- (ii) The Health Services Manager must supply all consumables necessary to provide the Radiological services, which will be reimbursed in accordance with **Schedule 5** (Fees and Payments).

(h) ***After Hours Service***

The Health Services Manager must provide an After Hours Service pursuant to **clause 28**.

(i) ***Optometry Services***

- (i) The Health Services Manager must provide optometry services to Transferees in accordance with this **clause 27.1** and **Annexure B** (Onsite Health Services) to this **Schedule 2**, including:
 - (A) making available non-prescription ‘pharmacy style’ spectacles.

(j) ***Preventative Health Services***

- (i) The Health Services Manager must provide preventative health services

to Transferees in accordance with this **clause 27.1** and **Annexure B** (Onsite Health Services) to this **Schedule 2**, including:

- (A) health education, awareness and promotion services (including advice on nutrition, diet, exercise, hygiene, sexual and reproductive Health Care); and
- (B) preventative mental health education, awareness and promotion services (including advice on dealing with post-traumatic stress disorder and techniques used in cognitive behaviour therapy).

27.2 Exclusions

The Health Services Manager will not be responsible for failure to deliver the services outlined in **clause 27.1** of this **Schedule 2** for any period of time during which there is:

- (a) a Personnel Shortfall; or
- (b) an Infrastructure Failure relating to the service or task in question, to the extent that the Personnel Shortfall or Infrastructure Failure contributes to the failure to deliver the services.

28. AFTER HOURS SERVICE

28.1 After Hours Service

- (a) The Health Services Manager must operate and manage an After Hours Service which involves the provision of a health triage service and initial health advice to Transferees in accordance with this **clause 28**.
- (b) The After Hours Service must:
 - (i) be available for all Transferees on Nauru and Manus Island; and
 - (ii) be available at all times during which any GP clinics on Nauru and Manus Island are not open.
- (c) The Health Services Manager must establish a dedicated telephone number for the purposes of providing the After Hours Service (the **AHS Number**).

28.2 Initial response

- (a) The Health Services Manager must make available a number of paramedics in accordance with **Annexure B** (Schedule Health Services) of this **Schedule 2** to provide the initial After Hours Service response.
- (b) The Health Services Manager must ensure that any call made to the AHS Number is answered within ten (10) seconds.
- (c) The initial response by the After Hours Service paramedic must include an initial examination and triage of the Transferee. After making the initial examination and

triage of a Transferee pursuant to **clause 28.2(b)** of this **Schedule 2**, the paramedic must:

- (i) where appropriate, treat the if the health concern of the is not urgent, make an appointment for the at the nurse clinic or general practitioner clinic (refer to **clause 28.1(b)(i)** **Schedule 2**);
- (ii) where appropriate given the complexity of the health concern of the, call the Transferee After Hours GP pursuant to **clause 28.3** of this **Schedule 2**; and/or
- (iii) in the case of emergency, refer the patient to the local hospital.

28.3 After Hours GP

- (a) The Health Services Manager must make available an after hours GP (**After Hours GP**) to provide general practitioner services to Transferees after hours.
- (b) The After Hours GP must be contactable by telephone by a paramedic providing After Hours Services, at any time during which the After Hours Service is available to Transferees.
- (c) Upon receiving a call from a paramedic providing After Hours, the After Hours GP must, where appropriate:
 - (i) provide advice and assistance to the paramedic over the telephone regarding the treatment of the Transferees; and/or
 - (ii) attend the Transferee to provide treatment.

PART 3: HEALTH CARE DELIVERY TO RECIPIENTS**29. DELIVERY OF HEALTH CARE TO RECIPIENTS**

The Health Services Manager will provide Recipients with Health Care as described in this **Part 3** of this **Schedule 2**.

30. PERFORMANCE STANDARDS

The Health Services Manager must ensure that:

- (a) the quality and standard of Health Care provided to Recipients during their time on Nauru and Manus Island is sufficient to maintain optimal health for Recipients while at the Facilities and is the best available in the circumstances and broadly comparable with health services available within the Australian community;
- (b) Health Care provided to Recipients is based on best available evidence and prioritised according to clinical need;
- (c) a Recipient has a consultation with a health care practitioner within seventy two (72) hours of a request for a medical consultation; and
- (d) Recipients receive Health Care at an appointed staff clinic. In Nauru this clinic is at the local hospital and onsite on Manus Island.

31. RECIPIENT HEALTH CARE RECORDS**31.1 Recipient Health Care Records**

- (a) The Health Services Manager must create a Health Care Records for a Recipient at the time of the person's first consultation and must contain as a minimum the following information for each consultation with a *Recipient*:
 - (A) date and time of consultation;
 - (B) full name and position/title of health professional;
 - (C) *Recipient's* symptoms (if any);
 - (D) examinations/tests undertaken;
 - (E) clinical findings, provisional diagnosis or differential diagnosis;
 - (G) treatment plan (if required); and
 - (H) review date (if required).
- (b) The Health Services Manager must maintain a secure network of individual paper

or electronic Health Care Records for any Recipient that requires Health Care whilst on Nauru or Manus Island.

- (c) Health Care Records for Recipients must be maintained in accordance with **clause 11.1(c)** of this **Schedule 2**.
- (d) The Health Services Manager will maintain up-to-date health summary notes within the Recipient Health Care Records to ensure a comprehensive handover of medical information to the individual's GP in Australia upon their departure from Nauru or Manus Island.
- (e) The Health Services Manager must ensure that if a Recipient requests access to his or her Health Care Record (or any information contained in that record), access is provided in accordance with relevant Laws.

31.2 Provision of Health Services Information

- (a) At the time of the first consultation, the Health Services Manager must ensure the Recipient is provided with clear and accurate information about their available Health Care and access arrangements relevant to the provision of that care.

32. HEALTH CARE ARRANGEMENTS FOR RECIPIENTS

32.1 General

- (a) The Health Services Manager will provide primary care and emergency response to Recipients.
 - (i) Primary care is within the limits of the services available on Nauru and Manus Island, which would be investigation of conditions by a GP including radiography and ultrasonography, routine laboratory investigations and treatment with generic medications with a maximum of three (3) months supply.
 - (ii) Emergency response is to resuscitate and stabilise the Recipient and hold for up to 20 hours prior to medical evacuation.
- (b) If the Recipient requires health care beyond **clause 32.1** of this **Schedule 2**, it will require follow up and investigation in Australia and would be the responsibility of the individual Recipient.
- (c) The Health Services Manager must ensure Recipients are able to access a GP during the staff clinic opening times.
- (d) GPs will be required to provide referrals for Recipients to access services provided by other Network Providers, in accordance with **clause 5.2(b)(i)** of **Part 1** of this **Schedule 2**.

- (e) The Health Services Manager must ensure that pain relief and emergency dental procedures are available to Recipients. Routine and cosmetic dental work is not to be provided by the Health Services Manager.
- (f) The Health Services Manager must provide After Hours Services to Recipients in the case of an emergency.
- (g) Where a Recipient requires medical evacuation from Nauru or Manus Island, the Health Services Manager will provide this service in accordance with **clause 26.2** of **Part 2** of this **Schedule 2**.
- (h) The Health Services Manager will not provide routine health checks or treatment for cosmetic purposes for Recipients on Nauru or Manus Island.
- (i) If required by the Recipient, the Health Services Manager will prescribe generic medications with a maximum supply of three months. The Health Services Manager will not be required to provide medications to Recipients for pre-existing chronic health issues.

33. **COUNSELLING SERVICE**

33.1 **General**

Where counselling services are not available to a Recipient through its own employment or contract arrangements, the Health Services Manager must provide counselling services.



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**SCHEDULE 2 ANNEXURE A
INCIDENTS**

1. This **Annexure** defines the terms Critical Incidents and Other Incidents.

2. **CRITICAL INCIDENTS**

The following matters or events are classified as a Critical Incident:

- (a) where the treating Health Care Provider believes that there is a serious risk to the Transferee's health or life;
- (b) where a Transferee requires involuntary assessment and treatment under mental health legislation;
- (c) the death of a Transferee;
- (d) a confirmed public health risk (including outbreak of an infectious or communicable disease at a Facility);
- (e) a refusal or failure of a Transferee to provide consent to any clinically recommended Health Care and where the treating Health Care Provider believes that this refusal or failure to consent poses a serious risk to the Transferee's health or life, or a serious risk to the health or life of another person;
- (f) any other event, circumstance, matter or thing that the Health Services Manager reasonably considers is sufficiently grave to warrant immediate notification to the Department as a "critical incident" under **clause 9 of Schedule 2** (Statement of Work); and
- (g) Sentinel Event, is defined by The Joint Commission (TJC) as any unanticipated event in a healthcare setting resulting in death or serious physical or psychological injury to a patient or patients, and not related to the natural course of the patient's illness.

3. **OTHER INCIDENTS**

The following matters or events are classified as Other Incidents:

- (a) a serious accident/injury resulting in hospitalisation of a Transferee;
- (b) an acute psychiatric hospital admission of a Transferee;
- (c) an occurrence of self harm resulting in injury to a Transferee;
- (d) an occurrence of attempted self harm by any Transferee;
- (e) the voluntary starvation (over 48 hours) of a Transferee;
- (f) the end of Voluntary Starvation (three subsequent meals consumed) of a Transferee;

- (g) any possible public health risk (including suspected outbreak of an infectious or communicable disease at a Facility), or the identification of a Transferee with an infectious or communicable disease;
- (h) an admission to or treatment of a Transferee at a hospital
(Note: in addition to the reporting obligations described in **clause 9 of Schedule 2** (Statement of Work), for hospital admissions of less than one week duration, daily written reports of the person's condition and other relevant details must be provided to the Department. For hospital admissions exceeding one week duration, weekly written reports must be provided to the Department, unless a significant change is observed in the person, in which case a further written report must be provided to the Department outlining the change in the person's condition, within twenty four (24) hours of the change occurring);
- (i) a discharge of a Transferee from hospital;
- (j) an identified or suspected torture and trauma sufferer;
- (k) the theft or loss of medication or other medical supplies or equipment at a Facility;
- (l) the refusal of a Transferee to consent to a Health Induction Assessment, Health Discharge Assessment, or any clinically recommended Health Care, treatment or procedure (other than any refusal required to be reported under **clause 2(e)** of this **Annexure A to Schedule 2** (Statement of Work));
- (m) all complaints received from Transferee, and any complaints referred (whether by the Health Services Manager or a Person in Detention) for external investigation; and
- (n) any Occupational Health and Safety incidents (as described in the Occupational Health and Safety and Environment Policy and Planning) that occurs at an onsite medical clinic; and
- (o) any other event, circumstance, matter or thing that the Health Services Manager reasonably considers should be reported to the Department as an "other incident" under **clause 8 of Schedule 2** (Statement of Work).



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**SCHEDULE 2 ANNEXURE B
ONSITE HEALTH SERVICES**

1. Nauru Staffing Arrangements

Staff Profile	Number of FTE (1-150)	Number of FTE (151-500)	Number of FTE (501-1000)	Number of FTE (1001-1500)	Second Site Increment
[Redacted Content]					

7 Day Service Model (Monday – Sunday)

Services will be provided on a seven (7) days per week basis on Nauru. On-site Health Care will be provided for twelve (12) hours with twelve (12) hours emergency coverage after hours.

2. Manus Island Staffing Arrangements

Staff Profile	Number of FTE (1-175)	Number of FTE (176-350)	Number of FTE (351-600)
[Redacted Content]			

7 Day Service Model (Monday – Sunday)

Services will be provided on a seven (7) days per week basis on Manus Island. On-site Health Care will be provided for twelve (12) hours with twelve (12) hours emergency coverage after hours.

3. Vector control staffing arrangements (Manus Island only)

Staff Profile	Staff Origin	FTE
[Redacted]		

Vector Control Services will be provided using the above staffing levels for a period of six (6) months upon the execution of the Contract. After the initial six (6) months, the staffing level will be reduced to a core staff of [Redacted] employees for the remaining period of the IVMP Term.



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Regional Processing Countries Health Services Contract

SCHEDULE 3
DEED OF SUBSTITUTION

SCHEDULE 3: DEED OF SUBSTITUTION

This Deed of Substitution made on the day of 2012

BETWEEN

THE COMMONWEALTH OF AUSTRALIA, ACTING THROUGH AND REPRESENTED BY THE DEPARTMENT OF IMMIGRATION AND CITIZENSHIP (Department)

AND

[THE MAJOR SUBCONTRACTOR] [INSERT FULL NAME AND ADDRESS] (the **Subcontractor**)

AND

INTERNATIONAL HEALTH AND MEDICAL SERVICES PTY LIMITED ABN 40 073 811 131 (Health Services Manager)

(together, **the Parties**)

- A The Health Services Manager and the Department are parties to an agreement executed on *[insert date of execution of Regional Processing Countries Health Services Contract]* (**Agreement**).
- B The Health Services Manager and the Subcontractor are parties to a subcontract under the Agreement executed on *[insert date of execution of subcontract]* (**Subcontract**).
- C The Parties have agreed that the Department may issue a notice to the effect that the Department is substituted for the Health Services Manager in the Subcontract (**Notice of Substitution**).
- D The parties have agreed that the Department will be substituted for the Health Services Manager under the Subcontract on the terms of this Deed.

1. **Interpretation**

- 1.1 The terms in this Deed will be interpreted as they apply in the Agreement, unless the contrary intention appears.

2. **Substitution**

- 2.1 The Parties agree that on and from the date of issue of a Notice of Substitution:

- (a) the Department is substituted for the Health Services Manager under the Subcontract;
- (b) all references in the Subcontract to the Health Services Manager are to be read and construed as if they were references to the Department;

(c) the Subcontractor:

- (i) is bound by and must comply with the Subcontract for the benefit of the Department; and
- (ii) directs the Health Services Manager to ensure that any amounts due under the Subcontract which became payable to the Department prior to the date of the Notice of Substitution are paid to the Department; and

(d) the Department:

- (i) is bound by and must comply with the Subcontract; and
- (ii) enjoys all the rights and benefits of the Health Services Manager under the Subcontract.

3. Further assurances

3.1 Each Party must take the steps, sign the documents, and do all other acts and things as may be reasonably required by the other Party to give effect to this Deed of Substitution.

4. Discharge of Deed of Substitution

4.1 This Deed of Substitution is discharged only if the Subcontractor meets all its obligations in relation to the Subcontract.

4.2 To avoid doubt, the Subcontractor is not released or discharged from this Deed of Substitution by any relief given by the Department to the Health Services Manager in relation to the Health Services Manager's obligations under the Agreement.

5. Settlement of disputes

5.1 If a dispute arises between the Parties in relation to this Deed of Substitution that cannot be settled by negotiation, the Parties may agree to use an alternative dispute resolution process to attempt to resolve the dispute.

6. Notices

6.1 Any notice or other communication required to be given under this Deed of Substitution is taken to have been given:

- (a) for the Department and the Health Services Manager, given in accordance with clause 67 of the Agreement; and
- (b) for the Subcontractor, if given to the Subcontractor in accordance with clause 67 of the Agreement as if the Subcontractor were a party to the Agreement with an address for service at (*insert Subcontractor's Postal and Fax Details*).

7. **Laws**

- 7.1 The laws of the Australian Capital Territory apply to this Deed of Substitution. The courts of the Australian Capital Territory have non-exclusive jurisdiction to decide any matter arising out of this Deed.

Executed as a Deed for and on behalf of the
Commonwealth of Australia represented by
the Department of Immigration and
Citizenship by its duly authorised delegate:

.....
Signature of witness

.....
Signature of delegate

.....
Name of witness (print)

.....
Name of delegate (print)

.....
Position of delegate (print)

Executed as a Deed by *[the Major Subcontractor]* by its duly authorised delegate:

.....
Signature of witness

.....
Signature of delegate

.....
Name of witness (print)

.....
Name of delegate (print)

.....
Position of delegate

Executed as a Deed by International Health and Medical Services Pty Ltd ABN 40 073 811 131 by its duly authorised delegate:

.....
Signature of witness

.....
Signature of delegate

.....
Name of witness (print)

.....
Name of delegate (print)

.....
Position of delegate (print)



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 4.1

PERFORMANCE MANAGEMENT MANUAL

CONTENTS

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Annexure A - Performance Measures

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Annexure D - Discretionary Day Form

1. INTRODUCTION & PURPOSE

1.1 Purpose

The purpose of this Performance Management Manual (**Manual**) is to outline the performance management framework applicable to the Contract. This manual describes how "deficient" performance in service delivery will be recognised and managed.

The Health Services Manager's performance will be measured and assessed via a set of Performance Measures that are carefully targeted and focused on key service delivery areas identified by the Department as fundamental to the Contract. This Manual describes the process by which the Health Services Manager's performance will be assessed, measured and reported against the Performance Measures at **Annexure A** (Performance Measures) to this Manual.

1.2 Key Objectives

The key objectives of the performance management regime described in this Manual are to achieve a performance based arrangement that:

- (p) ensures the provision of health services and the management of performance under this contract align with the objective of Transferee well-being;
- (q) appropriately focuses and targets the Health Services Manager's performance of the Health Services on the achievement of the Department's vision, values, strategy and objectives as reflected in the Service Delivery Model and as described in **clause 8** of the Contract;
- (r) ensures the Department achieves value for money in the performance of the Health Services by creating a regime that is financially responsive to variations in service standards or levels and ensures the Department pays for the quality and level of service actually delivered;
- (s) focuses on quality, accessibility, efficiency and accountability;
- (t) assists the Department to appropriately allocate and manage the risks associated with performance of the Health Services;
- (u) promotes a culture of continuous improvement in the performance of the Health Services through the regular and on-going review and adjustment of the operation of the Performance Measures; and
- (v) foster productive working relationships with all other service providers providing services at Nauru and Manus Island and engage effectively and positively with local communities.

2. OVERVIEW OF PERFORMANCE MANAGEMENT FRAMEWORK

2.1 Performance Measures

The set of Performance Measures used to measure and assess the Health Services Manager's performance comprise quantifiable performance measures that allow the Department to objectively monitor and measure the Health Services Manager's performance in key service delivery areas. As discussed in this Manual, these Measures have been set to align with the Department's strategic business objectives and priorities, as reflected in the Service Delivery Model and the Contract.

After the date that the Contract commences, the Performance Management Manual will be subject to ongoing review and appropriate adjustments, subject to mutual agreement by the Department and the Health Services Manager, including updates to the Performance and Incentive Measures, in accordance with **clause 5.3(a)** of this Manual.

2.2 Base Period

The Base Period will cease on 28 February 2013 on Nauru and Manus Island. During the Base Period, the Health Services Manager is required to monitor, measure and report on its performance against the performance measures in accordance with the Manual, but the Department will not withhold any percentage of the Onsite Health Clinic Fee as a result of reduced standards of performance during the Base Period.

During the base period, the Health Service Manager's performance results against the Incentive Measures will not be applied to the Withholding Fee.

Following the expiry of the Base Period, the Department will withhold a percentage of the Onsite Health Clinic Fee for any recorded performance failures.

3. OVERVIEW OF PERFORMANCE AND INCENTIVE MEASURES

3.1 Overview

The Performance regime is integral to the Department achieving value for money for the performance of the Health Services. Value for money requires that the Health Services Manager perform the Health Services, to the agreed performance levels, for the agreed Onsite Health Clinic Fee (and other payments specified in **Schedule 5** (Fees and Payments)).

The Performance Measures are designed to, and should, provide the Department with a level of assurance that the Health Services Manager is providing Health Care to Transferees in accordance with **Schedule 2** (Statement of Work).

3.2 Performance Measures

- (a) Central to the Performance regime are the eight (8) Performance Measures shown in **Figure 1** (Summary Table of Performance Measures) (below). These Measures represent a set of specific, measurable, attainable, realistic and (where applicable) time-bound components of the key service requirements of the Contract. **Annexure A** to this Manual further describes the method, process and information sources that must be used by the Parties to measure and assess the Health Services Manager's performance against the Performance Measures.
- (b) The Department has allocated a minimum *Performance Threshold* for each Performance Measure.
- (c) For the performance measures, the minimum *Performance Threshold* defines the tolerance level below which a performance failure is recognised as having occurred during a month. For example, a measure with a minimum Performance Threshold of 90% means that any level of performance below 90% is a performance failure.

For the incentive measure, the *Performance Threshold* defines tolerance levels above which performance must occur for the incentive to apply.

- (d) Under this regime the Health Services Manager is not entitled to receive any 'credit' or 'set-off' for performance that exceeds the minimum Performance Threshold for any Measure.

3.3 Summary of Performance and Incentive Measures

Set out in the below tables (Summary of Performance Measures) and (Summary of Incentive Measure) are the Performance Measures and Incentive Measure relevant to the delivery of the Services on Nauru and Manus Island. This table also shows the minimum Performance Threshold assigned to each Performance Measure and the Weightings that are used to calculate the retained Withholding Fee.

Figure 1: Summary of Performance Measures

Performance Criteria	Performance Measures	Performance Threshold*	Weightings
1. Accessibility	1.1 Provision of Health Services Information	90%	10%
2. Quality	2.1 Maintenance of Transferee Health Records	90%	20%
	2.2 Maintenance of Clinicians' Staff Records	95%	20%
3. Accountability	3.1 Timely conduct of Mandated Mental Health Screenings	90%	10%

	3.2	Timely Assessment of Vaccination Status and Commencement of Vaccinations	90%	10%
	3.3	Timely treatment of Transferees diagnosed with Diabetes	90%	10%
	3.4	Timely and Complete contributions to Joint Status Reports	100%	10%
4. Efficiency	4.1	Administration of Complaints Management System	95%	10%

Figure 2: Summary of Incentive Measures

Performance Criteria	Performance Measures	Performance Threshold*	Weightings
Accessibility	Conduct of Health Education Sessions	Contained in metric definition	Contained in metric definition

*Further details about these thresholds are set out in the sections below.

3.4 Performance and Incentive Measure Definition

Annexure A to this Manual further defines the eight (8) Performance Measures referred to in **Figure 1** (above). **Annexure B** to this Manual further defines the Incentive Measure. For each specified detailed Measure, the Annexures describe what is being measured, how frequently this measurement occurs, who has responsibility for measuring performance, the data sources used to verify performance, and the frequency and basis for reporting performance against the Measure. In relation to each Measure, **Figure 3** below presents this information in the form of a table (Format of Measure Definition):

Figure 3: Format of Measure Definitions

Description	
What is measured	<i>Defines the detailed Performance/Incentive Measure</i>
Contract requirement	<i>References the relevant clause of the Statement of Work or other contract schedule containing the requirement being measured by the Performance/Incentive Measure</i>
Scope/application	<i>Describes what is assessed by the Performance Measure</i>
Performance Threshold	<i>Identifies the relevant minimum Performance</i>

	<i>Threshold, below which a "performance failure" is recognised</i>
Weighting	<i>Identifies the weighting applied to the calculation of withholding amount (for failure of a measure) from the Onsite Health Clinic Fee.</i>
Measurement Methodology	
Measurement/monitoring points	<i>Identifies where or when the measurement is carried out</i>
Frequency of performance measurement	<i>Specifies the frequency of review of the Performance Measure, e.g. monthly</i>
Data verification sources/methods	<i>Identifies the source(s) of the information used to verify performance against the Performance Measure</i>
Measurement responsibility	<i>Identifies whether the Health Services Manager or the Department is responsible for measuring the Health Services Manager's performance against the Measure.</i>
Reporting frequency and requirements	<i>Details how often the Performance Measure is to be reported to the Department and any special reporting requirements</i>

3.5 Assessment of Performance Measures

- (a) The Performance Measures are at **Annexure A** of this Manual.
- (b) **Annexure A** describes how and when the Health Services Manager's performance will be measured and assessed against each Performance Measure. It also identifies the Party with responsibility for measuring the Health Services Manager's performance.
- (c) A performance failure is triggered for a Performance Measure if the Health Services Manager's actual performance during the relevant measurement period does not meet the minimum specified threshold level of performance for that Performance Measure.
- (d) Performance is attributed to the calendar month during which events fall due.
- (e) If a performance failure occurs for any Performance Measure, a portion of the Onsite Health Clinic Fee will be withheld by the Department in accordance with **clause 4** of this Manual. **Annexure A** of this Manual describes the Performance Measures and the method of determining whether a failure to meet the requisite Performance Threshold set out in **clause 3.3** of this Manual has occurred.

3.6 Assessment of Incentive Measures

- (a) The Incentive Regime for the Regional Processing Countries Health Services Contract is aimed at recognising and rewarding the Health Services Manager for superior performance in the delivery of the Health Services.
- (b) The Incentive Regime operates on a quarterly basis. This is, superior performance by the Health Services Manager will be measured and assessed on a quarterly basis via reference to the Incentive Measures that are included in **clause 3.3, Figure 2**.
- (c) The Health Services Manager will be rewarded for any superior performance during the relevant reporting quarter via a reduction in the relevant withholding fee for the following incentive reporting quarter.

4. CALCULATION OF WITHHOLDING FEE

4.1 Method of Calculating the Withholding Fee

- (a) Upon submission of the monthly performance report, in the event where:
 - (i) Performance Measure Thresholds were met: the Department will pay the Health Services Manager the entire Withholding Fee, upon the receipt of a correctly rendered invoice for the withholding fee amount, in accordance with **Schedule 5** (Fees and Payment); or
 - (ii) Performance failure occurred: the Department will confirm with the Health Services Manager the Retained Withholding Fee and Withholding Rebate based on the relevant sites monthly performance. The Department will continue to hold the Retained Withholding Fee until the receipt of a credit note for any Withholding Rebate amount and the Department will pay the Health Services Manager that amount.
- (b) The Retained Withholding Fee will be paid to the Health Services Manager when:
 - (i) the identified Corrective Action/s in response to a Performance Measure failure(s) have been implemented; or
 - (ii) the subsequent monthly performance report indicates the Performance Measure Threshold has been achieved for the previously failed Performance Measure.
- (c) The total Retained Withholding Fee for that calendar month will be five (5) per cent of the Onsite Health Clinic Fee relative to each site, multiplied by the sum of the Performance Measure Weightings (as listed in **clause 3.3, Figure 1**) for the Performance Measures against which a failure was recorded, except where **clause**

4.3 of this Manual is applicable in which case the maximum Retained Withholding Fee will be ten (10) per cent of the Onsite Health Clinic Fee and will be calculated in accordance with this **clause 4.2(c)** of this Manual.

$$\text{Retained Withholding Fee} = 5\% \text{ OHCF} * \sum (\text{weightings of performance measure failures})$$

* Where OHCF is the Onsite Health Clinic Fee for the reporting calendar month.

- (d) A worked example of the calculation used to determine the Retained Withholding Fee where **clause 4.3** does not apply, is at **Annexure C** of this Manual.

4.2 Reduction to Withholding Fee

- (a) The Department will reduce the withholding fee for the following incentive reporting quarter if the Health Services Manager achieves the minimum performance threshold for the incentive measure as detailed in **Annexure B** of this Manual.
- (b) The maximum reduction in the withholding fee to be applied to the following incentive reporting quarter is one (1) per cent.

4.3 Continuous Performance Measure Failure

- (a) Continuous Performance Measure Failure will occur where the Health Services Manager has been assessed as having a Performance Failure for the same Performance Measure for three (3) consecutive months (or other reporting period in the case of those metrics not measured monthly).
- (b) If there is a Continuous Performance Measure Failure, the Department will withhold an additional five (5) per cent of the Onsite Health Clinic Fee relative to each site in the following reporting month (Additional Withholding Fee). Therefore the total Fee withheld for that month and each following month of further Performance Failure of the same Performance Measure will be ten (10) per cent of the Onsite Health Clinic Fee relative to each site. For clarity:
- i. For the first three (3) months of Continuous Performance Failure, the amount of the Fee withheld will be five (5) per cent of the site Onsite Health Clinic Fee;
 - ii. In the fourth month of Continuous Performance Failure, the amount of the Fee withheld will be ten (10) per cent of the site Onsite Health Clinic Fee; and
 - iii. In each subsequent month of Continuous Performance Failure, the amount of the Fee withheld will be ten (10) per cent of the site Onsite Health Clinic Fee.

5. MONTHLY PERFORMANCE REPORTING AND CALCULATIONS

5.1 Reporting

- (a) The Health Services Manager's performance is measured monthly and is reflected in a Monthly Performance Report as detailed in **Schedule 4.3** (Reporting).
- (b) No later than ten (10) Business Days following the end of the calendar month in which performance is being measured, the Health Services Manager will provide the Department with a Monthly Performance Report.
- (c) The Department will make a decision to accept or dispute the Health Services Manager's performance calculations, and notify the Health Services Manager of its decision within five (5) Business Days following the submission of the Monthly Performance Report. Disputes made five (5) Business Days after the submission of the Monthly Performance Report will not be accepted.
- (d) In the event of a dispute, the Health Services Manager may submit sufficient documentation to support the calculation within five (5) Business Days following notification of a dispute. Documentation provided after five (5) Business Days will not be accepted.
- (e) The Department will provide written notice of its final decision as to the calculation of the Retained Withholding Fee applicable to any Month in accordance with **Annexure C** (Worked example for Withholding Fee Calculation) of this Manual within fifteen (15) Business Days following the submission of the Monthly Performance Report.

5.2 Audits

- (a) The Department may periodically conduct audits of the Health Services Manager's compliance with its performance obligations under the Contract (including as set out in this Manual), including the Health Services Manager's:
 - (i) monitoring, measuring or reporting against any Performance Measure, for the purpose of verifying the derivation and calculation of any measure; and
 - (ii) implementation of any Corrective Action plan.
- (b) An audit conducted under this **clause 5.2** will be undertaken by a review team comprising of any or more of the following personnel:
 - (i) Department national office staff;
 - (ii) Department staff on Nauru and Manus Island; and

- (iii) An independent third party;
- (c) This audit will involve the following steps:
 - (i) the cross-checking and verification of data produced by the Health Services Manager against other data or information available to the Department, including from invoices, the Department System, and the quarterly-reported detention health dataset;
 - (ii) site visits to any or all Facilities or Regions within scope of the audit; and
 - (iii) interviewing of Health Services Manager Personnel and Network Providers, Department Services Provider, Department Personnel, Transferees and other relevant stakeholders.
 - (iv) The Health Services Manager will cooperate with and assist the Department in completing audits conducted under this **clause 5.2**.

5.3 **Review of Measures**

- (a) The Performance and Incentive Measures will be jointly reviewed by the Department and the Health Services Manager on a quarterly basis. The review will examine the effectiveness and practicality of each Performance and Incentive Measure, and if required, amend the Measures. All changes to the Performance Measures must be carried out in accordance with the Contract Change Procedure set out in **clause 34** of the Contract.

5.4 **Failure to Earn Back Withholding Fee**

- (a) If, by the end of the Term, any Withholding Fees or Additional Withholding Fees have not been earned back the Health Services Manager, the amount of the withheld fees up to a maximum of three (3) months of Withholding Fees or Additional Withholding Fees, being the last three (3) Withholding Fees or Additional Withholding Fees to have been withheld, will be retained by the Department as liquidated damages and not as a penalty.
- (b) During the last month of the Contract, the Department will not retain a Withholding Fee for any Regional Processing Centre site, but the Health Services Manager is expected to submit a Monthly Performance Report.

6. **ADJUSTING CALCULATIONS**

6.1 **Trusted Officer**

- (a) The Health Services Manager will appoint a Trusted Officer and his or her appointment will be approved by the Department.

- (b) Acting reasonably, the Trusted Officer has an independent duty to ensure that the Monthly Performance Reports accurately and fairly reflect the Health Services Manager's performance. This duty is:
 - (i) fulfilled by adjusting data used in performance calculations as necessary and only in accordance with the criteria within this **clause 6**, and
 - (ii) for the benefit of the Department and the Health Services Manager.
- (c) The Trusted Officer will be subject to the following Code of Conduct:
 - (i) **Competence:** the Trusted Officer will have the necessary knowledge of **Schedule 4.1** to be able to discharge his or her duties competently.
 - (ii) **Integrity:** the Trusted Officer will perform his or her work honestly, accurately, fairly and responsibly.
 - (iii) **Objectivity:** the Trusted Officer will assess information impartially.
 - (iv) **Disclosure:** the Trusted Officer will communicate to the Department all material facts and assumptions used to prepare the Monthly Performance Reports
- (d) The Department and the Health Services Manager will review the activities of the Trusted Officer no less than quarterly to determine whether the Trusted Officer's activities and approach meet the requirements of the Department and the Health Services Manager. The Department may raise any concerns or queries relating to the actions of the Trusted Office with the National Operations Manager employed at the offices of the Health Services Manager.
- (e) If the Trusted Officer is unavailable at short notice, then the Health Services Manager must:
 - (i) use best endeavours to appoint a replacement with similar skills; and
 - (ii) advise the Department of the replacement, which the Department must, acting reasonably, approve, before the replacement is considered final.

6.2 Discretionary Days

- (a) A Discretionary Day may arise when events occur that:
 - (i) are beyond the Health Services Manager's reasonable control, and
 - (ii) adversely affect those activities that are subject to performance measurement pursuant to **Schedule 4.1**.
- (b) Such an event may include but not be limited to:

- (i) Inadequate transport to the clinic for a significant portion of Transferees, in the case that transport is required.
 - (ii) Inadequate interpreter services for a significant portion of Transferees.
 - (iii) Inadequate security escort services for a significant portion of Transferees.
 - (iv) Inadequate Transferee identification documentation for a significant portion of Transferees.
 - (v) An incident that interferes with the Health Services Manager's activities (such as a riot, emergency, group voluntary starvation or unrest, significant environmental event (but not to the extent that force majeure is considered appropriate by the parties)) requiring:
 - I. the clinic to be closed; or
 - II. clinical activities to be significantly curtailed; or
 - III. an urgent medical response on a large scale, which takes priority over the Health Services Manager's day-to-day activities, including those that are subject to Performance Management.
 - (vi) Communications failures that cause the Health Services Manager to have inadequate access to information technology for the purpose of providing health services.
 - (vii) Occasions where the Transferee population level on site exceeds the last notified capacity band and the Health Services Manager has not yet deployed additional staff.
- (c) A Discretionary Day is confirmed when, acting reasonably, the most senior DIAC representative at the site and available to the Health Services Manager signs a Discretionary Day Form (at **Annexure C**) submitted by the Health Services Manager. The form is to identify the:
- (i) day(s) to be treated as a Discretionary Day for the purposes of **Schedule 4.1**; and
 - (ii) the Performance Measures that are affected by the event.
- (d) If a Discretionary Day Form is not completed at the time that an event in **clause 6.2(b)** or **6.2 (e)(iv)** occurs, the form must be completed as soon as reasonably practicable and in accordance with **clause 6.2(c)**.
- (e) The Trusted Officer will incorporate Discretionary Days into monthly performance calculations as follows:

- (i) A Discretionary Day is to be excluded from performance calculations that relate to any time period during within which the Health Services Manager's performance is to be measured pursuant to **Schedule 4.1**. That is, any Discretionary Day period occurring within the Measurement/Monitoring points is to be subtracted from the calculation.
- (ii) If there are more than 20 Discretionary Days in a calendar month, then no Withholding Fee will apply to that month.
- (iii) Performance calculations can only be adjusted by the Trusted Officer if he/she has received a Discretionary Day Form:
 - I. in the format set out under **Annexure D** of this Manual, and
 - II. that has been signed by the most senior DIAC representative (or his/her delegate) and the Health Services Manager.
- (iv) Notwithstanding the events described in **clause 6.2(b)**, the Trusted Officer and the Department can mutually agree that a certain day is a Discretionary Day, subject to written acknowledgment of the agreement by both Parties.
- (v) The Trusted Officer will identify days that are Discretionary Days in the Monthly Performance Report.

6.3 Raw Data Exclusion

- (a) To compile Monthly Performance Reports, the Health Services Manager uses Raw Data that relates individual events to Transferees. Raw Data is sourced from:
 - (i) the Health Services Manager's information management system, which incorporates data provided by the Department via an XML file or otherwise;
 - (ii) administrative systems maintained by the Health Services Manager (e.g. Human Resource systems);
 - (iii) data that is otherwise manually inputted, collected or compiled by the Health Services Manager (whether in electronic form or otherwise); and
 - (iv) email (and its contents) between the Department and the Health Services Manager.
- (b) The Trusted Officer is the sole employee of the Health Services Manager who is authorised to exclude Raw Data from performance calculations. The Trusted Officer must retain records to demonstrate to the Department all Raw Data that is excluded and why an item of Raw Data has been excluded. Exclusions can occur in circumstances that include, but are not limited to:
 - (i) Evidence that a Transferee refused, declined or did not attend an event.

- (ii) Evidence that the Transferee was not in the location shown in the Raw Data (such as another detention centre, gaol, or Community Detention) or where the Raw Data cannot relate a Transferee's location to a site.
- (iii) Inadequate transport for the Transferee to the clinic on the day of the reported event, in the case that transport is required.
- (iv) Inadequate interpreter services for the Transferee on the day of the reported event.
- (v) Inadequate security escort services for the Transferee on the day of the reported event.
- (vi) Inadequate Transferee identification documentation for the Transferee on the day of the reported event.
- (vii) Any other Transferee specific incident or situation that adversely affects the provision of health services to that Transferee.

6.4 Other Exclusions

- (a) Notwithstanding **clause 6.2** and **clause 6.3**, there may be other circumstances that cause performance calculations to be adjusted.
- (b) The Trusted Officer must notify the Department of any such circumstances and justify the reason for the proposed exclusion. The justification is to be included in the Monthly Performance Report to which the events or days relate.
- (c) The Department will assess the justification and respond according to the procedures defined in this Manual.



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SCHEDULE 4.1 – ANNEXURE A PERFORMANCE MEASURES

1.1 Provision of Health Services Information

Description	
What is measured	The provision of a Health Services Information orientation by the Health Services Manager to Transferees following their arrival on Nauru/Manus Island. The orientation can be provided to Transferees as a group.
Contract requirement	Clause 20.2 of Schedule 2 (Statement of Work), Regional Processing Countries Health Services Contract
Scope/application	This measure applies to all Transferees on Nauru/Manus Island. The Department must provide the Health Services Manager with reasonable access to Transferees for the purpose of conducting the orientation and ensure that adequate time is available for this task.
Metric Weighting	10%
Performance Threshold	X% \geq 90% of Transferees are provided with a Health Services Information orientation.
Measurement Methodology	
Measurement/monitoring points	<ul style="list-style-type: none"> Number of Transferees that have arrived on Nauru/Manus Island during the reporting period and have been provided with a Health Services Information orientation. Number of Transferees that have arrived on Nauru/Manus Island during the reporting period.
Calculation	$X\% = \frac{\text{Number of Transferees that have arrived on Nauru/Manus Island during the reporting period and have been provided with a Health Services Information orientation at the same time as orientations provided by the Department and other agencies}}{\text{Number of Transferees that have arrived on Nauru/Manus Island during the reporting period}} \times 100$
Frequency of Performance measurement	Monthly
Data Verification Sources/methods	Manual records maintained by the Health Services Manager
Measurement responsibility	Health Services Manager
Reporting frequency and requirements	Monthly. The Health Services Manager is required to report on all Health Services Information Orientations that took place during the reporting month.

2.1 Maintenance of Transferee Health Records

Description	
What is measured	Measures the proper maintenance of Transferees' health records by the Health Services Manager.
Contract requirement	Clause 11.1 of Schedule 2 (Statement of Work), Regional Processing Countries Health Services Contract
Scope/application	This measure applies to all Transferees on Nauru/Manus Island.
Metric Weighting	20%
Performance Threshold	<p>X% \geq 90% of Transferees health records contain the following:</p> <ul style="list-style-type: none"> • Each item of information below must be recorded pursuant to a medical consultation: <ul style="list-style-type: none"> ○ transferee's identifier, name, gender and date of birth; ○ date/time of consultation; ○ clinician's name; ○ clinician's designation (GP, Nurse, Mental Health Nurse, Counsellor etc); ○ clinical assessment; and ○ reason for consultation. • Pursuant to a medical consultation, a recommended treatment plan may be recorded and could include, but not be limited to: <ul style="list-style-type: none"> ○ details of medication (where prescribed), and ○ details of recommended follow-up (if any). • Updates of recent important events, including but not limited to: <ul style="list-style-type: none"> ○ admissions to hospital, ○ emergency call out, and ○ acute presentations. • Updates to the following, where relevant: <ul style="list-style-type: none"> ○ adverse medicine events, ○ current medications, ○ immunisation, and

	<ul style="list-style-type: none"> ○ risk factors. • Consents have been obtained, where relevant. <p>The scope of Departmental audits will be agreed to by both parties.</p>
Measurement Methodology	
Measurement/monitoring points	Compliance will be measured by auditing health records.
Calculation	$X\% = \text{Number of audited health records that meet the required standard} \div \text{Number of audited health records} \times 100.$
Frequency of Performance measurement	Monthly by the Health Services Manager and quarterly by the Department. The month that the Department conducts its assessment, the Health Services Manager will not be required to complete an assessment.
Data Verification Sources/methods	Transferee healthcare records established by the Health Services Manager.
Measurement responsibility	The Department will measure the Health Services Manager's performance once per quarter. The Health Services Manager will undertake measurements for the remaining two months of each quarter.
Reporting frequency and requirements	Monthly

2.2 Maintenance of Clinicians Staff Records

Description	
What is measured	Measures the maintenance of clinicians' staff records by the Health Services Manager.
Contract requirement	Clause 6.4 of Schedule 2 (Statement of Work), Regional Processing Countries Health Services Contract
Scope/application	<p>For the purpose of defining this metric, Clinical Personnel are:</p> <ul style="list-style-type: none"> ○ employees of the Health Services Manager who hold roles detailed in Schedule 2 Annexure B of the Regional Processing Countries Health Services Contract and whose principal place of work is Nauru/Manus Island, and ○ clinicians employed by the Health Services Manager who visit Nauru/Manus Island for regular but limited periods for the purpose of providing healthcare directly to Transferees. <p>This metric applies to Clinical Personnel:</p> <ul style="list-style-type: none"> ○ who are deployed by the Health Services Manager to Nauru/Manus Island: ○ as at the date/time that performance is measured by the Health Services Manager in relation to this metric, and ○ solely for the purpose of providing healthcare directly to Transferees. ○ whose employment contracts: <ul style="list-style-type: none"> ○ commenced before the end of the calendar month for which performance is measured by the Health Services Manager in relation to this metric, and either: <ul style="list-style-type: none"> (a) will expire after the end of the calendar month for which performance is measured by the Health Services Manager in relation to this metric; or (b) in the case of clinicians deployed to Manus Island, where expiry has occurred prior to the end of the calendar month for which performance is measured by the Health Services Manager, was for a term of 20 or more contiguous calendar days

	<p>from its commencement.</p> <p>This metric does not apply to:</p> <ul style="list-style-type: none"> ○ employees of the Health Services Manager who are deployed to Nauru/Manus Island but not in clinical roles; ○ employees of the Health Services Manager who visit Nauru/Manus Island temporarily for the purpose of providing advice about the provision of healthcare but whose primary workplace is other than Nauru/Manus Island; ○ clinicians who are former employees of the Health Services Manager and were deployed to Nauru/Manus Island and for whom the Health Services Manager maintains a staff record; ○ Network Providers (as defined in Schedule 2 of the Regional Processing Countries Health Services Contract); ○ employees of the Health Services Manager’s parent company or any of its subsidiaries other than the Health Services Manager; and ○ Clinical Personnel who are deployed at short notice including staff who are deployed pursuant to: <ul style="list-style-type: none"> ○ a surge notice, or ○ any other notice by the Department to deploy staff within five business days of the notice date.
Weighting	20%
Performance Threshold:	<p>X% \geq90% of Required Items in clinicians’ staff records are valid as at the date/time that performance is measured by the Health Services Manager in relation to this metric.</p> <p>To meet the Performance Threshold</p> <ul style="list-style-type: none"> • The following Required Items must be valid: <ul style="list-style-type: none"> ○ Police check: The expiry date of the person’s police check is after midnight on the last day of the calendar month for which performance is measured by the Health Services Manager in relation to this metric. This applies to all clinicians. ○ Professional Registration: The expiry date of the person’s professional registration with the Australian Health Practitioner Regulation Agency (AHPRA) is after midnight on the last day of the calendar month for which

	<p>performance is measured by the Health Services Manager in relation to this metric. (This requirement does not exist in cases where such registration is not required to administer healthcare provided by the Health Services Manager.)</p> <ul style="list-style-type: none"> • For Clinicians not registered to practise in Australia, but who would otherwise require AHPRA registration due to their profession, the Health Services Manager must confirm, prior to the person’s deployment, that the clinician has: <ul style="list-style-type: none"> ○ obtained qualifications of a similar standing to the Australian qualifications for that category of clinician; ○ has a suitable medical, professional and employment history; and ○ capable of providing health care to a standard comparable with Australian standards.
Measurement Methodology	
Measurement/monitoring points	Performance is measured no later than 5pm Sydney local time on the first Business Day after the end of each calendar month.
Calculation	$X\% = \frac{\text{Number of Required Items}}{\text{Number of Total Required Items}} \times 100$ <p>i.e. Number of Required Items that are valid ÷ (the number of Clinical Personnel who require a valid professional registration with AHPRA + the number of Clinical Personnel who require a valid qualification certification + the number of Clinical Personnel who require a current police check).</p>
Frequency of calculation	Monthly
Data Verification Sources/methods	Health Services Manager’s information management system
Measurement responsibility	Health Services Manager
Reporting frequency and requirements	Monthly. The Health Services Manager is required to report on maintenance of clinicians’ staff records as detailed above.

3.1 Timely conduct of Mental Health Screening

Description	
What is measured	Measures the timeliness of the Health Services Manager's conduct of scheduled and indicated Mental Health Screening of Transferees on Nauru/Manus Island, other than the Mental State Examination conducted during the Health Induction Assessment.
Contract requirement	Clause 25 of Schedule 2 (Statement of Work), Regional Processing Countries Health Services Contract
Scope/application	This metric applies with respect to Transferees on Nauru/Manus Island
Metric Weighting	10%
Performance Threshold:	X% = 90% of required Mental Health Screenings are completed within the required timeframe as specified in Schedule 2 (Statement of Work for Nauru/Manus Island), other than the Mental State Examination conducted during the Health Induction Assessment.
Measurement Methodology	
Measurement/monitoring points	Time 1 = date/time of arrival on Nauru/Manus Island Time 2 = date/time of completion of Mental Health Screening
Calculation	This metric calculates the number of Mental Health Screenings for Transferees on Nauru/Manus Island that are completed within the required timeframe for the screening ie: $X\% = \frac{\sum \text{Number of mental health screenings conducted (Time 2 - Time 1)}}{\sum \text{Number of mental health screenings due to be completed during the period}} \times 100$
Frequency of calculation	Monthly
Data Verification Sources/methods	Health Services Manager information management system Detention Services Portal Notice from Health Services Manager to the Department in accordance with Notification Protocol
Measurement responsibility	Health Services Manager
Reporting frequency and requirements	Monthly The Health Services Manager is required to report all Mental Health Screenings that took place during the Month

3.1 Timely Assessment of Vaccination Status and Commencement of Vaccinations

Description	
What is measured	<p>Measures the time within which the Health Services Manager:</p> <ul style="list-style-type: none"> • Determines each Transferee's Vaccination Category, which will be one of the following: <ol style="list-style-type: none"> A. Transferees who agree to be vaccinated. B. Transferees who decline to be vaccinated. C. Transferees who do not require any further vaccinations because they can provide documentary evidence of previous and up-to-date vaccinations. D. Transferees who claim to be able to obtain documentary evidence of previous vaccinations within one month (failure to produce evidence will result in the Health Services Manager requesting to commence initial vaccinations). • Conducts the first vaccination for Transferees in Category A.
Contract requirement	Clause 22 of Schedule 2 (Statement of Work), Regional Processing Countries Health Services Contract
Scope/application	This measure applies to all Transferees on Nauru/Manus Island.
Metric Weighting	10%
Performance Threshold	<p>X% \geq90% of Transferees:</p> <ul style="list-style-type: none"> • are placed in a vaccination category within 48 hours of arrival on Nauru or Manus Island, and • who are placed in Category A receive their first vaccination within seven days of being categorised
Measurement Methodology	
Measurement/monitoring points	<p>Time 1 = date/time of arrival on Nauru/Manus Island Time 2 = date/time of vaccination categorisation Time 3 = date/time of first vaccination for Category A transferees.</p>

Calculation	<p>Y% = Number of Transferees placed into a vaccination category within the threshold (Time 2 – Time 1 \leq48 hours) \div Number of vaccination categorisations due to be completed during the period x 100.</p> <p>Z% = Number of required vaccinations for Category A Transferees completed within the threshold (Time 3 – Time 2 \leq7 days) \div Number of vaccinations for Category A Transferees due to be completed during the period x 100.</p>
Frequency of Performance measurement	Monthly
Data Verification Sources/methods	Manual records unless the Health Services Manager's health information system can be used.
Measurement responsibility	Health Services Manager
Reporting frequency and requirements	Monthly. The Health Services Manager is required to report on all assessments of vaccination status including commencement of vaccinations during the reporting month.

3.2 Timely Treatment of Transferees Diagnosed with Diabetes

Description	
What is measured	Measures the timeliness within which the Health Services Manager commences care plans for those Transferees on Nauru/Manus Island who are positively diagnosed with diabetes.
Contract requirement	Clause 23 of Schedule 2 (Statement of Work), Regional Processing Countries Health Services Contract
Scope/application	This measure applies to all Transferees on Nauru/Manus Island.
Metric Weighting	10%
Performance Threshold	X% \geq 90% of Transferees diagnosed with diabetes are placed on a care plan (developed by the Health Services Manager) within 48 hours of a positive diagnosis of diabetes or within 48 hours of arrival on Nauru/Manus Island, whichever is latest.
Measurement Methodology	
Measurement/monitoring points	Time 1 = the latter of the date/time of positive diagnosis with diabetes OR date/time of arrival on Nauru or Manus Island where a positive diagnosis has occurred prior to arrival Time 2 = date of commencement of care plan for a Transferee who has been diagnosed with diabetes If Time 1 for a Transferee is within 48 hours of the end of the calendar month, then measurement will occur in the following calendar month.
Calculations	$X\% = \text{Number of Transferees with a positive diagnosis of diabetes placed onto a care plan during the reporting period and within the relevant threshold (Time 2 - Time 1} \leq 48 \text{ hours)} \div \text{Number of Transferees who are transferees who are due to be placed on a diabetes care plan during the reporting period} \times 100.$
Frequency of Performance measurement	Monthly
Data Verification Sources/methods	Manual records unless the Health Services Manager's health information system can be used.
Measurement responsibility	Health Services Manager
Reporting frequency and requirements	Monthly. The Health Services Manager is required to report on all treatments and management of Transferees diagnosed with diabetes for the reporting month.

3.3 Timely and Complete contributions to Joint Status Report

Description	
What is measured	<p>Measures the:</p> <ul style="list-style-type: none"> • Timeliness of the Health Services Manager’s contributions to the weekly Joint Status Report (JSR). • Compliance with Content Requirements. Those requirements are met if each contribution to the JSR describes the Health Services Manager’s: <ul style="list-style-type: none"> ○ achievements during the week, and ○ progress on key projects.
Contract requirement	Schedule 4.3 (Reporting)
Scope/application	This measure applies to the Health Services Manager’s contributions to the weekly Joint Status Report for Nauru/Manus Island.
Metric Weighting	10%
Performance Threshold	<p>X% \geq100% of the Health Services Managers’ contributions to the weekly JSR:</p> <ul style="list-style-type: none"> • are submitted to the Salvation Army by 5pm local time on Friday of each week, and • meet the Content Requirements.
Measurement Methodology	
Measurement/monitoring points	<ul style="list-style-type: none"> • Timing of contributions to the JSR by the Health Services Manager and the number of contributions that meet the Content Requirements. • Number of JSRs compiled by The Salvation Army during the reporting period
Calculation	$\% = \text{Number of contributions to the JSR by the Health Services Manager that meet the Content Requirements and are within the deadline} \div \text{Number of Joint Status Reports compiled by The Salvation Army during the period} \times 100.$
Frequency of Performance measurement	Monthly
Data Verification Sources/methods	The Health Services Manager’s contributions to the JSR and confirmation that they were submitted before the deadline.
Measurement responsibility	Health Services Manager
Reporting frequency	Monthly

4.1 Administration of Complaints Management System

Description	
What is measured	Measures the administration of a Complaints Management System (CMS) by the Health Services Manager.
Contract requirement	Clause 15.1 of Schedule 2 (Statement of Work), Regional Processing Countries Health Services Contract
Scope/application	This measure applies to all complaints received by the Health Services Manager from Transferees on Nauru/Manus Island.
Metric Weighting	10%
Performance Threshold	<p>At a minimum, the CMS contains the following information for X% \geq95% of complaints received by the Health Services Manager during the reporting period:</p> <ul style="list-style-type: none"> • Date/time that the Health Services Manager received the complaint, • Date/time that the Health Services Manager resolved the complaint, • Nature of the complaint (brief description), • The identity of the complainant(s) • The action taken as a result of the complaint • The status of the complaint • Date of the formal written response if it has been provided (if no response has been provided as at the date/time of performance measurement, then this field will contain “complaint notes will indicate the resolution”).
Measurement Methodology	
Measurement/monitoring points	<ul style="list-style-type: none"> • Number of complaints with all required information recorded in the CMS. • Number of complaints received by the Health Services Manager during the period. <p>Performance is measured no later than 5pm Australian Eastern Standard Time on the first Business Day after the end of each calendar month.</p>
Calculation	$X\% = \text{Number of complaints with all required information recorded in the CMS} \div \text{Number of complaints received by the Health Services Manager during the period} \times 100$
Frequency of Performance measurement	Monthly

Data Verification Sources/methods	Manual records unless the Health Services Manager's health information system can be used.
Measurement responsibility	Health Services Manager
Reporting frequency and requirements	Monthly. The Health Services Manager will report on the status of the all complaints made by the Transferees for the reporting month.



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SCHEDULE 4.1 – ANNEXURE B INCENTIVE MEASURE

Incentive Metric - Conduct of Health Education Sessions

Description	
What is measured	Measures the frequency of the Health Services Manager's provision of health education to Transferees.
Contract requirement	Clause 27.1(b)(i)(C) of Schedule 2 (Statement of Work), Regional Processing Countries Services Contract
Scope/application	This measure applies to all Transferees on Nauru/Manus Island.
Performance Threshold	<ul style="list-style-type: none"> • Base Level 1: 91-95% minimum compliance will result in a 0.5% reduction in the 5% withholding fee for each month of the following reporting quarter. • Base Level 2: 96-100% minimum compliance will result in a 1% reduction in the 5% withholding fee for each month of the following reporting quarter.
Measurement Methodology	
Measurement/monitoring points	Timing of Health Awareness Sessions by the Health Services Manager
Calculation	$\% = \text{Number of instances where at least one Health Awareness Session was conducted within a week} \div \text{Number of weeks in the quarter} \times 100$
Frequency of Performance measurement	Monthly
Data Verification Sources/methods	Manual records maintained by the Health Services Manager
Measurement responsibility	Health Services Manager
Reporting frequency	Quarterly



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SCHEDULE 4.1 – ANNEXURE C

EXAMPLES OF CALCULATION FOR WITHHOLDING FEE

EXAMPLE OF CALCULATION FOR WITHHOLDING FEE

The following worked examples provide a demonstration using dummy dataset of how the calculation of the withholding fee will be calculated for illustration purposes only.

Example 1: One performance failure

The total Onsite Health Clinic Fee (OHCF) for the reporting month is \$650,000 and the Health Services Manager has recorded one performance failure for the month.

The following calculations apply:

Step 1

$$\begin{aligned} \text{Withholding Fee (WF)} &= 5\% \times \text{reporting month OHCF} \\ &= 5\% \times \$650,000 \\ &= \$32,500 \end{aligned}$$

The Department will withhold \$32,500 of the Onsite Health Clinic Fee for the reporting month until the monthly report is submitted.

Step 2

The Health Services Manager has recorded performance failure against one Performance Measure 4.1 Complaints Management under Performance Criteria 4 (Efficiency).

Retained Withholding Fee (RWF)

$$\begin{aligned} &= 5\% \text{ OHCF}^* \times \sum (\text{weightings of performance measure failures}) \\ &= \$32,500 \times 10\% \\ &= \$3,250 \end{aligned}$$

The RWF of \$3,250 will continue to be withheld until the Health Services Manager starts implementing the identified corrective action.

Step 3

The difference between the WF and RWF will be paid to the Health Services Manager.

$$\begin{aligned} \text{Difference} &= \text{WF} - \text{RWF} \\ &= \$32,500 - 3,250 \\ &= \$29,250 \end{aligned}$$

Example 2: Multiple Performance Failures

The total Onsite Health Clinic Fee for the reporting month is \$650,000 and the Health Services Manager has recorded one performance failure for the month.

Step 1

$$\begin{aligned} \text{Total WF} &= 5\% \times \text{reporting month OHCF} \\ &= 5\% \times \$650,000 \\ &= \$32,500 \end{aligned}$$

The Department will withhold \$32,500 of the Onsite Health Clinic Fee for the reporting month until the monthly report is submitted.

Step 2

The Health Services Manager has recorded performance failure against Performance Measure 4.1 Complaints Management and 3.3 Diabetes Management. Therefore the Department will withhold the following fee:

$$\begin{aligned} \text{RWF} &= 5\% \text{ OHCF}^* \times \sum (\text{weightings of performance measure failures}) \\ &= \$32,500 \times (10\% + 10\%) \\ &= \$6,500 \end{aligned}$$

The RWF of \$6,500 will continue to be withheld until the Health Services Manager starts implementing the identified corrective action.

Step 3

The difference between the WF and RWF will be paid to the Health Services Manager.

$$\begin{aligned} \text{Difference} &= \text{WF} - \text{RWF} \\ &= \$32,500 - 6,500 \\ &= \$26,000 \end{aligned}$$

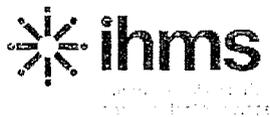


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SCHEDULE 4.1 – ANNEXURE D DISCRETIONARY DAY FORM



REQUEST FOR DISCRETIONARY DAY

Date(s) nominated as Discretionary Days:	
Centre:	
Clinic Type (s):	
Reason:	
Metric(s) Affected:	
All	<input type="checkbox"/>
Provision of Health Services Information	<input type="checkbox"/>
Maintenance of Transferee Health Records	<input type="checkbox"/>
Timely conduct of Mental Health Screenings	<input type="checkbox"/>
Timely Assessment of Vaccination Status and Commencement of	<input type="checkbox"/>
Timely Treatment of Transferees Diagnosed with Diabetes	<input type="checkbox"/>
Timely and Complete contributions to Joint Status Report	<input type="checkbox"/>
Administration of Complaints Management System	<input type="checkbox"/>

Date:

IHMS Site Manager / HSM name	DIAC Site Manager name
IHMS Site Manager / HSM signature	DIAC Site Manager signature



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SCHEDULE 4.2 – GOVERNANCE

1. PURPOSE

- 1.1 The purpose of this **Schedule 4.2** (Governance) is to outline the roles and responsibilities required of the Health Services Manager and describe the Department's and Health Services Manager's accountability for delivery of the Health Services. It outlines the broad governance structure, including the committee and management teams that the Health Services Manager is required to participate.

2. DEPARTMENT AND HEALTH SERVICES MANAGER PARTNERING

2.1 Code of Conduct

The Health Services Manager must ensure that all Health Services Manager Personnel comply with the Code of Conduct in **Annexure A** (Code of Conduct) to this **Schedule 4.2**. The Code of Conduct sets out the Department's expectations of all Health Services Manager Personnel in the performance of the Health Services.

3. CONTRACT GOVERNANCE

- 3.1 In accordance with **clause 20** of the Contract, the Health Services Manager must appoint a Health Services Authority and a Health Services Administrator (as counterparts to the Department's Contract Authority and Contract Administrator).
- 3.2 The Health Services Authority is the signatory officer of the Health Services Manager who is responsible for:
- (a) making decisions and approvals of any variations to the Contract; and
 - (b) participating in the governance arrangements as outlined in this **Schedule 4.2**.
- 3.3 The Health Services Administrator is the contact officer of the Health Services Manager who is responsible for:
- (a) overseeing the commercial delivery of the Contract;
 - (b) coordinating the Health Services Manager's participation in the governance arrangements as outlined in this **Schedule 4.2**;
 - (c) managing any variations, disputes or resolution processes associated with the Contract;
 - (d) managing invoicing and payment processes for the Health Services Manager; and
 - (e) management of requests for Additional Services, Scope Changes and Contract Changes.

4. CLINICAL GOVERNANCE

The Health Services Manager must appoint a Clinical Governance Team in accordance with this **clause 4** to manage the delivery of Health Services in accordance with **Schedule 2** (Statement of Work).

4.1 Clinical Governance Team

- (a) The Clinical Governance Team must be comprised of the Key Personnel occupying the following three key positions:
 - (i) Medical Director, IHMS;
 - (ii) National Operations Manager; and
 - (iii) Medical Director, Mental Health Services.
- (b) The responsibilities of the Medical Director, IHMS must include:
 - (i) coordinating, credentialing and managing the identification, training and ongoing engagement of suitable health professionals and other providers for the HSM Network;
 - (ii) providing second opinions on clinic matters and professional development and support to all Health Care Providers (including through the development of appropriate induction and ongoing training modules);
 - (iii) collating and providing medical opinion advice in the format requested by the Department about any Transferee;
 - (iv) overseeing and managing the accreditation process against applicable Health Standards;
 - (v) coordinating any Department request for medical escort or evacuation services;
 - (vi) developing and overseeing implementation of the clinical audit program;
 - (vii) developing and monitoring the Health Services Manager's performance against the Performance Measures;
 - (viii) ensuring that all medical protocols, treatment regimens, emergency evacuation and other procedures are documented and observed; and
 - (ix) ensuring that site formularies, drugs and disposable inventories, purchasing and prescribing guidelines are appropriate and monitored.
- (c) The responsibilities of the National Operations Manager include:
 - (i) managing the development, review and update of the Policies and Procedures Manual;
 - (ii) ensuring the Health Service are delivered in accordance with the Policy and Procedures Manual;

- (iii) overall responsibility for the operational aspects of the contract including selection and management of Network Providers; review of the HSM Network and Network Provider Agreements.
 - (iv) ensuring that all investigations of the suitability of prospective Health Services Manager Personnel and Network Providers are undertaken, including that all checks are performed and clearances obtained in accordance with **clause 6.3 of Schedule 2** (Statement of Work);
 - (v) in conjunction with the Medical Director, IHMS, ensuring a comprehensive programme of continuous improvement and quality assurance is implemented including
 - that all audits resulting from the performance management process are supported.
 - (vi) developing and implementing systems to support and inform Network Providers to ensure Network Providers understand the specific health needs of Transferees and the particular roles and responsibilities of Network Providers, including providing Network Providers with the appropriate training, education and advice;
 - (vii) ensuring that all Health Care Providers, receive all appropriate induction and on-going training and advice to support them and facilitate an understanding of specific health requirements of Transferees and their roles and responsibilities; and
 - (viii) investigating and confirming that all Health Care Providers are suitably qualified, skilled and registered.
- (d) The responsibilities of the Medical Director, Mental Health Services include:
- (i) ensuring the provision of welfare, counselling and psychological Health Services to Transferees in accordance with **Schedule 2** (Statement of Work);
 - (ii) in partnership with the Medical Director, IHMS, planning, developing, coordinating and evaluating mental health services across the services prescribed in this Contract in collaboration with relevant stakeholders;
 - (iii) liaising on a regular basis with the Health Services Regional Manager, the Department, other Department services providers, other government and non-government organisations and community groups, and cultivating their involvement in the planning process;
 - (iv) in partnership with the mental health management team, facilitating the operational aspects of service delivery ensuring that this contributes to and is consistent with, the development and maintenance of an integrated, comprehensive continuum of care;

- (v) managing the mental health service staff on Nauru and Manus Island, ensuring appropriate procedures for staff recruitment and selection, training and development, clinical supervision, performance appraisal and support;
- (vi) ensuring that appropriate Transferee records are maintained Monthly, and that relevant data is collected, monitored and analysed to assist in planning for the service;
- (vii) providing reports as required including, at the Department’s request, service monitoring and other ad hoc reports;
- (viii) ensuring, as far as practicable, staff under their supervision have a safe working environment in consultation with those staff;
- (ix) participating in multidisciplinary team meetings involving case management and intervention planning decisions;
- (x) liaising on a regular basis with the Department, and other Department service providers regarding the management of Transferees;
- (xi) ensuring that mental health clinical staff adhere to the standard operating policies, procedures and processes of the Health Services Manager and applicable Health Standards as they pertain to mental health and the National Standards for Mental Health, as applicable to Transferees on Nauru and Manus Island;
- (xii) delivering appropriate clinical consultation and supervision:
 - (A) on a fortnightly basis to staff under their supervision; and
 - (B) Monthly to other mental health service providers;
- (xiii) developing and implementing a training program for mental health clinical staff in accordance with the clinical needs and professional needs of those mental health clinical staff;
- (xiv) incorporating education material on cultural differences for any person who is likely to either work in or be treated at the health centre;
- (xv) developing relevant education material for distribution to detainees; and
- (xvi) developing and coordinating a relevant quality assurance plan for the mental health service in accordance with applicable Health Standards as they pertain to mental health and the National Standards for Mental Health and other relevant standards, as applicable to Transferees on Nauru and Manus Island.

5. GOVERNANCE ARRANGEMENTS

5.1 General

- (a) The Department’s governance framework has been developed to support the effective delivery of services under the immigration detention services contracts. A key feature of the governance framework is three distinct layers of governance at the strategic, tactical and delivery level, to provide clear pathways to raise, discuss, respond to, and resolve issues.
- (b) While Regional Processing Countries processing is not considered part of the immigration detention services, for the purposes of governance of the services under this Contract the parties agree that those services will be considered under the governance framework contemplated by this **Clause 5**.
- (c) The Service Provider must cooperate with the Department by actively participating in committees and meetings that have been (or are being) established across all levels of governance.

5.2 Cooperation, Collaboration and Meetings

- (a) The Service Provider must cooperate with the Department, other service providers in the detention services network, and stakeholders, to meet the needs of Transferees and assist the Department to meet its obligations.
- (b) The Service Provider must attend, participate in, and action agreed items resulting from all meetings, consultative committees and forums at the request of the Department. This will include, but is not limited to:

Tier	Meeting frequency	Parties
Strategic	Biannual	Department, Health Services Manager (represented by the Health Services Authority), other service providers at the Department’s discretion.
Tactical	Two (2) monthly	Department, Health Services Manager (represented by the Health Services Administrator), other service providers as required.
Delivery	Daily/weekly/as required	Department, Health Services Manager, other service providers as required.

- (c) In certain situations, and particularly at the delivery level of governance, the Service Provider will be required to chair and lead these initiatives.
- (d) The Service Provider must provide updates, reports and briefings for meetings, consultative committees and forums at the request of the Department.



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SCHEDULE 4.2 – ANNEXURE A

CODE OF CONDUCT

1. INTRODUCTION

- 1.1 When providing any Health Services to the Department, the Health Services Manager and Health Services Manager Personnel must observe and uphold the standards of conduct outlined in this document. These standards are considered fundamental to the successful performance of the Health Services.
- 1.2 The Code of Conduct is intended to provide an ethical framework to guide the Health Services Manager and Health Services Manager Personnel in their decisions, actions and behaviour, and it advocates values that include integrity, honesty and impartiality.
- 1.3 The Code of Conduct must be integrated into the induction training for Health Services Manager Personnel provided under **Schedule 2** (Statement of Work), and included in any other suitable training and development programmes, particularly leadership development, management and supervisor training.
- 1.4 Specific reference to the Code of Conduct must be made in all job descriptions and it will be a key area of focus of performance appraisal and development discussions between Health Services Manager Personnel and their managers.
- 1.5 A hardcopy of the Code of Conduct must be provided to all Health Services Manager Personnel, and additional copies made available at each Facility on Nauru and Manus Island.
- 1.6 Implementation of the Code of Conduct must be regularly reviewed and critically evaluated through audits, personnel surveys (including exit interviews) and other appropriate mechanisms. The results of these reviews and surveys may be taken into account for the purpose of determining whether the Health Services Manager has met its obligations under the Contract

2. STANDARDS OF CONDUCT

2.1 An Open and Accountable Organisation

In carrying out their duties and in all their dealings with Transferees, the Health Services Manager and Health Services Manager Personnel must:

- (a) behave honestly and with integrity;
- (b) be open and accountable for their decisions, actions and omissions;
- (c) disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with their duties;
- (d) not make improper use of information, their status, power or authority, in order to gain, or to seek to gain, a benefit or advantage for themselves or any other person;
- (e) at all times behave in a way that upholds the values, integrity and good reputation of the Department;

- (f) avoid any practice or activity which could be seen as bringing the Department into disrepute; and
- (g) report behaviour that breaches the Code of Conduct and all allegations and/or possible incidents of criminal activity, corruption, dishonesty, unlawful conduct and conflicts of interest.

2.2 Fair and Reasonable Dealings with Transferees

In carrying out their duties and in all their dealings with Transferees, the Health Services Manager and Health Services Manager Personnel must:

- (a) act fairly and reasonably in all of their dealings;
- (b) not provide false or misleading information in response to a request for information;
- (c) respect privacy and confidentiality and comply with their obligations under any Confidentiality Deed and the Deed of Non-Disclosure of Personal Information which they have signed;
- (d) ensure Transferees are not subject to discrimination on any ground, including race, colour, gender, sexual preference, religion, political or other opinion, age, national social origin, status or disability; and
- (e) facilitate access for Transferees to internal and external complaints mechanisms, and process requests promptly and in a fair and equitable manner in accordance with the requirements of the Contract.

2.1 Well Trained and Supported Personnel

In carrying out their duties and in all their dealings with Transferees, the Health Services Manager and Health Services Manager Personnel must:

- (a) comply with all applicable Laws, including those applicable on Nauru and Manus Island, any Australian Government Policies and Department Health Policies in accordance with the Contract;
- (b) comply with any lawful and reasonable direction given by the relevant Department Executive in accordance with the Contract;
- (c) demonstrate awareness of sensitivity, interest in and public scrutiny of, the environment, and, with this in mind, conduct themselves in an appropriate manner whenever on or off duty;
- (d) use the facilities contained in the Facilities on Nauru and Manus Island and the Department equipment and systems in a proper and respectful manner; and
- (e) comply with any other conduct requirement that is prescribed by regulations, determinations and directions.

2.2 Duty of Care

In carrying out their duties and in all their dealings with Transferees, the Health Services Manager and Health Services Manager Personnel must:

- (a) act with care and diligence;
- (b) take actions and comply with relevant policies and procedures to maintain a safe working environment;
- (c) ensure the requirements for separation detention are upheld, and that the integrity of the Department's visa determination process is maintained;
- (d) in respect of any children, ensure they receive appropriate and individual care; and
- (e) be alert for Transferees who are or appear to be, traumatised and/or vulnerable to self-harm or to harm by the actions of others.

2.3 Supportive Culture

In carrying out their duties and in all their dealings with Transferees, the Health Services Manager and Health Services Manager Personnel must:

- (a) support and promote a stable and harmonious environment, and seek to resolve situations and tensions peacefully;
- (b) treat everyone with respect and courtesy, and without harassment of any kind;
- (c) be supportive and helpful to Transferees who make a request in relation to their Health Care as required by **Schedule 2** (Statement of Work);
- (d) conduct all duties sensitively, enabling Transferees to maintain their dignity, and with due regard for their individual circumstances and backgrounds;
- (e) behave in a tolerant, respectful and culturally sensitive manner towards Transferees and avoid perceptions of discrimination and bias; and
- (f) show understanding, respect and sensitivity for religious beliefs and conventions of an individual Transferee and their particular needs.

2.4 Promoting a Healthy Environment

In carrying out their duties and in all their dealings with Transferees, the Health Services Manager and Health Services Manager Personnel must:

- (a) not be under the influence, or displaying the after effects, of drug or alcohol consumption; and
- (b) respect the natural environment in and surrounding the Facilities on Nauru and Manus Island.

2.5 Providing Appropriate Amenities

In carrying out their duties and in all their dealings with Transferees, the Health Services Manager and Health Services Manager Personnel must be aware of and monitor any Transferee with special needs, including children, the elderly and infirm, ensuring they are treated individually, accorded respect and provided with as much personal privacy as is reasonably possible, and receive timely and equitable access to the relevant services.

3 COMPLAINTS ABOUT CONDUCT

- 3.1 Copies of the Code of Conduct must be displayed prominently within the Facilities on Nauru and Manus Island at all times during the Term.
- 3.1 The Department and the Health Services Manager are committed to fair, transparent and timely resolution of complaints from Transferees regarding breaches of this Code of Conduct.
- 3.2 Transferees must be informed of their rights and are entitled to comment on or complain without hindrance or fear of reprisal:
- (a) about any matter relating to their Health Care or breach of this Code of Conduct;
 - (b) in the case of a suspected criminal offence, to the police; or
 - (c) in the case of suspected child abuse, to the relevant State/Territory welfare agency.
- 3.3 Complaints made by Transferees to the Health Services Manager and Health Services Manager Personnel, that are either expressed to be for the attention of a third party (including those agencies referred to in **clause 3.2** above) or are deemed by the Department and/or the Health Services Manager to be more appropriately resolved by a third party, must be forwarded to the relevant agency in a timely fashion and in accordance with applicable Law.
- 3.4 Material advising of the right to complain in accordance with the procedures developed under **Schedule 2** (Statement of Work) must be displayed prominently throughout the Facilities at all times and made available to each individual Transferee.
- 3.5 All complaints to the Health Services Manager and Health Services Manager Personnel, or the Department must be fully investigated and determined in accordance with the processes and procedures developed under **Schedule 2** (Statement of Work).
- 3.6 As part of this process, all relevant information must be considered and interviews may be undertaken by the Health Services Manager, with its relevant Health Services Manager Personnel. All Health Services Manager Personnel must cooperate fully with such interviews and any requests for information.
- 3.7 Following investigation, if necessary, the Department may require the Health Services Manager take corrective or disciplinary action against Health Services Manager Personnel who have breached the Code of Conduct.

3.8 The Health Services Manager must notify the Department of any complaint by a Transferee about the conduct of Health Services Manager Personnel within twelve (12) hours of the complaint.

4 INCONSISTENCIES WITH THE CODE

4.1 The obligations contained in this Code of Conduct are subject to:

- (a) any contrary express Contractual obligations; and
- (b) any contrary directions given by the Department Executive under the Contract.



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SCHEDULE 4.3 - REPORTING

1. Performance Reporting

- 1.2 The Health Services Manager must prepare and submit a Monthly Performance Report that details the Health Services Manager's performance against the Performance Measures in accordance with **Schedule 4.1** (Performance Management Manual) of this Contract.
- 1.3 The report must be submitted to the Department each calendar month within ten (10) business days after the last business day of the month.
- 1.4 The Monthly Performance Report must be prepared in accordance with the template agreed by the Department and the Health Services Manager and will contain:
 - (a) Performance calculations for each Performance Measure;
 - (b) The Health Services Manager's reasons for any dispute of the Department's calculation of Performance Measure 2.1 - Maintenance of Transferee Health Records; and
 - (c) Calculations of the Withholding Fee and Additional Withholding Fee in accordance with **clauses 4.1, 4.2 and 4.3** of **Schedule 4.1** (Performance Management Manual). This calculation is to include:
 - (i) any Departmental calculation of Performance Measure **clause 2.1**; and
 - (ii) adjustments to calculations as per **clause 6** of **Schedule 4.1** (Performance Management Manual).
- 1.5 Where Performance Failure occurs against a Performance Metric, the following information is to be provided in the monthly performance report:
 - (a) Details the performance failures for the month under review, including an explanation of the reason(s) or cause(s);
 - (b) Where applicable, details of the Health Services Manager's proposed action plan for rectifying any performance failures during the month; and
 - (c) Where applicable, details of preventative action proposed by the Health Services Manager and aimed at preventing or minimising the re-occurrence of any performance failure.

- 1.6 If the Health Services Manager fails to provide a Monthly Performance Report which contains the details described in this **Schedule 4.3** within the timeframe required by this **Schedule 4.3**, the Department may withhold payment of the Onsite Health Clinic Fee for up to ten (10) Business Days (as decided by the Department in its absolute discretion) after the date on which the Health Services Manager submits the report to the Department which complies with this Schedule.

2. Regular Reporting

- 2.1 The Health Services Manager is to provide the following reporting to the Department. The reporting is to be provided in a form acceptable to the Department and a separate report is to be provided for Nauru and Manus Island:

- (a) Confirmation of standard clinics offered – type of clinics, days and hours of operation, plus exception reporting and explanation for any days where there was under-delivery against standard clinic hours.

Reporting timeframe: Monthly within 10 business days of end of month.

- (b) An analysis of health trends amongst the Transferee population over the previous quarter (by location), including consideration of environmental factors and detailing responses undertaken or planned to address trends of concern.

Reporting timeframe: Quarterly within 20 business days of end of quarter, the first quarter ending 31 December 2012.

3. Additional Regular Reporting

- 3.1 The Health Services Manager must provide to the Department, in a format agreed by the Parties, reporting as described and according to the timeframes specified in an Additional Regular Reporting Register ('Reporting Register').
- 3.2 The contents of the Reporting Register will be agreed by the Parties, maintained by the Department and jointly reviewed with the Health Services Manager at least quarterly.

4. Joint Service Provider Report

- 4.1 The Health Services Manager is to contribute to a weekly joint-service provider report, which will be coordinated and assembled by service provider management on Nauru and Manus Island and provided to DIAC weekly. The report will outline the week's achievements, significant events and progress on key projects on Nauru and Manus Island. A separate report will be provided for Nauru and Manus Island.

5. Ad Hoc Reporting

- 5.1 The Health Services Manager must provide the following at the Department's request:
- (a) Written or verbal psychiatric, psychological and medical reports and advice on any Transferee in accordance with all relevant Law, Department Health Policy and professional and ethical standards; and
 - (b) Written or verbal reports or advice in response to any Ministerial, Parliamentary or other stakeholder inquiry, review or investigation.

All ad hoc reports provided under this **clause 5.1** must address the issues identified by the terms of the relevant request, and be provided within the timeframe reasonably specified by the Department at the time of the request.



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**SCHEDULE 5
FEES AND PAYMENTS**

1. FEES AND PAYMENTS

1.1 Overview of fees payable under this Agreement

The fees which the Health Services Manager is entitled to be paid for performance of the Contract comprise:

- (a) Onsite Health Clinic Fee (refer clause 2)
- (b) Pass Through Costs (refer clause 4)
- (c) IT Transition-in Fee (refer clause 5)
- (d) Establishment Costs (refer clause 6)
- (e) Site Health Review Fee (refer clause 7)
- (f) Additional Fees (refer clause 8)
- (g) Medical Consumables (refer clause 9)
- (h) Medical Evacuation (refer clause 10)

1.2 Vector Control

- (a) The Health Services Manager will carry out a comprehensive vector control program on Manus Island, in accordance with **clause 16.3** of **Schedule 2** (Statement of Work).
- (b) The Department will pay the Health Services Manager a monthly flat rate as specified in **Annexure A** Pricing Tables to this **Schedule 5**. The monthly rate does not include the following costs:
 - (i) Travel and accommodation;
 - (ii) All associated equipment and on-going consumables costs;
 - (iii) Freight and transport related costs; and
 - (iv) Storage infrastructure for equipment.

1.3 Calculation of fees per day

Onsite Health Clinic Fees will be calculated monthly on a role-by-role basis, based on the relevant occupancy and capacity bands as notified by the Department to the Health Services Manager. Notification will be sent to the Health Services Manager within ten (10) business days upon the commencement of the previous month advising of the estimated capacity band for the following month. The Health Services Manager must comply with the requirements of this contract in respect of the new occupancy and capacity band in accordance with the Departments notice considered in this **clause 1.3**, within (4) weeks

when the notice requires a reduced occupancy and capacity band and within two (2) weeks when the notice requires an increased occupancy and capacity band. In the event that the Health Services Manager is unable to comply as a result of matters beyond its reasonable control (including but not limited to, delay in the issuance of visas by Nauru and Papua New Guinea, the non-availability of passenger flights into or out of either facility, and extended time taken for the registration of clinical staff by the Nauru and Papua New Guinea governments) the Health Services Manager will notify the Department of the reasoning and such delay will not be considered as part of this **clause 1.3**.

2. **ONSITE HEALTH CLINIC FEE**

- 2.1 The Onsite Health Clinic Fee payable to the Health Services Manager for the performance of the Health Services, other than Pass Through Costs, is a fixed fee per day. The amount of the Onsite Health Clinic Fee must be calculated in accordance with **clause 1.3** of this **Schedule 5**, applying the fixed fee per day set out in **Annexure A** (Pricing Tables) to this **Schedule 5**.
- 2.2 The Onsite Health Clinic Fee for Nauru and Manus Island is to be calculated by apportioning weightings to the two respective facilities Onsite Health Clinic Tables at **Annexure A** (Pricing Tables) to this **Schedule 5** on a role-by-role basis, according to the utilisation of Australian and Other Country Personnel Primary Health Care Nurses and GPs during that period for which the fee is being calculated.

3. **HEALTH SERVICES FOR RECIPIENTS**

- 3.1 There will be no additional fees for Health Services provided to Recipients, other than Pass Through Costs which are provided for under **clause 4** of this **Schedule 5**.
- 3.2 Health Services for Recipients are to be provided utilising personnel already deployed on Manus Island or Nauru for the purpose of providing Health Services to Transferees (in accordance with the occupancy bands and personnel levels provided at **Annexure A** (Pricing Tables) to this **Schedule 5**).
- 3.3 Recipients are not to be included in the occupancy band calculation per **Annexure A** (Pricing Tables) to this **Schedule 5**.

4. **PASS THROUGH COSTS**

- 4.1 The Health Services Manager may be reimbursed for the following items on a Pass Through Cost basis in line with **clause 13**:
- (a) cost of Health Care delivered to Transferees and Recipients, except health care delivered at Onsite Health Clinics;
 - (b) for Personnel deployed for at least five (5) weeks continuously on Nauru or Manus Island and visiting specialists to provide Health Care Services, the cost of air travel (domestic and international), in accordance with **Schedule 6** of the Contract;

- (c) for Personnel deployed for at least five (5) weeks continuously on Nauru or Manus Island and visiting specialists to provide Health Care Services, the cost of accommodation, meals, taxis and public transport incurred in connection with travel (domestic and international) in accordance with **Schedule 6** of the Contract;
- (d) the cost for air travel (domestic and international), accommodation, meals, taxis and public transport incurred by the Health Services Manager Personnel with the Departments prior agreement or acceptance;
- (e) Medical Escort fees calculated using the rates specified at **Annexure A** of this **Schedule 5**;
- (f) cost of undertaking Federal police background checks for Network Providers delivering Health Care at a Facility;
- (g) cost of undertaking “Working with Children” checks for Network Providers delivering Health Care to Children; and
- (h) any other costs that the Contract expressly provides may be recovered by the Health Services Manager on a Pass Through Cost basis.
- (i) any other associated costs in relation to health services provided by a Network Service Provider, in line with this Contract with the prior written approval by the Department.

4.2 Where:

- (a) The Health Services Manager has expressed an urgency in deployment of staff or materiel to either Nauru or Manus Island, and
- (b) The Health Services Manager has submitted a proposal to the department for approval for such deployment, and
- (c) The Health Services Manager has advised the Department of limited opportunity to deploy staff or materiel to Nauru or Manus Island with a view to meeting the Department’s expectation for the provision of the Health Services, and
- (d) Twenty-four hours have passed since the proposal we submitted, and all attempts to contact the Contract Manager and Administrator have been exhausted;

the Health Services Manager will proceed with the deployment on the basis that the need for the deployment is to meet clinical or operational requirements. The Pass Through Costs of this deployment will be deemed to have been approved by the Department.

- 4.3 Pass Through Costs in foreign currency are to be converted into Australian Dollars utilising the exchange rate reported by the Reserve Bank of Australia for the day the Pass Through Cost was paid by the Health Services Manager.

5. IT Transition-in Fee

- 5.1 The IT Transition-In Fee payable to the Health Services Manager for the performance of the Transition-In is specified in **Annexure A** (Pricing Tables) to this **Schedule 5**.

6. ESTABLISHMENT COSTS

- 6.1 Subject to **clauses 6.2-6.4**, the Health Services Manager will be reimbursed for costs required to establish the Onsite Health Clinics.
- 6.2 These costs will generally relate to assets such as fixtures and fittings (including furniture) which are non-consumables and exclude those costs provided for under any other part of this **Schedule 5**. These costs may incorporate a pricing mark up of no greater than 10% on the actual cost of the individual item (specifically excluding postage and handling fees).
- 6.3 The Health Services Manager is required to have received the Department's prior written approval of any expenditure for which it seeks reimbursement under this **clause 6**.
- 6.4 All establishment costs under this **clause 6** must have been requested by IHMS and subsequently approved by the Department within the initial eight (8) weeks of the Onsite Health Clinic commencing Health Care.
- 6.5 Unless the Department notifies the Health Services Manager otherwise, assets reimbursed under this **clause 6** are considered to be Departmental Assets from the time they are received by the Health Services Manager and confirmed by the Health Services Manager to have been delivered in good order.

7. SITE HEALTH REVIEW FEE

- 7.1 The Site Health Review Fee for the performance of Site Health Reviews by the Health Services Manager is specified in **Annexure A** (Pricing Tables) to this **Schedule 5**. The Site Health Review Fee will be payable once for Manus Island and once for Nauru.

8. ADDITIONAL FEES

Any additional or expanded services provided by the Health Services Manager under **clause 31** of the Contract will be priced according to the following principles:

- (a) If a relevant pricing mechanism, methodology or metric already exists within the framework of this Contract – the fee for the additional or expanded services will be calculated by applying that mechanism, methodology or metric (including any applicable rates specified in a schedule of labour rates in the Pricing Tables);
- (b) If no relevant pricing mechanism, methodology or metric exists within the framework of this Contract – the fee for the additional or expanded services will be determined according to what the Department considers (acting reasonably) is fair and reasonable at that time, having regard to the then prevailing market rates or prices commercially available in the market for similar service to like customers; or

- (c) If the adjustment cannot be determined under either (a) or (b), or by agreement of the Parties, the cost of the additional service will be recovered by the Health Services Manager as a Pass Through Cost.

9. MEDICAL CONSUMABLES

9.1 Clinical Consumables, Pharmaceuticals and other Medicines

- (a) For the purposes of the Health Services provided by the Health Services Manager on Nauru and Manus Island, the cost of medical consumables, including pharmaceuticals and other medicines provided by the Health Services Manager under **Part 1 of Schedule 2** (Statement of Work) will be priced on a Pass Through basis;

10. MEDICAL EVACUATION AND ESCORT

- 10.1 Where medical evacuation or escort of a Transferee or Recipient is required, the Health Services Manager will seek to arrange Department approval of costs associated with the evacuation or escort prior to the evacuation or escort taking place.

11. PERFORMANCE MANAGEMENT REGIME

- (a) The Department will retain a Withholding Fee of five per cent of the Onsite Health Clinic Fee for the reporting month until the requirements as specified in **Schedule 4.1** (Performance Management Manual) have been met.
- (b) The Health Services Manager will send two separate invoices per month per site for the Onsite Health Clinic Fee to the Department. One invoice will be for the site Withholding Fee and the second invoice will be for the remaining amount of the Onsite Health Clinic Fee. The invoices must be in accordance with **clause 12.1** of this **Schedule 5**.
- (c) The Department will review the monthly performance report and confirm with the Health Services Manager the Withholding Rebate and Retained Withholding Fee amounts.
- (d) Upon the Department's advice, the Health Services Manager will be able to provide the Department with a credit note for the Withholding Rebate amount. Upon receipt of the credit note, the Department will proceed to release these funds to the Health Services Manager.
- (e) The Retained Withholding Fee amount will be released to the Health Services Manager upon meeting the requirements as outlined in **Schedule 4.1** (Performance Management Manual) and upon the submission of a credit note for that amount.

12. INVOICING ARRANGEMENTS AND FEE CALCULATIONS

12.1 Invoicing Arrangements

- (a) On acceptance and signing of this Agreement by both parties, the Health Services Manager must invoice the Department, monthly in arrears and in accordance with the requirements as set out in this **clause 12**.
- (b) Invoices must be in the form approved by the Department and submitted within ten (10) Business Days of the end of the monthly billing period.
- (c) Each month, the Health Services Manager must submit the following invoices for payment of the fees:
 - (i) Onsite Health Clinic Fee by Facility;
 - (ii) Pass Through Costs by Facility; and
 - (iii) Additional Fees by Facility.
- (d) Separate invoices must be submitted for payment of:
 - (i) the IT Transition-in Fee by Facility;
 - (ii) Establishment Costs by Facility; and
 - (iii) Site Health Review Fee by Facility,

at the commencement of the month following receipt by the Health Services Manager of notification of acceptance by the Department that the requirements of these fees have been met.
- (e) The Department will pay the invoices within the timeframe specified at **Part 11** of the Contract.
- (f) In addition to submitting invoices for payment, the Health Services Manager must provide a summary report with each invoice that identifies health services provided to Transferees and Recipients listed by Recipient Employer.

13. REIMBURSEMENT OF PASS THROUGH COSTS

- (a) Subject to this **clause 13**, the Department will reimburse the Health Services Manager at cost (and without any mark up, unless otherwise stated) for any of the Pass Through Cost items described in **clause 3** and **6** of this **Schedule 5**.
- (b) The Department will not reimburse the Health Services Manager for the cost of any Pass Through Cost item unless the relevant invoice claiming payment for the amount is accompanied by sufficient supporting documentation, including copies of third party invoices verifying the Health Services Manager's payment of each amount.
- (c) The Pass Through Cost invoice amount for Health Care delivered by a Network Provider to a Transferee or Recipient on Nauru and Manus Island will be calculated on a daily rate as agreed between the Department and the Health Services Manager.

- (d) The Pass Through Cost invoice amount for hospital services delivered by a Network Provider to a Transferee or Recipient will be calculated on a daily rate as agreed between the Department and the Health Services Manager, unless the pass through cost is set by;
- (i) The rates agreed by way of memorandum of understanding between the Commonwealth and the relevant government institution, where such an instrument exists;
 - (ii) Any variations to the quotation provided by the Health Services Manager and agreed by the Department during the patient's admission.
- (e) Medical escort fees will apply to escorts provided by the Health Services Manager under **clause 26 of Schedule 2** (Statement of Work) by applying the applicable "fee per period" of escort set out in **clause 5** (Medical Escorts) of **Annexure A** (Pricing Tables)). For each escort, the period to which the "fee per period" applies comprises:
- (i) Where applicable, the agreed pre-escort period immediately prior to the escort and the post-escort period immediately following the escort, applied strictly in accordance with **clause 10** of this **Schedule 5**; and
 - (ii) The total time spent by the medical escort in the company of the Transferee, excluding the pre-escort period and the post escort period.

For the avoidance doubt, the medical escort fees do not include any incidentals such as but not limited to travel, subsistence and accommodation costs.

- (f) The pre-escort and post escort periods referred to in this **clause 13(f)** of this **Schedule 5** are:
- (i) For escort via land transportation within Nauru or Manus Island departing from an Onsite Clinic:
 - (A) No pre-escort period applies for an escort that commences during Business Hours;
 - (B) A pre-escort period of two (2) hours applies for an escort that commences outside of Business Hours;
 - (C) No post-escort period applies following an escort that concludes during Business Hours; and
 - (D) A post-escort period of one (1) hour applies following an escort that concludes outside of Business Hours;
 - (ii) For escort via land travel transportation within Nauru and Manus Island departing from a place other than an Onsite Clinic:
 - (A) A pre-escort period of two (2) hours applies, whether or not that escort commences outside Business Hours;

- (iii) For escort via air travel to or from Nauru or Manus Island:
 - (A) A pre-escort period of three (3) hours immediately prior to the first voyage of the scheduled flight departure applies; and
 - (B) A post-escort period of two (2) hours immediately following the flight applies.

- (g) The Department is not obliged to reimburse the Health Services Manager for any Pass Through Cost that is included in an invoice, where the amount for which reimbursement is being sought:
 - (i) Relates to Health Care that was provided by a Network Provider to a Transferee or Recipient and the Network Provider has not transferred all relevant health information to the Health Services Manager in accordance with **clause 10.4 of Schedule 2** (Statement of Work);
 - (ii) Relates to Health Care outside the scope of relevant Department Health Policy (and for which the Department's prior written consent was not obtained), or is for any specialist, allied health or hospital service provided to a Transferee in breach of **clause 10.2(a) of Schedule 2** (Statement of Work); or
 - (iii) Relates to Health Care provided to a Transferee off site of a Facility in breach of **clause 18.1(e) of Schedule 2** (Statement of Work).

ANNEXURE A (PRICING TABLES)¹

¹ All pricing is calculated in AUD exclusive of GST and Withholding Tax





Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 6
PERSONNEL ARRANGEMENTS AND CONDITIONS

1. PERSONNEL ARRANGEMENTS

- 1.1 The Health Services Manager must arrange for, and incur the cost of obtaining, the required permits of all its Personnel to work on Nauru and Papua New Guinea.
- 1.2 All Health Services Manager Personnel, (including expatriate Australian, locally engaged and citizens of other countries) staff, will work 54 hours per week while based on Manus Island and Nauru.
- 1.3 Health Services Manager Personnel will be required to work for at least five (5) consecutive weeks and then undertake a period of three (3) weeks off-location.
- 1.4 The Department must provide prior written approval for any Network Provider deployment less than five (5) consecutive weeks.

2. TRAVEL ARRANGEMENTS AND REIMBURSEMENT

- 2.1 The Department will not be responsible for arranging travel, or arranging accommodation related to travel, for Health Services Manager Personnel.
- 2.2 The Department will reimburse (subject to the limits set out below) the Health Services Manager for the cost of domestic and international air travel for Health Services Manager Personnel at the lowest practical fare at an economy class rate. It is intended that reimbursement will cover one return fare for each five week period on Nauru or Manus Island. Reimbursement of additional trips will be considered on a case by case basis in consultation with the Department.
- 2.3 For Personnel sourced from Australia, the Department will reimburse the Health Services Manager for an air fare between Nauru or Manus Island and the airport closest to the Health Services Manager Personnel's usual place of residence in Australia.
- 2.4 For Personnel sourced from outside Australia, the air fare reimbursement per person per voyage (between their usual place of residence and Manus Island or Nauru) will be the lesser amount of the cost of the air fare or AUD2000. The Department will not reimburse air fare costs above AUD2000 per person per voyage unless it has provided the Health Services Manager with prior written approval.
- 2.5 For Personnel sourced from Australia or outside Australia, the Department will reimburse the cost of taxi or public transport between the usual places of residence of the Health Services Manager Personnel and the airport nearest to their usual place of residence when associated with a reimbursed air trip. The reimbursement will not exceed AUD100 per person per voyage without the Department's prior written approval.
- 2.6 The Department will reimburse the Health Services Manager for reasonable accommodation and meals related to Health Services Manager Personnel travel, at rates commensurate with the Department's then current travel policy.

- 2.7 The Department will not reimburse the Health Services Manager for excess baggage costs for Health Services Manager Personnel without the Department's prior written agreement.
- 2.8 The Department will not cover the cost of travel insurance. The Health Services Manager must arrange for and provide appropriate travel insurance at its cost.

3. STAFF ACCOMMODATION AND MEALS

- 3.1 The Department will provide accommodation and meals to Health Services Manager Personnel while they are on deployment on Manus Island or Nauru.

4. GUIDELINES

- 4.1 The Department may issue Guidelines with respect to the management of Personnel Arrangements and Conditions. The Health Services Manager must comply with the Guidelines even if they are inconsistent with this Schedule.



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 7

**KEY PERSONNEL AND APPROVED MAJOR
SUBCONTRACTORS**

1. Key Personnel

1.1 Key Personnel of the Health Services Manager are set out in the table below:

Key Personnel	Key Position
Dr Liz Paslawsky	Health Services Authority
Ian Gilbert	Health Services Administrator
Dr Mark Parrish	Medical Director, IHMS
Dr Peter Young	Medical Director, Mental Health Services

1.2 Key Personnel may be changed by written agreement between the Parties.

1. Approved Major Subcontractors

2.1 The initial Approved Major Subcontractors are as follows:

(a) **Nauru**

Name: International Health and Medical Services (South Pacific)
Address: c/- Nauru Agency Corporation, PO Box 300, Nauru, Central Pacific
Contact: Site Manager
Telephone: +674 557 0200

(b) **Manus Island**

Name: International Health and Medical Services Papua New Guinea Limited
Address: 156 TransAir Hangar, General Aviation, Jacksons Airport, Port Moresby N.C.D, Papua New Guinea
Contact: Site Manager
Telephone: (TBA)



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 8
DEPARTMENT ASSETS

1. Nauru Processing Centre

Model/Serial Number	Description	Qty
1 Medical Assets		
MED3597 / SN 10012479	Welch Allyn CP100 Resting ECG with Interpretation CP1A-1E6	1
MED225881	Welch Allyn ECG CP100/CP200 hospital cart, No arm or shelf	1
TAUTAUXXXX294127121	TAUTMANN UT 10 HIGHT ADJUSTABLE WITH X-RAY CASSETTE FEATURE (HYDRAULIC BED)	1
99577-000656	Physio control lifepak 15 monitor / defibrillator	1
EXQLIEXXXXXXKLV3912	LIEBHERR MEDILINE VACCINE FRIDGE 360L GLASS DOOR LKV3912	3
SN 81.647.716.4		
SN 81.626.133.6		
SN 81.746.618.1		
MED51660	WELCH ALLYN SPOT VITAL BP/NELCOR/TEMP 42NTB-E6 INCLUDES NIBP	3
SN 201203303		
SN 201203308		
SN 201205258		
HOSHOSINFXXPAIX1XX	PLUM A INFUSION SYSTEM	3
SN 18167821		
SN 18167670		
SN 18167758		
HOSHOSINFXXPAIX2XX	PLUM A INFUSION PRIMARY IV PLUMSET - 12030-12 (BOX OF 48)	3
SONA SITE M TURBO WITH 5 PROBES	Ultra Sound SONO-SITE M Turbo	1
REMBAYXXXPICXXX	REM PICCOLO DISC BLOOD ANALYZER UNIT	1
PXP-100CA	POSKOM POX-100CA X-RAY UNIT	1
SNASDJ-0035	Draeger Oxylog 1000 Each	1
4P75.01 / SN 354299	I-STAT 1 ANALYSER	1
	AED & Accessories	1
	Bench-top Sterilizer	1
	Thomas Pack	1
	Doctors bag	1
	Hematology Pentra 60	1
99425-000096 / SN 40590474	LIFEPAK 1000 Defibrillator / Monitor	1
21330-001176	2 x Lithium - Ion Battery 5.7 Amp hour Capacity	1
11140-000072 / SN 016791	1 x AC power adaptor for lifepak 15	1
11577-000010 / SN LP15M03123	1 x Station battery charger for lifepak 15 lithium batteries	1
SWHSWHXXXXXXXXX260TS / SN 1534/1211	KOBRA 260TS S4/CC4 shredder With Cross Cutting	1
MED1040037 / SN4509	Addtech Twin O Vac High Vacuum SIS Fitting	4
MED1220005 / SN 01542	Clini-C-art Isolation Cart 34" Yellow with 3 Drawers	1
4P74.04 / SN 1200422	I-STAT PRINTER KIT	1
4P73.04	I-STAT DOWNLOADER/RECHARGER	1
6F11.01 / SN 82274	I-STAT ELECTRONIC SIMULATOR	1
MED65474	Drug Safe 3 Shelves	1
MED1253	Oxford Blood Collection Chair	1
DADADADL FUR	Heavy duty exam couch 250kg	2
Macmacxxxau34emgb	Clinicart 34 inch emergency cart blue	1
MACMACXXXITM / 05198	Clinicart 34 inch emergency cart blue LOCKABLE	1
FIFISXXX2KMS115T18	KERMA S ERGO WHEELCHAIR	1
DRGDRGDOXXXX2M86837	Draeger Breathing Hose With Valve, Single use, Pk 25	1
MED56911	Welch Allyn GS 300 Exam Light Table / Wall Mount -44416	2
MED98706 684 / SN 067852	Ferno EXL Scoop Stretcher with 3 Restraints BSSF-EXL	1
MED98706611	Ferno 715 Basket Stretcher Split Version FWE715	1
MED98706708	Ferno Full Body Vacuum Mattress with Pump & Case SVVM-AGB	1
MED98706710	Ferno Fernotrac Traction Splint Adult SVTS-FA	1
WALWALDISXXXMAV1XXNC	WELCH ALLYN DIAGNOSTIC SET	3

Model/Serial Number	Description	Qty
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2 Containers

KUDU2225292	20ft General Purpose Container	1
KUDU2553540	20ft General Purpose Container	1
KUDU2581876	20ft General Purpose Container	1
KUDU2862268	20ft General Purpose Container	1
KUDU2866263	20ft General Purpose Container	1
KUDU2869262	20ft General Purpose Container	1

Model/Serial Number	Description	Qty
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3 IT Equipment

Server room, unable to be located yet	ftServer 6310 w/ftScalable SAN	1
SN 22N135900015	Prodelin 1251 2.4m C-Band VSAT Antenna	1
	IBUC 25W C-Band N-Type Input and Output DC Power Supply	1
	iDirect 5100 Netmodem	1
	Dell Rack 4220, full set	1
	Dell 1082 Digital KVM switch	1
	SMT1500I Smart-UPS 1500VA	2
	PowerVault TL2000 Tape Library	1
	Wireless bridge	4
	Wireless controller	1
	Switch	1
	Wireless Access Point	4
6YSV9T1	Latitude E5520	14
6YSBBT1		
6YS5BT1		
6YSCBT1		
6YS8BT1		
6YS9BT1		
6YSY9T1		
6YSS9T1		
6YS5BT1		
6YSW9T1		
6YSZ9T1		
6YSX9T1		
6YST9T1		
6YSZ921		
6PRR62S	Latitude E5500	
DQ90RP1	Latitude E5510	
6YTOBT1		
CNB7D7MH0B	HP LaserJet Pro 400 MFP + 3yr warrant	7
CNB7D7MH0C		
CNB7D7MH0K		
CNB7D7MH0L		
CNB7D7MH03		
CNB7D7MH04		
CNB7D7MH09		
FP 500014	Canon DR-C125 Scanner	4
FP 500024		
FP 500013		

2. Manus Island Processing Centre

Model/Serial Number	Description	Qty
1 Medical Assets		
MD23569	Welch Allyn CP100 Resting ECG with Interpretation CP1A-1E6	1
401394 / BOIX05D	Welch Allyn ECG CP100/CP200 hospital cart, No arm or shelf	1
	TAUTMANN UT 10 HIGHT ADJUSTABLE WITH X-RAY CASSETTE FEATURE (HYDRAULIC BED)	1
N017541	Physio control lifepak 15 monitor / defibrillator	1
81.647.717.1	LIEBHERR MEDILINE VACCINE FRIDGE 360L GLASS DOOR	3
81.647.715.7	LKV3912	
81.746.628.0		
201208629	WELCH ALLYN SPOT VITAL BP/NELLCOR/TEMP 42NTB-E6	3
201207422	INCLUDES NIBP PULSE (CARDIAC MONITORS)	
	Welch Allyn Vital Sign Stand + Basket 4700-60	3
754383811	PLUM A INFUSION SYSTEM	3
754383812		
754383814		
	PLUM A INFUSION PRIMARY IV PLUMSET - 12030-12 (BOX OF 48)	3
000000PO7062	REM PICCOLO DISC BLOOD ANALYZER UNIT	1
4SDJ-0008	Draeger Oxylog 1000 Each	1
354553	I-STAT 1 ANALYSER	1
40758860	LIFEPAK 1000 Defibrillator / Monitor	1
LP15M03249	2 x Lithium - Ion Battery 5.7 Amp hour Capacity	1
17541	1 x AC power adaptor for lifepak 15	1
LP15M03249	1 x Station battery charger for lifepak 15 lithium batteries	1
16990612 20	KOBRA 260TS S4/CC4 shredder With Cross Cutting	1
	Addtech Twin O Vac High Vacuum SIS Fitting	4
bm11/01545	Clini-C-art Isolation Cart 34" Yellow with 3 Drawers	1
1200499	I-STAT PRINTER KIT	1
60733	I-STAT DOWNLOADER/RECHARGER	1
62463	I-STAT ELECTRONIC SIMULATOR	1
	Drug Safe 3 Shelves	1
	Oxford Blood Collection Chair	1

	Heavy duty exam couch 250kg	2
RM1105200	Clinicart 34 inch emergency cart blue	1
BM1100545	Clinicart 34 inch emergency cart blue LOCKABLE	1
M120316	KERMA S ERGO WHEELCHAIR	1
M36152	Draeger Breathing Hose With Valve.Single use. Pk 25	1
	Welch Allyn GS 300 Exam Light Table / Wall Mount -44416	2
067551	Ferno EXL Scoop Stretcher with 3 Restraints BSSF-EXL	1
238136800	Ferno 71S Basket Stretcher Split Version FWE71S	1
2327163000	Ferno Full Body Vacuum Mattress with Pump & Case SVVM-AGB	1
126070759	Ferno Fernotrac Traction Splint Adult SVTS-FA	1
	WELCH ALLYN DIAGNOSTIC SET	3
BM3TE32K1T521084	Westinghouse Bar Fridge 130Ltr Each	1
11120662721	Welch Allyn Braun ThermoScan Pro4000 Ear Thermometer	1
+H10905098-300	Welch Allyn DS-66 Sphygmomanometer, with Multi Cuff 5098-30	2
	Karma S-ergo 125 18"x17" 2-KM-S125-18	1

Model/Serial Number	Description	Qty
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2 IT Equipment

	Latitude E5520, Bag, Lock and Mouse*	12
	Office Home and Business 2010*	12
	Symantec EPO anti-virus*	12
	Canon DR-C125*	4
	HP LaserJet Pro 400 MFP M425dw*	8



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 9
PERFORMANCE SECURITIES

SCHEDULE 9 – PERFORMANCE SECURITIES

PART A - UNCONDITIONAL FINANCIAL UNDERTAKING

THIS UNDERTAKING is made on the _____ day of _____ 201

in favour of the Commonwealth of Australia, represented by the Department of Immigration and Citizenship (**the Department**)

by [_____] ACN [_____] (**Guarantor**)

AGREEMENT

1. The Department wishes to procure the Health Services (as defined in the Contract) and, subject to the issue of this undertaking, International Health and Medical Services Pty Ltd (ABN 40 073 811 131) (**Health Services Manager**) will supply the Health Services to the Department under the Contract.
2. At the request of the Health Services Manager and in consideration of the Department accepting this undertaking, the Guarantor unconditionally and irrevocably, as a primary obligation, undertakes and covenants to pay to the Department, on demand, and without reference to the Health Services Manager and notwithstanding any notice given by the Health Services Manager to the Guarantor not to pay the same, any sum or sums which may from time to time be demanded in writing by the Department to a maximum of seven hundred thousand Australian dollars (AUD\$700,000).
3. The Guarantor's liability under this undertaking is a continuing liability and continues until payment is made under this undertaking of the Guaranteed Amount, or a period no longer than seven (7) years after the termination of the Contract, or such time as the Department notifies the Guarantor that this undertaking is no longer required. The obligations of the Guarantor under this undertaking are not affected by anything which, but for this provision, might operate to exonerate it from that liability in whole or in part and this undertaking may be enforced against the Guarantor without the Department being required to exhaust any remedy it may have against the Health Services Manager. The Guarantor agrees that it is not to be discharged or released from this undertaking by any arrangement made between the Health Services Manager and the Department.
4. The Guarantor acknowledges that it has received valuable consideration for entering into this undertaking.
5. The Guarantor must make payments to the Department under this undertaking to the Department's bank account the details of which the Department will designate by notice to

4. The indemnity in **clause 3** extends to any loss that is not recoverable because of any legal limitation, disability or incapacity of or affecting the Health Services Manager, Health Services Manager employees, agents or subcontractors or any other person for whom the Health Services Manager is vicariously liable.
5. The Guarantor agrees to pay interest to the Department on any amount payable by it to the Department under this Guarantee from when it becomes due for payment, during the period that it remains unpaid, on demand, or at times determined by the Department calculated on daily balances at the Reserve Bank of Australia's (RBA) 90-Day Bank-Accepted Bill Rate less ten (10) basis points, and is capitalised (if not paid) every seven (7) calendar days.
6. The Guarantor must make payments to the Department's bank account the details of which the Department will designate by notice to the Guarantor under this Guarantee no later than 11:00am Canberra time on the due date.
7. If a law requires the Guarantor to withhold or deduct taxes from a payment so that the Department would not actually receive for its own benefit on the due date the full amount provided for under this Guarantee, then:
 - (f) the amount payable is increased so that, after that deduction and deductions applicable to additional amounts payable, the Department receives the amount it would have received if no deduction had been required;
 - (g) the Guarantor must make the deduction; and
 - (h) the Guarantor must pay the full amount deducted to the relevant authority in accordance with applicable law.
8. The Guarantor will not be discharged or released or excused from this Guarantee by an arrangement made between the Health Services Manager and the Department with or without the consent of the Guarantor, or by any alteration, amendment or variation in the obligations assumed by the Health Services Manager or by any forbearance whether as to payment, time, performance or otherwise. The guarantee by the Guarantor in this Guarantee to assume the obligations of the Health Services Manager will continue in force and effect until completion of all the Health Services Manager 's obligations under the Contract or until the completion of the undertakings under this Guarantee by the Guarantor.
9. The undertakings of the Guarantor under this Guarantee will not exceed the obligations of the Health Services Manager under the Contract. Any liability of the Guarantor shall be coextensive, but not in excess of any liability of the Health Services Manager to the Department under the Contract. The Guarantor shall be entitled to all rights, privileges and defences otherwise available, to the Health Services Manager with respect to any such liability, including without limitation all provisions of the Contract relating to the limitation of liability and the resolution of disputes.
10. This Guarantee is subject to, and is to be construed in accordance with, the laws in force in the Australian Capital Territory and the parties agree that the courts of that Territory have jurisdiction to entertain any action in respect of, or arising out of, this Guarantee and the parties submit themselves to the jurisdiction of those courts.

11. For the purpose of this Guarantee, where an obligation of the Health Services Manager under the Contract has not been performed, the Health Services Manager will be taken to have failed to perform that obligation notwithstanding that the Health Services Manager has been dissolved or is subject to external administration procedures under chapter V of the *Corporations Act 2001* or any other law.
12. The guarantee and indemnity in this Guarantee survive the expiry or termination of this Guarantee.
13. The following notice arrangements apply:
 - (a) notice or other communication which may be given to or served on the Guarantor under this Guarantee will be deemed to have been duly given or served if it is in writing, signed on behalf of the Department and is either delivered by hand, posted or faxed or a copy transmitted electronically to the Guarantor or its agent at any registered office of the Guarantor or posted to the Guarantor's address set out above or such other address as is notified in writing to the Department from time to time;
 - (b) a notice or other communication which may be given to or served on the Department under this Guarantee will be deemed to have been duly given or served if it is in writing, signed by or on behalf of the Guarantor and is either delivered by hand, posted or faxed or a copy transmitted electronically to the address set out above or such other address as is notified in writing to the Guarantor from time to time;
 - (c) a notice sent by post will be deemed to have been given at the time when, in due course of transmission, it would have been delivered at the address to which it is sent; and
 - (d) a notice sent by facsimile transmission or transmitted electronically will be deemed to have been given when the machine on which the notice is sent reports that the notice has been transmitted satisfactorily.
14. A statement, signed on behalf of the Department by any of its authorised representatives, as to any matter or any amount at the date specified in the statement is conclusive evidence in the absence of manifest error.
15. Until the obligations of the Health Services Manager have been performed in full, the Guarantor may not:
 - (a) share in any security interest or money received or receivable by the Department in relation to the guaranteed obligations, or stand in the place of the Department in relation to any security interest or right to receive money;
 - (b) take any steps to enforce a right or claim against the Health Services Manager relating to any money paid by the Guarantor to the Department under this Guarantee;
 - (c) have or exercise any rights as surety in competition with the Department;

- (d) receive, claim or have the benefit of any payment (including a payment under a guarantee), distribution or security interest from or on account of the Health Services Manager or any other person; and
 - (e) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any agreement or document to which the Department is a party.
16. If the Health Services Manager is wound up or bankrupted, the Guarantor irrevocably authorises the Department to prove for all money that the Guarantor has paid under this Guarantee until the guaranteed obligations have been irrevocably performed in full. The Department is not obliged to do this.
17. If, after the Department applies any amount against any of the obligations of the Health Services Manager, it forms the view that it is obliged to make a payment in respect of the amount so applied by it to any person under any law relating to bankruptcy, winding up or the protection of creditors:
- (a) the rights of the Department are to be reinstated and will be the same in respect of that amount, or the relevant part of it, as if the application, or the payment or transaction giving rise to it, had not been made; and
 - (b) the Guarantor shall immediately do anything (including the signing of documents) required by the Department to restore to the Department any guarantee to which it was entitled immediately before that application or the payment or transaction giving rise to it.
18. The Guarantor indemnifies the Department against, and will pay the Department on demand, the amount of all stamp duty and goods and service taxes payable in connection with this Guarantee and in connection with preserving its rights under this Guarantee.
19. The Guarantor shall indemnify the Department against each claim, action, proceeding, judgment, damage, loss, reasonable expense or liability incurred or suffered by or brought or made or recovered against the Department in connection with any breach of the provisions of this Guarantee by the Guarantor.
20. The Guarantor agrees for the term of the Performance Guarantee to provide to the Department:
- (a) a letter issued to the Guarantor, by the directors of AEA International Holdings Pte. Ltd. or its successor parent company (Ultimate Parent Company), indicating that:
 - (i) the Ultimate Parent Company will continue to provide financial support to the Guarantor to ensure that the Guarantor can meet its obligations and debts as and when they fall due; and
 - (ii) it will provide the Department with the financial statements of the Ultimate Parent Company within 30 days of such audited financial statements being signed by the directors and auditors of the Guarantor, for the purpose of enabling the Department to undertake a credit quality assessment of the Ultimate Parent Company;
 - (b) such information as undertaken to be given by the Ultimate Parent Company pursuant to clause 20(a)(ii); and

- (c) the audited financial statements of the Guarantor and other relevant information reasonably required by the Department to undertake a credit quality assessment of the Guarantor, within 30 days of such audited financial statements being signed by the directors and auditors of the Guarantor or as otherwise requested by the Department.

THE COMMON SEAL of)
[Guarantor] was affixed in the presence)
of, and the sealing is witnessed by:)
)

.....

.....

Secretary
Name (Printed)

Director
Name (Printed)



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 10
CONFIDENTIAL INFORMATION

The Health Service Manager's confidential information is limited to the information set out in Table 1.

Health Services Manager Confidential Information	Period of Confidentiality
Annexure A (Staffing Profiles) to Schedule 2 (Statement of Work)	Term of Contract
Annexure A (Pricing Tables) to Schedule 5 (Fees and Payments), but not the total fees payable to the Health Services Manager for performance of the Contract, or the total fees payable under each individual category of fees.	Term of Contract
Clinical Practice Guidelines and related flowcharts and forms associated with the Policy and Procedures Manual	Perpetual
Pricing methodology and the make-up of the price	Perpetual

Table 1 – Health Services Manager Confidential Information



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 11
CONFIDENTIALITY DEED

SCHEDULE 11 – CONFIDENTIALITY DEED

THIS DEED POLL is made the _____ day of _____ 20____
in favour of the **COMMONWEALTH OF AUSTRALIA** represented by the Department of
Immigration and Citizenship (**the Department**)

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

RECITALS

- A The Department and International Health and Medical Services Pty Ltd (**Health Services Manager**) have entered into a contract under which the Health Services Manager will provide the Regional Processing Countries Health Services to the Department.
- B. The performance of the Regional Processing Countries Health Services requires access to information confidential to the Department.
- C. The Confidant will be performing Health Services.

THE CONFIDANT DECLARES AS FOLLOWS:

1. INTERPRETATION

- 1.1 All terms used in this Deed have the same meaning as is given to them in the Contract, and in particular, the following terms have the following meaning:

Contract means the Contract between the Department and the Health Services Manager for the provision of Regional Processing Countries Health Services dated January 2013.

Department Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated by the Department or any law as confidential; or
- (c) the Confidant knows or ought to know is confidential;

and includes to the extent that it is confidential:

- (d) information comprised in or relating to any Intellectual Property of the Department;
- (e) information relating to contractors or suppliers to the Department; and
- (f) information relating to Department Data,

but does not include information which:

- (g) is or becomes public knowledge other than by breach of the Contract or any other confidentiality obligation; or
- (h) has been independently developed or acquired by the Confidant as established by written evidence.

Department Data means all data and information relating to the Department, and its operations, facilities, customers, clients, constituents, personnel, assets and programs in whatever form that information may exist and whether entered into, stored in, generated by or processed through the Health Services by or on behalf of the Department and any other data in relation to which the Health Services are provided.

Intellectual Property or IP includes business names, copyrights, and all rights in relation to inventions, patents, registered and unregistered trade marks (including service marks), registered designs, and semi-conductor and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Health Services means the Health Services specified in the Contract.

2. NON DISCLOSURE

- 2.1 Subject to **clause 3** hereof, the Confidant must not copy, reproduce or disclose any Department Confidential Information without the prior written consent of the Department, which consent the Department may grant or withhold in its absolute discretion.

3. RESTRICTION ON USE

- 3.1 The Confidant must use Department Confidential Information only for the purpose of performing the Health Services. In particular the Confidant must not access, use, modify, disclose or retain any personal information the Confidant has acquired through the performance of the Health Services except for the purpose of performing the Health Services.

4. CRIMES ACT

- 4.1 The Confidant acknowledges that section 3(1) of the *Crimes Act 1914* (Cth) states that the term "Commonwealth officer" includes a person who "performs services for or on behalf of the Commonwealth".
- 4.2 The Confidant acknowledges that:
 - (a) any unauthorised and intentional access, destruction, alteration, addition or impediment to access or usefulness of personal information stored in any computer in the course of performing, a contract with the Commonwealth is an offence under Part VIA of the *Crimes Act 1914* to which may attract a substantial penalty, including imprisonment; and

- (b) the publication or communication by the Confidant of any fact or document which has come to their knowledge or into their possession or custody by virtue of the performance of the Contract (other than to a person to whom the Confidant is authorised to publish or disclose the fact or document) may be an offence under section 70 of the *Crimes Act 1914* (Cth), punishment for which may be a maximum of two (2) years (section 70) or seven (7) years (section 79) imprisonment.

5. DELIVERY UP OF DOCUMENTS

- 5.1 The Department may, at any time and without notice, demand, either orally or in writing, the delivery to the Department of all documents in the possession or control of the Confidant which contain Department Confidential Information.

6. CONFLICT OF INTEREST

- 6.1 The Confidant warrants that no conflict of interest exists or is likely to arise in the performance of the Health Services.
- 6.2 The Confidant warrants that it will not permit any situation to arise or engage in any activity during the performance of the Health Services which may result in a conflict of interest.

7. SURVIVAL OF OBLIGATIONS

- 7.1 The obligations in this Deed are perpetual.

8. INDEMNITY

Note: *This clause can be deleted where the Confidant is an individual.*

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

Executed as a Deed

Drafting Note: *Use appropriate signature block.*

SIGNED, SEALED and DELIVERED by
[*Confidant*] in the presence of:

Signature of Confidant

Signature of witness

Name

THE COMMON SEAL of [*Confidant*],
the fixing of which was witnessed by:

Signature of director

Signature of director/secretary

Name

Name



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 12
DEED OF NON-DISCLOSURE OF PERSONAL
INFORMATION

SCHEDULE 12 – DEED OF NON-DISCLOSURE OF PERSONAL INFORMATION

THIS DEED POLL is made the _____ day of _____ 20____
in favour of the **COMMONWEALTH OF AUSTRALIA** represented by the Department of
Immigration and Citizenship (**the Department**)

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

1. The Confident understands that in the course of performing duties in relation to a Contract between the Department and International Health and Medical Services Pty Ltd (**Health Services Manager**) dated _____ January 2013 (**Contract**) for the Health Services, the Confident may have access to personal information, being information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion (**Personal Information**).
2. The Confident acknowledges and agrees that it may not access, use, disclose, publish, communicate or retain, or otherwise deal with in any way, Personal Information except in the course of, and for the purpose of, performing its duties in relation to the Contract.
3. The Confident agrees, with respect to all Personal Information to which it has access in the course of performing duties in relation to the Contract, to:
 - (a) not do any act, or engage in any practice that would breach:
 - (i) the Health Services Manager's obligations under the Contract to protect Personal Information if done or engaged in by the Health Services Manager; or
 - (ii) the Information Privacy Principles set out in the *Privacy Act 1988* (Cth) (**Privacy Act**) if done or engaged in by the Department.
 - (b) implement all reasonable measures to assist the Department in meeting the obligations under the Privacy Act concerning the security, use and disclosure of information to which the Department is subject in respect of that Personal Information;
 - (c) co-operate with any reasonable demands or enquiries made by the Commonwealth Privacy Commissioner;
 - (d) not disclose such Personal Information without the written authority of the Department except in the course of, and for the purpose of, performing the Contract, and it will immediately notify the Department where it becomes aware that a disclosure of such information may be required by law;
 - (e) ensure that any person who has an access level which would enable that person to obtain access to any information in respect of which the Department has obligations under the Privacy Act is made aware of, and undertakes in writing, to observe the provisions of this Deed;
 - (f) take all reasonable measures to ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only Health Services Manager personnel have access to it. For the

avoidance of doubt, Personal Information must not be used for, or in any way relating to, any direct marketing purpose;

- (g) not transfer such Personal Information outside Australia, or allow parties outside Australia to have access to it, without the prior approval of the Department;
 - (h) inform any person, on his or her request, in writing of the content of any provision of the Contract that is inconsistent with an approved privacy code binding the Health Services Manager or a National Privacy Principle as set out in the Privacy Act, in accordance with the Health Services Manager's obligations under section 95C of the Privacy Act;
 - (i) immediately notify the Department when the Confidant becomes aware of a breach of any obligation concerning security, use and disclosure of such Personal Information by itself or any representative, employee or officer;
 - (j) notify the Department of, and co-operate with the Department in the resolution of, any complaint alleging an interference with privacy;
 - (k) give to any person, on his or her request, having taken reasonable steps to satisfy itself of that person's identity, access to that person's Personal Information held by the Health Services Manager, except to the extent that the Health Services Manager is required or authorised by law to refuse to provide the person with access to that Personal Information;
 - (l) if requested to correct or update such Personal Information by a person to whom the Personal Information relates, take reasonable steps to correct or update the Personal Information;
 - (m) upon written notice from the Department, destroy or permanently de-identify any Personal Information as soon as practicable after it is no longer required for the purpose for which it was originally collected;
 - (n) not adopt as its own identifier of a person an identifier that has been assigned by the Department, or use or disclose any such identifier except for the purpose of fulfilling its obligations under the Contract, or where required or authorised by law; and
 - (o) if the Personal Information is sensitive information or health information, as those terms are defined in the Privacy Act, not collect, use or disclose such information without the consent of the person to whom that information relates, subject to any exception provided for by law.
4. The Confidant agrees that its obligations under this Deed and to perform duties in relation to the Contract:
- (a) to the extent of any inconsistency with the National Privacy Principles in the Privacy Act 1988 (Cth) or any privacy codes or privacy principles contained in, authorised by or registered under any law, take priority to the fullest extent permitted by applicable law; and
 - (b) to the extent not so inconsistent, are in addition to any obligations the Confidant may have under the Privacy Act 1988 (Cth) or any privacy codes or privacy principles contained in, authorised by or registered under any law.

5. The Confidant acknowledges that failure by it to comply with the obligations under the Privacy Act in accordance with paragraph 3 may result in the Health Services Manager or the Department taking action against the Confidant (including, without limitation, disciplinary action).
6. The Confidant acknowledges that any unauthorised access, alteration, removal, addition, possession, control, supply or impediment to the access, reliability, security or operation of data held in any computer (or, in some cases, any storage device) in the course of performing a contract with the Commonwealth may be an offence under Part 10.7 of the Criminal Code 1995 (Cth) for which there are a range of penalties, including imprisonment.
7. The Confidant acknowledges that:
 - (a) section 3(1) of the Crimes Act 1914 (Cth) states that the term "Commonwealth officer" includes a person who "performs services for or on behalf of the Commonwealth";
 - (b) the publication or communication by the Confidant of any fact or document which has come to its knowledge or into its possession or custody by virtue of the performance of the Contract (other than to a person to whom the Confidant is authorised to publish or disclose the fact or document) may be an offence under section 70 or 79 of the Crimes Act 1914 (Cth), punishment for which may be a maximum of two (2) years (section 70) to seven (7) years (section 79) imprisonment and if the Confidant is not an employee of the Health Services Manager, the Confidant agrees to act in accordance with the obligations in section 79 of the Crimes Act 1914 (Cth) as if it was bound by that provision; and
 - (c) it is an offence under Division 137 of the Criminal Code 1995 (Cth) to give false and misleading information to the Commonwealth or its officers or agents.
8. The Confidant agrees to treat all Personal Information with the utmost care and to protect that information at all times in accordance with all security and privacy requirements imposed by the Contract on persons performing duties in relation to the Contract.
9. The Confidant acknowledges and agrees that this Deed survives the termination or expiry of any contract providing for the performance of services by it (whether directly or indirectly) in relation to the Contract.
10. This Deed will be governed by, and construed in all respects in accordance with, the law of the Australian Capital Territory and the Confidant agrees to submit to the applicable jurisdiction of the Courts of that Territory in respect of all matters arising under, or in relation to, this Deed.
11. Without limiting the rights of the Department to enforce this Deed, the Department may also enforce this Deed against the Confidant.

Executed as a Deed

Drafting Note: *Use appropriate signature block.*

SIGNED, SEALED and DELIVERED by
[*Confidant*] in the presence of:

Signature of Confidant

Signature of witness

Name

THE COMMON SEAL of [*Confidant*], the
fixing of which was witnessed by:

Signature of director

Signature of director/secretary

Name

Name



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 13

HEALTH SERVICES MANAGER INSURANCE

SCHEDULE 13 – INSURANCE**1. Insurance on Nauru**

The Health Services Manager must effect and maintain or cause to be effected and maintained:

- (a) public and products liability insurance, written on an occurrence basis, with a limit of indemnity of at least \$10 million in respect of each and every occurrence, and in respect of products liability only also in the aggregate for all occurrences arising during any one twelve (12) Month policy period, and which covers:
 - (i) the Health Services Manager's liability and the liability of its employees (including to the Department); and
 - (ii) the Department's vicarious liability (and its liability as principal arising from a breach of its non-delegable duty of care) for the acts or omissions of the Health Services Manager and its employees;

in respect of:

- (iii) loss of, damage to, or loss of use of any real or personal property (including any Facility, Department Assets or Department System); and
- (iv) the bodily injury of, disease or illness (including mental illness) to, or death of, any person (except employees of the Health Services Manager);

arising out of or in connection with the Health Services Manager's performance of any Health Services or this Contract or any products manufactured or deemed to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, repaired, serviced, treated, sold, supplied (including services) or distributed including packaging or any container (other than a Vehicle).

- (b) workers' compensation insurance which insures any injury, damage, expense, loss or liability suffered or incurred by any person engaged in work by the Health Services Manager under this Contract including employees, Subcontractors and consultants or their dependents:
 - (i) giving rise to a claim under any statute relating to workers' or accident compensation to the level, and as required by the relevant state or territory law;
 - (ii) where common law claims are possible outside of the statutory scheme referred to at **clause 1(b)(i) above**, for employer's liability at common law with a limit of indemnity of not less than \$50 million for any one (1) event and in the aggregate for any twelve (12) Month policy period;
 - (iii) in each State or Territory where the Health Services Manager's employees normally reside or where their contract of employment was made; and

- (iv) where possible under the relevant law or scheme governing workers compensation insurance and in respect of all employers' liability policies, extending to indemnify the Department for its liability as principal.
- (c) professional indemnity or errors and omissions insurance:
 - (i) which covers the liability of the Health Services Manager and its employees (other than a liability insured under a medical malpractice insurance policy effected in compliance with **clause 1(d) below** arising from a breach of duty owed in a professional capacity, or an error or omission in judgment;
 - (ii) extending to include cover for unintentional breaches of Intellectual Property rights;
 - (iii) with no exclusion for claims arising from personal injury or illness;
 - (iv) with a limit of indemnity of at least \$20 million in respect of each claim and \$40 million in the aggregate for all claims in any one twelve (12) Month policy period, and with one (1) automatic right of reinstatement; and
 - (v) with a retroactive date not later than the date of the commencement of the Health Services.
- (d) medical malpractice insurance:
 - (i) which covers the liability of registered or licensed medical practitioners under the law of an Australian State or Territory who will be performing any Health Services arising from a breach of duty owed in a professional capacity; and
 - (ii) with a limit of indemnity of at least \$20 million in respect of each claim and \$40 million in the aggregate for all claims in any one twelve (12) Month policy period, and with one (1) automatic right of reinstatement.
- (e) property insurance:
 - (i) except to the extent covered by the insurance referred to at clause (a) above, industrial special risks insurance covering all Health Services Manager Assets which are material to the Health Services Manager's ability to perform its obligations under this Contract, against the risks of loss, damage or destruction caused by all insurable risks (including theft, malicious damage, fire, lightning, storm, flood and tempest) for their full reinstatement or replacement value; and
 - (ii) with a limit of indemnity of at least \$20 million in respect of each claim and \$40 million in the aggregate for all claims in any one twelve (12) Month policy period.

2. Insurance on Manus Island

The Health Services Manager must effect and maintain or cause to be effected and maintained:

Public and Products Liability, Professional Indemnity and Medical Malpractice, with an overall limit of \$38 million in respect of each and every occurrence and in the aggregate for all claims, except Medical Malpractice, in any one twelve (12) Month policy period. A limit of \$20 million in the aggregate for Medical Malpractice will be applied.

- (a) public and products liability insurance, written on an occurrence basis, with a limit of indemnity as mentioned above, and in respect of products liability only also in the aggregate for all occurrences arising during any one twelve (12) Month policy period, and which covers:
 - (i) the Health Services Manager's liability and the liability of its employees (including to the Department); and
 - (ii) the Department's vicarious liability (and its liability as principal arising from a breach of its non-delegable duty of care) for the acts or omissions of the Health Services Manager and its employees;

in respect of:

- (iii) loss of, damage to, or loss of use of any real or personal property (including any Facility, Department Assets or Department System); and
- (iv) the bodily injury of, disease or illness (including mental illness) to, or death of, any person (except employees of the Health Services Manager);

arising out of or in connection with the Health Services Manager's performance of any Health Services or this Contract or any products manufactured or deemed to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, repaired, serviced, treated, sold, supplied (including services) or distributed including packaging or any container (other than a Vehicle).

- (b) workers' compensation insurance which insures any injury, damage, expense, loss or liability suffered or incurred by any person engaged in work by the Health Services Manager under this Contract including employees, Subcontractors and consultants or their dependents:
 - (i) giving rise to a claim under any statute relating to workers' or accident compensation to the level, and as required by the relevant state or territory law;
 - (ii) where common law claims are possible outside of the statutory scheme referred to at **clause 2(b)(i) above**, for employer's liability at common law with a limit of indemnity of not less than \$50 million for any one (1) event and in the aggregate for any twelve (12) Month policy period;

- (iii) in each State or Territory where the Health Services Manager's employees normally reside or where their contract of employment was made; and
 - (iv) where possible under the relevant law or scheme governing workers compensation insurance and in respect of all employers' liability policies, extending to indemnify the Department for its liability as principal.
- (c) professional indemnity or errors and omissions insurance:
- (i) which covers the liability of the Health Services Manager and its employees (other than a liability insured under a medical malpractice insurance policy effected in compliance with **clause 2(d)** below arising from a breach of duty owed in a professional capacity, or an error or omission in judgment;
 - (ii) extending to include cover for unintentional breaches of Intellectual Property rights;
 - (iii) with no exclusion for claims arising from personal injury or illness;
 - (iv) with a limit of indemnity as mentioned above in respect of each claim and in the aggregate for all claims in any one twelve (12) Month policy period, and with one (1) automatic right of reinstatement; and
 - (v) with a retroactive date not later than the date of the commencement of the Health Services.
- (d) medical malpractice insurance:
- (i) which covers the liability of registered or licensed medical practitioners under the law of an Australian State or Territory who will be performing any Health Services arising from a breach of duty owed in a professional capacity; and
 - (ii) with a limit of indemnity as mentioned above in any one twelve (12) Month policy period, and with one (1) automatic right of reinstatement.
- (e) property insurance:
- (i) except to the extent covered by the insurance referred to at clause (a) above, industrial special risks insurance covering all Health Services Manager Assets which are material to the Health Services Manager's ability to perform its obligations under this Contract, against the risks of loss, damage or destruction caused by all insurable risks (including theft, malicious damage, fire, lightning, storm, flood and tempest) for their full reinstatement or replacement value; and
 - (ii) with a limit of indemnity of at least \$20 million in respect of each claim and \$40 million in the aggregate for all claims in any one twelve (12) Month policy period.



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 13A
NETWORK PROVIDER INSURANCE

SCHEDULE 13A – NETWORK PROVIDER INSURANCE

1. The Health Services Manager must ensure that each Network Provider effects and maintains, or causes to be effected and maintained, professional indemnity or errors and omissions (or similar) insurance for the duration of this Contract, and must agree in each Network Provider Agreement that the Network Provider will continue to maintain such insurance until the expiry of at least seven (7) years after the expiry or termination of the Network Provider Agreement:
 - (a) that covers the liability of the Network Provider arising from a breach of duty owed in a professional capacity or an error or omission in judgment, as a result of an act or omission of its Network Provider Employees, officers, consultants and contractors;
 - (b) with no exclusion for claims against the Network Provider relating to the personal injury of, disease, illness (including mental illness) to, or death of, a person, arising from a breach of duty owed in a professional capacity, or an error or omission in judgement, of the Network Provider, the Network Provider Employees, officers, consultants and contractors;
 - (c) with a retroactive date not later than the date of the appointment of the Network Provider to the HSM Network;
 - (d) for each Network Provider that delivers the Health Care specified in **clause 1(f)** below:
 - (i) with a limit of indemnity in respect of each claim of at least the relevant amount or amounts listed in **clause 1(f)** below; and
 - (ii) with a limit of indemnity in the aggregate for all claims in any one twelve (12) Month policy period of at least the relevant amount or amounts listed in **clause 1(f)** below; and
 - (e) for each Network Provider that delivers Health Care not specified in **clause 1(f)** below:
 - (i) with a limit of indemnity in respect of each claim of:
 - (A) an amount that accords with the minimum recommendations of the professional body or bodies for that industry or industries in which the Network Provider and its Network Provider Employees, officers, consultants and contractors operate; or
 - (B) where there is no such minimum recommendation, \$5 million; and
 - (ii) with a limit of indemnity in the aggregate for all claims in any one twelve

(12) Month policy period of:

- (A) the amount that accords with the minimum recommendations of the professional body or bodies for that industry or industries in which the Network Provider and its Network Provider Employees, officers, consultants and contractors operate; or
- (B) where there is no such minimum recommendation, \$5 million.
- (f) For the purpose of **clause 1(d)** and **clause 1(e)** above, the minimum limits of indemnity for each type of Health Care are set out in the table below:

Service	Minimum limit of indemnity for each claim	Minimum limit of indemnity in the aggregate for all claims in any one 12 month period
General Practitioner	\$10 million	\$20 million
Specialist Doctor	\$10 million	\$20 million
Optometry	\$10 million	\$10 million
Pharmacy	\$5 million	\$5 million
Physiotherapy	\$5 million	\$5 million
Psychiatry	\$10 million	\$20 million
Dentistry	\$10 million	\$10 million
Pathology	\$10 million	\$10 million
Radiology	\$10 million	\$20 million
Public Hospitals	in accordance with State health provisions	in accordance with State health provisions

2. The Health Services Manager must ensure that each Network Provider who is an individual and each Approved GP effects and maintains, or causes to be effected and maintained, medical malpractice (or similar) insurance for the duration of this Contract, and must agree in each Network Provider Agreement that the Network Provider and each Approved GP will continue to maintain such insurance until the expiry of at least seven (7) years after the expiry or termination of the Network Provider Agreement:

- (a) that covers the liability of the Network Provider and Approved GP arising from a breach of duty owed in a professional capacity;
- (b) for each Network Provider that delivers the Health Care specified in **clause 2(d)** below:
- (i) with a limit of indemnity in respect of each claim of at least the relevant amount listed in **clause 2(d)** below; and
- (ii) with a limit of indemnity in the aggregate for all claims in any one twelve (12) Month policy period of at least the relevant amount listed in **clause 2(d)** below; and
- (c) for each Network Provider that delivers the Health Care not specified in **clause 2(d)** below:
- (i) with a limit of indemnity in respect of each claim of:
- (A) the amount which accords with the minimum recommendations of the relevant professional body or bodies for that industry or industries in which the Network Provider and Approved GP (as the case may be) operate; or
- (B) where there is no such minimum recommendation, \$5 million; and
- (ii) with a limit of indemnity in the aggregate for all claims in any one twelve (12) Month policy period of:
- (A) the amount which accords with the minimum recommendations of the relevant professional body or bodies for that industry or industries in which the Network Provider and Approved GP (as the case may be) operate; or
- (B) where there is no such minimum recommendation, \$5 million.
- (d) For the purpose of **clause 2(b)** and **clause 2(c)**, the minimum limits of indemnity for each type of Health Care are set out in the table below:

Service	Minimum limit of indemnity for each claim	Minimum limit of indemnity in the aggregate for all claims in any one 12 month period
General Practitioner	\$10 million	\$20 million
Specialist Doctor	\$10 million	\$20 million

Optometry	\$10 million	\$10 million
Pharmacy	\$5 million	\$5 million
Physiotherapy	\$5 million	\$5 million
Psychiatry	\$10 million	\$20 million
Dentistry	\$10 million	\$10 million
Pathology	\$10 million	\$10 million
Radiology	\$10 million	\$20 million
Public Hospitals	in accordance with State health provisions	in accordance with State health provisions



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

**SCHEDULE 14
CHANGE CONTROL**

SCHEDULE 14 – CHANGE CONTROL

PART A – CONTRACT CHANGE PROPOSAL

Parties: THE COMMONWEALTH OF AUSTRALIA (**the Department**)

INTERNATIONAL HEALTH AND MEDICAL SERVICES PTY LTD (**the Health Services Manager**)

Contract Details: Contract for Regional Processing Countries health services between the Department and the Health Services Manager

Date: *[insert date of this Contract Change Proposal]*

Contract Change Proposal No: *[insert sequential Contract Change Proposal No.]*

Proposal Title:

Operative provisions: This Change Proposal is given pursuant to **clause 34 (Contract Change Procedure)** of the Contract.

The party proposing this change proposes the variations to the Contract specified in the schedule to this Change Proposal.

Enquiries: Any questions in relation to this notice should be directed to the officer issuing this notice as specified below:

Issuing Officer:

Contract Details: *[Insert details of person authorised to give the Notice]*
.....

[Insert contact details of Issuing Officer]

Party proposing change *[The Department] or [the Health Services Manager]*

Schedule to Change Proposal

1. THE VARIATIONS PROPOSED ARE AS FOLLOWS:

[Insert details of the proposed variation(s) to the Contract including:

- (a) details of the change and its extent (nature, scope, scale and technology employed);
- (b) a statement of reasons for proposing the change;
- (c) the steps required to implement the Contract Change Proposal;
- (d) the time within which the Health Services Manager proposes to implement the Contract Change;
- (e) the impact of the Contract Change Proposal on the delivery of Regional Processing Countries Health Services under this Contract, including any necessary amendments to this Contract, Plans and/or procedures in the format of old clause and marked up new clause;
- (f) the changes to the Onsite Health Clinic Fee which the Health Services Manager proposes to apply to the change supported by reasons for the price change and relevant measurements or documents which support or validate the change;
- (g) a financial statement of the change in financial cost to the Health Services Manager as a result of the Contract Change Proposal certified by an accountant independent of the Health Services Manager declaring:
 - (i) the Change Proposal cannot be accommodated within the existing Onsite Health Clinic Fee; and
 - (ii) the accuracy of the financial information provided to the Department;
- (h) details of the review the Health Services Manager has undertaken to allow the Contract Change Proposal to be accommodated within the existing requirements of this Contract, including the Onsite Health Clinic Fee;
- (i) any reduction to the Onsite Health Clinic Fee (if any) which the Health Services Manager proposes as a result of the Contract Change Notice, in order to reflect all cost savings to the Health Services Manager resulting from any changes to the Health Services Manager's then current arrangements or operations for the provision of the Health Services;
- (j) the adjustments (if any) to the Performance Measures which the Health Services Manager proposes as a result of the Contract Change Notice, and reasons for the adjustments;
- (k) any risks associated with the proposed change and any recommendations for minimising those risks; and
- (l) the Health Services Manager's reasonable costs of preparing this Contract Change Proposal.

2. THE DATE OF EFFECT OF THE CONTRACT CHANGE IS PROPOSED TO BE

[Insert Date]

IN SIGNING THIS CONTRACT CHANGE PROPOSAL, THE HEALTH SERVICES MANAGER WARRANTS THAT ALL COSTS ARE REASONABLE AND PROFIT DOES NOT EXCEED THAT USED IN THE ORIGINAL ONSITE HEALTH CLINIC FEE AND TAKES ACCOUNT OF ANY SAVINGS ON OTHER ASPECTS OF THE REGIONAL PROCESSING COUNTRIES HEALTH SERVICES AFFECTED BY THE CHANGE PROPOSAL.

Additional Information

3. ADDITIONAL INFORMATION IS PROVIDED AS FOLLOWS:

**The Health Services Manager
Certification**

*(Certification that the Health
Services Manager and any
Subcontractor costs are
reasonable.)*

**Comments from the Health
Services Administrator**

**Comments from the Contract
Administrator**

Other relevant documentation

*(Other information relevant to
the proposal is attached,
including a financial statement
of the change in financial cost to
the Health Services Manager.)*

SIGNED for and on behalf of the **Health Services Manager** by:

.....

Name:

Title

PART B – VARIATION NOTICE

Contract Change Proposal No:

Contract No:

The Contract Change Proposal referred to above is agreed in the form attached to this Variation Notice.

Signed for and on behalf of **Commonwealth of Australia**

By:

Signature

Signature of Witness

Name of Witness in full

Signed for and on behalf of **International Health and Medical Services Pty Ltd**

By:

Signature

Signature of Witness

Name of Witness in full

PART C – DEED

CONTRACT NUMBER:

This Deed is made on *[insert date]*

Between

THE COMMONWEALTH OF AUSTRALIA, represented by the Department of Immigration and Citizenship, ABN 68 706 814 312 (**the Department**)

and

INTERNATIONAL HEALTH AND MEDICAL SERVICES PTY LTD, ABN 40 073 811 131 (**the Health Services Manager**)

RECITALS:

- A The Department has entered into a contract with the Health Services Manager dated *[insert date]* (**the Contract**) for the provision of Regional Processing Countries Health Services.
- B The Contract provides that Variations must be effected by way of a formal amendment.
- C The Department and the Health Services Manager propose to vary the Contract in accordance with the provisions of this Deed.

OPERATIVE PROVISIONS

1. INTERPRETATION

- (a) Terms defined in the Contract have the same meaning when used in this Deed.

2. CONSIDERATION

- (a) Each party acknowledges that it has received valuable consideration for entering into this Deed.

3. AMENDMENT

- (a) The Contract is amended with effect on and from [specify the date of this Deed or another date specified in the Contract Change Proposal] (the Variation Date) as follows:

[insert details of variation – ie clause # is deleted and replaced with #]

- (b) **Clause 3(a)** does not affect any right or obligation that arises before the Variation Date



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 15
AUSTRALIAN GOVERNMENT AND DEPARTMENT
POLICIES

SCHEDULE 15 – AUSTRALIAN GOVERNMENT AND DEPARTMENT POLICIES

1. Department Policies

Department Policies include:

- (a) Integrated Business Model;
- (b) Cultural Diversity Charter;
- (c) Asset Replacement Plan and Philosophy.

2. Australian Government Policies

Australian Government Policies in force from time to time, include:

Australian Government Policies	Published by
Australian Communications – Electronic Security Instructions (ACSI 33)	Defence Signals Directorate
Commonwealth Fraud Control Guidelines 2002	Attorney General's Department
Commonwealth Procurement Rules	Department of Finance and Administration
Fair Work Principles	Department of Education, Employment and Workplace Relations
Commonwealth Disability Strategy	Department of Families, Housing, Community Services and Indigenous Affairs
Australian Government Protective Security Framework	Attorney-General's Department
Identification and Support of People in Immigration Detention Who are Survivors of Torture and Trauma	Department of Immigration and Citizenship
Psychological Support Program (PSP) for the Prevention of Self-Harm in Immigration Detention	Department of Immigration and Citizenship
Mental Health Screening for People in Immigration Detention	Department of Immigration and Citizenship

3. International Treaties, Charters, Covenants and Agreements

The Health Services Manager must comply with all Australia's obligations under any international treaties. Charters, covenants and agreement including:

- (a) International Covenant on Civil and Political Rights;
- (b) Convention relating to the States of Refugees;
- (c) Convention on the Rights of the Child;
- (d) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- (e) Convention on the Elimination of All Forms of Racial Discrimination;
- (f) Convention on the Elimination of All Forms of Discrimination against Women;
- (g) Convention on the Rights of Persons with Disabilities; and
- (h) Universal Declaration of Human Rights.



CONTRACT

IN RELATION TO THE PROVISION OF SERVICES IN REGIONAL
PROCESSING COUNTRIES

Commonwealth of Australia represented by the Department of Immigration
and Citizenship

The Salvation Army (New South Wales) Property Trust (ABN 57 507 607
457)

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CONTRACT

IN RELATION TO THE PROVISION OF SERVICES ON MANUS ISLAND (PNG) AND NAURU

Date

This Contract is made on January 2013.

Parties

This Contract is made between and binds the following parties:

1. The **Commonwealth of Australia**, acting through and represented by the Department of Immigration and Citizenship ABN 33 380 054 835 (the Department)
2. The **Salvation Army (New South Wales) Property Trust** ABN 57 507 607 457 (the Service Provider)

Recitals

This Contract is made in the following context:

- A. The Department wishes to obtain welfare and support services for the people being transferred to Regional Processing Countries, Papua New Guinea (PNG) - Manus Island and the Republic of Nauru, (Transferees) and has asked the Service Provider to provide these services.
- B. The Department and the Service Provider entered into a Heads of Agreement for the provision of interim welfare and support services for people being transferred to Regional Processing Country in the Republic of Nauru from September 2012 (Transferees). The parties subsequently agreed that the Service Provider would commence the provision of interim services on Manus Island (PNG) from October 2012.
- C. The Department requires the Service Provider to continue to provide services to Transferees and other persons nominated by the Department on Nauru and on Manus Island (PNG) and to perform a leadership role at the Sites in relation to the other service providers as set out in Schedule 1 [Statement of Work].
- D. The parties have agreed that this Contract will replace the Heads of Agreement with effect from the Commencement Date and from that date the Service Provider will provide the Services on the terms of this Contract.

Operative Provisions

1. Definitions and interpretation

1.1. Definitions

1.1.1. In this Contract, unless the context indicates otherwise:

Business Day	means a weekday other than a public holiday in the place specified or, if no place is specified, in the Australian Capital Territory, Australia;
Code of Conduct	means the code of conduct provided by the Department to the Service Provider that outlines expectations and guidelines regarding the conduct of the Service Provider and its Personnel;
Commencement Date	means the date on which the Contract is signed by the last party to do so;
Commonwealth Material	means any Material: a. provided by the Department to the Service Provider for the purposes of this Contract; or b. derived at any time from the Material referred to in paragraph a;
Confidential Information (of the Service Provider)	means information that is by its nature confidential and is described in Schedule 4;
Contract Administrator	means the person appointed by the Department Secretary to perform the duties of Contract Administrator and includes any person from time to time acting in that position as notified to the Service Provider in writing;
Contract Authority	means the person occupying the position of First Assistant Secretary, Detention Infrastructure and Services Division;
Contract Material	means any Material: a. created for the purposes of this Contract; b. provided or required to be provided to the Department as part of the Services; or c. derived at any time from the Material referred to in paragraphs a or b;
Department	means the Commonwealth of Australia as represented by any department, agency or authority of the Commonwealth which is from time to time responsible for administering this Contract;
Department Operations	means the person (or delegate) appointed by the Department to perform the role of Department Operations

Team Leader	Team Leader at the Site;
Execution Date	means the date on which the last of the parties executes this Contract;
Excusable Performance Failure Event	<p>means any of the following events:</p> <ol style="list-style-type: none"> a. a fire, flood, earthquake, pandemic, elements of nature or other acts of God; b. war or other state of armed hostilities, national emergency, embargo or action by customs; c. unavailability of essential services such as electricity, gas or water for more than 48 hours; d. a restraint by any government agency in a Regional Processing Country, e. any other event or occurrence beyond the control of the Service Provider, <p>other than as a result of the acts or omissions of the Service Provider or its Personnel or any of its subcontractors which prevents or delays the performance of this Contract by the Service Provider;</p>
GST	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> ;
Incident	<p>means an activity which threatens, harms or impacts, or has the potential to threaten, harm or impact upon:</p> <ol style="list-style-type: none"> a. the welfare of Transferees; b. the good order, safety or security of a Site; c. the success of escort/transfer activities; or d. immigration processing;
Information Officer	means any of the information officers appointed under the <i>Australian Information Commissioner Act 2010 (Cth)</i> when performing privacy functions as defined in that Act;
Information Privacy Principle	has the same meaning as it has in the <i>Privacy Act 1988 (Cth)</i> ;
Intellectual Property	<p>includes:</p> <ol style="list-style-type: none"> a. all copyright (including rights in relation to phonograms and broadcasts); b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and c. all other rights resulting from intellectual activity in the

	<p>industrial, scientific, literary or artistic fields, but does not include:</p> <ul style="list-style-type: none"> d. Moral Rights; e. the non-proprietary rights of performers; or f. rights in relation to Confidential Information;
Key Performance Measure	means a Key Performance Measure in the Performance Management Framework;
Key Personnel	means the Service Provider Personnel specified under clause 5 as Key Personnel;
Material	means any thing in relation to which Intellectual Property rights arise;
Migration Act	means the <i>Migration Act 1958</i> (Cth);
Moral Rights	means the following non-proprietary rights of authors of copyright Material: <ul style="list-style-type: none"> a. the right of attribution of authorship; b. the right of integrity of authorship; and c. the right not to have authorship falsely attributed;
Official Information	means any information developed, received or collected by or on behalf of the Department to which the Service Provider gains access under or in connection with this Contract and the terms of the Contract;
Pass Through Cost	has the meaning given by Schedule 2 [Fees and Payment];
Performance Management Framework	means the Performance Management Framework developed in accordance with clause 4.4;
Personnel	means: <ul style="list-style-type: none"> a. in relation to the Service Provider - any natural person who is an officer, employee, agent or professional advisor of the Service Provider or of its subcontractors; and b. in relation to the Department - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the Commonwealth;
Regional Processing Country	means a country designated by the Minister for Immigration and Citizenship, acting under subsection 198AB(1) of the Migration Act as a regional processing country;
Schedule	means the schedules to this Contract and includes the

	Schedules as amended or replaced from time to time by agreement in writing between the parties;
Services	means the services described in Schedule 1 [Statement of Work];
Services Fee	has the meaning given in Schedule 2 [Fees and Payment];
Site	means: <ul style="list-style-type: none"> a. the site notified by the Department to the Service Provider on Nauru and where another site is established on Nauru, will also include a reference to that site; and b. the site notified by the Department to the Service Provider on Manus Island (PNG) and where another site is established on Manus Island, will also include reference to that site; and c. any other site at which Services are to be provided in accordance with clause 2.6;
Term	has the meaning given by clause 2.4; and
Transferee	means a person transferred to a Regional Processing Country;
WHS Law	means all statutes, regulations, statutory instruments, subordinate legislation, codes of practice and standards (including those of the Commonwealth of Australia and of the location where the Services are being delivered) dealing with or relevant to health and safety in workplaces and of workers and others who may be affected by the carrying out of work and includes any approvals, permits, licences, directions or requirements of an authority exercising regulatory powers in respect of such matters.

- 1.1.2. In this Contract, unless the contrary intention appears:
- a. words importing a gender include any other gender;
 - b. words in the singular include the plural and words in the plural include the singular;
 - c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
 - d. words importing a person include a partnership and a body whether corporate or otherwise;
 - e. a reference to dollars is a reference to Australian dollars;
 - f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;

- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. a reference to an Item is a reference to an Item in the Schedules;
- i. the Schedules and any Attachments or Appendices form part of this Contract;
- j. if any conflict arises between the terms and conditions contained in the clauses of this Contract and any part of a Schedule (and Attachments or Appendices if any), the terms and conditions of the clauses prevail;
- k. if any conflict arises between any part of a Schedule and any part of an Attachment or Appendix, the Schedule prevails; and
- l. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.2. Guidance on construction of Contract

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

2. General

2.1. Contract objectives

- 2.1.1. The primary objectives of this Contract are to:
 - a. provide open, accountable and transparent care and support services to Transferees at the Sites.
 - b. provide Transferees with a standard and range of care and support that is the best available in the circumstances, and utilising facilities and personnel on the Sites and that as far as possible (but recognising any unavoidable limitations deriving from the circumstances of the Sites) is broadly comparable with services available within the Australian community; and
 - c. provide that care through the Services identified in Schedule 1 [Statement of Work] to this Contract.

2.2. Cooperation and good faith

- 2.2.1. The parties intend to conduct themselves and perform this Contract in the spirit of cooperation and good faith. For avoidance of doubt, the spirit of cooperation and good faith does not override or limit the provisions of this Contract.
- 2.2.2. The parties acknowledge that the terms of this Contract require them to reach agreement on a range of matters. The Service Provider must take all steps necessary to prepare relevant documentation and respond to any documentation provided by the Department in relation to these matters in a timely manner. For the avoidance of doubt and without limiting clause 15.1 or 15.2, if notwithstanding this clause, the parties fail to reach agreement in relation to any of these matters, the Department may terminate this Contract in accordance with clause 15.1.

2.3. Papua New Guinea and Nauru Memoranda of Understanding

- 2.3.1. The Service Provider agrees not to permit any act or omission that causes or may cause the Commonwealth to be in breach of its Memorandum of Understanding with Papua New Guinea and the Republic of Nauru or with the related administrative measures (a copy of which will be provided by the Department to the Service Provider).

2.4. Term

- 2.4.1. Subject to clause 2.4.2 and noting Recital B, this Contract commences on the Commencement Date, and the Heads of Agreement is terminated from that date, and continues until the first to occur of:
- a. the Contract is terminated under clause 15; or
 - b. 12 months after the Commencement Date.
- 2.4.2. The Department may notify the Service Provider that it wishes to extend the term of this Contract beyond the Term for one or more additional periods on the terms and conditions of this Contract then in effect, by providing in each case at least 30 days written notice to the Service Provider, provided that the total maximum Term of the Contract is 24 months from the Commencement Date. The Service Provider must notify the Department within 10 Business Days whether it agrees to the extension of the Agreement and if the Service Provider does not notify the Department by the end of the tenth Business Day it will be deemed to have agreed to the extension of the Agreement. If the Service Provider notifies the Department that it does not agree to the extension of the Agreement, the Agreement will terminate 60 days after the date of that notice.

2.5. Transition-in

- 2.5.1. The parties acknowledge that the Service Provider has been providing Services at the Site on Nauru from September 2012 and on Manus Island (PNG) from 10 October 2012.

2.5.2. The Service Provider must complete any further activities required to ensure it is able to provide Services in accordance with this Contract at Manus Island (PNG) as soon as possible after the Execution Date and in any event no more than 3 weeks from that date.

2.6. New Sites

2.6.1. Where a country is designated by the Minister for Immigration and Citizenship acting under subsection 198AB(1) of the Migration Act as a regional processing country, the Department may by written notice advise the Service Provider that it would like the Service Provider to provide services similar to the Services at a site on that country ('New Site').

2.6.2. Where the Department issues a notice under clause 2.6.1, the parties will promptly meet to negotiate amendments to this Contract to provide for the provision of services at the New Site. The parties acknowledge that, to the extent possible, the negotiations will be on the basis that the terms and conditions in this Contract (including the Services and the fees) will apply to the provision of services at the New Site.

2.6.3. Once the negotiations have been finalised, the parties will vary this Contract to include the New Site as a Site and the services provide at the New Site will be Services under this Contract.

3. Services

3.1. Service obligations

3.1.1. Schedule 1 [Statement of Work] of this Contract sets out the specific requirements for the Services to be performed at the Sites. The Department may request the Service Provider to provide other services on terms to be agreed. Once agreed, the parties will amend this Contract to include the other services and the other services will be Services for the purposes of this Contract.

3.1.2. In accordance with clause 3.2.1 the Service Provider is required to comply with all applicable laws. The requirements in Schedule 1 are to be read subject to that requirement.

3.1.3. The Service Provider agrees to:

- a. provide the Services and meet the requirements described in Schedule 1 [Statement of Work];
- b. adopt relevant best practice, including any applicable Department, Commonwealth or industry standards and guidelines;
- c. once agreed, implement and comply with the performance management framework described in Schedule 5 [Performance Management Framework];
and

- d. submit invoices, and any required supporting documents, in the manner specified by the Department.

3.2. Facilities and assistance

- 3.2.1. The Department will provide the Service Provider with facilities and assistance specified in Item 6 of Schedule 2 and such other facilities and assistance as agreed between the parties from time to time.
- 3.2.2. The Service Provider acknowledges that:
 - a. it will be sharing some of the facilities referred to in clause 3.2.1 with other service providers and the Department personnel; and
 - b. from time to time the Department may require the Service Provider to move out of part of the facilities or otherwise adjust the arrangements that apply to the access to the facilities or the assistance that is provided.
- 3.2.3. The Service Provider will cooperate with the other service providers and the Department in relation to the management and use of the facilities.
- 3.2.4. The parties acknowledge that in order for the Service Provider to fulfil its obligations under this Contract, it is required to be provided with the items listed in Item 6 of Schedule 2 and a means to be able to transport its personnel from Australia by available flights on commercial aircraft (the reasonable costs of which are an approved Pass Through Cost for the purposes of Item 4 of Schedule 2).

3.3. Compliance with laws

- 3.3.1. The Service Provider must, in performing its obligations in this Contract, comply, and ensure compliance by all its Personnel, with:
 - a. all applicable laws, including those applicable in the Regional Processing Country where the Site is located and those Australian laws that are applicable to the Services or the Site; and
 - b. all applicable Commonwealth policies as notified to the Service Provider from time to time.
- 3.3.2. The Service Provider may seek assistance from the Department in complying with clause 3.3.1, for example in respect of Personnel and subcontractor clearances, resources imports and the establishment of facilities and, without limiting the Service Provider's obligations in connection with the Contract, the Department will provide assistance to the extent it is reasonably able to do so.

3.4. Compliance with Fair Work Principles

- 3.4.1. The Service Provider must comply, and as far as practicable must ensure its subcontractors comply, with all relevant requirements of the Fair Work Principles as set out in the Fair Work Principles User Guide (available at

<http://www.deewr.gov.au/WorkplaceRelations/Policies/FairWorkPrinciples/Documents/FWPUserGuide.pdf> including by:

- a. complying with all applicable workplace relations, occupational health and safety and workers' compensation laws;
 - b. informing the Department of any adverse court or tribunal decision for a breach of workplace relations law, occupational health and safety laws or workers' compensation laws made against it during the term of this Contract and any remedial action it has taken, or proposes to take, as a result of the decision;
 - c. providing the Department any information the Department reasonably requires to confirm that the Service Provider (and any subcontractor) is complying with the Fair Work Principles; and
 - d. participating in all compliance activities associated with its legal obligations, including those arising under the Fair Work Principles. Compliance activities may include responding to requests for information and/or audits undertaken by the Commonwealth, its nominees and/or relevant regulators.
- 3.4.2. Compliance with the Fair Work Principles shall not relieve the Service Provider from its responsibility to comply with its other obligations under this Contract.
- 3.4.3. If the Service Provider does not comply with the Fair Work Principles, without prejudice to any rights that would otherwise accrue to the Department, the Department or any other Commonwealth Department, shall be entitled to publish details of the Service Provider's failure to comply (including the Service Provider's name) and to otherwise provide those details to other Commonwealth agencies.
- 3.4.4. As far as practicable, the Service Provider must:
- a. not use a subcontractor in relation to this Contract where the subcontractor would be precluded from contracting directly with the Department under the requirements of the Fair Work Principles; and
 - b. ensure that all subcontracts impose obligations on subcontractors equivalent to the obligations specified in clauses 3.4.1 to 3.4.4.

4. Management and governance

4.1. Project Management

- 4.1.1. The Service Provider must comply with the project management and governance arrangements as outlined in Schedule 1 [Statement of Work] of this Contract.

4.2. Department Personnel

- 4.2.1. The Department will appoint a:
- a. Contract Administrator; and

- b. Department Operations Team Leader.

4.3. Liaison with Contract Administrator

- 4.3.1. The Service Provider agrees:
 - a. to liaise with the Contract Administrator and Department Operations Team Leader (if applicable) as reasonably required; and
 - b. to comply with directions of the Contract Administrator that are consistent with this Contract.

4.4. Performance Management Framework

- 4.4.1. The parties will jointly develop and agree a Performance Management Framework as soon as possible after, and in any event within 8 weeks of, the Execution Date. The Performance Management Framework will be consistent with the principles set out in Schedule 5 [Performance Management Framework Principles] and will include:
 - a. details of key deliverables and key performance measures;
 - b. processes and procedures for managing and responding to Excusable Performance Failure Events;
 - c. an abatement regime in respect of the level of performance achieved in the performance of the Services; and
 - d. details of the format, content and frequency of performance reports to be submitted in accordance with clause 4.5.
- 4.4.2. Once the Performance Management Framework has been developed and agreed, the parties will implement the Performance Management Framework.
- 4.4.3. The parties will periodically review the Performance Management Framework to ensure it remains current and relevant to this Contract and the overall operation and management of the Sites.

4.5. Reports

- 4.5.1. The Service Provider must as part of the Performance Management Framework and in collaboration with other service providers develop a draft performance report format to be used to report on its performance of its obligations under this Contract and the operation and management of the Sites.
- 4.5.2. The draft performance report format must address the issues set out in Schedule 5 and must be submitted to the Department for approval within 6 weeks of the Execution Date.
- 4.5.3. Once agreed, the Service Provider must develop and submit performance reports in the agreed performance report format:

- a. on a monthly basis; or
- b. once the Performance Management Framework has been agreed, in accordance with the Performance Management Framework.

5. Service Provider Personnel

5.1. Key Personnel

- 5.1.1. The Service Provider will notify the Department from time to time of Key Personnel that have been retained in relation to the performance and management of the Services and the Service Provider's obligations under this Contract.
- 5.1.2. The Service Provider must ensure that each of the Key Personnel occupy the position and provide the Services advised to the Department.

5.2. Replacement of Key Personnel

- 5.2.1. Where Key Personnel cease to work in respect of this Contract, the Service Provider must notify the Department immediately and must provide replacement Key Personnel acceptable to the Department at no additional charge and at the earliest opportunity.
- 5.2.2. If the Service Provider is unable to provide replacement Key Personnel acceptable to the Department within 10 Business Days of their ceasing work in respect of this Contract, the Department may, at its discretion, terminate this Contract or remove Services from scope in accordance with clause 15.1.

5.3. Removal of Key Personnel

- 5.3.1. The Department may, in its absolute discretion, give notice requiring the Service Provider to remove any Key Personnel from work in respect of the Services. The Department must provide to the Service Provider reasons that explain why it is seeking removal of the Key Personnel. The Service Provider must promptly arrange for the removal of such Key Personnel from work in respect of the Services and their replacement with personnel acceptable to the Department and at no additional cost to the Department.

5.4. Requirements for Service Provider Personnel

- 5.4.1. The Service Provider must, at its own cost, ensure that all Service Provider Personnel who carry out work or perform duties under this Contract:
 - a. are, and remain, of good character and good conduct;
 - b. are considered suitable by the Department having regard to any issues identified in an Australian Federal Police background check and brought to the attention of the Department;

- c. have a current 'working with children' check or certificate from an Australian jurisdiction or if that is not possible, an Australian Federal Police Clearance Certificate which shows that the relevant Personnel has no relevant conviction which would ordinarily preclude them from working with children in Australia or, in the case of any local Personnel, any similar check or certificate where practicable;
 - d. undergo induction, orientation and ongoing training that complies with the Department requirements when commencing employment with the Service Provider or starting work in relation to the Services and during deployment, including training provided by other service providers;
 - e. are appropriately skilled, trained and qualified to provide the Services in accordance with the requirements of Schedule 1 [Statement of Work];
 - f. are authorised, registered or licensed in accordance with any applicable regulatory requirements for the purposes of or incidental to the performance of the Services;
 - g. possess all relevant industry body, supplier, manufacturer and accreditation or scheme memberships and professional association membership that might be reasonably expected of providers of the Services, and produce evidence of such authorisation, registration, license, accreditation or membership to the Department upon request at any time during the term of this Contract; and
 - h. will be subject to internal disciplinary processes.
- 5.4.2. The Service Provider must ensure that all Service Provider Personnel that are to carry out work or perform duties under this Contract have signed a Deed of Confidentiality and Non-disclosure of Personal Information substantially in the form of Schedule 3 (Confidentiality Deed), prior to commencing work or performing duties under this Contract or within 2 days of the Execution Date.
- 5.4.3. The Service Provider will ensure that the Personnel levels at the Sites are adequate to deliver the Services in accordance with this Contract.
- 5.5. Behaviour of Service Provider Personnel at the Sites**
- 5.5.1. The Service Provider must ensure that all Service Provider Personnel at a Site:
- a. are aware of, and comply with, the Code of Conduct at all times;
 - b. comply with the Department's policy on smoking and other occupational health and safety matters as declared from time to time by the Department; and
 - c. carry out their duties and behave in such a way as to maximise the seamless interface between the delivery of the Services and:
 - i. any other services provided by other service providers; and
 - ii. the day to day activities of the Department,

so that services delivered by multiple service providers give the impression of being delivered by a single provider.

5.6. Illegal workers

- 5.6.1. The Service Provider must ensure that its Service Provider Personnel do not include any illegal workers and must notify the Department immediately if it becomes aware of any of its Service Provider Personnel being an illegal worker.
- 5.6.2. For the purposes of clause 5.6.1, an illegal worker is a person who:
- a. has unlawfully entered and remains in Australia or the relevant Regional Processing Country;
 - b. has lawfully entered Australia or the relevant Regional Processing Country but remains in that country after his or her visa has expired; or
 - c. is working in breach of his or her visa conditions.

5.7. Removal of Service Provider Personnel

- 5.7.1. The Department may, in its absolute discretion, give notice requiring the Service Provider to remove any Service Provider Personnel from work in respect of the Services. The Department must provide to the Service Provider reasons that explain why it is seeking removal of the Service Provider Personnel. The Service Provider must promptly arrange for the removal of such Service Provider Personnel from work in respect of the Services and their replacement with Personnel acceptable to the Department and at no additional cost to the Department.

6. Subcontractor arrangements

6.1. Approval of subcontracts

- 6.1.1. The Service Provider must notify the Department prior to entering into any proposed subcontract, such notice to be given at least 15 Business Days prior to the date the Service Provider intends to enter into the proposed subcontract.
- 6.1.2. Subject to clause 6.1.3, the Service Provider must not enter into a subcontract without the prior written approval of the Department (such approval not to be unreasonably withheld or delayed).
- 6.1.3. Where the total fees payable under the subcontract equal or are less than AUD\$5,000, the Department will be deemed to have given its approval if it has not notified the Service Provider that it does not approve of the proposed subcontract within 15 Business Days of the notice being given under clause 6.1.1.
- 6.1.4. The Service Provider acknowledges that the Department may consult with the Government of Papua New Guinea in relation to any proposed subcontracts in relation to Services being provided on Manus Island (PNG).

6.2. Extension of provisions to subcontractors and Personnel

6.2.1. In this clause 6.2:

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

6.2.2. The Service Provider agrees to ensure that:

- a. its subcontractors and Personnel comply with all relevant Requirements; and
- b. any contract entered into in connection with this Contract imposes all relevant Requirements on the other party.

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

6.3. Copies of subcontracts

6.3.1. The Service Provider must:

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

6.4. Service Provider liability and obligations

6.4.1. The Department's approval of any subcontract does not relieve the Service Provider from any liability or obligation under this Contract.

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

6.4.3. The Service Provider remains responsible for ensuring that:

- a. the work performed by each subcontractor meets the requirements of this Contract; and
- b. no subcontractor further subcontracts any work valued at AUD \$5000 or more without the prior written approval of the Department.

6.5. Subcontractor warranty

6.5.1. The Service Provider warrants that each subcontractor:

- a. is suitable to carry out the work under the subcontract and is accredited or qualified in accordance with relevant Laws, Australian Standards and Commonwealth requirements;

- b. where applicable, meets the requirements of the National Code of Practice for the Construction Industry; and
- c. will exercise the standard of skill, care and diligence that would be expected of an expert professional provider of services similar to the Services being provided by the subcontractor.

6.6. Service Provider to be the Department's sole point of contact

6.6.1. The Service Provider acknowledges that the Department may, in its absolute discretion, contact any subcontractor directly as and when required in order to obtain information regarding the Services provided by that subcontractor.

6.6.2. Except as provided in clause 6.6.1, the Service Provider will be the Department's sole point of contact regarding the Services, including with respect to payment.

6.7. Locally engaged subcontractors and Personnel

6.7.1. The parties intend that the Service Provider will seek to maximise local involvement in the delivery of Services including engaging local entities as subcontractors. The parties recognise that it may not be possible for local entities or local Personnel to meet all of the requirements of the Contract. The Service Provider will use its best endeavours to ensure that local Personnel meet the requirements of this Contract as much as possible. The terms on which local entities will be engaged as subcontractors will be agreed between the parties.

7. Document approval

7.1. Plans

7.1.1. The Service Provider will develop, update and deliver all draft plans to the Department in accordance with Schedule 1 [Statement of Work].

7.2. Review and approval of plans

7.2.1. The Department will:

- a. review; and
- b. approve or request changes to,

each draft plan. The Service Provider will promptly address any requested changes and deliver an updated draft plan to the Department in a timely manner. This clause 7.2.1 will apply to any updated draft plan.

7.2.2. Once approved, the Service Provider will comply with and perform the Contract in accordance with the approved plans.

7.2.3. Approval of a draft plan will:

- a. be construed as no more than an indication that the plan appears to the Department to be capable of being used as a basis for performing the Services;
- b. not be construed as limiting the Service Provider's responsibility to provide Services in accordance with the requirements of the Contract; and
- c. not be construed as a waiver of any right under this Contract or any cause of action arising out of any act or omission of the Service Provider or its Personnel or subcontractors.

8. Payments

8.1. Fees

- 8.1.1. Subject to this Contract, and in consideration of the Service Provider performing its obligations under this Contract, the Department agrees to make payment to the Service Provider in accordance with Schedule 2 [Fees and Payment].

8.2. Taxes, duties and government charges

- 8.2.1. Except as provided by this clause 8.2, the Service Provider agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract.
- 8.2.2. Unless otherwise indicated, the fees and all other consideration for any supply made under this Contract is exclusive of any GST imposed on the supply.
- 8.2.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Contract, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 8.2.4. No party may claim or retain from the other party any amount in relation to a supply made under this Contract for which the first party can obtain an input tax credit or decreasing adjustment.
- 8.2.5. 

8.3. Currency

- 8.3.1. All payments will be made in Australian dollars unless otherwise agreed.

9. Confidentiality of Official Information and security

9.1. Interpretation

- 9.1.1. In this clause 9:

- Official Resources** includes:
- a. Official Information;
 - b. people who work for or with the Department; and
 - c. assets belonging to (even if in the possession of contracted providers) or in the possession of the Department;

9.2. Confidentiality of Official Information

- 9.2.1. The Service Provider will not, without prior written authorisation of the Department, disclose any Official Information to any person (unless required to do so by law).
- 9.2.2. The Service Provider is authorised, subject to clause 9.3, to provide Official Information to those Personnel and subcontractors who require access for the purposes of this Contract.
- 9.2.3. The Service Provider agrees to secure all Official Information against loss and unauthorised access, use, modification or disclosure.

9.3. Other security obligations of Service Provider

- 9.3.1. The Service Provider agrees to comply with any security requirements notified by the Department from time to time.
- 9.3.2. The Service Provider agrees to implement security procedures to ensure that it meets its obligations under this clause 9 and will provide details of these procedures to the Department on request.

9.4. Management of Copies

- 9.4.1. In this clause 9.4:

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

- 9.4.2. The Service Provider agrees, on expiration or termination of this Contract, to deal with all Copies as directed by the Department, subject to any requirement of law binding on the Service Provider.

10. Confidential Information of Service Provider

10.1. Confidential Information not to be disclosed

- 10.1.1. Subject to clause 10.2 the Department will not, without the prior written authorisation of the Service Provider, disclose any Confidential Information of the Service Provider to a third party.

10.2. Exceptions to obligations

- 10.2.1. The obligations of the Department under this clause 10 will not be taken to have been breached to the extent that Confidential Information:
- a. is disclosed by the Department to its Personnel solely in order to comply with its obligations, or to exercise its rights, under this Contract;
 - b. is disclosed by the Department to its internal management Personnel, solely to enable effective management or auditing of Contract-related activities;
 - c. is disclosed by the Department to the responsible Minister;
 - d. is disclosed by the Department in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - e. is shared by the Department within the Department's organisation, or with another Commonwealth Department, where this serves the Commonwealth's legitimate interests;
 - f. is authorised or required by law to be disclosed; or
 - g. is in the public domain otherwise than due to a breach of this clause 10.
- 10.2.2. Where the Department discloses Confidential Information to another person pursuant to clauses 10.2.1.a - 10.2.1.e, the Department will notify the receiving person that the information is confidential.
- 10.2.3. In the circumstances referred to in clauses 10.2.1.a, 10.2.1.b, and 10.2.1.e the Department agrees not to provide the information unless the receiving person agrees to keep the information confidential.

10.3. Period of confidentiality

- 10.3.1. The obligations under this clause 10 in relation to an Item of information described in Schedule 4 [Service Provider Confidential Information] continue for the period set out there in respect of that Item.

11. Intellectual Property

11.1. Use of Commonwealth Material

- 11.1.1. The Department grants (or will procure) a royalty-free, non-exclusive licence for the Service Provider to use, reproduce and adapt Commonwealth Material provided to the Service Provider for the purposes of this Contract.
- 11.1.2. The Service Provider agrees to use the Commonwealth Material strictly in accordance with any direction from the Department.

11.2. Rights in Contract Material

- 11.2.1. Intellectual Property in all Contract Material vests or will vest in the Department.

- 11.2.2. Clause 11.2.1 does not affect the ownership of Intellectual Property in:
- a. any Commonwealth Material incorporated into Contract Material; or
 - b. any Material in existence at the Commencement Date and specified below:
Material relating to the SAMIS computer program
- 11.2.3. Subject to clause 11.2.4, the Service Provider grants to (or will procure for) the Department a perpetual, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, perform, distribute, communicate and exploit any existing Material referred to in clause 11.2.2.b in conjunction with the Contract Material, for any purpose.
- 11.2.4. The parties intend to enter into a comprehensive agreement in relation to the license of the SAMIS computer program (the SAMIS Agreement). The parties agree to negotiate in good faith in order to finalise the SAMIS Agreement within 2 months of the Commencement Date. Once the SAMIS Agreement has been executed, the licence in clause 11.2.3 will not apply to Contract Material that is covered by the SAMIS Agreement.
- 11.2.5. The parties agree that the licence provided for in clause 11.2.3 does not extend to any of the source code or other intellectual property making up the backend of the SAMIS computer program.
- 11.2.6. The Service Provider agrees, on request by the Department, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 11.2.
- 11.2.7. The Service Provider warrants that:
- a. it is entitled; or
 - b. it will be entitled at the relevant time,
- to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause 11.2.

11.3. Moral Rights

11.3.1. In this clause 11.3:

- 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 or authorship;
 - b. supplementing the Contract Material with any other Material;
 - c. using the Contract Material in a different context to

that originally envisaged;

- d. releasing the Contract Material to the public under an Open Access Licence;

but does not include false attribution of authorship.

11.3.2. The Service Provider agrees:

- a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Department or any person claiming under or through the Department (whether occurring before or after the consent is given) and, on request, to provide the executed original of any such consent to the Department; and
- b. to ensure that each author's attention is drawn to the Department's general policies and practices regarding Moral Rights.

11.3.3. This clause 11.3 does not apply to any Commonwealth Material incorporated in the Contract Material.

12. Indemnity and insurance

12.1. Proportionate liability regimes excluded

12.1.1. To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Service Provider under or in connection with this Contract.

12.2. Indemnity

12.2.1. The Service Provider will be required to release and indemnify the Department from and against any claim or liability (including any claim made by, or liability to, a third party) which the Department suffers, incurs or for which it becomes liable arising out of or in connection with:

- a. loss or damage to any real or personal property, including property of the Department;
- b. personal injury, disease, illness or death of any person; or
- c. infringement of any third party's Intellectual Property Rights

arising out of or in connection with any breach of this Contract or any negligent act or omission, fraudulent, criminal actions, or wilful default of the Service Provider in connection with the Services.

12.2.2. The Service Provider's liability to indemnify the Department under clause 12.2.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of the Department or its Personnel contributed to the relevant cost, liability, loss, damage or expense.

12.3. Limitation of liability

12.3.1.

[REDACTED]

12.3.2. Clause 12.3.1 does not apply in relation to liability relating to:

- a. personal injury (including sickness and death);
- b. breach of another person's intellectual property rights;
- c. damage to or the loss of the property of a person other than the Department;
- d. wilful misconduct, fraudulent or criminal actions of the Service Provider or its Personnel.

12.4. Insurance

12.4.1. The Service Provider will be required, prior to the Commencement Date, to effect and maintain insurance cover for the duration of this Contract as follows:

- a. workers compensation insurance, as required by law;
- b. products liability insurance [REDACTED]
- c. public liability insurance [REDACTED] to cover the Service Provider and its employees for their respective rights, interests and liabilities to the Department and third parties for loss or damage to any property and injury or death to any person arising from, or in connection with the provision of the Services by the Service Provider;
- d. professional indemnity insurance [REDACTED]
- e. health and medical evacuation insurance for all Service Provider Personnel; and
- f. compulsory third party motor vehicle insurance in respect of registered vehicles used in the provision of the Services.

12.4.2. The Department may require the Service Provider to obtain additional insurance or higher levels of insurance. [REDACTED]

[REDACTED]

13. Publicity, media and external relationship management

13.1. Publicity and media to be managed by the Department

13.1.1. The Service Provider acknowledges and agrees that the Department has an interest in the management of publicity and media and agrees to:

- a. provide advice to the Department prior to the release of information, comment or opinion that is either directly or indirectly related to this Contract

including, without limitation, regarding the Department and any matter related to the Services, any Transferees, or the relationship or issues between the Service Provider and the Department; and

- b. provide advice to the Department prior to the release of information, comment or opinion regarding the relationship and dealings with stakeholders and external parties (including industry groups, special interest or lobby groups, and the community).

13.1.2. Any contact with or release to the media by the Department which specifically names the Service Provider is to be approved by the Service Provider prior to any statement being made or material being released, which consent or approval must not be unreasonably withheld or delayed.

13.2. Protection of Transferee privacy - Service Provider not to make public statements

13.2.1. The Service Provider must not, and will ensure that its Personnel and subcontractors do not:

- a. make any public statement;
- b. release any information to, make any statement or comment to, deal with any inquiry from or otherwise assist or advise the media;
- c. publish, distribute or otherwise make available any information or material to third parties,

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

- d. an individual Transferee;
- e. the processing of a claim for asylum for an individual or group of Transferees;
- f. the health or wellbeing of an individual or group of Transferees; or
- g. the wellbeing of the relatives of a Transferee;

other than:

- h. to direct any such inquiry to the Department;
- i. as is specifically authorised by and to the minimum extent necessary to fulfil the Service Provider's obligation under this Contract or comply with the Law; or
- j. as may be otherwise specifically authorised in writing by the Department.

14. Dispute resolution

14.1. Procedure for dispute resolution

- 14.1.1. The parties agree that a dispute arising under this Contract will be dealt with as follows:
- a. a party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
 - b. within 5 Business Days of the notice, the Contract Administrator and a senior representative of the Service Provider will meet and try to settle the dispute by direct negotiation between them;
 - c. if the parties are not able to resolve the dispute within a further 15 Business Days, the parties will refer the dispute to the Contract Authority and a more senior representative of the Service Provider who will meet and try to settle the dispute.
- 14.1.2. If the parties have been unable to resolve the dispute within 20 Business Days of the dispute being referred under clause 14.1.1.c;
- a. the parties may agree to refer the dispute to mediation on terms to be agreed between the parties at the time; or
 - b. where the parties do not agree to refer the dispute to mediation or where the dispute remains unresolved after 20 Business Days of the dispute being referred to mediation, either party may commence legal proceedings in relation to the dispute.
- 14.1.3. Each party will bear its own costs of complying with this clause 14.

14.2. Continued performance

- 14.2.1. Despite the existence of a dispute, the Service Provider will (unless requested in writing by the Department not to do so) continue to perform the Services in accordance with the Contract to the extent possible.

14.3. Exemption

- 14.3.1. This clause 14 does not apply to:
- a. action by the Department under or purportedly under clause 15;
 - b. legal proceedings by either party seeking urgent interlocutory relief.

15. Termination

15.1. Termination without default

- 15.1.1. In addition to any right to terminate at law, the Department may by written notice and in its absolute discretion:

- a. terminate this Contract, in which case at least 4 weeks notice will be given;
or
 - b. reduce the scope of the Services, in which case the notice will unless otherwise specified by the Department in the notice take effect immediately.
- 15.1.2. The Service Provider agrees, on receipt of a notice issued under clause 15.1.1:
- a. to stop or reduce work as specified in the notice;
 - b. to take all available steps to minimise loss resulting from that termination or reduction; and
 - c. to continue work on any part of the Services not affected by the notice.
- 15.1.3. In the event of termination under clause 15.1, the Department will be liable only:
- a. to pay any fees relating to Services completed before the effective date of termination; and
 - b. to reimburse any expenses the Service Provider unavoidably incurs relating entirely to Services not covered under clause 15.1.3.a.
- 15.1.4. The Department will not be liable to pay amounts under clause 15.1.3.a and 15.1.3.b which would, added to any fees already paid to the Service Provider under this Contract, together exceed the fees set out in Schedule 2 [Fees and Payment].
- 15.1.5. In the event of a reduction in the scope of the Services under clause 15.1, the Department's liability to pay fees under clause 8 will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Services.
- 15.1.6. The Service Provider will not be entitled to compensation for loss of prospective profits.
- 15.1.7. For the avoidance of doubt, this clause 15.1 includes but is not limited to the Department notifying the Service Provider that it is to cease providing Services at a particular Site or in a particular Regional Processing Country.

15.2. Termination for default

- 15.2.1. In addition to any right to terminate at law, if the Service Provider fails to perform any obligation under this Contract, the Department - if it considers that the failure is:
- a. not capable of remedy – may, by notice, terminate this Contract immediately;
 - b. capable of remedy – may, by notice require that the failure be remedied within the time specified in the notice (being a reasonable period having

regard to the circumstances of the failure) and, if not remedied within that time, may terminate this Contract immediately by giving a second notice.

15.2.2. The Department may also, by notice, terminate this Contract immediately (but without prejudice to any prior right of action or remedy which the Department has or may have) if the Service Provider:

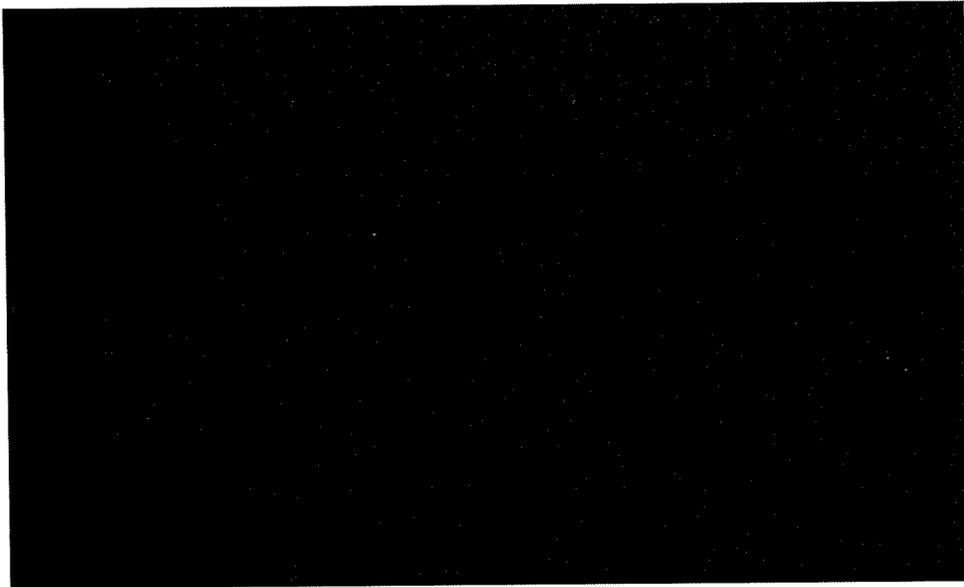
- a. being a corporation, comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001*, or an order has been made for the purpose of placing the corporation under external administration; or
- b. being an individual, becomes bankrupt or enters into a scheme of arrangement with creditors.

15.3. Transition out

15.3.1. If this Contract is terminated or reduced in scope for any reason, the Service Provider must at the request of the Department comply with any reasonable directions issued by the Department to achieve an orderly transition of services similar to the Services to the Department or an alternative provider. Where the termination or reduction in scope is pursuant to clause 15.1, the Department will meet the Service Provider's approved and reasonable costs of complying with this clause.

15.4. Termination by the Service Provider

15.4.1.



15.4.2. In the event of termination under clause 15.4.1, the Department will be liable only:

- a. to pay any fees relating to Services completed before the effective date of termination; and

- b. to reimburse any expenses the Service Provider unavoidably incurs relating entirely to Services not covered under clause 15.4.2.a.
- 15.4.3. The Department will not be liable to pay amounts under clause 15.4.2 which would, added to any fees already paid to the Service Provider under this Contract, together exceed the fees set out in Schedule 2 [Fees and Payment].
- 15.4.4. In the event of termination under clause 15.4.1, the provisions of clause 15.3 will apply.

16. Notices

16.1. Format, addressing and delivery

- 16.1.1. A notice under this Contract is only effective if it is in writing, and dealt with as follows:
 - a. if given by the Service Provider to the Department - addressed to the Contract Administrator at the address specified in the definition of Contract Administrator under clause 1 or as otherwise notified by the Department; or
 - b. if given by the Department to the Service Provider - given by the Contract Administrator (or any superior officer to the Contract Administrator) and addressed to (and marked for attention) of



or as otherwise notified by the Service Provider

- 16.1.2. A notice is to be:
 - a. signed by the person giving the notice and delivered by hand; or
 - b. signed by the person giving the notice and sent by pre-paid post; or
 - c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

16.2. When effective

- 16.2.1. A notice is deemed to be effected:
 - a. if delivered by hand - upon delivery to the relevant address;
 - b. if sent by post - upon delivery to the relevant address;
 - c. if transmitted electronically - upon actual receipt by the addressee.
- 16.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

17. General provisions

17.1. Excusable performance failure

- 17.1.1. Where an Excusable Performance Failure Event occurs, the Service Provider must immediately notify the Department in writing of the event specifying:
- a. the nature of, reason(s) for, and estimated duration of the Excusable Performance Failure Event;
 - b. the obligations and Key Performance Measures affected by it and the extent of its effect on those obligations.

A copy of any notice issued under this clause must be provided at the same time it is issued to the Department Operations Team Leader.

- 17.1.2. The Department will notify the Service Provider whether it accepts that an Excusable Performance Failure Event has occurred and the extent of its effect.

- 17.1.3. Where the Department accepts that an Excusable Performance Failure Event has occurred and the extent of its effect, subject to the Service Provider's compliance with its obligations under this clause, the Service Provider's obligations under this Contract and the relevant Key Performance Measures are suspended for so long as and to the extent they are affected by the Excusable Performance Failure Event (Excusable Performance Failure Period) and no failure or omission by the Service Provider to perform or meet a suspended obligation or Key Performance Measure during the Excusable Performance Failure Period will be a breach of this Contract or result in an abatement of fees under the Performance Management Framework.

- 17.1.4. During the Excusable Performance Failure Period, the Service Provider must:
- a. use its reasonable endeavours to remove, overcome or minimise the effects of that Excusable Performance Failure Event as quickly as possible;
 - b. continue providing the Services and complying with its obligations under this Contract and meeting the Key Performance Measures not affected by the Excusable Performance Failure Event;
 - c. implement and comply with the processes and procedures set out in the Performance Management Framework relating to the management of Excusable Performance Failure Events;
 - d. provide the Department Operations Team Leader with daily updates on the Excusable Performance Failure Event and its impact on the performance or meeting of any suspended obligations or Key Performance Measures; and
 - e. notify the Department in writing as soon as the Excusable Performance Failure Period ceases.

17.2. Conflict of interests

- 17.2.1. In this clause 17.2, **Conflict** means any matter, circumstance, interest, or activity affecting the Service Provider, its Personnel or subcontractors which may or may appear to impair the ability of the Service Provider to provide the Services to the Department diligently and independently.
- 17.2.2. The Service Provider warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date no Conflict exists or is likely to arise in the performance of the Services.
- 17.2.3. If, during the period of this Contract a Conflict arises, or appears likely to arise, the Service Provider agrees:
- a. to notify the Department immediately;
 - b. to make full disclosure of all relevant information relating to the Conflict; and
 - c. to take any steps the Department reasonably requires to resolve or otherwise deal with the Conflict.

17.3. Work health and safety

- 17.3.1. The Service Provider must at all times:
- a. comply with, and ensure that its Personnel and subcontractors comply with WHS Law in the provision of the Services;
 - b. co-operate and ensure its Personnel and subcontractors co-operate as required with the Department in the Service Provider's performance of its work health and safety obligations under WHS Law, including participating in any consultation and representation required by the Department;
 - c. prepare and provide any report required under the WHS Law to the Department;
 - d. comply with any direction or requirement of the Department in relation to work health and safety;
 - e. not permit any act or omission that causes or may cause the Department to be in breach of the WHS Law;
 - f. immediately notify the Department of any notifiable incident as defined in the WHS Law; and
 - g. immediately notify the Department of any circumstance which may give rise to a work health and safety risk or a failure by the Service Provider, its Personnel, subcontractors or the Department to comply with WHS Law.

17.4. Privacy

- 17.4.1. The Service Provider agrees, in providing the Services:
- a. not to do any act or engage in any practice which, if done or engaged in by the Department, would be a breach of an Information Privacy Principle; and

- b. to comply with any directions, guidelines, determinations or recommendations specified by the Department, to the extent that they are consistent with the Information Privacy Principles.

17.4.2. The Service Provider agrees to notify the Department immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 17.4.

17.5. Audit and access

17.5.1. The Service Provider agrees:

- a. to give the Contract Administrator, or any persons authorised in writing by the Contract Administrator, access to premises where the Services are being performed or where Official Resources are located; and
- b. to permit those persons to inspect and take copies of any material relevant to the Services.

17.5.2. The rights referred to in clause 17.5.1 are subject to:

- a. the Department providing reasonable prior notice;
- b. the reasonable security procedures in place at the premises;
- c. if appropriate, execution of a deed of confidentiality by the persons to whom access is given; and
- d. payment of reasonable substantiated costs incurred by the Service Provider in complying with this clause provided that the Service Provider seeks prior approval of those costs.

17.5.3. The Auditor-General and Information Officer (including their delegates) are persons authorised for the purposes of this clause 17.5.

17.6. Access to documents

17.6.1. In this clause 17.6, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).

17.6.2. The Service Provider acknowledges that this Contract is a Commonwealth contract.

17.6.3. Where the Department has received a request for access to a document created by, or in the possession of, the Service Provider or any subcontractor that relates to the performance of this Contract (and not to the entry into the Contract), the Department may at any time by written notice require the Service Provider to provide the document to the Department and the Service Provider must promptly comply with the notice. The Department will pay reasonable substantiated costs incurred by the Service Provider in complying with this clause provided that the Service Provider seeks prior approval of those costs.

17.6.4. The Service Provider must include in any subcontract relating to the performance of this Contract provisions that will enable the Service Provider to comply with its obligations under this clause 17.6.

17.7. Relationship of parties

17.7.1. The Service Provider is not by virtue of this Contract an officer, employee, partner or agent of the Department, nor does the Service Provider have any power or authority to bind or represent the Department.

17.7.2. The Service Provider agrees:

- a. not to misrepresent its relationship with the Department; and
- b. not to engage in any misleading or deceptive conduct in relation to the Services.

17.8. Waiver

17.8.1. A failure or delay by a party to exercise any right or remedy it holds under this Contract or at law does not operate as a waiver of that right.

17.8.2. 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.

17.9. Variation

17.9.1. The Department may, including in response to a suggestion from the Service Provider, request that the Service Provider develop a change proposal to address a proposed variation to the Contract. The Service Provider will prepare a contract change proposal, outlining the impact on the Contract of the proposed variation, including on Schedule 1 [Statement of Work] and Schedule 2 [Fees and Payment]. The parties will discuss any contract change proposal in a timely manner.

17.9.2. A variation of this Contract is binding only if agreed in writing and signed by the parties.

17.10. Assignment

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

17.11. Survival

17.11.1. Unless the contrary intention appears, the expiry or earlier termination of this Contract will not affect the continued operation of any provision relating to:

- a. confidentiality;

- b. privacy;
- c. audit and access;
- d. an indemnity;

or any other provision which expressly or by implication from its nature is intended to continue.

17.12. Applicable law

- 17.12.1. This Contract is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.
- 17.12.2. The parties submit to the jurisdiction of the courts of that Territory.

SCHEDULE 1 STATEMENT OF WORK

PART 1: NAURU

PART 1A: NATURE OF THE SERVICES

1. General background and nature of services

1.1. Background

1.1.1. The Department has a requirement for the provision of Services, outlined in this Schedule, to Transferees and staff at the Site on Nauru.

1.1.2. Nauru is part of the Republic of Nauru that is part of Micronesia in the South Pacific. The population is approximately 12,000. The climate in Nauru is generally hot and humid consistently throughout the year. The currency on Nauru is the Australian Dollar. The main industry on Nauru is phosphate mining.

1.1.3. It is expected that the temporary facilities will accommodate up to 500 Transferees and the more permanent facilities up to 1000 or, if a second site is established, up to a total of 1700.

1.1.4. The provision of Services to Transferees will require the Service Provider to take a collaborative approach with Australia and the Nauru government organisations and any other service providers engaged by the Department. In particular, an integrated approach will need to be taken around security, safety, incident and risk management.

1.1.5. The Regional Processing Centres are low security and allow a certain level of freedom for Transferees. Engagement with the local community will be encouraged. Transferees employment within local communities, Transferee relationships with Nauru nationals and the management of high risk Transferees will need to be considered once the Department develops a position on these issues.

1.2. Other service providers

1.2.1. Other service providers will be engaged which may include an additional Transferee Welfare Support Service Provider dedicated to the interests of children, Operational and Maintenance Service Provider and a Health Service Provider. The Service Provider will work cooperatively with the other service providers. Where an obligation is expressed as 'support' in this Statement of Work, this usually denotes that another service provider has primary responsibility for the relevant activity and the Service Provider must provide necessary support to that activity.

1.2.2. The Service Provider must cooperate with other services providers appointed by the Department to ensure the integrated and efficient carrying on of the operations of the Site, and must provide such reasonable assistance to the

Department, local authorities and other service providers as the Department may reasonably request whether or not this is specifically stated in the Schedule.

1.3. Time for development of plans, procedures and arrangements

- 1.3.1. Where this Statement of Work refers to the development of a plan, arrangement or procedure, unless otherwise stated here or agreed by the parties, it is to be developed, approved and then implemented as soon as possible, and implementation should start no later than 6 weeks from the Commencement Date.

1.4. Stakeholder management

- 1.4.1. The Service Provider will have significant stakeholder management and consultation requirements including with the Department and Nauru government authorities. The Service Provider must adopt a collaborative approach to the complex stakeholder and governance issues.
- 1.4.2. The Service Provider will be required to work closely with the Centre Administrator appointed by the Government of Nauru.

PART 1B - TRANSFEEE SERVICES

2. General

2.1. Context

- 2.1.1. The Service Provider must provide and assist with a range of Transferees Services at the Site, and facilitate and encourage Transferees to access these Services.
- 2.1.2. All service delivery decisions taken by the Service Provider will take account of the individual needs of Transferees, and will aim to improve health and well-being outcomes for each Transferee. This will be undertaken in conjunction with other service providers.
- 2.1.3. The Service Provider will, in conjunction with other service providers, provide a range of Services to promote the well-being of Transferees and create an environment that supports security and safety at the Site.
- 2.1.4. The Service Provider must ensure that it and all its Personnel and subcontractors treat Transferees equitably and fairly, with dignity and respect.
- 2.1.5. The Service Provider must focus on the well-being of each Transferee and will facilitate visits from family, friends and support groups, while maintaining safety of all Transferees. The Department will take all reasonable steps to facilitate these visits.
- 2.1.6. The Service Provider will encourage interaction between Transferees where safe and appropriate.

2.1.7. The Service Provider will facilitate activities to enhance the ongoing emotional and mental health of each Transferee.

2.2. Personnel and structure

2.2.1. The Service Provider will prepare an updated personnel list and any changes to the organisational structure chart in relation to its operations at the Site under this Contract on a fortnightly basis. The Service Provider will provide this list to the Department Operations Team Leader and each other service provider.

2.2.2. The Service Provider will also be responsible for updating and distributing the Nauru inter-agency contact list to the Department Operations Team Leader and each other service provider on a weekly basis.

3. Programs and activities

3.1. Overview

3.1.1. The Service Provider must:

- a. develop, manage and deliver structured and unstructured programs and activities designed to provide educational and recreational opportunities, and provide meaningful activities that will enhance the mental health and well-being of individuals accommodated at the Site;
- b. develop strategies to encourage Transferees to participate in programs and activities, but enable Transferees at the Site to determine their own level of participation and involvement;
- c. ensure programs and activities cater for the diverse needs of Transferees;
- d. take feedback from Transferees into account when developing programs and activities;
- e. in accordance with the procedures for the sourcing of equipment advised by the Department, arrange for the supply of equipment required to support the activities; and
- f. ensure suitably qualified Service Provider Personnel are provided to support the activities.

3.1.2. The Service Provider will develop a plan that sets out in more detail the programs and activities that meet the requirements of this statement of work and the processes that will be used to monitor compliance with these requirements.

3.2. Religious activities and cultural liaison

3.2.1. The Service Provider must ensure all Transferees are free to practice their religion of choice individually or communally in accordance with Departmental Policy and subject to the overriding safety and security of Transferees.

- 3.2.2. The Service Provider will provide religious and cultural liaison between Transferees and Department and other service provider personnel.

3.3. Individual Allowance Program and Canteen

- 3.3.1. The Service Provider will be responsible for the operation and management of the Individual Allowance Program (IAP) in accordance with the guidelines issued by the Department from time to time.

- 3.3.2. The Service Provider must:

- a. stock and manage a shop that trades IAP points for items such as personal care products, telephone cards, stamps, writing paper, tobacco and snack food;
- b. consider requests of Transferees when determining what items are to be stocked in the shop, noting that Departmental policy may preclude the stocking of some items; and
- c. prominently display prices and opening hours in the shop, with signage in all relevant languages as appropriate to the Site's population.

4. Reception, transfer and discharge of Transferees

4.1. General responsibilities

- 4.1.1. The Service Provider will be responsible for coordinating reception, transfer and discharge processes at the Site. The Service Provider must:
- a. conduct reception processes upon the arrival of Transferees at the Site and support the other service providers in relation to their role in the reception processes, including but not limited to providing appropriate contributions to the conduct of security risk assessments by other service providers;
 - b. assist Transferees to prepare for transfer within or from the Site;
 - c. provide discharge processes in a manner that promotes the well-being of Transferees, their dignity and safety;
 - d. ensure that Transferees are regularly informed about what is happening to them in a language they understand through the use of interpreters provided by the Service Provider. This requirement may include passing on information from the Department, other authorities or other service providers; and
 - e. take primary responsibility for induction including provision of an induction booklet.

4.2. Processing times

- 4.2.1. The Service Provider must:
- a. ensure Service Provider Personnel are available to undertake reception, transfer and discharge activities at any time;

- b. have capacity to undertake these processes simultaneously;
- c. commence the reception process, immediately after a Transferee arrives at the Site and complete the reception process within 12 hours of their arrival at the Site;
- d. commence the induction processes as soon as reasonably practicable after the Transferee's arrival at the Site and complete the induction processes within two days of the Transferee arriving at the Site - the induction process includes providing information regarding how the Site operates and explaining relevant policies, procedures and roles.
- e. undertake transfer and discharge processes in accordance with timeframes determined by the Department on a case by case basis; and
- f. undertake discharge processes where a Transferee is being released immediately after the Service Provider is advised by the Department of the Transferee's release.

4.3. Reception process

4.3.1. The Service Provider must:

- a. develop and implement a reception process and checklist as soon as possible in consultation with the Department;
- b. ensure the reception process is coordinated with the Department and the other service providers;
- c. make available leaflets on the reception and induction processes in a range of languages to explain the reception and induction processes;
- d. on admission of a Transferee to the Site, offer the Transferee food and drink, access to bathroom facilities and toiletries;
- e. ensure that Service Provider Personnel involved in the reception process are specifically trained to manage the reception process in a non-threatening and threat-reducing way, with a focus on the well being of Transferees at all times; and
- f. provide a copy of reception reports to the Department within 48 hours of a Transferee being received at the Site.

4.3.2. The reception process will include providing clear information to Transferees regarding their right to complain and the process to be followed. The Service Provider will develop, implement and manage the complaints handling process, with the intention of promoting where possible the early and informal rectification of issues.

4.4. Transferee health induction assessment

4.4.1. During the reception process, the Service Provider must facilitate, in conjunction with the health Service Provider, the opportunity for each Transferee to undergo a health induction assessment.

- 4.4.2. Where a Transferee undergoes a health induction assessment, the Service Provider must ensure it receives a Transferee's health summary from the health service provider as soon as practicable.

4.5. Arrival phone call

- 4.5.1. As part of the induction process, the Service Provider must advise Transferees they may make a telephone call to advise family, friends or other support networks of their arrival at the Site. The Service Provider will facilitate this phone call.

5. Individual management

5.1. Individual management plans

- 5.1.1. The Service Provider will be responsible for the development and implementation of an individual management plan for each Transferee.

5.2. Transferee records

- 5.2.1. The Service Provider will be responsible for the development and management of Transferee Records. Other service providers will contribute information for inclusion in those records.

- 5.2.2. The Service Provider must develop and implement a Transferee records management system for use by all service providers. The Service Provider and the Department will develop guidelines that set out in more detail the minimum requirements that are to be met by the Transferee records management system ('Transferee Records Guidelines'); including:

- a. minimum categories of information to be recorded;
- b. timeframes for updating Transferee records;
- c. reporting and data analysis, including frequency and format of standard reporting templates; and
- d. format and processes for the transfer of data to the Department at regular intervals during the Term and at the expiration or termination of the Contract.

The Service Provider will ensure that other service providers and their personnel are provided with training in the use of the Transferee management system.

- 5.2.3. The Service Provider must ensure that all relevant information relating to a Transferee is recorded in this system in a timely manner in accordance with the Transferee Records Guidelines to assist with Transferee welfare and management of the Site.

- 5.2.4. The Service Provider must, on request from the Department and otherwise in accordance with the Transferee Records Guidelines, promptly provide reports and other information from the Transferee records management system.

5.3. Referral of Transferee identity issues

- 5.3.1. The Service Provider must immediately refer any doubts or concerns regarding a Transferee's identity to the Department.
- 5.3.2. Where the Service Provider identifies that a Transferee that claimed to be 18 or over, is under 18, the Service Provider must manage that Transferee in accordance with any Department instructions.

5.4. Access to telecommunications and mail services

- 5.4.1. The Service Provider will assist and manage access of Transferees to communication services where available, including internet, telephones, facsimiles, computers, television, other media and mail services.
- 5.4.2. The Service Provider must, where available, facilitate access to a telephone by Transferees as far as practicable. The Service Provider will notify a Transferee of any calls received for them when the Transferee is not available to receive the call, ensuring the privacy of the Transferee is maintained at all times.
- 5.4.3. The Service Provider must:
- a. facilitate Transferees to perform functions such as word processing, spreadsheets, internet and email for their private use and the preparation of documents relating to their Refugee Status Determination outcome;
 - b. facilitate other communications for Transferees, including scanning and printing, where those facilities are not available for Transferee use;
 - c. manage access by Transferees to internet usage including the use of email by managing a computer room booking system;
 - d. support the implementation of any Department processes or protocols that control and limit access at the Site by Transferees to pornographic and other prohibited sites containing or promoting illegal acts, personal software, file transfer protocol sites, software or data and prohibited sites in foreign languages; and
 - e. ensure Transferees understand and sign the conditions of computer use before they use computer services.
- 5.4.4. All mail and facsimiles addressed to a Transferee will be registered by the operational and maintenance service provider before being provided to the Service Provider. The Service Provider must:
- a. ensure all mail and facsimiles addressed to a Transferee are distributed to them; and
 - b. ensure each Transferee signs for all mail and facsimiles received by them.

5.5. Health of Transferees

- 5.5.1. The Service Provider must ensure that any Transferee who requests, or appears to be in need of medical attention, is referred for appropriate medical attention.
- 5.5.2. Where it appears that a Transferee requires emergency medical attention, the Service Provider must:
 - a. immediately implement the Site's emergency response protocol advised by the Department and administer first aid to the Transferee until the service provider responsible for health services' personnel arrive;
 - b. inform the service provider responsible for health services of the Transferee's circumstances as soon as the initial response is complete.

5.6. Transferees under the influence of drugs or alcohol

- 5.6.1. The Service Provider will:
 - a. ensure that a Transferee who appears to be under the influence of drugs or alcohol is supervised by Service Provider Personnel until the Transferee appears to be no longer affected; and
 - b. refer the Transferee for assessment by the service provider responsible for health services within 12 hours, unless emergency medical attention is required, in which case the arrangements set out in paragraph 5.5.2 above will apply.

5.7. Mental health awareness

- 5.7.1. The Service Provider must ensure all relevant Service Provider Personnel attend mental health awareness training as required by the Department, including training provided by other service providers.

5.8. Behavioural management of Transferees

- 5.8.1. The Service Provider must, in collaboration with other service providers, develop and implement a system of Transferees behavioural management strategies that aim to defuse tensions and conflicts before they escalate or become serious or violent. The strategy must outline the steps taken to effect de-escalation.

5.9. Illegal and anti-social behaviour

- 5.9.1. The Service Provider must develop and implement processes, in cooperation with the Department and other local authorities and other service providers, for managing instances where Transferees are engaged in behaviour that is illegal, has breached the rules applicable at the Site or is anti-social in nature.
- 5.9.2. For the purposes of this clause undesirable behaviours may include:
 - a. bullying;
 - b. verbal abuse;

- c. sexual or other forms of harassment;
- d. assault;
- e. malicious destruction of property; and
- f. possession of weapons or illegal drugs.

5.9.3. The Service Provider must:

- a. communicate the Site policy on anti-social behaviour to all Transferees during the induction process; and
- b. prominently display the policy on anti-social behaviour in all relevant languages in the Site.

5.9.4. Where the Service Provider has identified, or suspects, that a Transferee has engaged in illegal, non-compliant or antisocial behaviour, the Service Provider must: immediately inform the Department and the service provider responsible for security services. The Service Provider must, in collaboration with other relevant service providers, help to develop recommendations for:

- a. dealing with the perpetrator(s); and
- b. preventing recurrence;

5.9.5. The Service Provider must support the security service provider in recording details of and responses to instances of individual illegal, non-compliant or antisocial behaviour by Transferees and in completing Incident reports.

5.9.6. The Service Provider must ensure that Transferees identified as victims of anti-social behaviour are supported by Service Provider Personnel and other service providers, with relevant details recorded.

5.9.7. The Department will be responsible for involving the police or other authorities as required, except where reporting is mandatory under applicable law.

5.10. Management of Incidents

5.10.1. The Service Provider will support other service providers in their management of Incidents and other security issues.

5.10.2. The Service Provider will comply with any security and risk management processes and policies notified by the Department that apply at the Site and otherwise manage risk in accordance with AS/NZS ISO 31000:2009 Risk management – Principles and guidelines.

6. Work health and safety

6.1. General

6.1.1. The Service Provider Personnel must:

- a. develop and implement a work health and safety plan in consultation with other service providers and the Department;
 - b. comply with all applicable Laws for occupational/work health and safety which include for the avoidance of doubt the Commonwealth Work Health and Safety Act, regulations and codes of practice as well as any applicable local laws and where there is any conflict, in the applicable laws, comply with the highest standard;
 - c. establish a work health and safety committee to oversee compliance with work/occupational health and safety requirements for the site as a whole. Representation from other service providers is encouraged.
- 6.1.2. The Service Provider must comply with the interim work health and safety plan until the more detailed work health and safety plan has been developed and approved in accordance with clause 7.2 of the Contract.

6.2. Safety precautions in performing the Services

- 6.2.1. The Service Provider Personnel must observe all the work/occupational health and safety rules for that Site, including rules applicable to:
- a. the storage, transport, and use of materials including hazardous substances and chemicals; and
 - b. safe work processes and the incorporation of any safety precautions.
- 6.2.2. The Service Provider must provide appropriate employee assistance programs support for all Service Provider Personnel. The Service Provider must ensure that all Service Provider Personnel are aware of and have access to these programs at all times, particularly while working at a Site and after any deployment.

PART 1C - GOVERNANCE ARRANGEMENTS

7. Outline

- 7.1.1. This Part:
- a. outlines the Department's governance framework to support the effective delivery of Services under the Contract; and
 - b. discusses the partnering approach expected of the Service Provider, the Department and other service providers to build long term relationships and improve service delivery for Transferees; and
 - c. describes the contract management structure that will be in place at a site level, and a national level, including the committees and joint initiatives the Service Provider will be required to participate in.

8. Governance framework

8.1. General

- 8.1.1. The Department's governance framework has been developed to support the effective delivery of services under this Contract. A key feature of the governance framework is two distinct layers of governance to provide clear pathways to raise, discuss, respond to, and resolve issues:
- a. senior management - to address issues at the strategic/tactical level; and
 - b. local management - to address issues at the delivery levels
- 8.1.2. The Service Provider must cooperate with the Department by actively participating in committees and meetings that have been (or are being) established across both levels of governance, including where requested by the Department acting as the Chair of a committee or meeting.
- 8.1.3. The Service Provider must cooperate with the Department, other service providers, and stakeholders, to meet the needs of Transferees and assist the Department to meet its obligations.

8.2. Cooperation, collaboration and meetings

- 8.2.1. The Service Provider must attend the high level strategic/tactical level meetings with the Department senior management as follows:
- a. as an individual service provider every two to three months as required by the Department; and
 - b. in a joined-up forum with the Department and representatives of other service providers every six months or as otherwise required by the Department.

Unless otherwise advised by the Department, senior management meetings will be held in Canberra.

- 8.2.2. The Service Provider must attend the following local management meetings:
- a. morning meeting (daily) with the Department and other service providers;
 - b. consultative committee (monthly) with Transferees, other service providers and the Department;
 - c. weekly Department and prevention committee review with the Department and other service providers to identify Transferees at risk; and
 - d. facility level board (monthly) with the Department and other service providers reviewing the effectiveness of governance arrangements, risks and issues affecting the facility.

Unless otherwise advised by the Department, local management meetings will be held at the Site.

- 8.2.3. The Service Provider must participate in, and action agreed items resulting from all meetings, consultative committees and forums at the request of the Department.
- 8.2.4. In certain situations, and particularly at the delivery level of governance, the Service Provider will be required to chair and lead these initiatives.
- 8.2.5. The Service Provider must provide updates, reports and briefings for meetings, consultative committees and forums at the request of the Department.
- 8.2.6. The Service Provider with the Department and Nauruan government must :
- a. participate in and contribute to regular meetings with community leaders;
and
 - b. develop and maintain good working relationships with key community members.

PART 2: MANUS ISLAND (PNG)

PART 2A: NATURE OF THE SERVICES

1. General background and nature of services

1.1. Background

- 1.1.1. The Department has a requirement for the provision of Services, outlined in this Schedule, to Transferees and staff at the Site on Manus Island (PNG).
- 1.1.2. Manus Island, part of the Manus Province, is an island in northern Papua New Guinea (PNG) and is the largest of the Admiralty Islands. The population is approximately 43,000. Manus Island is covered by tropical rain forest with temperatures typically varying from 24 to 32 degrees and has no dry season. Manus Island uses the currency of PNG, the Kina. The main industries on Manus Island are coconut production and sea cucumber fishing.
- 1.1.3. It is expected that the temporary facilities will accommodate up to 500 Transferees and the more permanent facilities up to 600.
- 1.1.4. The provision of Services to Transferees will require the Service Provider to take a collaborative approach with Australia and the PNG government organisations and any other service providers engaged by the Department. In particular, an integrated approach will need to be taken around security, safety, incident and risk management.
- 1.1.5. The Regional Processing Centres are low security and allow a certain level of freedom for Transferees. Engagement with the local community will be encouraged. Transferees employment within local communities, Transferee relationships with PNG nationals and the management of high risk Transferees will need to be considered once the Department develops a position on these issues.

1.2. Other service providers

- 1.2.1. Other service providers will be engaged which may include an additional Transferee Welfare Support Service Provider dedicated to the interests of children, Operational and Maintenance Service Provider and a Health Service Provider. The Service Provider will work cooperatively with the other service providers. Where an obligation is expressed as 'support' in this Statement of Work, this usually denotes that another service provider has primary responsibility for the relevant activity and the Service Provider must provide necessary support to that activity.
- 1.2.2. The Service Provider must cooperate with any other service providers appointed by the Department to ensure the integrated and efficient carrying on of the

operations of the Site, and must provide such reasonable assistance to the Department, local authorities and other services providers as the Department may reasonably request whether or not this is specifically stated in this Schedule.

1.3. Time for development of plans, procedures and arrangements

1.3.1. Where this Statement of Work refers to the development of a plan, arrangement or procedure, unless otherwise stated here or agreed by the parties, it is to be developed, approved and then implemented as soon as possible, and implementation should start no later than 6 weeks from the Commencement Date.

1.4. Stakeholder management

1.4.1. The Service Provider will have significant stakeholder management and consultation requirements including with the Department and Papua New Guinea government authorities. The Service Provider must adopt a collaborative approach to the complex stakeholder and governance issues.

1.4.2. The Service Provider will be required to work closely with the Centre Administrator appointed by the Government of Papua New Guinea.

PART 2B - TRANSFEREE SERVICES

2. General

2.1. Context

2.1.1. The Service Provider must provide and assist with a range of Transferees Services at the Site, and facilitate and encourage Transferees to access these Services.

2.1.2. All service delivery decisions taken by the Service Provider will take account of the individual needs of Transferees, and will aim to improve health and well-being outcomes for each Transferee. This will be undertaken in conjunction with other service providers.

2.1.3. The Service Provider will, in conjunction with other service providers, provide a range of Services to promote the well-being of Transferees and create an environment that supports security and safety at the Site.

2.1.4. The Service Provider must ensure that it and all its Personnel and subcontractors treat Transferees equitably and fairly, with dignity and respect.

2.1.5. The Service Provider must focus on the well-being of each Transferee and will facilitate visits from family, friends and support groups, while maintaining safety of all Transferees. The Department will take all reasonable steps to facilitate these visits.

2.1.6. The Service Provider will encourage interaction between Transferees where safe and appropriate.

2.1.7. The Service Provider will facilitate activities to enhance the ongoing emotional and mental health of each Transferee.

2.2. Personnel and structure

2.2.1. The Service Provider will prepare an updated personnel list and any changes to the organisational structure chart in relation to its operations in relation to the Site under this Contract on a fortnightly basis. The Service Provider will provide this list to the Department Operations Team Leader and each other service provider.

2.2.2. The Service Provider will also be responsible for updating and distributing the Manus Island (PNG) inter-agency contact list to the Department Operations Team Leader and each other service provider on a weekly basis.

3. Programs and activities

3.1. Overview

3.1.1. The Service Provider must:

- a. develop, manage and deliver structured and unstructured programs and activities designed to provide educational and recreational opportunities, and provide meaningful activities that will enhance the mental health and well-being of individuals accommodated at the Site;
- b. develop strategies to encourage Transferees to participate in programs and activities, but enable Transferees at the Site to determine their own level of participation and involvement;
- c. ensure programs and activities cater for the diverse needs of Transferees;
- d. take feedback from Transferees into account when developing programs and activities;
- e. in accordance with the procedures for the sourcing of equipment advised by the Department, arrange for the supply of equipment required to support the activities; and
- f. ensure suitably qualified Service Provider Personnel are provided to support the activities.

3.1.2. The Service Provider will develop a plan that sets out in more detail the programs and activities that meet the requirements of this statement of work and the processes that will be used to monitor compliance with these requirements.

3.2. Religious activities and cultural liaison

- 3.2.1. The Service Provider must ensure all Transferees are free to practice their religion of choice individually or communally in accordance with Departmental Policy and subject to the overriding safety and security of Transferees.
- 3.2.2. The Service Provider will provide religious and cultural liaison between Transferees and Department and other service provider personnel.

3.3. Individual Allowance Program and Canteen

- 3.3.1. The Service Provider will be responsible for the operation and management of the Individual Allowance Program (IAP) as set out in the guidelines issued by the Department from time to time.
- 3.3.2. The Service Provider must:
 - a. stock and manage a shop that trades IAP points for items such as personal care products, telephone cards, stamps, writing paper, tobacco and snack food;
 - b. consider requests of Transferees when determining what items are to be stocked in the shop, noting that Departmental policy may preclude the stocking of some items; and
 - c. prominently display prices and opening hours in the shop, with signage in all relevant languages as appropriate to the Site's population.

4. Reception, transfer and discharge of Transferees

4.1. General responsibilities

- 4.1.1. The Service Provider will be responsible for coordinating reception, transfer and discharge processes at the Site. The Service Provider must:
 - a. conduct reception processes upon the arrival of Transferees at the Site and support the other service providers in relation to their role in the reception processes, including but not limited to providing appropriate contributions to the conduct of security risk assessments by other service providers;
 - b. assist Transferees to prepare for transfer within or from the Site;
 - c. provide discharge processes in a manner that promotes the well-being of Transferees, their dignity and safety;
 - d. ensure that Transferees are regularly informed about what is happening to them in a language they understand through the use of interpreters provided by the Service Provider. This requirement may include passing on information from the Department, other authorities or other service providers; and
 - e. take primary responsibility for induction including provision of an induction booklet.

4.2. Processing times

4.2.1. The Service Provider must:

- a. ensure Service Provider Personnel are available to undertake reception, transfer and discharge activities at any time;
- b. have capacity to undertake these processes simultaneously;
- c. commence the reception process, immediately after a Transferee arrives at the Site and complete the reception process within 12 hours of their arrival at the Site;
- d. commence the induction processes as soon as reasonably practicable after the Transferee's arrival at the Site and complete the induction processes within two days of the Transferee arriving at the Site - the induction process includes providing information regarding how the Site operates and explaining relevant policies, procedures and roles.
- e. undertake transfer and discharge processes in accordance with timeframes determined by the Department on a case by case basis; and
- f. undertake discharge processes where a Transferee is being released immediately after the Service Provider is advised by the Department of the Transferee's release.

4.3. Reception process

4.3.1. The Service Provider must:

- a. develop and implement a reception process and checklist as soon as possible in consultation with the Department;
- b. ensure the reception process is coordinated with the Department and the other service providers;
- c. make available leaflets on the reception and induction processes in a range of languages to explain the reception and induction processes;
- d. on admission of a Transferee to the Site, offer the Transferee food and drink, access to bathroom facilities and toiletries;
- e. ensure that Service Provider Personnel involved in the reception process are specifically trained to manage the reception process in a non-threatening and threat-reducing way, with a focus on the well being of Transferees at all times; and
- f. provide a copy of reception reports to the Department within 48 hours of a Transferee being received at the Site.

4.3.2. The reception process will include providing clear information to Transferees regarding their right to complain and the process to be followed. The Service Provider will develop, implement and manage the complaints handling process, with the intention of promoting where possible the early and informal rectification of issues.

4.4. Transferee health induction assessment

- 4.4.1. During the reception process, the Service Provider must facilitate, in conjunction with the health Service Provider, the opportunity for each Transferee to undergo a health induction assessment.
- 4.4.2. Where a Transferee undergoes a health induction assessment, the Service Provider must ensure it receives a Transferee's health summary from the health service provider as soon as practicable.

4.5. Arrival phone call

- 4.5.1. As part of the induction process, the Service Provider must advise Transferees they may make a telephone call to advise family, friends or other support networks of their arrival at the Site. The Service Provider will facilitate this phone call.

5. Individual management

5.1. Individual management plans

- 5.1.1. The Service Provider will be responsible for the development and implementation of an individual management plan for each Transferee.

5.2. Transferee Records

- 5.2.1. The Service Provider will be responsible for the development and management of Transferee Records. Other service providers will contribute information for inclusion in those records.
- 5.2.2. The Service Provider must develop and implement a Transferee records management system for use by all service providers. The Service Provider and the Department will develop guidelines that set out in more detail the minimum requirements that are to be met by the Transferee records management system ('Transferee Records Guidelines'); including:
 - a. minimum categories of information to be recorded;
 - b. timeframes for updating Transferee records;
 - c. reporting and data analysis, including frequency and format of standard reporting templates; and
 - d. format and processes for the transfer of data to the Department at regular intervals during the Term and at the expiration or termination of the Contract.

The Service Provider will ensure that other service providers and their personnel are provided with training in the use of the Transferee management system.

- 5.2.3. The Service Provider must ensure that all relevant information relating to a Transferee is recorded in this system in a timely manner in accordance with the

Transferee Records Guidelines to assist with Transferee welfare and management of the Site.

- 5.2.4. The Service Provider must, on request from the Department and otherwise in accordance with the Transferee Records Guidelines, promptly provide reports and other information from the Transferee records management system.

5.3. Referral of Transferee identity issues

- 5.3.1. The Service Provider must immediately refer any doubts or concerns regarding a Transferee's identity to the Department.

- 5.3.2. Where the Service Provider identifies that a Transferee that claimed to be 18 or over, is under 18, the Service Provider must manage that Transferee in accordance with any Department instructions.

5.4. Access to telecommunications and mail services

- 5.4.1. The Service Provider will assist and manage access of Transferees to communication services where available, including internet, telephones, facsimiles, computers, television, other media and mail services.

- 5.4.2. The Service Provider must, where available, facilitate access to a telephone by Transferees as far as practicable. The Service Provider will notify a Transferee of any calls received for them when the Transferee is not available to receive the call, ensuring the privacy of the Transferee is maintained at all times.

- 5.4.3. The Service Provider must:

- a. facilitate Transferees to perform functions such as word processing, spreadsheets, internet and email for their private use and the preparation of documents relating to their Refugee Status Determination outcome;
- b. facilitate other communications for Transferees, including scanning and printing, where those facilities are not available for Transferee use;
- c. manage access by Transferees to internet usage including the use of email by managing a computer room booking system;
- d. support the implementation of any Department processes or protocols that control and limit access at the Site by Transferees to pornographic and other prohibited sites containing or promoting illegal acts, personal software, file transfer protocol sites, software or data and prohibited sites in foreign languages; and
- e. ensure Transferees understand and sign the conditions of computer use before they use computer services.

- 5.4.4. All mail and facsimiles addressed to a Transferee will be registered by the operational and maintenance service provider before being provided to the Service Provider. The Service Provider must:

- a. ensure all mail and facsimiles addressed to a Transferee are distributed to them; and
- b. ensure each Transferee signs for all mail and facsimiles received by them.

5.5. Health of Transferees

- 5.5.1. The Service Provider must ensure that any Transferee who requests, or appears to be in need of medical attention, is referred for appropriate medical attention.
- 5.5.2. Where it appears that a Transferee requires emergency medical attention, the Service Provider must:
 - a. immediately implement the Site's emergency response protocol advised by the Department and administer first aid to the Transferee until the service provider responsible for health services' personnel arrive;
 - b. inform the service provider responsible for health services of the Transferee's circumstances as soon as the initial response is complete.

5.6. Transferees under the influence of drugs or alcohol

- 5.6.1. The Service Provider will:
 - a. ensure that a Transferee who appears to be under the influence of drugs or alcohol is supervised by Service Provider Personnel until the Transferee appears to be no longer affected; and
 - b. refer the Transferee for assessment by the service provider responsible for health services within 12 hours, unless emergency medical attention is required, in which case the arrangements set out in paragraph 5.5.2 will apply.

5.7. Mental health awareness

- 5.7.1. The Service Provider must ensure all relevant Service Provider Personnel attend mental health awareness training as required by the Department, including training provided by other service providers.

5.8. Behavioural management of Transferees

- 5.8.1. The Service Provider must, in collaboration with other service providers, develop and implement a system of Transferees behavioural management strategies that aim to defuse tensions and conflicts before they escalate or become serious or violent. The strategy must outline the steps taken to effect de-escalation.

5.9. Illegal and anti-social behaviour

- 5.9.1. The Service Provider must develop and implement processes, in cooperation with the Department and other local authorities and other service providers, for managing instances where Transferees are engaged in behaviour that is illegal, has breached the rules applicable at the Site or is anti-social in nature.

- 5.9.2. For the purposes of this clause undesirable behaviours may include:
- a. bullying;
 - b. verbal abuse;
 - c. sexual or other forms of harassment;
 - d. assault;
 - e. malicious destruction of property; and
 - f. possession of weapons or illegal drugs.
- 5.9.3. The Service Provider must:
- a. communicate the Site policy on anti-social behaviour to all Transferees during the induction process; and
 - b. prominently display the policy on anti-social behaviour in all relevant languages in the Site.
- 5.9.4. Where the Service Provider has identified, or suspects, that a Transferee has engaged in illegal, non-compliant or antisocial behaviour, the Service Provider must: immediately inform the Department and the service provider responsible for security services. The Service Provider must, in collaboration with other relevant service providers, help to develop recommendations for:
- a. dealing with the perpetrator(s); and
 - b. preventing recurrence;
- 5.9.5. The Service Provider must support the security service provider in recording details of and responses to instances of individual illegal, non-compliant or antisocial behaviour by Transferees and in completing Incident reports.
- 5.9.6. The Service Provider must ensure that Transferees identified as victims of anti-social behaviour are supported by Service Provider Personnel and other service providers, with relevant details recorded.
- 5.9.7. The Department will be responsible for involving the police or other authorities as required, except where reporting is mandatory under applicable law.
- 5.10. Management of Incidents**
- 5.10.1. The Service Provider will support other service providers in their management of Incidents and other security issues.
- 5.10.2. The Service Provider will comply with any security and risk management processes and policies notified by the Department that apply at the Site and otherwise manage risk in accordance with AS/NZS ISO 31000:2009 Risk management – Principles and guidelines.

6. Work health and safety

6.1. General

- 6.1.1. The Service Provider Personnel must:
- a. develop and implement a work health and safety plan in consultation with other service providers and the Department;
 - b. comply with all applicable Laws for occupational/work health and safety which include for the avoidance of doubt the Commonwealth Work Health and Safety Act, regulations and codes of practice as well as any applicable local laws and where there is any conflict, in the applicable laws, comply with the highest standard;
 - c. establish a work health and safety committee to oversee compliance with work/occupational health and safety requirements for the site as a whole. Representation from other service providers is encouraged.
- 6.1.2. The Service Provider Personnel must comply with the interim work health and safety plan until the more detailed work health and safety plan has been developed and approved in accordance with clause 7.2 of the Contract.

6.2. Safety precautions in performing the Services

- 6.2.1. The Service Provider Personnel must observe all the work/occupational health and safety rules for that Site, including rules applicable to:
- a. the storage, transport, and use of materials including hazardous substances and chemicals; and
 - b. safe work processes and the incorporation of any safety precautions.
- 6.2.2. The Service Provider must provide appropriate employee assistance program support for all Service Provider Personnel. The Service Provider must ensure that all Service Provider Personnel are aware of and have access to these programs at all times, particularly while working at a Site and after any deployment.

PART 2C - GOVERNANCE ARRANGEMENTS

7. Outline

- 7.1.1. This Part:
- a. outlines the Department's governance framework to support the effective delivery of Services under the Contract; and
 - b. discusses the partnering approach expected of the Service Provider, the Department and other service providers to build long term relationships and improve service delivery for Transferees; and

- c. describes the contract management structure that will be in place at a site level, and a national level, including the committees and joint initiatives the Service Provider will be required to participate in.

8. Governance framework

8.1. General

- 8.1.1. The Department's governance framework has been developed to support the effective delivery of services under this Contract. A key feature of the governance framework is two distinct layers of governance to provide clear pathways to raise, discuss, respond to, and resolve issues:
 - a. senior management - to address issues at the strategic/tactical level; and
 - b. local management - to address issues at the delivery levels
- 8.1.2. The Service Provider must cooperate with the Department by actively participating in committees and meetings that have been (or are being) established across both levels of governance, including where requested by the Department acting as the Chair of a committee or meeting.
- 8.1.3. The Service Provider must cooperate with the Department, other service providers, and stakeholders, to meet the needs of Transferees and assist the Department to meet its obligations.

8.2. Cooperation, collaboration and meetings

- 8.2.1. The Service Provider must attend the high level strategic/tactical level meetings with the Department senior management as follows:
 - a. as an individual service provider every two to three months as required by the Department; and
 - b. in a joined-up forum with the Department and representatives of other service providers every six months or as otherwise required by the Department.

Unless otherwise advised by the Department, senior management meetings will be held in Canberra.

- 8.2.2. The Service Provider must attend the following local management meetings:
 - a. morning meeting (daily) with the Department and other service providers;
 - b. consultative committee (monthly) with Transferees, other service providers and the Department;
 - c. weekly Department and prevention committee review with the Department and other service providers to identify Transferees at risk; and

- d. facility level board (monthly) with the Department and other service providers reviewing the effectiveness of governance arrangements, risks and issues affecting the facility.

Unless otherwise advised by the Department, local management meetings will be held at the Site.

- 8.2.3. The Service Provider must participate in, and action agreed items resulting from all meetings, consultative committees and forums at the request of the Department.
- 8.2.4. In certain situations, and particularly at the delivery level of governance, the Service Provider will be required to chair and lead these initiatives.
- 8.2.5. The Service Provider must provide updates, reports and briefings for meetings, consultative committees and forums at the request of the Department.
- 8.2.6. The Service Provider with the Department, PNG government and Manus Island communities must :
 - a. participate in and contribute to regular meetings with community leaders; and
 - b. develop and maintain good working relationships with key community members.

SCHEDULE 2 FEES AND PAYMENT

1. Service Fee

1.1. Elements of the Service Fee

1.1.1. The Service Fee for the Services will comprise the following elements which are described further below:

- a. a Corporate Overhead Fee
- b. a Service Delivery Team Fee
- c. a Pass-Through Cost Fee.

1.1.2. In addition, the Service Provider may claim certain pass through costs. The Service Provider is not entitled to any other payments in relation to the delivery of the Services.

1.1.3. The Parties acknowledge that this payment schedule has been developed with the intention that it only apply during the term of the Contract.

1.2. Exchange rate adjustment

1.2.1. Where relevant, the exchange rate to be used is 1Kina = A\$0.46. If there is a variation of more than 10% in the exchange rate (as published by the Reserve Bank on <http://www.rba.gov.au/statistics/frequency/exchange-rates.html>), either party may seek a review of this exchange rate or any elements of the Service Fee that have been calculated using this exchange rate.

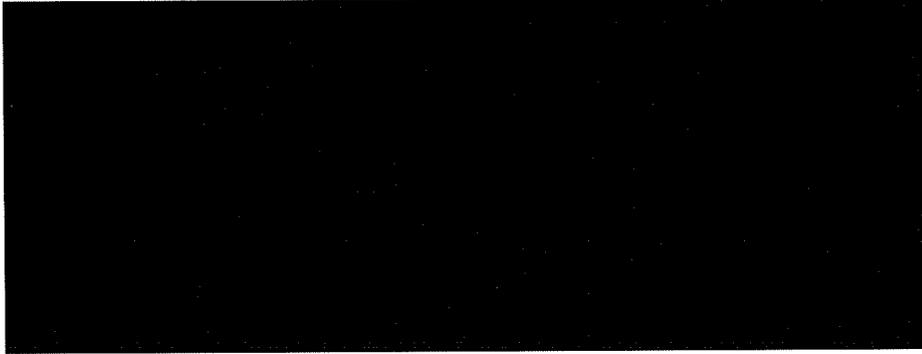
2. Corporate Overhead Fee

2.1. Basis of the Corporate Overhead Fee

2.1.1. The Corporate Overhead Fee is a monthly fee of [REDACTED]

2.1.2. The Corporate Overhead Fee covers the provision of all Services under this Contract at all Sites and takes account of the cost of business and management systems and support (as distinct from specific Service Delivery Team members), including





2.2. Adjustment of the Corporate Overhead Fee - Performance Management Framework

2.2.1. The Service Provider acknowledges that the Department may withhold part of the Corporate Overhead Fee in accordance with the abatement regime set out in Performance Management Framework once it has been agreed.

3. Service delivery team fee

3.1. Calculation of Service Delivery Team Fee

3.1.1. The Service Delivery Team Fee will apply to the Service Delivery Team. The Service Delivery Team comprises those Personnel/positions that the Department agrees to be part of the Service Delivery Team and are either:

- a. In-Country staff being Service Provider Personnel deployed or being deployed to a Site to provide the Services; or
- b. Headquarters service delivery team staff being Personnel based in Australia directly involved in delivering the Services (as opposed to undertaking tasks which are included in the Management Fee).

3.1.2. The service delivery team fee is calculated using the daily rates set out in Appendix 1 to this Schedule.

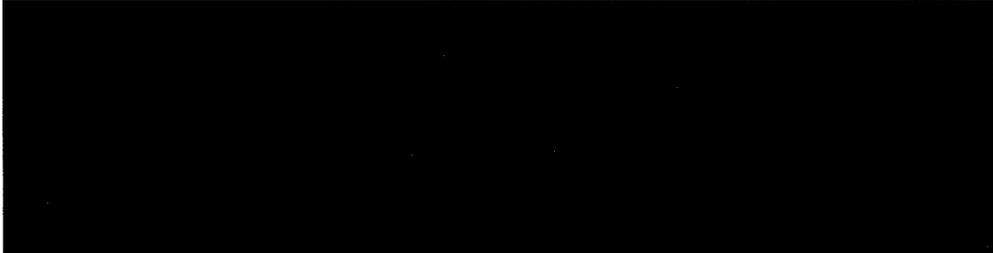
3.2. In-Country Service Delivery Team

3.2.1. The Service Provider agrees that the on shore rates for the In-Country staff per Appendix 1 to this Schedule 2 will be



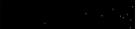
3.2.2.

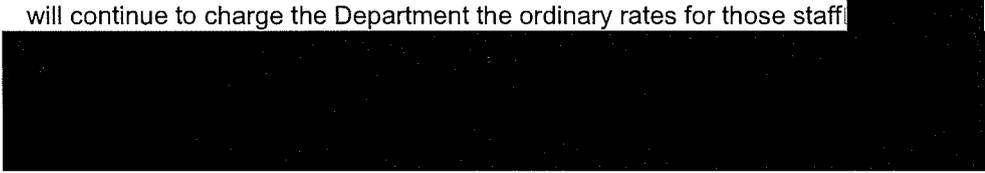




- 3.2.3. The daily rates are 
- 3.2.4. If the Department approves the deployment of volunteers, these rates will not be applicable to volunteers. An amount to be agreed between the parties will be paid in relation to living away from home allowance.

3.3. Headquarters Service Delivery Team

- 3.3.1. The Headquarters Service Delivery Team fee is calculated using the daily rates set out in the spreadsheet at Appendix 1 to this Schedule 2.
- 3.3.2. The Service Provider may claim payments in relation to Australian based Personnel who are agreed by the Department to be part of the Headquarters Service Delivery Team on the basis of the Headquarters service delivery team rates. Where a person is agreed for only part of a day, the rate will be adjusted on a pro rata basis.
- 3.3.3. The Department agrees that whenever Headquarters Service Delivery Team personnel are visiting either Nauru or Manus Island (PNG) the Service Provider will continue to charge the Department the ordinary rates for those staff 



3.4. Changes in number of Personnel

- 3.4.1. The Service Provider has indicated the anticipated initial number of roles for each of the relevant personnel for the Service Delivery Team, both In-Country and Headquarters, in the spreadsheet at Appendix 1 to this Schedule 2. The Department accepts the figures for roles and applicable rates in Appendix 1 to this Schedule 2 as at the Commencement Date of this Contract. The parties agree that these personnel numbers may become subject to change (either as the contract life matures and workloads become more known, and/or as further Sites are nominated). The Department agrees to approve reasonable requests made in writing by the Service Provider to increase relevant service delivery team staff so as to allow the Service Provider to adequately deliver the Services.
- 3.4.2. Where the Service Provider makes a request in writing to the Department in accordance with clause 3.4.1 of this Schedule 2, the Department will respond within 10 Business Days indicating its approval, or if not approved, indicating the

reasons for withholding the approval and stating what, if any further steps may be undertaken by the Service Provider in order for the approval to be granted.

- 3.4.3. In circumstances where the urgency of the matter does not permit the Service Provider to wait 10 Business Days required by clause 3.4.2 of this Schedule 2, the Service Provider must in the request submitted to the Department notify the Department that it is an urgent request. The Service Provider may then temporarily increase the relevant service delivery team staff for a period of up to a maximum of 10 Business Days and the costs of doing so may be claimed as a Pass-through cost in accordance with clause 4 of this Schedule 2, provided that any such temporary arrangement will cease immediately upon the Department notifying the Service Provider that it does not approve the increase.

3.5. Rates for locally engaged staff

- 3.5.1. Labour rates for locally engaged staff must be consistent with local law and practice for the relevant Site and will be subject to a mark up to be agreed to account for management, supervision, contingency, profit and shift work.

4. Pass-through costs and pass through costs fee

4.1. Approval of all pass-through costs

- 4.1.1. The Department will reimburse all other approved costs incurred by the Service Provider in the delivery of the Services after the Commencement Date. All Pass-Through Costs must be approved in advance.
- 4.1.2. The Parties will develop a joint procedure for the management and approval of these costs but the Department acknowledges that the procedure for recording and approval of these costs does not currently exist and is required to be developed and agreed during the term of the Contract.
- 4.1.3. All Pass-Through Costs must
- a. be approved by the Department in advance in writing; and
 - b. be claimed within 6 months of the date on which the relevant goods or services are provided to the Service Provider, with no Pass-Through Costs able to be claimed more than 120 days after the expiration or earlier termination of the Contract (or not later than 120 days after the expiration of any extension of the Term, as the case may be). The Department will not reimburse, and will not pay the Pass-Through Cost Fee in relation to, any Pass-Through Costs claimed after that time.

4.2. Pass-Through Cost Fee

- 4.2.1. A pass through cost fee of [REDACTED]

5. Payment arrangements

5.1. Invoices

5.1.1. The Service Fee and the approved Pass-Through Costs will be invoiced and submitted as soon as possible and in any event no more than 10 Business Days after the last working day of each month and be paid by the Department monthly in arrears within 30 days of receipt by the Department of a correctly rendered invoice. Unless otherwise agreed, any payments under this Contract will be made by electronic transfer directly to a nominated bank account.

5.1.2. An invoice must:

- a. meet Australian Taxation Office requirements of a tax invoice as required by GST Law;
- b. be accurate;
- c. where applicable, meet the requirements of the Financial Management and Accountability Act 1997;
- d. provide disclosure of the basis of all components of the Services Fee charged to the Department (including relevant calculations); and
- e. provide full substantiation for any Pass-Through Costs claimed by the Service Provider and confirmation that the Pass-Through Costs are properly recoverable.

5.2. Disputes about invoices

5.2.1. If the Department in good faith disputes the whole or any portion of the amount claimed in an invoice, the Department:

- a. may withhold payment of any part of the Services Fee or any Pass-Through Costs that are in dispute until the dispute is resolved; and
- b. must notify the Service Provider in writing (within 30 days of receipt of the invoice) of the reasons for disputing the remainder of the invoice.

5.3. Incorrect Invoices

5.3.1. If an invoice is found to have been rendered incorrectly, any underpayment or overpayment will be recoverable by or from the Service Provider, as the case may be, and, without limiting recourse to other available remedies, may be offset against any amount subsequently due from the Department to the Service Provider. In such circumstances the Service Provider must provide to the Department a correctly rendered Tax Adjustment Note.

6. Facilities and other assistance

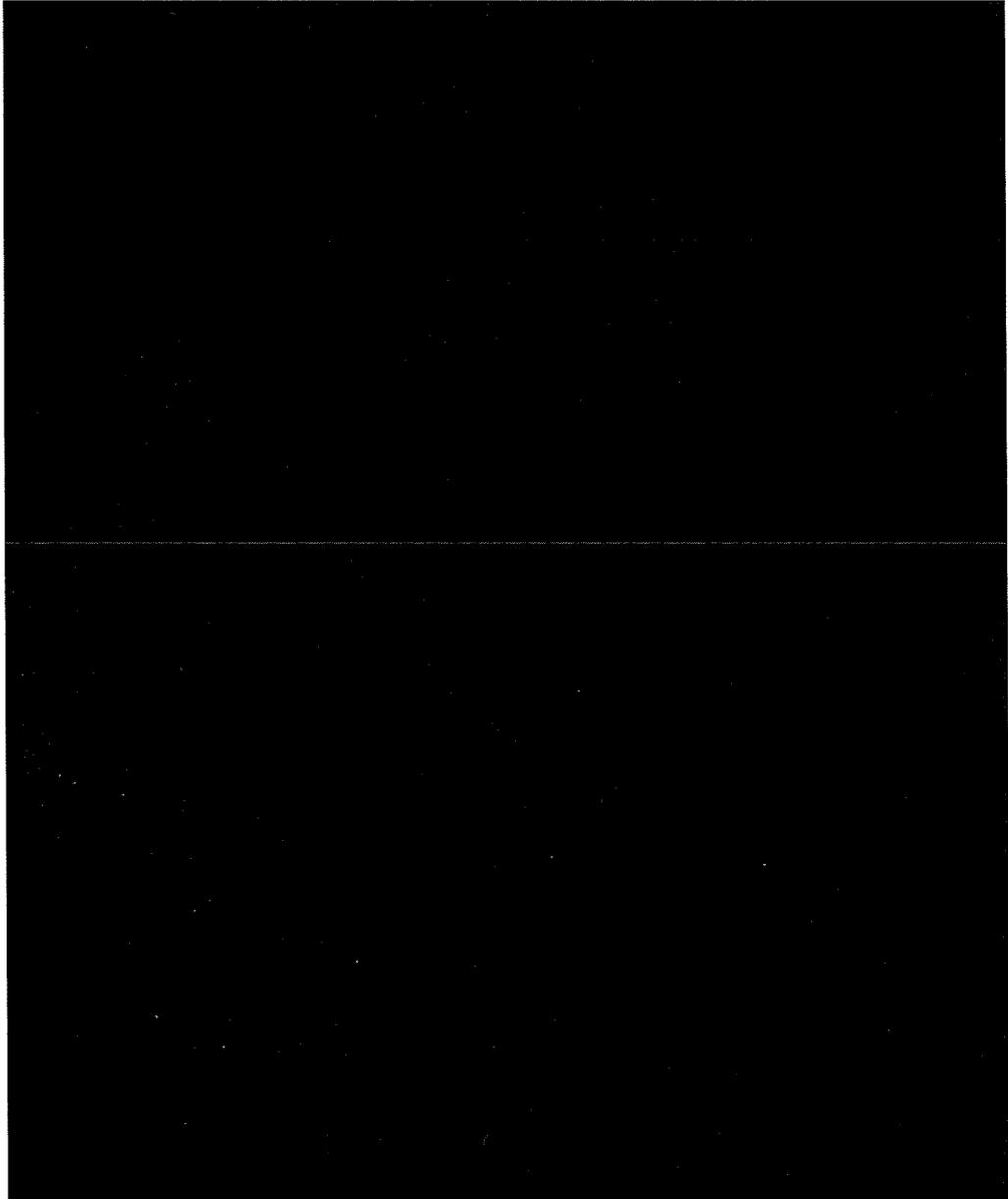
6.1.1. The Department will provide the Service Provider with access to the following facilities for the purposes of providing the Services under this Contract at Nauru and Manus Island (PNG):

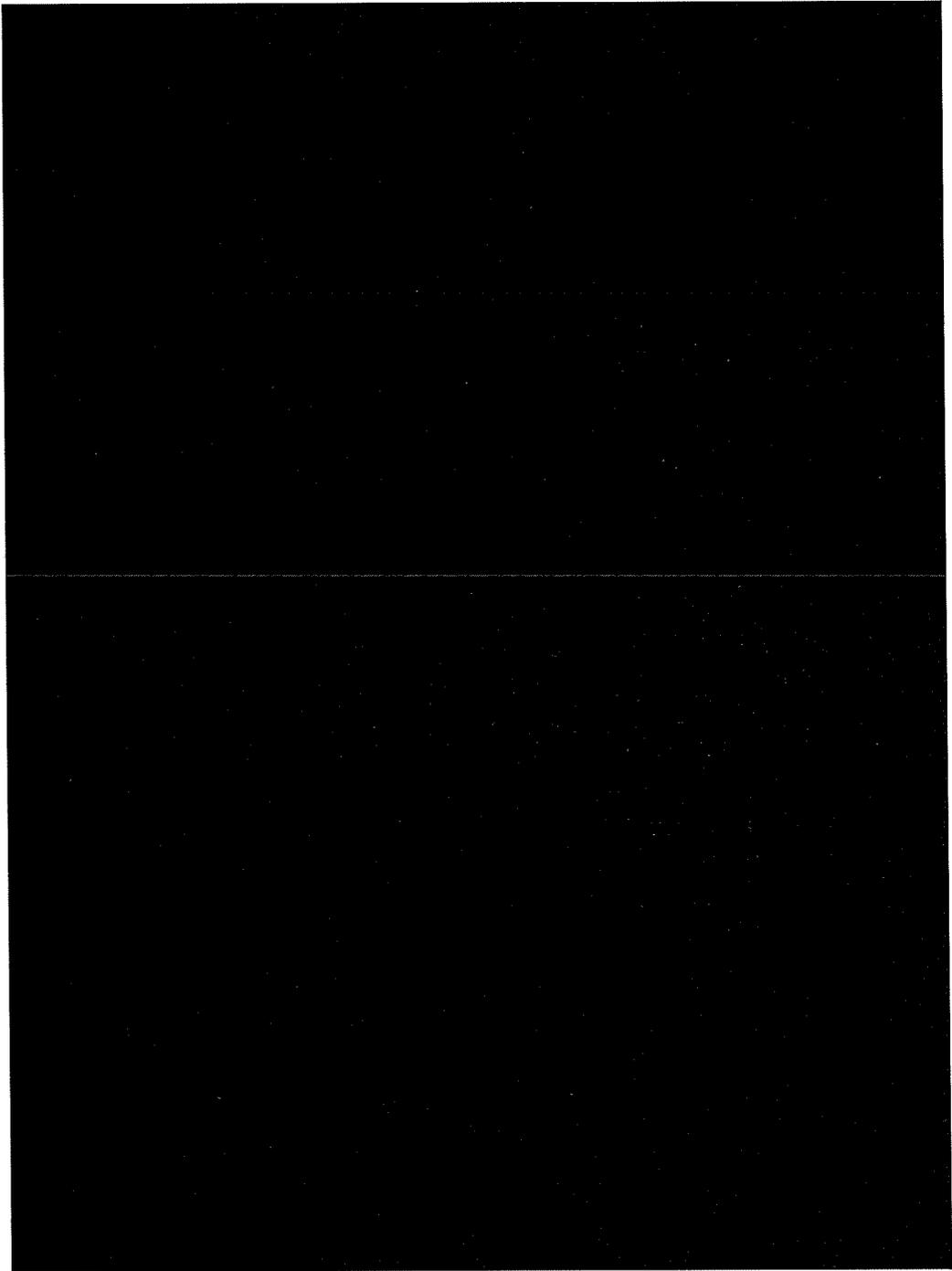
- a. accommodation;
- b. bathrooms and sanitary services;
- c. transport on island;
- d. basic cooking facilities;
- e. meals at a subsidised cost in accordance with Department policy;
- f. security and lockable storage facilities for personal possessions;
- g. electricity;
- h. potable drinking water and water for bathing of an appropriate standard;
- i. emergency evacuation for the Service Provider's Personnel in the event of a need to evacuate all personnel from a Site; and
- j. office space;
- k. access to standard clinical health support;
- l. reasonable access to internet, postal and telecommunications facilities;
- m. recreation facilities for personnel while off-duty, such as staff mess and television;
- n. adequate resources where reasonably requested by the Service Provider for the provision of the programs run by the Service Provider as part of the Services.

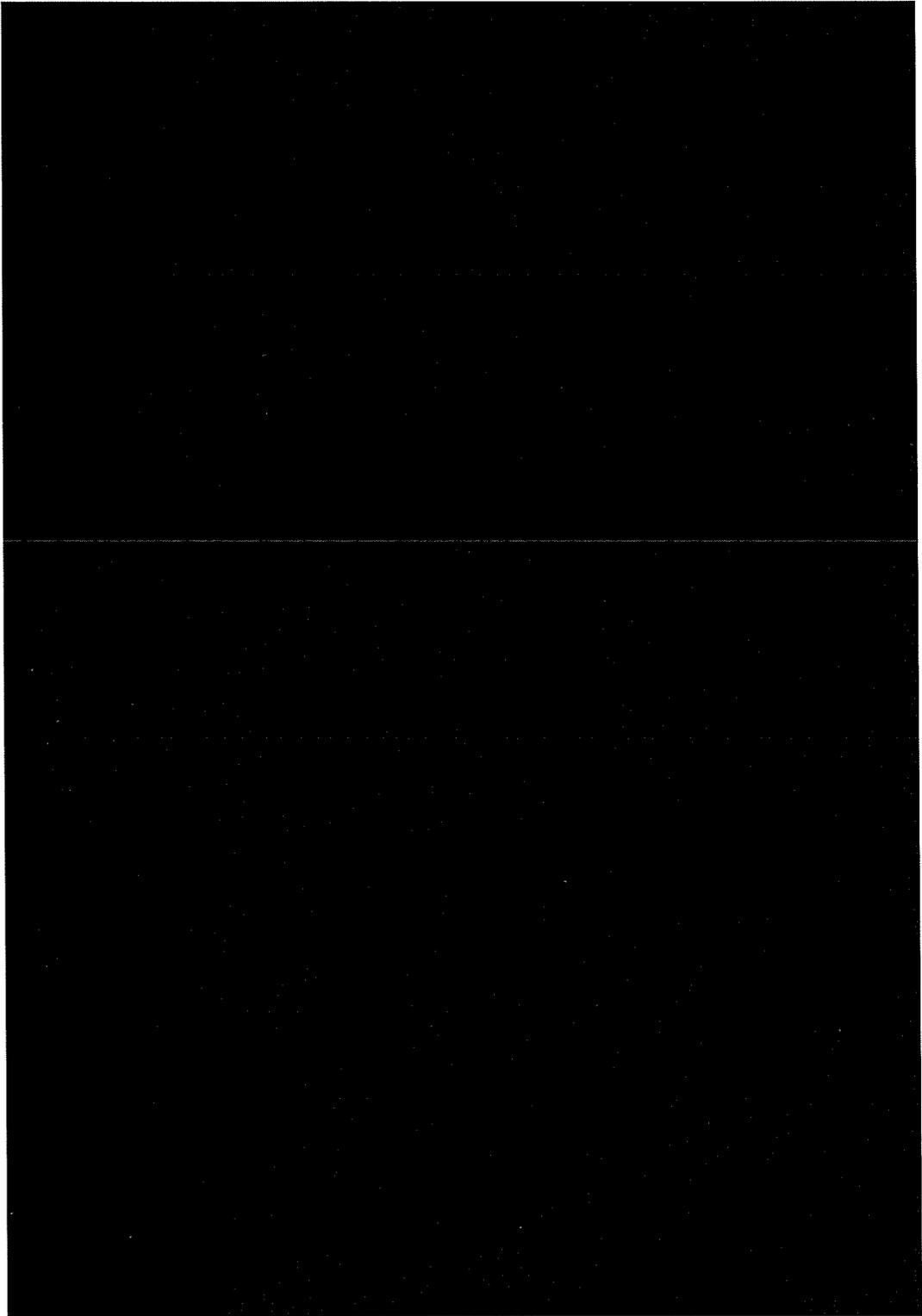
Unless otherwise stated in the Contract, these facilities are provided at no additional cost to the Service Provider or its personnel.

- 6.1.2. The Service Provider acknowledges that other service provider and Department personnel will also be accessing and using these facilities as part of the operation and management of a Site. The Service Provider will refer any issues regarding access to or use of the facilities to the Department Operations Team Leader for resolution.

Appendix 1 - Daily rates







SCHEDULE 3 DEED OF CONFIDENTIALITY AND NON-DISCLOSURE

THIS DEED POLL is made the _____ day of _____ 2013 in favour of the **COMMONWEALTH OF AUSTRALIA** represented by the Department of Immigration and Citizenship (**the Department**)

BY _____ (**You**)

RECITALS

A The Department and The Salvation Army (**Service Provider**) have entered into a Contract under which the Service Provider will provide the Services to the Department.

B. The performance of the Services requires access to information confidential to the Department.

C. You will be involved in the performance of the Services.

THE CONFIDANT DECLARES AS FOLLOWS:

1. INTERPRETATION

1.1 All terms used in this Deed have the same meaning as is given to them in the Contract, and in particular, the following terms have the following meaning:

Contract means the Contract between the Department and the Service Provider for the provision of Services at the Sites.

Department Confidential Information means information that:

- a. is by its nature confidential;
- b. is designated by the Department or any law as confidential; or
- c. You know or ought to know is confidential;

and includes to the extent that it is confidential:

- d. information comprised in or relating to any Intellectual Property of the Department;
- e. information relating to contractors or suppliers to the Department; and
- f. information relating to Department Data,

but does not include information which:

- g. is or becomes public knowledge other than by breach of the Contract or any other confidentiality obligation; or
- h. has been independently developed or acquired by the Confidant as established by written evidence.

Department Data means all data and information relating to the Department, and its operations, facilities, customers, clients, constituents, personnel, assets and programs in whatever form that information may exist and whether entered into, stored in, generated by or processed through the Services by or on behalf of the Department and any other data in relation to which the Services are provided.

Intellectual Property or IP includes business names, copyrights, and all rights in relation to inventions, patents, registered and unregistered trade marks (including service marks), registered designs, and semi-conductor and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion which You have gained access to or acquired through Your involvement in the performance of the Services.

Services means the Services specified in the Contract.

2. NON DISCLOSURE

2.1. You understand that in the course of performing duties in relation to a Contract for the Services, you may have access to:

- a. Department Confidential Information; or
- b. Personal Information

(collectively 'Information').

2.2. Subject to **clause 3** of this Deed, You must not copy, reproduce or disclose any Information without the prior written consent of the Department. The Department will have absolute discretion whether to grant or withhold its consent.

3. RESTRICTION ON USE

3.1. You must only use the Information for the purpose of performing the Services. In particular You must not access, use, modify, disclose or retain any Information except for the purpose of performing the Services. You agree to treat all Information with the utmost care and to protect that information at all times in accordance with all security and privacy requirements imposed by the Contract or notified by the Department.

3.2. In relation to Personal Information, You agree to:

- a. not do any act, or engage in any practice that would breach:

- i. the Services Provider's obligations under the Contract to protect Personal Information if done or engaged in by the Services Provider; or
 - ii. the Information Privacy Principles set out in the Privacy Act 1988 (Cth) (Privacy Act) if done or engaged in by the Department;
- b. do everything reasonable to assist the Department in meeting the obligations under the Privacy Act in relation to the Personal Information;
- c. co-operate with any reasonable demands or enquiries made by the Commonwealth Privacy Commissioner;
- d. ensure that anyone who has an access level that enables them to access information in respect of which the Department has obligations under the Privacy Act is made aware of, and undertakes in writing, to observe the provisions of this Deed;
- e. take all reasonable measures to ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse. For the avoidance of doubt, Personal Information must not be used for, or in any way relating to, any direct marketing purpose;
- f. not transfer Personal Information outside Australia, or allow parties outside Australia to have access to it, without first obtaining the written consent of the Department;
- g. upon receiving a written request from a person, inform them of any provision of the Contract that is inconsistent with an approved privacy code binding the Service Provider or a National Privacy Principle as set out in the Privacy Act;
- h. notify the Department when You become aware of any breach of any obligation concerning security, use and disclosure of Personal Information by you or any representative, employee or officer of the Service Provider and co-operate with the Department in the resolution of, any complaint alleging an interference with privacy;
- i. after taking steps to confirm a person's identity, give them access to their Personal Information held by the Service Provider, except to the extent that the Service Provider is required or authorised by law to refuse the person access to that Personal Information;
- j. where a person requests that their Personal Information be corrected or updated, take reasonable steps to correct or update the Personal Information;

- k. upon written notice from the Department, destroy or permanently de-identify any Personal Information as soon as practicable after it is no longer required for the purpose for which it was originally collected;
- l. not use or disclose an identifier that the Department has assigned in relation to a person; and
- m. not use or disclose any health information or other sensitive information about a person without their consent, except where permitted by law.

3.3. You agree that your obligations under this Deed:

- a. to the extent of any inconsistency with any obligations under the Privacy Act 1988 (Cth), take priority to the fullest extent permitted by law; and
- b. are in addition to any obligations you may have under the Privacy Act 1988 (Cth) or any privacy codes or privacy principles contained in, authorised by or registered under any law.

3.4. You acknowledge that failure to comply with the obligations under this clause 3 may result in the Service Provider or the Department taking action against you (including, without limitation, disciplinary action).

4. CRIMES ACT

4.1. You acknowledge that any unauthorised access, alteration, removal, addition, possession, control, supply or impediment to the access, reliability, security or operation of data held in any computer (or, in some cases, any storage device) in the course of performing a Contract with the Commonwealth may be an offence under Part 10.7 of the Criminal Code 1995 (Cth) for which there are a range of penalties, including imprisonment.

4.2. You acknowledge that section 3(1) of the *Crimes Act 1914* (Cth) states that the term "Commonwealth officer" includes a person who "performs services for or on behalf of the Commonwealth".

4.3. You acknowledge that the *Crimes Act 1914* (Cth) contains penalties (including fines and imprisonment) in relation to unauthorised disclosure of information that may be applicable to You.

4.4. You acknowledge that it is an offence under Division 137 of the Criminal Code 1995 (Cth) to give false and misleading information to the Commonwealth or its agents.

5. DELIVERY UP OF DOCUMENTS

5.1. When requested to do so by the Department, You will immediately deliver to the Department all documents in Your possession or control which contain Information.

6. CONFLICT OF INTEREST

6.1. You warrant that no conflict of interest exists or is likely to arise in the performance of the Services.

6.2. You warrant that it will not permit any situation to arise or engage in any activity during the performance of the Services which may result in a conflict of interest.

7. SURVIVAL OF OBLIGATIONS

7.1. The obligations in this Deed are perpetual.

Executed as a Deed

SIGNED, SEALED and DELIVERED by

[Confidant] in the presence of:

Signature of Recipient

Signature of witness

Name

SCHEDULE 4 SERVICE PROVIDER CONFIDENTIAL INFORMATION

(a) Information contained in Contract:

Item	Period of Confidentiality
Each of the individual components of the Service Fee set out in Schedule 2	3 Years
Insurance levels	3 Years

(b) Information obtained or generated in performing Contract:

Item	Period of Confidentiality
The Service Provider's internal policies and procedures (which does not include any plans or procedures referred to in the Statement of Work or otherwise required to be developed under this Contract)	In perpetuity
Details as to the coding and functional operation and/or copyright in the SAMIS computer system	In perpetuity

As noted in clause 11, the parties intend that arrangements regarding the SAMIS computer program will be the subject of a separate agreement between the parties

SCHEDULE 5 PERFORMANCE MANAGEMENT FRAMEWORK PRINCIPLES

1. Joined Up Approach

- 1.1.1. Fundamental to the successful delivery of services to Transferees located at the Sites is a requirement to foster productive working relationships with all other service providers providing services at sites on Regional Processing Countries.
- 1.1.2. The Service Provider is required to engage effectively and positively with local communities and ensure that operational aspects of the Sites are appropriately supported.

2. The Framework

2.1. General

- 2.1.1. The Performance Management Framework will ensure the provision of the Services and the management of performance under this Contract aligns with the vision and outcomes of Transferee and community well-being. This is represented in the diagram below as a Performance Pyramid incorporating the following:

- 1. Program Vision
- 2. Program Outcomes
- 3. Key Deliverables (Performance Indicators)
- 4. Key Performance Measures.

These four levels highlight the different levels of offshore performance measures and have been developed to monitor, analyse, review and implement the Department's core Transferee, operational and strategic objectives in a single framework.

- 2.1.2. The Service Provider must comply with all processes and timeframes specified in
 - a. The Performance Management Framework; and
 - b. Any related documents as agreed between the parties.



Diagram 1: Performance Pyramid

2.1.3. Level One, the Program Vision, represents the 'Well-being' of the Transferees within a Site on a Regional Processing Country. The well-being of Transferees in a Site is a priority for the Department and the Service Provider. This will be heavily scrutinised in terms of Performance Measurement.

2.1.4. Level Two, Program Outcomes, comprise of:

- Transferees' needs
- Provider relationships; and
- Community engagement and operational support.

It is imperative that the Service Provider acknowledges and addresses the needs of Transferees and fosters productive relationships with all other service providers working in Regional Processing Countries. The Service Provider is expected to engage effectively and positively with local communities and ensure that operational aspects of the Sites are supported.

2.1.5. Level Three, being the Key Performance Indicators represent the eight key areas that frame the Department's expected key deliverables. These areas cover the full scope of services on Site across all service providers.

2.1.6. Level Four represents the specific Key Performance Measures which will be used to measure the success of the programs core objectives. These measures

will be specific to each Service Provider and will cover the full scope of services deliverable under each contract. These measures will be developed jointly with the Service Provider within eight weeks of the Execution Date.

2.2. Reporting

- 2.2.1. The Service Provider must work collaboratively with the other service providers to prepare a single Joint Performance Report for the Site.
- 2.2.2. The Joint Performance Report must be delivered to the Department monthly within 10 Business Days of the end of each month. The Report will provide an overview of the operations in the Site.
- 2.2.3. The Report will be prepared in accordance with the agreed template and will include sections dealing with:
 - a. Performance against the Key Performance Measures
 - b. Areas of poor performance
 - c. Areas of achievement
 - d. Quality Transferee and community outcomes

2.3. Incentive Regime

- 2.3.1. The Incentive Regime will be implemented at each Site once the Site is in a business-as-usual operating mode as agreed between the Department and the Service Provider.
- 2.3.2. The incentive regime will make use of both financial and non-financial incentives to encourage providers to set their performance goals beyond the minimum expectations of the contract and focus on the key outcomes for transferees.

2.4. Abatement Regime

- 2.4.1. The Abatement Regime will be implemented at each Site once the Site is in a business-as-usual operating mode as agreed between the Department and the Service Provider.
- 2.4.2. The abatement regime to be implemented will include:
 - a. a three 'tiered system' – not financially penalising poor performance in the first instance; and
 - b. withholding a percentage of the Corporate Overhead Fee in months where abatement is applicable and in the event of continuous failure.
- 2.4.3. The 'three tiered system' for abatements will be implemented as follows:
 - a. An initial failure of a metric – no financial abatement would apply to an area of performance monitoring, however there is an obligation to increase the

level and frequency of reporting requirements and a process for the identification of issues / failures on key deliverables

- b. Subsequent failure of the metric – there is no financial abatement however the failure results in increased observations and monitoring by the Department to determine preventative / corrective action
- c. A third failure of the same metric or a failure of any significant metric – a financial abatement is applied in accordance with a methodology yet to be determined.

2.4.4. There will be some situations in which the first and second tier of the three tier system will not apply. This relates to performance failures that DIAC considers 'significant' in terms of not complying against performance measures. Immediate financial abatement will apply in the first instance in the following circumstances:

- a. Breaches of hygiene standards
- b. Breaches of client accountability
- c. Incidents of preventative injury
- d. Others as determined by DIAC (based on an assessment of risk)

3. Excusable Performance Failure

3.1.1. The Contract includes provisions dealing with Excusable Performance Failure Events. The Service Provider must comply with the requirements of these provisions.

3.1.2. The Service Provider must develop as part of the Performance Management Framework, processes and procedures that will be implemented in the event of a Excusable Performance Failure Event in order to remove, overcome or minimise the effects of that Excusable Performance Failure Event as quickly as possible and that, to the maximum extent possible, the Program Vision, Program Outcomes and Key Performance Indicators continue to be met during the Excusable Performance Failure Period ('Response Processes'). Successful implementation of these Response Processes will be reflected in a least one Key Performance Measure.

3.1.3. During the Excusable Performance Failure Period, some of the Key Performance Measures may be suspended. However, the Service Provider's performance against the remaining Key Performance Measures, in particular the Key Performance Measure(s) dealing with implementation of the Response Processes, will continue to be measured and failure to meet any Key Performance Measures that have not been suspended could result in an abatement.

Executed by the **Commonwealth of Australia** represented by **Department of Immigration and Citizenship** by its duly authorised delegate:

.....
Signature of witness

.....
Signature of delegate

.....
Name of witness (print)

.....
Name of delegate (print)

.....
Position of delegate (print)

Executed by the **Salvation Army (New South Wales) Property Trust ABN 57 507 607 457**:

.....
Signature of trustee

.....
Signature of trustee

.....
Name of trustee

.....
Name of trustee

.....
Signature of trustee

.....
Signature of secretary

.....
Name of trustee

.....
Name of secretary



Australian Government

**Department of Immigration
and Border Protection**

DEED

BETWEEN

THE COMMONWEALTH OF AUSTRALIA

AND

.....
[INSERT SERVICE PROVIDER'S NAME]
.....

(ABN)

for the Provision of
Interpreting Services
to and on behalf of the Commonwealth

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Date and Governing Law

This Deed is dated:

This Deed is to be construed in accordance with the laws of the Australian Capital Territory.

Parties

This Deed is made between and binds the following parties:

THE COMMONWEALTH AS REPRESENTED BY THE DEPARTMENT OF IMMIGRATION AND BORDER PROTECTION (DIBP), ABN: 33 380 054 835,

2 Lonsdale Street MELBOURNE VIC 3000

AND

.....
.....

Insert Service Provider name (ABN if applicable) & registered address (Service Provider)

Purpose

This Deed is made in the following context:

- A. DIBP has established a group of suppliers to provide interpreting services to its Clients. The Service Provider is one of the suppliers.
- B. DIBP may from time to time request the provision of services by the Service Provider.
- C. Where the Service Provider has offered to provide services, and that offer has been accepted by DIBP, the Service Provider must provide those services in accordance with this Deed.

Operative Provisions

The parties to this Deed agree as follows:

1 Interpretation

1.1 Definitions

1.1.1 In this Deed, unless the context indicates otherwise:

Business Day	in relation to the doing of any action in a place, means a weekday other than any Public Holiday in that place
Client	means the person identified by DIBP as the person for whom particular Services are required
Client Material	means any Material provided by the Client, either directly or through DIBP, to the Service Provider for the purpose of providing Services or produced by the Service Provider in the course of providing Services
Commencement Date	means the date of this Deed

Commonwealth Material	means any Material: <ul style="list-style-type: none"> a. provided by DIBP to the Service Provider for the purposes of this Deed; or b. derived at any time from the Material referred to in paragraph a;
Confidential Information	means information that: <ul style="list-style-type: none"> 1) is by its nature confidential; 2) is designated by the Commonwealth or the Client, as the case may be, as confidential; or 3) the Service Provider knows or ought to know is confidential; but does not include information which the Service Provider can show: <ul style="list-style-type: none"> 4) is in the possession of the Service Provider without restriction in relation to use or disclosure before the date of receipt from the Commonwealth or the Client; or 5) has been independently developed or acquired by the Service Provider
Deed	means this Deed, the schedules to this Deed and any attachments
DIBP's Representative	means the person specified by name or position in Item B of Schedule 1 or any substitute notified to the Service Provider in accordance with clause 9.6.4
End Date	means the later of the Initial End Date and the final day of any extension of the Term of this Deed under clause 2.2.4
Initial End Date	means the date specified in Item A of Schedule 1
Intellectual Property	includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions, trademarks (including service marks), designs and circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include Moral Rights, the rights of performers or rights in relation to Confidential Information
Material	means the subject matter of any category of Intellectual Property rights
Moral Rights	includes the following rights of an author of copyright Material: <ul style="list-style-type: none"> 1) the right of attribution of authorship 2) the right of integrity of authorship and 3) the right not to have authorship falsely attributed
Public Holiday	means a public holiday specified in Item G of Schedule 1
Service Delivery Form or SDF	means the pre-printed form to be used by Service Provider to make a claim for payment upon completion of an onsite service as notified by DIBP.

Services	means services specified in Item A of Schedule 2
Term	means the term of this Deed, being the period from the Commencement Date to the End Date.

1.2 Interpretation

1.2.1 Capitalised terms that are contained in this Deed but are not defined in clause 1.1 have the meanings given to them in Schedule 3.

1.2.2 In this Deed, unless the contrary intention appears:

- a. words importing a gender include any other gender
- b. words in the singular include the plural and words in the plural include the singular
- c. clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer
- d. words importing a person include a partnership and a body whether corporate or otherwise
- e. all references to dollars are to Australian dollars
- f. a reference to any legislation or legislative provision includes any statutory modification substitution or re-enactment of such legislation or legislative provision
- g. where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning
- h. reference to an Item is to an Item in a schedule
- i. the schedules and any attachments form part of this Deed
- j. where any conflict arises between the terms and conditions contained in the clauses of this Deed and any other part of this Deed, the following order of priority will apply:
 - k. the terms and conditions specified in this Deed
 - l. the schedules, then
 - m. any attachments
 - n. reference to a schedule (or an attachment) is a reference to a schedule (or an attachment) to this Deed, including as amended or replaced from time to time by agreement in writing between the parties and
 - o. a reference to writing means any representation of words, figures or symbols, whether or not in a visible form.

1.3 Guidance on Construction of this Deed

1.3.1 This Deed records the entire agreement between the parties in relation to its subject matter.

1.3.2 This Deed may only be varied by a formal deed of variation executed by both parties.

1.3.3 Any reading down or severance of a particular provision does not affect the other provisions of this Deed.

2 Provision of Services

2.1 Availability to provide Services

- 2.1.1 The Service Provider must be available to provide Services during the times specified in Item E of Schedule 1.
- 2.1.2 The Service Provider must notify DIBP's Representative (in writing if so requested) of any change in the Service Provider's availability.

2.2 Offer to provide Services

- 2.2.1 DIBP may, from time to time, request the Service Provider to provide Services to a Client. The Service Provider may accept or decline a request to provide Services.
- 2.2.2 Where the Service Provider accepts a request pursuant to this Deed, the Service Provider irrevocably offers to provide Services for the Client as requested by DIBP. Confirmation by DIBP that the Service Provider is to provide Services will constitute acceptance of the Service Provider's offer and will form a contract between DIBP and the Service Provider for the Service Provider to provide the relevant Services on the terms and conditions set out in this Deed.
- 2.2.3 The Service Provider's standing offer in this clause 2.2 will remain open for acceptance by DIBP for the Term of this Deed and in accordance with this Deed.
- 2.2.4 DIBP may extend the Term of this Deed for a further period ending not later than the Extension Date by notice in writing delivered to the Service Provider not less than 30 days before the Initial End Date. Any extension will be on the same terms and conditions, and cover the same Services, as set out in this Deed.

2.3 Performing Services

- 2.3.1 In performing Services, the Service Provider must:
 - a. comply with the conditions for the performance of Services specified in Item B of Schedule 2;
 - b. submit claims for payment in the manner specified in Item B of Schedule 3;
 - c. adopt relevant best practice, including the Code of Ethics reproduced in Schedule 3; and
 - d. liaise with and provide information and comply with all reasonable directions of DIBP's Representative.
- 2.3.2 The Service Provider will be fully responsible for the provision of Services and for ensuring compliance with the requirements of this Deed and will not be relieved of that responsibility because of any:
 - a. involvement by DIBP or the Client in the provision of Services; or
 - b. payment made to the Service Provider on account of Services.
- 2.3.3 The Service Provider must:
 - a. immediately notify DIBP if an act or omission of the Service Provider causes a problem or delay that has a material impact on the Service Provider's ability to provide Services in accordance with this Deed; and
 - b. work with DIBP to prevent or circumvent the problem or delay.

2.4 Subcontractors

2.4.1 The Service Provider must not subcontract the supply of any part of the Services.

2.5 Quality review

2.5.1 The Service Provider acknowledges that, from time to time, DIBP may conduct a quality review of the Service Provider's provision of Services. The Service Provider consents to DIBP recording interpreting assignments performed by the Service Provider for this purpose.

2.6 DIBP not bound to request Services from the Service Provider

2.6.1 The Service Provider acknowledges that it is one of a number of suppliers which may be requested by DIBP to provide Services.

2.6.2 DIBP:

- a. is not obliged to place any request with the Service Provider or to request any volume of Services from the Service Provider and
- b. may at any time purchase or acquire services the same as, or similar to, the Services from another supplier or from any other person on such terms and conditions as DIBP wishes.

2.7 Relationship of the parties

2.7.1 The Service Provider is not by virtue of this Deed an officer, employee, partner or agent of DIBP, nor does the Service Provider have any power or authority to bind or represent DIBP.

2.7.2 The Service Provider must not represent itself as being an officer, employee, partner or agent of DIBP, or as otherwise able to bind or represent DIBP. The Service Provider must not engage in any misleading or deceptive conduct in relation to the provision of Services.

2.7.3 The Service Provider acknowledges that, as the Service Provider is not an employee of DIBP, the Service Provider is not entitled to payment for annual leave, public holidays, sick leave, long service leave, redundancy or any other entitlements afforded to employees either by statute, award or common law.

3 Fees

3.1 Calculation of fees

3.1.1 The fees due to the Service Provider for performing Services will be calculated in accordance with Item A of Schedule 3.

3.1.2 Only those fees specified in Item A of Schedule 3 will be paid by DIBP and the Service Provider will not seek to claim payment in excess of the fees specified in Item A of Schedule 3 from DIBP, the Client or any other person.

3.2 Payment

3.2.1 DIBP will pay the Service Provider the fees calculated in accordance with Item A of Schedule 3 fortnightly in arrears for any Services provided by the Service Provider for which claims for payment are made by the Service Provider in the manner specified in Item B of Schedule 3 during that period.

3.2.2 Payment will be effected by electronic funds transfer (EFT) to the bank account of the Service Provider specified in Item F of Schedule 1.

- 3.2.3 DIBP will be entitled to delay any payment of fees until DIBP is satisfied that:
- a. delivery of the Services to which the fees relate has been completed;
 - b. in delivering those Services, the Service Provider has complied with the requirements of this Deed and the conditions for the performance of Services specified in Item B of Schedule 2;
 - c. the Service Provider has performed those Services in accordance with the Code of Ethics reproduced in Schedule 3; and
 - d. the Service Provider has submitted claims for payment of the fees in the manner specified in Item B of Schedule 3.

3.3 Taxes, duties and government charges

- 3.3.1 All taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of Services must be borne by the Service Provider.

3.4 Superannuation

- 3.4.1 DIBP will make superannuation payments in accordance with the requirements of the *Superannuation Guarantee (Administration) Act 1992 (Cth)* in relation to any payments made under this Deed.

4 Further Service Provider Obligations

4.1 Accreditation

- 4.1.1 Subject to clause 4.1.2, the Service Provider shall possess and maintain the language accreditations specified in Item D of Schedule 1 and must maintain all records necessary for revalidation of the language accreditations.
- 4.1.2 Where a Service Provider does not have an accreditation, the Service Provider agrees to obtain accreditation at or above the level specified by DIBP at the earliest possible opportunity.

4.2 Conflict of interest

- 4.2.1 For the purposes of this clause 4.2, "Conflict" means any matter, circumstance, interest or activity affecting the Service Provider which may or may appear to impair the ability of the Service Provider to provide Services to a Client diligently and independently.
- 4.2.2 The Service Provider must not offer to provide Services under clause 2.2 where a Conflict exists or is likely to arise in the provision of the relevant Services.
- 4.2.3 If, during the performance of Services a Conflict arises, or appears likely to arise, the Service Provider must:
- a. immediately verbally notify the Client and notify DIBP in writing;
 - b. make full written disclosure of all relevant information relating to the Conflict; and
 - c. take such steps as the Client or DIBP may reasonably require to resolve or otherwise deal with the Conflict, including ceasing to provide Services.
- 4.2.4 The Service Provider acknowledges that it will not be entitled to any payment for Services that it is not able to complete as a result of a Conflict.
- 4.2.5 If the Service Provider is a Registered Migration Agent, the Service Provider must not offer to provide Services where the Client is DIBP.

- 4.2.6 If the Service Provider is an Australian Public Servant, the Service Provider must:
- a. have regard to the provisions of section 13(7) of the Public Service Act 1999 which provides:

An APS employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment.
 - b. observe any restrictions or requirements contained in the APS Code of Conduct and/or any Certified Agreement or other employment agreement that applies to the Service Provider's employment.

4.3 Security

- 4.3.1 The Service Provider agrees to obtain a security report from the Australian Federal Police within a period specified by DIBP after signing this Deed and whenever required by DIBP during the term of this Deed. The Service Provider must submit a copy of any security report to DIBP promptly after receipt from the Australian Federal Police.
- 4.3.2 Should the Service Provider be convicted of any criminal offence, the Service Provider shall notify DIBP within 14 days of being convicted.

4.4 Service Provider will not solicit work

- 4.4.1 The Service Provider will not solicit work in a private or other capacity from Clients who are individuals.

4.5 Contact details

- 4.5.1 The Service Provider must inform DIBP of any change to its contact details as specified in Item C of Schedule 1.

4.6 Engagement of illegal workers prohibited

- 4.6.1 For the purposes of this clause 4.6 an illegal worker is a person who:
- a. has unlawfully entered and remains in Australia;
 - b. has lawfully entered Australia, but remains in Australia after his/her visa has expired; or
 - c. is working in breach of his/her visa conditions.
- 4.6.2 The Service Provider warrants that the Service Provider is not an illegal worker.

5 Material

5.1 Use of Material by the Service Provider

- 5.1.1 The Service Provider must:
- a. ensure that all Commonwealth Material and Client Material is used, copied, supplied or reproduced only for the purposes of providing the Services to which the Material relates and strictly in accordance with any conditions or restrictions advised by the Client or DIBP; and
 - b. establish and maintain procedures to secure Commonwealth Material and Client Material against loss, unauthorised access, use, modification and disclosure.

5.2 Dealing with Copies

- 5.2.1 For the purposes of this clause 5.2, "Copy" means any document, device, article or medium in which Commonwealth Material or Client Material is embodied.
- 5.2.2 Property in any Copy containing Client Material vests or will vest in the Client. Property in all other Copies vests or will vest in DIBP.
- 5.2.3 The Service Provider must establish and maintain procedures to secure all Copies against loss and unauthorised access, use, modification or disclosure.
- 5.2.4 When required to do so by DIBP, at any time during the term of the Deed, the Service Provider must ensure that all Copies are delivered to DIBP or otherwise dealt with as directed by DIBP.

5.3 Intellectual Property

- 5.3.1 The Service Provider acknowledges that Intellectual Property in all Client Material vests in the Client on its creation.
- 5.3.2 If requested by DIBP, the Service Provider must create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 5.3.
- 5.3.3 The Service Provider undertakes that it will be entitled, at all relevant times, to deal with the Intellectual Property in the Commonwealth Material or Client Material in the manner provided for in this clause 5.3.

5.4 Moral Rights

- 5.4.1 In this clause 5.4:

Permitted means any of the following classes or types of acts or omissions:

Acts

- 1) using, reproducing, adapting or exploiting all or any part of the Client Material, with or without attribution of authorship;
- 2) supplementing the Client Material with any other Material; and
- 3) using the Client Material in a different context to that originally envisaged.

But does not include false attribution of authorship.

- 5.4.2 Where the Service Provider is a natural person and the author of:
- a. the Client Material, he or she consents to the performance of the Permitted Acts in relation to the Client Material by the Client or any person claiming under or through the Client; or
 - b. the Commonwealth Material, he or she consents to the performance of the Permitted Acts in relation to the Commonwealth Material by DIBP or any person claiming under or through DIBP.
- 5.4.3 In any other case, the Service Provider agrees:
- a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Client, in the case of Client Material, or DIBP, in the case of Commonwealth Material, or any person claiming under or through them (whether occurring before or after the consent is given); and
 - b. upon request, to provide the executed original of any such consent to DIBP.

6 Disclosure of Information

6.1 Confidential Information not to be disclosed

- 6.1.1 The Service Provider must not, without the prior written consent of the Commonwealth or the Client, as the case may be, disclose any Confidential Information of the Commonwealth or the Client to a third party.
- 6.1.2 DIBP may at any time require the Service Provider to give a written undertaking in the form of a deed relating to the use and non-disclosure of Confidential Information.
- 6.1.3 If the Service Provider receives a request under clause 6.1.2, it must promptly arrange for all such undertakings to be given.
- 6.1.4 The obligations under this clause 6 will continue, notwithstanding the expiry or termination of the Deed.
- 6.1.5 Nothing in this clause 6 derogates from any obligation which the Service Provider may have under the Privacy Act 1988 (Cth) as amended from time to time, or under this Deed in relation to the protection of Personal Information.

6.2 Protection of Personal Information

- 6.2.1 This clause applies only where the Service Provider deals with Personal Information when and for the purpose of, providing Services.
- 6.2.2 In this clause 6.2, the terms “agency”, “approved privacy code” (APC), “Information Privacy Principles” (IPPs) and “National Privacy Principles” (NPPs) have the same meaning as they have in section 6 of the Privacy Act 1988 (Cth) (Privacy Act).
- 6.2.3 The provisions of this clause 6.2 survive termination or expiration of the Deed.
- 6.2.4 The Service Provider acknowledges that it is a “Contracted service provider” within the meaning of section 6 of the Privacy Act and agrees in respect of the provision of Services under the Deed:
- a. to use or disclose Personal Information obtained during the course of providing Services, only for the purposes of providing those Services;
 - b. not to do any act or engage in any practice that would breach an Information Privacy Principle (IPP) contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
 - c. to carry out and discharge the obligations contained in the IPPs as if it were an agency under the Privacy Act;
 - d. to notify individuals whose Personal Information the Service Provider holds, that complaints about acts or practices of the Service Provider may be investigated by the Privacy Commissioner who has power to award compensation against the Service Provider in appropriate circumstances;
 - e. not to use or disclose Personal Information or engage in an act or practice that would breach section 16F (direct marketing) of the Privacy Act, an NPP (particularly NPPs 7 to 10) or an APC, where that section, NPP or APC is applicable to the Service Provider, unless:
 - f. in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Deed; or

- g. in the case of an NPP or an APC – the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Deed;
- h. to disclose in writing to any person who asks, the content of the provisions of the Deed (if any) that are inconsistent with an NPP or an APC binding a party to this Deed;
- i. to notify DIBP in writing immediately if the Service Provider becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 6.2.

7 Indemnity and insurance

7.1 Indemnity

7.1.1 The Service Provider must indemnify DIBP from and against any:

- a. liability incurred by DIBP
- b. loss of or damage to property of DIBP or
- c. loss or expense incurred by DIBP in dealing with any claim against it, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by DIBP,

arising from either:

- d. a breach by the Service Provider of this Deed, or
- e. an act or omission involving fault on the part of the Service Provider in connection with the provision of Services or this Deed.

7.1.2 The Service Provider's liability to indemnify DIBP under clause 7.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of DIBP contributed to the relevant liability, loss or damage, or loss or expense.

7.1.3 The right of DIBP to be indemnified under this clause 7.1 is in addition to and not exclusive of, any other right, power or remedy provided by law, but DIBP is not entitled to be compensated in excess of the amount of the relevant liability, loss or damage, or loss or expense.

7.2 Insurance

7.2.1 The Service Provider must have and maintain during the Term valid and enforceable insurance policies for:

- a. public liability (third party) in respect of each occurrence, for at least \$5 million
- b. professional indemnity in respect of each occurrence, for at least \$500,000 and
- c. workers' compensation as required by law.

7.2.2 DIBP may, at its own expense, arrange for the insurance required under this clause 7.2 to be taken out on behalf of the Service Provider.

7.2.3 If DIBP does not make such arrangements under clause 7.2.2, the Service Provider must, on request, provide DIBP with proof of its compliance with clause 7.2.1.

7.2.4 This clause 7.2 will continue in operation for so long as any obligations remain in connection with the Deed.

8 Termination

8.1 Termination for convenience

- 8.1.1 DIBP may, at any time by notice, terminate this Deed or require the Service Provider to cease providing particular Services immediately.
- 8.1.2 Upon receipt of a notice under clause 8.1.1, the Service Provider must:
- a. stop work as specified in the notice;
 - b. take all available steps to minimise loss resulting from that termination or reduction; and
 - c. continue work on any part of any Services not affected by the notice.
- 8.1.3 Where there has been a termination under clause 8.1.1, DIBP will only be liable to pay any amount due and relating to Services completed before the date of termination.
- 8.1.4 The Service Provider will not be entitled to any other payment, including but not limited to any compensation for loss of prospective profits.

8.2 Termination for default

- 8.2.1 Where the Service Provider fails to perform any Services in accordance with the requirements of this Deed or otherwise fails to satisfy any of its obligations under this Deed, DIBP may:
- a. if it considers that the failure is not capable of remedy: by written notice, terminate this Deed immediately; or
 - b. *if it considers that the failure is capable of remedy*: by written notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate this Deed immediately by giving a second written notice; or
 - c. *in either case*: by written notice suspend this Deed for the period specified in the notice.
- 8.2.2 DIBP may also, by written notice, terminate this Deed immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if the Service Provider:
- a. commits a material breach of its obligations under this Deed;
 - b. becomes bankrupt or enters into a scheme of arrangement with creditors;
 - c. ceases, or threatens to cease, to carry on business;
 - d. is convicted of a criminal offence;
 - e. fails to respond to a request by DIBP to contact DIBP within a period of six months; or
 - f. fails to accept a request by DIBP to provide Services on five or more occasions within a financial year.

9 General Provisions

9.1 Occupational health and safety

- 9.1.1 The Service Provider agrees, in carrying out Services, to comply with:

- a. all relevant legislation, codes of practice and National Standards relating to occupational health and safety; and
- b. all directions and all current policy and procedures relating to occupational health and safety that apply to DIBP's or a Client's premises or facilities when using those premises or facilities.

9.2 Compliance with other laws

9.2.1 The Service Provider agrees, in carrying out Services, to comply with all relevant legislation of the Commonwealth and of all applicable States, Territories and local authorities and in particular:

- a. Crimes Act 1914 (Cth);
- b. Racial Discrimination Act 1975 (Cth);
- c. Sex Discrimination Act 1984 (Cth);
- d. Disability Discrimination Act 1992 (Cth); and
- e. Equal Opportunity for Women in the Workplace Act 1999 (Cth)

9.3 Audits and access

9.3.1 The Service Provider must give to DIBP's Representative, or to any persons authorised in writing by DIBP's Representative, access to premises occupied by the Service Provider and permit those persons to participate in audits, inspect and take copies of any Material relevant to the Services.

9.3.2 Without in any way affecting the statutory powers of the Auditor-General under the Auditor-General Act 1997 (Cth) and subject to the provisions of that Act, the Auditor-General is a person authorised for the purposes of this clause 9.3.

9.3.3 The Service Provider must participate cooperatively in any audits conducted by DIBP or its nominee. The participation in audits does not in any way reduce the Service Provider's responsibility to perform its obligations under this Deed.

9.3.4 The Service Provider must maintain complete, accurate and up to date accounts and records in relation to the Services and any amounts payable under this Deed.

9.4 Waiver

9.4.1 A failure or delay by a party to exercise any right it holds under this Deed will not operate as a waiver of that right.

9.4.2 A single or partial exercise by a party of any right it holds under this Deed will not prevent that party from exercising that right again or exercising that right to the extent it has not already been exercised.

9.4.3 In this clause 9.4, the word "right" means a right or remedy provided by this Deed or at law.

9.5 Assignment and novation

9.5.1 The Service Provider cannot novate its obligations and must not assign its rights, under this Deed without, in either case, prior approval in writing from DIBP.

9.5.2 The Service Provider must not consult with any other person for the purposes of entering into an arrangement that will require novation of this Deed without first consulting DIBP.

9.6 Notices

- 9.6.1 Any notice, request or other communication to be given or served pursuant to this Deed, excepting any communication pursuant to clause 2, will be in writing and dealt with as follows:
- a. if given by the Service Provider to DIBP - marked for the attention of DIBP's Representative and addressed as specified in Item B of Schedule 1; or
 - b. if given by DIBP to the Service Provider - marked for the attention of the Service Provider and addressed as specified in Item C of Schedule 1.
- 9.6.2 Any notice, request or other communication is to be delivered by hand, sent by prepaid post or transmitted electronically. If it is sent or transmitted electronically, a copy is to be sent to the addressee by prepaid post.
- 9.6.3 A notice will only be deemed as given and received:
- a. if delivered by hand, upon delivery to the relevant address
 - b. if sent by pre-paid ordinary post within Australia, upon the expiration of 2 Business Days after the date on which it was sent
 - c. if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient and
 - d. in any event, if received after 5.00pm (local time in the place of receipt) on a Business Day or on a day that is not a Business Day, on the next Business Day.
- 9.6.4 DIBP may, by written notice to the Service Provider, change its Representative.

Execution Page:

EXECUTED as a Deed.

SIGNED on behalf of the)
COMMONWEALTH OF AUSTRALIA AS)
REPRESENTED BY THE DEPARTMENT)
OF IMMIGRATION AND BORDER PROTECTION)

By *insert name of signatory*)
insert signatory's position)
insert date)

IN THE PRESENCE OF
insert name of witness)
insert date)

Interpreter: Please sign below.

SIGNED on behalf of the)
SERVICE PROVIDER)
insert name of signatory)
insert date)

Interpreter's witness: Please sign below

IN THE PRESENCE OF
insert name of witness)
insert date)

SCHEDULE 1. - GENERAL INFORMATION

A. End Date and Extension Date (see clause 1.1)

Initial End Date: 30 June 2014

Being the date this Deed will expire if not extended

Extension Date (see clause 2.2.4): 30 June 2016 * (* to be extended in one year increments)

Being the latest date of extension of this Deed available to DIBP

Note: any decision to extend a Panel arrangement requires DIBP to consider whether such an extension represents value for money in accordance with the CPGs.

B. DIBP's Representative and Contact Details (see clause 1.1 and 9.6)

B1. DIBP's Representative: DIBP's Representative will be the person for the time being holding, occupying or performing the duties of Assistant Director Contracts.

B2. Address for Service:

Physical address	Level 6 Casselden Place, 2 Lonsdale Street Melbourne VIC 3000
Postal address	GPO Box 241 Melbourne VIC 3001
Email	interpreters@immi.gov.au
Facsimile	1300 654 151

B3. Phone Number: Interpreter Liaison Officer Hotline: 1300 132 621
Accounts Payable Enquiries; 1300 655 080

C. Service Provider's Contact Details

C1. Address for Service (see clause 9.6): *Clearly specify all relevant addresses for Service Provider, including:*

Physical address	
Postal address	
Email	
Facsimile	

C2. Phone Numbers: *Insert phone numbers*

Home	
Work	
Mobile	

Please indicate which telephone number is the preferred contact number.

D. Languages and Accreditations (see clause 4.1):

Specify Service Provider's languages and accreditations that the Service Provider must possess and maintain (e.g. NAATI "Professional Interpreter" level)

Language	Dialect	Accreditation/Recognition

E. Availability (see clause 2.1)

Specify any defined hours and/or days during which the Service Provider has agreed to be available

Telephone

Days Available	Hours Available From – To
Monday	
Tuesday	
Wednesday	
Thursday	
Friday	
Saturday	
Sunday	

Onsite

Days Available	Hours Available From – To
Monday	
Tuesday	
Wednesday	
Thursday	
Friday	
Saturday	
Sunday	

Availability for offshore interpreter

	YES/NO
Are you willing to provide interpreting services overseas?	
Do you have a current passport?	

F. Bank Details (see clause 3.2.2)

Specify Service Provider's banking details

Account name	
BSB No	
Account No	

G. Public Holidays

The following public holidays are recognised by DIBP for the purposes of this Deed:

New Year's Day
Australia Day
Good Friday
Easter Monday
Anzac Day
Queen's Birthday
Christmas Day
Boxing Day
Labour Day within the State it is recognised. (Eight Hour Day in TAS)
May Day and Picnic Day (NT)
Adelaide Cup Day (SA)
Melbourne Cup Day (VIC)
Foundation Day (WA)
Canberra Day (ACT)

All other holidays set in the calendar are not recognised by DIBP for the purposes of this Deed.

SCHEDULE 2. - PROVISION OF SERVICES

A. Services

The Service Provider will provide telephone interpreting services in the languages specified in Item D of Schedule 1. The Service Provider is required to interpret to and from English between non-English-speakers and English-speakers.

The services may be:

- immediate telephone assignments – which have a minimum duration of 15 minutes,
- or pre-booked telephone assignments – which have a minimum duration of 30 minutes.
- Automated Telephone Interpreting Service (ATIS)

The Service Provider will provide onsite interpreting services in the languages specified in Item D of Schedule 1. The Service Provider is required to interpret to and from English between non-English-speakers and English-speakers, in person, at a specified location and from a nominated time.

The services may be:

- standard onsite,
- full day onsite,
- non-metro standard onsite,
- non-metro full day onsite, or
- video conferencing

Non-metro onsite assignments are defined as onsite assignments that require an interpreter to travel more than 100km to the place where the relevant Service are to be performed (i.e. a round trip of 200km or more).

B. Conditions

DIBP policy and procedures

The Service Provider shall perform Services in accordance with DIBP policy and procedures advised from time to time.

TIS Identification Card

Service Providers are to show their TIS Identification Card to the Client at the start of each TIS onsite assignment and are to wear it at all times during the assignment.

The TIS Identification Card remains the property of DIBP. The Service Provider must return the TIS Identification Card to DIBP on request.

Maintaining records of assignments

The Service Provider must maintain records of SDFs completed for a period of five (5) years. The Service Provider must produce such records in response to a Client's invoice dispute, tax issue or audit requirement.

Mobile Phones

The Service Provider may conduct telephone assignments on a mobile phone. The Service Provider must ensure that the mobile phone is fully charged and used in an appropriate manner. The Service Provider must ensure, if using the mobile phone, that it is only used in a quiet location which allows for privacy.

SCHEDULE 3. – FEES FROM 1 JULY 2013

A. Calculation of Fees

The fees to be paid to the Service Provider for Services are to be calculated in accordance with the rates set out below.

DIBP may, from time to time, notify the Service Provider of changes to the fees payable under this Deed. This Item may be amended to reflect the new fees with effect from the date specified in the notice.

Where a Service is not specified below, or other special circumstances exist, DIBP will negotiate a fee for the relevant Services with the Service Provider.

DIBP will not reimburse the Service Provider for travel fares or any other disbursement, unless DIBP has previously approved the disbursement.

ALL TELEPHONE INTERPRETING ASSIGNMENTS

SERVICES	QUALIFIER	DETAILS	FEES (ex GST)
Telephone Interpreting	Standard Hours	Per 15 minutes	0
	After Hours	Per 15 minutes	\$
Pre-booked Telephone Interpreting	Standard Hours	First 30 minutes or part thereof	\$
		Each additional 15 minutes	\$
	After Hours	First 30 minutes or part thereof	\$
		Each additional 15 minutes	\$
	Pre-reading at a TIS office	Treated as an On Site assignment	On Site Rates
	Pre-reading at an interpreter's home	Add to actual interpreting time	Pre-booked rates
International Conferlink Call			Pre-booked rates

STANDARD ON-SITE INTERPRETING ASSIGNMENTS

SERVICES & TRAVEL COSTS	QUALIFIER	DETAILS	FEEES (ex GST)
Hourly rates for Standard On-site Interpreting (ex. Travel Costs)	Standard Hours*	First 1.5 hours or part thereof	\$ [REDACTED]
		Each additional 15 mins	\$ [REDACTED]
	After Hours**	First 1.5 hours or part thereof	\$ [REDACTED]
		Each additional 15 mins	\$ [REDACTED]
Full day rates for Standard On-site Interpreting (ex Travel Costs)	Standard Hours*	Each 15 minutes	\$ [REDACTED]
	After Hours**	Each 15 minutes	\$ [REDACTED]
	Minimum Payment (Based on when assignment starts)	Per day (weekdays)	\$ [REDACTED]
		Per day (Sat, Sun or Public Holidays)	\$ [REDACTED]
Travel Costs (See Note 1)	Interpreter's own vehicle	Per kilometre	77 cents
	Travel Fares and accommodation (approved in advance by DIBP)	Reimbursement of Fares and/or accommodation if incurred	Actual Cost
	Overnight travel allowance (includes meals and incidentals)	Per overnight stay	\$ [REDACTED]
	Travel time (standard hours)	Per 15 minutes	\$ [REDACTED]
	Travel time (after hours)	Per 15 minutes	\$ [REDACTED]
	Other Expenses	Reimbursement of expenses incurred	Actual Cost

* "Standard Hours" means 8:00am – 6:00pm - Monday to Friday;

** "After Hours" means 6:00pm – 8:00am - Monday to Friday and all day Saturday, Sunday and Public Holidays;

Note 1: Travel costs can only be claimed where a Service Provider is on a standard onsite interpreting assignment outside of the Metropolitan Area and the travel involves a round trip of at least 200 kilometres to and from a Service Provider's usual place of residence (home city). Travel costs cannot be claimed for travel between temporary accommodation and the assignment.

IRREGULAR MARITIME ARRIVAL ON-SITE INTERPRETING ASSIGNMENTS

LOCATION OF SERVICES	QUALIFIER	DETAILS	FEES*** (ex GST)	
URBAN On-site Interpreting See Note 1 ([REDACTED] Loading)	Standard Hours*	Each 15 minutes or part of	[REDACTED]	
	After Hours**	Each 15 minutes or part of	[REDACTED]	
	Minimum Payment (Based on when assignment starts)	Per day (weekdays)	[REDACTED]	
		Per day (Sat, Sun or Public Holidays)	[REDACTED]	
	RURAL On-site Interpreting See Note 2 ([REDACTED] Loading)	Travel to and from home city during Standard Hours* (See Note 5)	Per 15 minutes or part of	[REDACTED]
		Travel to and from home city occurring After Hours** (See Note 5)	Per 15 minutes or part of	[REDACTED]
REMOTE On-site Interpreting See Note 3 ([REDACTED] Loading)	Standard Hours*	Each 15 minutes or part of	[REDACTED]	
	After Hours**	Each 15 minutes or part of	[REDACTED]	
	Minimum Payment (Based on when assignment starts)	Per day (weekdays)	[REDACTED]	
		Per day (Sat, Sun or Public Holidays)	[REDACTED]	
	Travel to and from home city during Standard Hours* (See Note 5)	Per 15 minutes or part of	[REDACTED]	
	Travel to and from home city occurring After Hours** (See Note 5)	Per 15 minutes or part of	[REDACTED]	
REGIONAL (OFFSHORE) On-site Interpreting See Note 4	Standard Hours*	Each 15 minutes or part of	[REDACTED]	
	After Hours**	Each 15 minutes or part of	[REDACTED]	
	Minimum Payment (Based on when assignment starts)	Per day (weekdays)	[REDACTED]	
		Per day (Sat, Sun or Public Holidays)	[REDACTED]	

	Travel to and from home city during Standard Hours* (See Note 5)	Per 15 minutes or part of	\$ [REDACTED]
	Travel to and from home city occurring After Hours** (See Note 5)	Per 15 minutes or part of	\$ [REDACTED]
	Tent allowance (where temporary tent accommodation is provided)	\$50 per day until alternative accommodation is provided (as designated by DIBP)	

*“Standard Hours” means 8:00am – 6:00pm -Monday to Friday;

***“After Hours” means 6:00pm – 8:00am - Monday to Friday and all day Saturday, Sunday and Public Holidays;

***Fees include relevant loadings for each listed location.

Note 1: **URBAN** refers to any IMA assignment in an immigration facility in a location designated by DIBP as Urban and currently includes Adelaide ITA, Brisbane ITA, Darwin IDFs, Maribyrnong IDC, Melbourne ITA, Perth IDC, Perth IRH, Sydney IRH and Villawood IDC;

Note 2: **RURAL** refers to any IMA assignment in an immigration facility in a location designated by DIBP as Rural and currently includes Inverbrackie APOD, Port Augusta IRH, Yongah Hill IDC and Pontville IDC;

Note 3: **REMOTE** refers to any IMA assignment in an immigration facility in a location designated by DIBP as Remote and currently includes Christmas Island IDC, Curtin IDC, Leonora APOD & Scherger IDC;

Note 4: **REGIONAL (OFFSHORE)** refers to any IMA assignment in a location designated by DIBP as Regional (Offshore) and currently includes Manus Island PC and Nauru PC;

Note 5: Travel costs can only be claimed for travel outside of the Metropolitan Area and the travel involves a round trip of at least 200 kilometres to and from a Service Provider’s usual place of residence (home city) and the location of the assignment. Travel costs cannot be claimed for travel between temporary accommodation at any location and the assignment.

IRREGULAR MARITIME ARRIVAL ON-SITE INTERPRETING SERVICES

Incidental Translation Services

In situations where on-site interpreting services are provided for Irregular Maritime Arrivals, the Service Provider may be required to undertake some incidental translation related services. This will consist of such functions as:

- Sight Translating - This being the task of reading out a document written in a language different from the spoken translation. For example, reading a document that is written in a language for which the service provider provides interpreting services out loud in English or vice versa.
- Incidental Translation – Producing a written translation into English of a document of not more than 100 words. Such translations are not to be regarded as official translations.

Service Providers on IMA related assignments may be required to abide by additional expectations regarding their conduct whilst on such assignments. These expectations will be provided either at the time the service provider is given the assignment or by staff at those immigration facilities.

CANCELLATION FEE

If an assignment is cancelled and the Service Provider is notified within 24 hours of the scheduled start time of the onsite assignment and DIBP cannot provide alternative work, a cancellation fee may be paid. A cancellation fee will not be paid if DIBP can offer alternative work.

Cancellation payments may apply to pre-booked telephone and onsite interpreting assignments. DIBP will provide Service Providers with notice of cancellations when notified by Clients.

If the Service Provider is notified of a cancellation with more than 24 hours' notice then they will not be paid for the assignment.

If the notification is within 24 hours, then the Service Provider will be paid for the scheduled time for the assignment.

If the assignment is more than a full day assignment then only the first days scheduled time will be paid as a cancellation fee.

In all of the cases stated above, 24 hours will be considered to be a standard 24 hour period, this includes weekends and public holidays.

If DIBP has made all reasonable efforts to contact the Service Provider of the cancellation with sufficient time but the Service Provider cannot be contacted, the interpreter will be deemed to be contacted with sufficient time. For the purposes of this Schedule, such contact to provide such notification can be made either by telephone, SMS (text messages), facsimile, email, mail, or in person.

CANCELLATION FEE FOR MULTIPLE DAY ASSIGNMENTS UNDERWAY

Where a Service Provider is undertaking an onsite assignment which is more than a full day assignment, and the assignment has commenced, DIBP will provide the Service Provider of notice of cancellation where the Service Provider's assignment is to conclude before the originally scheduled conclusion time.

In such cases, the Service Provider will be paid only until the revised time of conclusion of the assignment advised to the Service Provider, or for the next full day's fee, whichever is the greater amount.

For the purposes of this Schedule, such contact to provide such notification can be made either by telephone, SMS (text messages), facsimile, email, mail, or in person.

To avoid ambiguity, this provision operates separately from the provisions of Clause 8.

DEDUCTION FROM FEES FOR OVERDUE CLAIMS

Where an SDF is required to be submitted for an assignment in accordance with the procedure for submitting claims for payment specified in Item B of 1, the SDF must be submitted within 3 months of completing the assignment. For every SDF that is submitted outside this period, DIBP will deduct \$10 from the fees payable for that assignment to cover the cost of processing the overdue SDF.

B. Payment of Fees

Telephone Interpreting:

Telephone interpreting assignments are calculated and paid automatically. DIBP will pay the Service Provider in accordance with the automatic timings. If the Service Provider can demonstrate that the automatic timings are incorrect DIBP will adjust these timings in accordance with DIBP operating procedures.

Standard Onsite Interpreting:

Standard onsite interpreting assignments are a minimum time of 90 minutes. Service Providers will be paid for any additional time beyond that in accordance with the onsite interpreting fee table. The time used to determine payment will be taken as the scheduled time or the actual time if it is longer. The actual times will be accepted by DIBP in accordance with the Client's advice on the Service Provider's Service Delivery Form (SDF).

Full day onsite interpreting assignments will be determined in accordance with the Client's request. TIS can undertake an approximate calculation of the payments and reimbursements of cost prior to the assignment taking place. The minimum payment for full day assignments is based on a total period of eight hours work per day.

Service Providers will be notified by DIBP if an assignment is entitled to be paid at the IRPC rate.

A Service Provider must make a claim for payment:

- a. if the assignment is a standard onsite interpreting assignment completed within the scheduled time - on the Automated Telephone Interpreting Service (ATIS) system. (Documents explaining the usage of the ATIS system are available from DIBP. If a Service Provider has enquiries regarding its usage, they can contact DIBP as per the details in Item B of Schedule 1);
- b. if the assignment is a full day assignment, or goes over the scheduled time or is cancelled with payment due – on an SDF submitted to the DIBP Representative within 14 days of the date that the assignment was performed. The completed SDF must include the Client's certification that the interpreting assignment was performed. If the assignment goes over the scheduled time and the DIBP Representative does not receive the SDF within 14 days of the assignment being completed, the Service Provider will only receive the fee payable for the scheduled time.

A Video conference where the Service Provider makes themselves available for site to site conferencing shall be paid in accordance with the onsite rates.

Service Delivery Forms:

The Service Provider must complete an SDF for every day of the assignment including travel days and days where they are not interpreting. The assignment starts when the interpreter leaves their home and finishes when they get back home. On travel days they should reflect the time left and the time they get to the accommodation.

SCHEDULE 4. CODE OF ETHICS

PROFESSIONAL CODE

"Code of Ethics for Interpreters and Translators"©

Australian Institute of Interpreters and Translators Inc.

When providing Interpreting and/or Translating Services, Service Providers shall conform to professional principles of ethics and practice that are specified in the Australian Institute of Interpreters and Translators Inc. (AUSIT) *"Code of Ethics for Interpreters and Translators"* © 2000.

For the purpose of this Deed, in the *Code of Practice* section, "6. Employment", in clause a)ii) "employed" should be read as "panel member", and in paragraph a)iii) "an employing" should be read as "the service provider".

While Service Providers are required to confirm with AUSIT *"Code of Ethics for Interpreters and Translators"*© relating to the provision of Interpreting and/or Translating Services under this Deed, the Service Providers are not obliged to be members of AUSIT.

AUSIT

Australian Institute of Interpreters and Translators Inc.

CODE OF ETHICS

FOR

INTERPRETERS & TRANSLATORS

Developed in consultation with NAATI

National Accreditation Authority for

Translators and Interpreters

November, 2012

AUSIT CODE OF ETHICS

An Introduction

The AUSIT Code of Ethics was first drafted as a by-law in the early 1990s. It was then endorsed in expanded form at the National Annual General Meeting in 1995, and for the next 15 years served AUSIT and the wider profession well. A number of overseas educational institutions and professional bodies used it as a reference or as a model for their own codes.

But changes in the translation and interpreting industry mean the requirements of a code of ethics have also changed. In late 2010 AUSIT accepted a proposal from Monash University to set up a joint AUSIT/Monash working group to review the Code of Ethics, with funding for Dr Uldis Ozolins as its leader. After twelve months, when the funding was exhausted, Christian Schmidt took over the reins to bring the project to completion. At some point during the review process feedback was sought from all AUSIT members and from representatives of all areas of the T&I industry.

The members of the working group, in alphabetical order, are:

- Dr Meredith Bartlett, educator and deaf sign interpreter, former Chair of ASLIA Vic, currently Chair of AUSIT's Vic/Tas Branch
- Vesna Boglev, AUSIT member, Manager of Sessional Interpreters, Research and Training at the Health Language Services, South Western Sydney Local Health District
- Adolfo Gentile, practitioner and founder member of AUSIT, who was Australia's first home-grown full professor in T&I (Deakin University); former President of FIT and former Chair of the Board of NAATI
- Eva Hussain, former AUSIT Vice President and former Chair of AUSIT Vic/Tas Branch; an interpreter and translator who runs her own language services company
- Dr Uldis Ozolins, a researcher who has written widely on T&I in Australia and internationally and taught in several Australian universities.
- Christian Schmidt, a graduate of the University of Heidelberg who now runs a translating and editing business in Adelaide.

Consultants: Dr Jim Hlavac and Prof. Rita Wilson of Monash University
Barbara McGilvray, freelance translator and educator.

The AUSIT National Council wishes to express its heartfelt thanks to Christian and Uldis for their leadership of the review group, and to all the group members for their valuable contribution.

Barbara McGilvray
AUSIT National Vice President

Preamble

The AUSIT Code of Ethics and Code of Conduct is intended to regulate the professional conduct of members of AUSIT, the Australian Institute of Interpreters and Translators.

AUSIT was founded in 1987, when the National Accreditation Authority for Translators and Interpreters (NAATI) called practitioners, educators and government language service provider representatives from around Australia to a meeting in Canberra to establish a national professional association. AUSIT's establishment was part of the historical development of the architecture of interpreting and translating in Australia and New Zealand, which has also included national accreditation and qualifications standards, widespread language services, specialised education and a respected code of ethics.

AUSIT's original Code of Ethics was completed in 1995, when it was endorsed by NAATI and adopted by AUSIT at its National Annual General Meeting. In 1996 it was presented to the International Federation of Translators at the World Congress hosted by AUSIT in Melbourne. NAATI endorses the AUSIT Code of Ethics as the basis of professional conduct for those with a NAATI credential, that is to say anyone holding NAATI accreditation or recognition.

This updated version of the AUSIT Code of Ethics and Code of Conduct was written in 2012 in recognition of the significant development and diversification of the field in Australia, and the growing attention to ethical issues in interpreting and translation around the world. International recognition of the status of interpreters and translators becomes even more important as they achieve greater prominence through media, international affairs and local political issues, attracting increased scrutiny of their standards.

The revised Code was adopted by NZSTI, the national association of interpreting and translating professionals in New Zealand (est. 1985), at its Annual General Meeting in 2012.

The interpreting and translation profession in Australia is part of a global profession increasingly concerned to address ethical issues that transcend national boundaries, such as protection of translators and translations (the Nairobi Declaration of UNESCO and the Translator's Charter of the International Federation of Translators), protection of interpreters in conflict areas or the right of individuals in criminal court proceedings to have access to interpreting and translating services.

Within Australia, a large number of agencies, institutions, language service providers and purchasers of interpreting and translating services now require practitioners who work with them – whether AUSIT members or not – to adhere to this Code of Ethics. It is recognised as setting a general standard for interpreting and translating.

In summary, the Code obliges members to:

- maintain professional detachment, impartiality, objectivity and confidentiality
- strive for excellence through continuous regular professional development
- decline work beyond their competence
- promote working conditions, relationships and an understanding of roles that facilitate collaboration and quality service delivery
- adhere to dispute resolution procedures

Clients or other parties who work with interpreting and translating practitioners should bring any breach of this Code to AUSIT's attention. AUSIT has processes for investigating such complaints, as do many of the agencies or institutions that purchase interpreting and translating services and require their practitioners to adhere to the AUSIT Code

AUSIT also encourages, and will assist, organisations with specific institutional or operational requirements of interpreters and translators to develop their own organisation-specific Good Practice Guides or protocols, which may usefully supplement this Code.

The AUSIT Code of Ethics defines the values and principles guiding the decisions interpreting and translating professionals make in practice. The related Code of Conduct and Conduct issues specific to translators and interpreters provide a framework for interpreting and translating professionals to use when exercising judgment in their practice. They are not intended to be exhaustive lists of the situations and circumstances that may comprise compliance and non-compliance with the Code of Ethics. Ethical interpreting and translating practice requires judgment and balanced decision-making in context. Interpreters and translators who commit to practise in accordance with the Code of Ethics accept that they will be accountable for their conduct under AUSIT's processes for non-compliance.

The following values and principles will inform our interpreting and translating practice.

CODE OF ETHICS

GENERAL PRINCIPLES

1. PROFESSIONAL CONDUCT

Interpreters and translators act at all times in accordance with the standards of conduct and decorum appropriate to the aims of AUSIT, the national professional association of interpreting and translation practitioners.

Explanation: Interpreters and translators take responsibility for their work and conduct; they are committed to providing quality service in a respectful and culturally sensitive manner, dealing honestly and fairly with other parties and colleagues, and dealing honestly in all business practices. They disclose any conflict of interest or any matter that may compromise their impartiality. They observe common professional ethics of diligence and responsiveness to the needs of other participants in their work.

2. CONFIDENTIALITY

Interpreters and translators maintain confidentiality and do not disclose information acquired in the course of their work.

Explanation: Interpreters and translators are bound by strict rules of confidentiality, as are the persons they work with in professional or business fields.

3. COMPETENCE

Interpreters and translators only undertake work they are competent to perform in the languages for which they are professionally qualified through training and credentials.

Explanation: In order to practise, interpreters and translators need to have particular levels of expertise for particular types of work. Those who work with interpreters and translators are entitled to expect that they are working with appropriately qualified practitioners. Practitioners always represent their credentials honestly. Where formal training or accreditation is not available (e.g. in less frequently used language combinations and new and emerging languages), practitioners have an obligation to increase and maintain skills through their own professional development (see Principle 8 below) or request employers, agencies or institutions to provide it.

4. IMPARTIALITY

Interpreters and translators observe impartiality in all professional contacts. Interpreters remain unbiased throughout the communication exchanged between the participants in any interpreted encounter. Translators do not show bias towards either the author of the source text or the intended readers of their translation.

Explanation: Interpreters and translators play an important role in facilitating parties who do not share a common language to communicate effectively with each other. They aim to ensure that the full intent of the communication is conveyed. Interpreters and translators are not responsible for what the parties communicate, only for complete and accurate transfer of the message. They do not allow bias to influence their performance; likewise they do not soften, strengthen or alter the messages being conveyed.

5. ACCURACY

Interpreters and translators use their best professional judgement in remaining faithful at all times to the meaning of texts and messages.

Explanation: Accuracy for the purpose of this Code means optimal and complete message transfer into the target language preserving the content and intent of the source message or text without omission or distortion.

6. CLARITY OF ROLE BOUNDARIES

Interpreters and translators maintain clear boundaries between their task as facilitators of communication through message transfer and any tasks that may be undertaken by other parties involved in the assignment.

Explanation: The focus of interpreters and translators is on message transfer. Practitioners do not, in the course of their interpreting or translation duties, engage in other tasks such as advocacy, guidance or advice. Even where such other tasks are mandated by particular employment arrangements, practitioners insist that a clear demarcation is agreed on between interpreting and translating and other tasks. For this purpose, interpreters and translators will, where the situation requires it, provide an explanation of their role in line with the principles of this Code.

7. MAINTAINING PROFESSIONAL RELATIONSHIPS

Interpreters and translators are responsible for the quality of their work, whether as employees, freelance practitioners or contractors with interpreting and translation agencies. They always endeavour to secure satisfactory working conditions for the performance of their duties, including physical facilities, appropriate briefing, a clear commission, and clear conduct protocols where needed in specific institutional settings. They ensure that they have allocated adequate time to complete their work; they foster a mutually respectful business relationship with the people with whom they work and encourage them to become familiar with the interpreter or translator role.

Explanation: Interpreters and translators work in a variety of settings with specific institutional demands and a wide range of professional and business contexts. Some settings involve strict protocols where the interpreter or translator is a totally independent party, while others are marked by cooperation and shared responsibilities. Interpreters and translators must be familiar with these contexts, and endeavour to have the people they work with understand their role. For practitioners who work through agencies, the agency providing them with the work is one of their clients, and practitioners maintain the same professional standards when working with them as when working with individual clients. At the same time agencies must have appropriate and fair procedures in place that recognise and foster the professionalism of interpreting and translating practitioners.

8. PROFESSIONAL DEVELOPMENT

Interpreters and translators continue to develop their professional knowledge and skills.

Explanation: Practitioners commit themselves to lifelong learning, recognising that individuals, services and practices evolve and change over time. They continually upgrade their language and transfer skills and their contextual and cultural understanding. They keep up to date with the technological advances pertinent to their practice in order to continue to provide quality service. Practitioners working

in languages where there is no standard training or credential may need to assess, maintain and update their standards independently

9. PROFESSIONAL SOLIDARITY

Interpreters and translators respect and support their fellow professionals, and they uphold the reputation and trustworthiness of the profession of interpreting and translating.

Explanation: Practitioners have a loyalty to the profession that extends beyond their individual interest. They support and further the interests of the profession and their colleagues and offer each other assistance.

CODE OF CONDUCT

Obligations towards recipients of services

1. Professional conduct	
<p>1.1 Interpreters and translators maintain their integrity and independence at all times.</p> <p>1.2 Interpreters and translators undertake appropriate preparations for all assignments.</p> <p>1.3 Interpreters and translators complete assignments they have accepted, unless they are unable to do so for ethical reasons (see 3.4 and 4.2 below).</p> <p>1.4 Interpreters and translators adhere to appointment times and deadlines, or advise clients promptly of any hindrance.</p> <p>1.5 Interpreters and translators do not exercise power or influence over their clients.</p> <p>1.6 Interpreters and translators do not solicit or accept gratuities or other benefits. They may, however, accept typical small gifts in specific cultural contexts.</p>	<p>Ethical principle: Interpreters and translators act at all times in accordance with the standards of conduct and decorum appropriate to the aims of AUSIT, the national professional association of interpreting and translation practitioners.</p>

2. Confidentiality	
<p>2.1 Interpreters and translators are bound by strict rules of confidentiality, as are the parties they work with in professional or business fields.</p> <p>2.2 Where teamwork is required, the ethical obligation for confidentiality extends to all members of the team and/or agency.</p> <p>2.3 Practitioners do not seek to take advantage of information acquired during or as a result of their work.</p> <p>2.4 Disclosure of information may be permissible with clients' agreement or when disclosure is mandated by law (see Int15).</p>	<p>Ethical principle: Interpreters and translators maintain confidentiality and do not disclose information acquired in the course of their work.</p>

3. Competence	
<p>3.1 The acceptance of an interpreting or translation assignment is an implicit declaration of an interpreter's or translator's competence to carry out that assignment.</p> <p>3.2 Interpreters and translators are familiar with the varied contexts, institutional structures, terminology and genres of the areas in which they accept work.</p> <p>3.3 Interpreters and translators clearly state their qualifications in particular languages or language directions if requested by the client.</p> <p>3.4 If it becomes apparent in the course of an assignment that expertise beyond their competence is required, interpreters and translators inform the client(s) immediately and work to resolve the situation, either withdrawing from the assignment or following another acceptable strategy.</p> <p>3.5 If a client wishes to change the language of the interpretation or translation to a different language, this can only be done if the interpreter or translator has relevant competence in the other language.</p>	<p>Ethical principle: Interpreters and translators only undertake work they are competent to perform, in the languages for which they are professionally qualified through training and credentials.</p>

4. Impartiality	
<p>4.1 Professional detachment is required for interpreting and translation assignments in all situations.</p> <p>4.2 Where impartiality may be difficult to maintain because of personal beliefs or other circumstances, interpreters and translators do not accept assignments, or they offer to withdraw from the assignment.</p> <p>4.3 Interpreters and translators are not responsible for what clients say or write.</p> <p>4.4. Interpreters and translators do not voice or write an opinion, solicited or unsolicited, on any matter or person during an assignment.</p> <p>4.5 Interpreters and translators frankly disclose all conflicts of interest, e.g. in assignments for relatives or friends and those affecting their employers.</p> <p>4.6 Interpreters and translators do not recommend to clients any business, agency, process, substance or material matters in which they have a personal or financial interest, without fully disclosing this interest to the clients.</p>	<p>Ethical principle: Interpreters and translators observe impartiality in all professional contacts. Interpreters remain unbiased throughout the communication exchanged between the participants in any interpreted encounter. Translators do not show bias towards either the author of the source text or the intended readers of their translation.</p>

5. Accuracy	
<p>5.1 Interpreters and translators provide accurate renditions of the source utterance or text in the target language. Accurate is defined for this purpose as optimal and complete, without distortion or omission and preserving the content and intent of the source message or text. Interpreters and translators are able to provide an accurate and complete rendition of the source message using the skills and understanding they have acquired through their training and education.</p> <p>5.2 Interpreters and translators do not alter, add to, or omit anything from the content and intent of the source message.</p> <p>5.3 Interpreters and translators acknowledge and promptly rectify any interpreting or translation mistakes.</p> <p>5.4 Where circumstances permit, interpreters and translators ask for repetition, rephrasing or explanation if anything is unclear.</p>	<p>Ethical principle: Interpreters and translators use their best professional judgement in remaining faithful at all times to the meaning of texts and messages.</p>

6. Clarity of role boundaries	
<p>6.1 Interpreters and translators do not, in the course of their interpreting or translation duties, assume other roles such as offering advocacy, guidance or advice. Even where such other tasks are mandated (e.g. by specific institutional requirements for employees), practitioners insist that a clear demarcation is agreed on by all parties between interpreting and translating and other tasks.</p> <p>6.2 Interpreters and translators respect the professional boundaries of other participants involved in an assignment.</p> <p>6.3 Interpreters and translators draw attention to any situation where other parties misunderstand the interpreter or translator role or have inappropriate expectations.</p> <p>6.4 Interpreters and translators understand, and help their clients understand, the difference between professional and personal interactions. They assume responsibility for establishing and maintaining appropriate boundaries between themselves and the other participants in the communicative interaction.</p>	<p>Ethical principle: Interpreters and translators maintain clear boundaries between their task as facilitators of communication through message transfer and any tasks that may be undertaken by other parties involved in the assignment.</p>

<p>7. Maintaining professional relationships</p>	
<p>7.1 Practitioners follow this Code whenever they are interpreting or translating – as employees, as freelancers, as agency contractors or as supervisors or employers of other interpreters and translators.</p> <p>7.2 When working as freelancers, interpreters and translators deal with clients and agencies honestly and transparently.</p> <p>7.3 When working through agencies, interpreters and translators maintain the same professional standards as when working with individual clients.</p> <p>7.4 Interpreters and translators request briefing and access to reference material and background information before their work commences.</p> <p>7.5 In interpreting assignments, interpreters endeavour to secure a physical environment that enables optimal message transfer in the given context. This includes the use of any devices and aids which participants typically require for hearing and speaking, such as appropriate standard booths for conference interpreting or appropriate physical arrangements for confidentiality, or security measures in cases of physical risk. It also includes provision of seating and reasonable breaks to avoid interpreter fatigue.</p> <p>7.6 In acknowledging the shared responsibility to provide effective language services, interpreters and translators can expect that agencies, employers or clients who stipulate this Code as mandatory for interpreter or translator behaviour have appropriate procedures in place that recognise the professional obligations of the practitioners, and that they support interpreters and translators in securing the conditions outlined in 7.4 and 7.5 above.</p>	<p>Ethical principle: Interpreters and translators are responsible for the quality of their work, whether as employees, freelance practitioners or contractors with interpreting and translation agencies. They always endeavour to secure satisfactory working conditions for the performance of their duties, including physical facilities, appropriate briefing, a clear commission and clear conduct protocols where needed in specific institutional settings. They ensure that they have allocated adequate time to complete their work, they foster a mutually respectful business relationship with the people with whom they work and encourage them to become familiar with the interpreter or translator role.</p>

8. Professional development	
<p>8.1 Interpreters and translators enhance their skills and knowledge through continuing education and professional development throughout their professional career.</p> <p>8.2 Interpreters and translators maintain proficiency in the languages and familiarity with the cultures for which they offer professional interpreting and translation services.</p> <p>8.3 Interpreters and translators support and encourage professional development within the profession and among their colleagues.</p> <p>8.4 Interpreters and translators endeavour to keep themselves informed about new trends and developments and the results of research in the field to improve their competence and practice.</p>	<p>Ethical principle: Interpreters and translators continue to develop their professional knowledge and skills.</p>

9. Professional solidarity	
<p>9.1 Interpreters and translators support and further the interests of the profession and their colleagues and offer each other assistance.</p> <p>9.2 Interpreters and translators resolve any disputes with their interpreting and translating colleagues in a cooperative, constructive and professional manner.</p> <p>9.3 AUSIT members refer any unresolved disputes with other AUSIT members to the National Council. The conclusive direction of the Council is binding on members, with the provision of appeal or review in the interests of natural justice.</p>	<p>Ethical principle: Interpreters and translators respect and support their fellow professionals and they uphold the reputation and trustworthiness of the profession of interpreting and translating.</p>

Conduct issues specific to translators

- T1 Before commencing work, translators ascertain the intended purpose of the translation and the form of delivery required.
- T2 Translators obtain from the client as much information, terminology or reference material as possible and necessary for the proper and timely execution of the translation commission, and treat such material confidentially or as expressly agreed. If the client possesses but fails to provide reference texts crucial to the desired outcome, the translator is not responsible for inadequacies in the translation that are demonstrably due to such aids being withheld.
- T3 Translators deliver a translation that completely and impartially renders the meaning and intention of the source text within the parameters and requirements of the target language and culture and is in keeping with the purpose specified in the commission received from the client/initiator.
- T4 Translators work only from source languages and into target languages in which they are qualified.
- T5 Translators only perform work which they believe is within their translation competence and relevant specialist competence and for which they have the necessary resources, transfer abilities, level of understanding and fluency, or which will be revised by a person with the relevant knowledge or competence.
- T6 If the source text contains particular elements that need to be taken into account in carrying out the translation, translators use their best endeavours and apply professional judgement to bring this to the attention of the client (except where the translated document is expected or required to be an exact reproduction of all source text content, meaning, style and language and needs to be thus certified). Such elements may include ambiguities, factual inaccuracies, linguistic errors, imprecise terminology, language that in the judgement of the translator is discriminatory, or wording or references that would jeopardise achieving the purpose of the text in the target language culture.
- T7 If a translator is contracted by an agency, he or she does not contact the client of the agency directly, except as provided for under the terms of the relevant agreement entered into with the agency. If contacted by the client of the agency directly, the translator follows the procedures agreed with the agency.
- T8 Translators may sub-contract work only to other practitioners who they have good reason to believe possess the necessary competence and resources and who adhere to this Code of Ethics and Code of Conduct, and always in compliance with any agreement entered into with the client. The responsibility for the translated text in any case rests with the translator who sub-contracted the work to the other practitioner, unless otherwise expressly agreed.
- T9 If a translation is subject to revision or checking by another translator, the revision is returned to the original translator for approval and finalisation. If changes are made to the translated text after delivery to the client without the translator's agreement and knowledge, the translator is no longer responsible for the translated text.

T10 Professional translators working in areas involving copyright matters endeavour to follow the principles laid out in the Nairobi Recommendation of UNESCO on the Legal Protection of Translators and Translations, and the FIT Translator's Charter (see [FIT website](#)).

Conduct issues specific to interpreters

Int1 Interpreters prepare themselves by obtaining from the initiator/client as much information and briefing as is necessary for the proper execution of their interpreting, and treat such material confidentially or as expressly agreed.

Completeness in interpreting

Int2 In order to ensure the same access to all that is said or signed by all parties involved in a meeting, interpreters relay accurately and completely everything that is communicated.

Int3 Interpreters interpret in the first person.

Int4 Interpreters maintain the emotions of the speakers in their interpreting and do not soften or enhance the force of messages conveyed or language used. In specific contexts such as in court or psychometric assessments, incoherence, hesitations and unclear statements are maintained in the interpretation.

Int5 If obvious untruths are uttered, interpreters convey these accurately in the same manner as presented.

Relations with other parties and the interpreting role in dialogue situations

Int6 In dialogue situations where some participants may be unaccustomed to working with interpreters, the interpreter encourages such participants to address each other directly.

Int7 In situations with a number of participants and where the interpreter is not interpreting aloud to all, the interpreter enables each participant to remain linguistically present where appropriate by whispered simultaneous interpreting or other suitable means, when other participants are communicating in the language not understood by the party or parties in question.

Int8 If anything is unclear, the interpreter asks for repetition, rephrasing or explanation, informing all participants of what is happening.

Int9 In emergency situations where interpreters may not have had the opportunity to be adequately briefed or given enough time to prepare, or if there are safety/security issues, they communicate this to the responsible person or initiator who is participating in the session.

- Int10 Interpreters keep the participants informed of any side comments made by any of the parties or of their attempts to engage the interpreter in a private or any other conversation. In business or intergovernmental contexts where one or more parties bring their own interpreter, it is appropriate for the interpreter to relay side comments of the other party to his or her own party.
- Int11 Various participants may place competing expectations on interpreters. These expectations may contravene the interpreters' ethics, therefore the onus is on interpreters to clarify the boundaries of their role and assist their clients in understanding how to achieve the best outcomes in an interpreted session. Interpreters take care that conversations that may arise during periods of waiting remain courteous but do not become personal, and that information divulged in the course of such conversations also remains confidential.
- Int12 Interpreters testify to their qualifications and the accuracy of their interpreting and, when requested, explain their linguistic choices, but do not testify to participants' understanding of messages; this remains an issue for participants.

Remote interpreting

- Int13 Interpreters familiarise themselves with the increasing use of technology for interpreting, including telephone, video and internet interpreting, and diverse recording/transmitting devices. Interpreters who engage in interpreting using these technologies prepare themselves by understanding the purposes of their use and the way in which communication is shaped by these technologies. Institutions, agencies and clients who use these technologies are encouraged to develop protocols and brief interpreters on their use and on any particular requirements they may have.

Specific institutional settings of interpreting work

- Int14 Where interpreters have roles in addition to that of interpreting due to specific employment arrangements, they clearly indicate when they are acting as interpreters and do not switch roles without notice.
- Int15 In specific institutional settings where duty of care or security rules regulate the behaviour of all participants, such as in health care or high security settings, interpreters follow the relevant policies and procedures combining them with their interpreting code of ethics.

CONTRACT

**IN RELATION TO THE PROVISION OF GARRISON AND WELFARE
SERVICES AT REGIONAL PROCESSING COUNTRIES**

Commonwealth of Australia represented by the Department of Immigration
and Border Protection

Transfield Services (Australia) Pty Limited

ABN: 11 093 114 553

ACN: 093 114 553

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CONTRACT

IN RELATION TO THE PROVISION OF GARRISON AND WELFARE SERVICES AT REGIONAL PROCESSING COUNTRIES

Date

This Contract is made on 24 March 2014.

Parties

This Contract is made between and binds the following parties:

1. The **Commonwealth of Australia**, acting through and represented by the Department of Immigration and Border Protection ABN 33 380 054 835 (the Department)

2. Transfield Services (Australia) Pty Limited ABN 11 093 114 553 and ACN 093 114 553 (a company duly incorporated under the laws of Australia) and registered as:
 - (a) as an overseas company in Papua New Guinea (3-100193) of PO Box 130, Boroko, National Capital District, Papua New Guinea; and
 - (b) a foreign corporation in Nauru,

with its registered address in Australia being Level 10, 110 Pacific Highway North Sydney NSW 2060 (the Service Provider).

Recitals

The Department wishes to obtain the following services from the Service Provider:

- A. welfare services for Transferees located on Regional Processing Countries (RPCs);
- B. garrison services for Sites occupied by Transferees on RPCs; and
- C. garrison and accommodation management services for Sites occupied by Personnel on RPCs.

Operative Provisions

1. Definitions and interpretation**1.1. Definitions**

- 1.1.1. In this Contract, unless the context indicates otherwise:

Australian Privacy Principle	has the same meaning as it has in the <i>Privacy Act 1988</i> (Cth);
Business Day	means a weekday other than a public holiday in the place specified or, if no place is specified, in the Australian Capital Territory, Australia;
Code of Conduct	means the code of conduct provided by the Department to the Service Provider that outlines expectations and guidelines regarding the conduct of the Service Provider and its Personnel;
Commencement Date	means 24 March 2014;
Commonwealth Material	means any Material: <ul style="list-style-type: none"> a. provided by the Department to the Service Provider for the purposes of this Contract; or b. derived at any time from the Material referred to in paragraph a;
Confidential Information (of the Service Provider)	means information that is by its nature confidential and is described in Schedule 5;
Contract Administrator	means the person appointed by the Department Secretary to perform the duties of Contract Administrator and includes anyone acting in that position from time to time as notified to the Service Provider in writing;

Address:

Offshore Detention Services Branch
Department of Immigration and Border Protection
6 Chan Street
Belconnen ACT 2616
opc.service.delivery@immi.gov.au

Contract Authority	means the person occupying the position of First Assistant Secretary – Offshore Detention and Returns Task Group;
Contract Material	means any Material: <ul style="list-style-type: none"> a. created for the purposes of this Contract; b. provided or required to be provided to the

	Department as part of the Services; or
	c. derived at any time from the Material referred to in paragraphs a or b;
Department	means the Commonwealth of Australia as represented by any department, agency or authority of the Commonwealth which is from time to time responsible for administering this Contract;
Department Operations Team Leader	means the person (or delegate) appointed by the Department to perform the role of Department Operations Team Leader at the Site;
Excluded Items	means items that may not be brought to the Site under an applicable law or policy issued by the Department;
Execution Date	means the date on which the last of the parties executes this Contract;
Excusable Performance Failure Event	means any of the following events: <ul style="list-style-type: none"> a. a fire, flood, earthquake, pandemic, elements of nature or other acts of God; b. war or other state of armed hostilities, national emergency, embargo or action by customs; c. unavailability of essential services such as electricity, gas or water for more than 48 hours; d. a restraint by any government agency in a Regional Processing Country; e. any other event or occurrence beyond the control of the Service Provider, <p>other than as a result of the acts or omissions of the Service Provider or its Personnel or any of its subcontractors, which prevents or delays the performance of this Contract by the Service Provider;</p>
GST	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
Incident	means an activity which threatens, harms or impacts, or has the potential to threaten, harm or impact upon: <ul style="list-style-type: none"> d. the welfare of Transferees; e. the good order, safety or security of a Site; f. the success of escort/transfer activities; or g. immigration processing;

Information Officer	means any of the information officers appointed under the <i>Australian Information Commissioner Act 2010</i> (Cth) when performing privacy functions as defined in that Act;
In Trust Property	means property of a Transferee that is stored by the Service Provider;
Intellectual Property	includes: <ul style="list-style-type: none"> h. all copyright (including rights in relation to phonograms and broadcasts); i. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and j. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include: <ul style="list-style-type: none"> k. Moral Rights; l. the non-proprietary rights of performers; or m. rights in relation to Confidential Information;
Key Performance Measure	means a Key Performance Measure in the Performance Management Framework;
Key Personnel	means the Service Provider Personnel specified under clause 5 as Key Personnel;
Maintenance	means work that maintains the functionality to applicable performance specifications (or where there are no specifications, to reasonable, safe operating standards) of the Site and includes preventative maintenance, repairs, replacement of lost or damaged items, refurbishment and restoration of work;
Material	means anything in relation to which Intellectual Property rights arise;
Migration Act	means the <i>Migration Act 1958</i> (Cth);
Moral Rights	means the following non-proprietary rights of authors of copyright Material: <ul style="list-style-type: none"> n. the right of attribution of authorship; o. the right of integrity of authorship; and p. the right not to have authorship falsely attributed;

Official Information	means any information developed, received or collected by or on behalf of the Department to which the Service Provider gains access under or in connection with this Contract and the terms of the Contract;
Open Access Licence	means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the material subject to certain restrictions. An Open Access Licence includes any Department or Australian Government open access licence and any Creative Commons Attribution licence (see http://creativecommons.org.au/learn-more/licences/);
Pass Through Cost	has the meaning given by Schedule 2 [Fees and Payment];
Performance Management Framework	means the Performance Management Framework developed in accordance with clause 4.4;
Personal Information	has the same meaning as it has in the <i>Privacy Act 1988</i> (Cth);
Personnel	means: <ul style="list-style-type: none"> q. in relation to the Service Provider - any natural person who is an officer, employee, agent or professional advisor of the Service Provider or of its subcontractors; and r. in relation to the Department - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent, contractor or professional advisor of the Commonwealth;
Regional Processing Country	means a country designated by the Minister for Immigration and Border Protection, acting under subsection 198AB(1) of the Migration Act as a regional processing country;
Schedule	means the schedules to this Contract and includes the Schedules as amended or replaced from time to time by agreement in writing between the parties;
Services	means the services described in Schedule 1 [Statement of Work];
Services Fee	has the meaning given in Schedule 2 [Fees and Payment];
Site	means the site notified by the Department to the Service Provider on the Republic of Nauru and Manus (Papua New Guinea) and includes any new

	sites established by the Department on respective RPCs;
Term	has the meaning given by clause 2.4;
Transferee	means a person transferred to a Regional Processing Country.
WHS Law	means all statutes, regulations, statutory instruments, subordinate legislation, codes of practice and standards (including those of the Commonwealth of Australia and of the location where the Services are being delivered) dealing with or relevant to health and safety in workplaces and of workers and others who may be affected by the carrying out of work and includes any approvals, permits, licences, directions or requirements of an authority exercising regulatory powers in respect of such matters.

- 1.1.2. In this Contract, unless the contrary intention appears:
- a. words importing a gender include any other gender;
 - b. words in the singular include the plural and words in the plural include the singular;
 - c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
 - d. words importing a person include a partnership and a body whether corporate or otherwise;
 - e. a reference to dollars is a reference to Australian dollars;
 - f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
 - g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
 - h. a reference to an Item is a reference to an Item in the Schedules;
 - i. the Schedules and any Attachments form part of this Contract;
 - j. if any conflict arises between the terms and conditions contained in the clauses of this Contract and any part of a Schedule (and Attachments if any), the terms and conditions of the clauses prevail;
 - k. if any conflict arises between any part of a Schedule and any part of an Attachment, the Schedule prevails; and
 - l. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.2. Guidance on construction of Contract

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

2. General

2.1. Contract objectives

- 2.1.1. The primary objectives of this Contract are to:
 - a. provide open, accountable and transparent Services (identified in Schedule 1 [Statement of Work] to this Contract) to Transferees and Personnel at the Sites on the RPCs; and
 - b. provide Services that is the best available in the circumstances, and utilising facilities and Personnel on the Sites and that as far as possible (but recognising any unavoidable limitations deriving from the circumstances of the Sites) is broadly comparable with services available within the Australian community.

2.2. Cooperation and good faith

- 2.2.1. The parties intend to conduct themselves and perform this Contract in the spirit of cooperation and good faith. For avoidance of doubt, the spirit of cooperation and good faith does not override or limit the provisions of this Contract.
- 2.2.2. The parties acknowledge that the terms of this Contract require them to reach agreement on a range of matters. The Service Provider must take all steps necessary to prepare relevant documentation and respond to any documentation provided by the Department in relation to these matters in a timely manner. For the avoidance of doubt and without limiting clause 15.1 or 15.2, if notwithstanding this, the parties fail to reach agreement, the Department may terminate this Contract in accordance with clause 15.1.

2.3. PNG and Nauru Memoranda of Understanding

- 2.3.1. The Service Provider agrees not to permit any act or omission that causes or may cause the Commonwealth to be in breach of its Memorandum of Understanding with the Republic of Nauru and the Memorandum of Understanding with PNG or with the related Administrative Arrangements (a copy of which will be provided by the Department to the Service Provider).

2.4. Term

- 2.4.1. Subject to clause 2.4.2 this Contract commences on the Execution Date and continues until the first to occur of:
- a. the Contract is terminated under clause 15; or
 - b. 31 October 2015.
- 2.4.2. The Department may (subject to clause 1.2 in Schedule 2 [Fees and payments]) extend the term of this Contract beyond the initial Term for one or more periods up to a total of 6 months on the terms and conditions of this Contract then in effect, by providing in each case at least 90 days written notice to the Service Provider.

2.5. Transition-in

- 2.5.1. The Service Provider must provide the Department with a draft Transition Plan no later than two (2) days after the Execution Date. The Service Provider must finalise the Transition Plan (subject to any amendments required by the Department) no later than four (4) days after the Execution Date.
- 2.5.2. The Service Provider must implement the Transition Plan no later than five (5) days after the Execution Date and must perform all activities required to ensure it is ready to provide Services in accordance with this Contract on and from the Commencement Date.
- 2.5.3. The Service Provider must commence the provision of Services on the Commencement Date.

2.6. New Sites

- 2.6.1. Where a country is designated by the Minister for Immigration and Border Protection acting under subsection 198AB(1) of the Migration Act as a Regional Processing Country, the Department may by written notice advise the Services Provider that it would like the Service Provider to provide services similar to the Services at a site on that country ('New Site').
- 2.6.2. Where the Department issues a notice under clause 2.6.1, the parties will promptly meet to negotiate amendments to this Contract to provide for the provision of services at the New Site. The parties acknowledge that, to the extent possible, the negotiations will be on the basis that the terms and conditions in this Contract (including the Services and the fees) will apply to the provision of services at the New Site.
- 2.6.3. Once the negotiations have been finalised, the parties will vary this Contract to include the New Site as a Site and the services provided at the New Site will be Services under this Contract.

3. Services

3.1. Service obligations

- 3.1.1. Schedule 1 [Statement of Work] of this Contract sets out the specific requirements for the Services to be performed at the Sites. The Department may

request the Service Provider to provide other services on terms to be agreed. Once agreed, the parties will amend this Contract to include the other services and the other services will be Services for the purposes of this Contract.

- 3.1.2. In accordance with clause 3.3 the Service Provider is required to comply with all applicable laws. The requirements in Schedule 1 [Statement of Work] are to be read subject to that requirement.
- 3.1.3. The Service Provider agrees to:
- a. provide the Services and meet the requirements described in Schedule 1 [Statement of Work];
 - b. adopt relevant best practice, including any applicable Department, Commonwealth or industry standards and guidelines;
 - c. once agreed, implement and comply with the performance management framework described in Schedule 6 [Performance Management Framework]; and
 - d. submit invoices, and any required supporting documents, in the manner specified in clause 9 in Schedule 2 or as otherwise specified by the Department.
- 3.1.4. The Service Provider acknowledges that powers and functions of the guardian of unaccompanied minors in Nauru have been currently delegated to Save the Children Australia under the *Asylum Seekers (Regional Processing Centre) Act 2012* (Nauru). The Department will keep the Service Provider informed at all times as to who is the current guardian of unaccompanied minors in Nauru and all the powers and functions that the guardian has. If any delegation is revoked or amended at any time the Department will immediately notify the Service Provider in writing.

3.2. Facilities and assistance

- 3.2.1. The Department will provide the Service Provider with facilities and assistance specified in clause 11 of Schedule 2 and such other facilities and assistance as agreed between the parties from time to time.
- 3.2.2. The Service Provider acknowledges that:
- a. it will be sharing some of the facilities referred to in clause 3.2.1 with other service providers and the Department Personnel; and
 - b. from time to time the Department may require the Service Provider to move out of part of the facilities or otherwise adjust the arrangements that apply to the access to the facilities or the assistance that is provided.
- 3.2.3. The Service Provider will cooperate with the other service providers and the Department in relation to the management and use of the facilities.

3.3. Compliance with laws

- 3.3.1. The Service Provider must, in performing its obligations in this Contract, comply, and ensure compliance by all its Personnel, with:

- a. all applicable laws, including those applicable in the Regional Processing Country where the Site is located and those Australian laws that are applicable to the Services or the Site; and
 - b. all applicable Commonwealth policies as notified to the Service Provider from time to time.
- 3.3.2. The Service Provider may seek assistance from the Department in complying with clause 3.3.1, for example in respect of Personnel and subcontractor clearances, resources imports and the establishment of facilities and, without limiting the Service Provider's obligations in connection with the Contract, the Department will provide assistance to the extent it is reasonably able to do so.
- 3.4. Compliance with Fair Work Principles**
- 3.4.1. The Service Provider must comply, and as far as practicable must ensure its subcontractors comply, with all relevant requirements of the Fair Work Principles as set out in the Fair Work Principles User Guide (available at http://docs.employment.gov.au/system/files/doc/other/fair_work_principles_user_guide.pdf including by:
- a. complying with all applicable workplace relations, occupational health and safety and workers' compensation laws;
 - b. informing the Department of any adverse court or tribunal decision for a breach of workplace relations law, occupational health and safety laws or workers' compensation laws made against it during the term of this Contract and any remedial action it has taken, or proposes to take, as a result of the decision;
 - c. providing the Department any information the Department reasonably requires to confirm that the Service Provider (and any subcontractor) is complying with the Fair Work Principles; and
 - d. participating in all compliance activities associated with its legal obligations, including those arising under the Fair Work Principles. Compliance activities may include responding to requests for information and/or audits undertaken by the Commonwealth, its nominees and/or relevant regulators.
- 3.4.2. Compliance with the Fair Work Principles shall not relieve the Service Provider from its responsibility to comply with its other obligations under this Contract.
- 3.4.3. If the Service Provider does not comply with the Fair Work Principles, without prejudice to any rights that would otherwise accrue to the Department, the Department or any other Commonwealth Department, shall be entitled to publish details of the Service Provider's failure to comply (including the Service Provider's name) and to otherwise provide those details to other Commonwealth agencies.
- 3.4.4. As far as practicable, the Service Provider must:
- a. not use a subcontractor in relation to this Contract where the subcontractor would be precluded from contracting directly with the Department under the requirements of the Fair Work Principles; and

- b. ensure that all subcontracts impose obligations on subcontractors equivalent to the obligations specified in clauses 3.4.1 to 3.4.4.

4. Management and governance

4.1. Project management

- 4.1.1. The Service Provider must comply with the project management and governance arrangements as outlined in Schedule 1 [Statement of Work] of this Contract.

4.2. Department Personnel

- 4.2.1. The Department will appoint a:
 - a. Contract Administrator; and
 - b. Department Operations Team Leader.

4.3. Liaison with Contract Administrator

- 4.3.1. The Service Provider agrees:
 - a. to liaise with the Contract Administrator and Department Operations Team Leader (if applicable) as reasonably required; and
 - b. to comply with directions of the Contract Administrator that are consistent with this Contract.

4.4. Performance management framework

- 4.4.1. The parties will jointly develop and agree a Performance Management Framework as soon as possible after, and in any event within 8 weeks of, the Execution Date. The Performance Management Framework will be consistent with the principles set out in Schedule 6 [Performance Management Framework Principles] and will include:
 - a. details of key deliverables and key performance measures;
 - b. processes and procedures for managing and responding to Excusable Performance Failure Events;
 - c. an abatement regime in respect of the level of performance achieved in the performance of the Services; and
 - d. details of the format, content and frequency of performance reports to be submitted in accordance with clause 4.5.
- 4.4.2. Once the Performance Management Framework has been developed and agreed, the parties will implement the Performance Management Framework.
- 4.4.3. The parties will periodically review the Performance Management Framework to ensure it remains current and relevant to this Contract and the overall operation and management of the Sites.

4.5. Reports

- 4.5.1. The Service Provider must as part of the Performance Management Framework and in collaboration with other service providers develop a draft performance report format to be used to report on its performance of its obligations under this Contract and the operation and management of the Sites.
- 4.5.2. The draft performance report format must address the issues set out in Schedule 6 [Performance Management Framework] and must be submitted to the Department for approval within 6 weeks of the Execution Date.
- 4.5.3. Once agreed, the Service Provider must develop and submit performance reports in the agreed performance report format:
 - a. on a monthly basis; or
 - b. once the Performance Management Framework has been agreed, in accordance with the Performance Management Framework.

5. Service Provider Personnel

5.1. Key Personnel

- 5.1.1. The Service Provider will notify the Department from time to time of Key Personnel that have been retained in relation to the performance and management of the Services and the Service Provider's obligations under this Contract.
- 5.1.2. The Service Provider must ensure that each of the Key Personnel occupy the positions and provide the Services advised to the Department.

5.2. Replacement of Key Personnel

- 5.2.1. Where Key Personnel cease to work in respect of this Contract, the Service Provider must notify the Department immediately and must provide replacement Key Personnel acceptable to the Department at no additional charge and at the earliest opportunity.
- 5.2.2. If the Service Provider is unable to provide replacement Key Personnel acceptable to the Department within 10 Business Days of their ceasing work in respect of this Contract, the Department may, at its discretion, terminate this Contract or remove Services from scope in accordance with clause 15.

5.3. Removal of Key Personnel

- 5.3.1. The Department may, in its absolute discretion, give notice requiring the Service Provider to remove any Key Personnel from work in respect of the Services. The Service Provider must promptly arrange for the removal of such Key Personnel from work in respect of the Services and their replacement with personnel acceptable to the Department and at no additional cost to the Department.

5.4. Service Provider Personnel

- 5.4.1. The Service Provider must ensure that all Service Provider Personnel that are to carry out work or perform duties under this Contract have signed:

- a. Confidentiality Deed Poll substantially in the form of Schedule 3 [Confidentiality Deed]; and
- b. Deed of Non-disclosure of Personal Information substantially in the form of Schedule 4 [Deed of Non-disclosure of Personal Information],

prior to commencing work or performing duties under this Contract or within 2 days of the Execution Date.

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

- a. are, and remain, of good character and good conduct;
- b. are considered suitable by the Department having regard to any issues identified in an Australian Federal Police background check and brought to the attention of the Department;
- c. have a current 'working with children' check or certificate from an Australian jurisdiction or equivalent from the Australian Federal Police or, in the case of any local Personnel, any similar check or certificate where practicable;
- d. undergo induction, orientation and ongoing training that complies with the Department's requirements when commencing employment with the Service Provider or starting work in relation to the Services and during deployment, including training provided by other service providers;
- e. are appropriately skilled, trained and qualified to provide the Services described in Schedule 1 [Statement of Work];
- f. are authorised, registered or licensed in accordance with any applicable regulatory requirements for the purposes of or incidental to the performance of the Services;
- g. possess all relevant industry body, supplier, manufacturer accreditation or scheme memberships and professional association membership that might be reasonably expected of providers of the Services, and produce evidence of such authorisation, registration, license, accreditation or membership to the Department upon request at any time during the term of this Contract; and
- h. will be subject to internal disciplinary processes.

5.4.3. The Service Provider will ensure that the personnel levels at the Sites are adequate to deliver the Services in accordance with this Contract.

5.5. Behaviour of Service Provider Personnel at the Sites

5.5.1. The Service Provider must ensure that all Service Provider Personnel at a Site:

- a. are aware of, and comply with, the Code of Conduct at all times;
- b. comply with the Department's policy on smoking and other occupational health and safety matters as declared from time to time by the Department; and

- c. carry out their duties and behave in such a way as to maximise the seamless interface between the delivery of the Services and:
 - i. any other services provided by other service providers; and
 - ii. the day to day activities of the Department,so that services delivered by multiple service providers give the impression of being delivered by a single provider.

5.6. Illegal workers

- 5.6.1. The Service Provider must ensure that its Service Provider Personnel do not include any illegal workers and must notify the Department immediately if it becomes aware of any of its Service Provider Personnel being an illegal worker.
- 5.6.2. For the purposes of clause 5.6.1, an illegal worker is a person who:
 - a. has unlawfully entered and remains in Australia or the relevant Regional Processing Country;
 - b. has lawfully entered Australia or the relevant Regional Processing Country but remains in that country after his or her visa has expired; or
 - c. is working in breach of his or her visa conditions.

5.7. Removal of Service Provider Personnel

- 5.7.1. The Department may, in its absolute discretion, give notice requiring the Service Provider to remove any Service Provider Personnel from work in respect of the Services. The Service Provider must promptly arrange for the removal of such Service Provider Personnel from work in respect of the Services and their replacement with Personnel acceptable to the Department and at no additional cost to the Department.

6. Subcontractor arrangements

6.1. Approval of subcontracts

- 6.1.1. The Service Provider must not enter into a subcontract without the prior written approval of the Department (such approval not to be unreasonably withheld or delayed) if the total fees of that subcontract equal or exceed AUD\$50,000.
- 6.1.2. The Service Provider must notify the Department prior to entering into any proposed subcontract (regardless of value) that will or is likely to fall within the scope of or otherwise raise issues under the Memorandum of Understanding with the relevant Regional Processing Country referred to in clause 2.3.

6.2. Extension of provisions to subcontractors and Personnel

- 6.2.1. In this clause 6.2:

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

- 6.2.2. The Service Provider agrees to ensure that:

- a. its subcontractors and Personnel comply with all relevant Requirements; and
 - b. any contract entered into in connection with this Contract imposes all relevant Requirements on the other party.
- 6.2.3. The Service Provider agrees to exercise any rights it may have against any of its subcontractors, Personnel or third parties in connection with a Requirement in accordance with any direction by the Department.
- 6.3. Copies of subcontracts**
- 6.3.1. The Service Provider must:
- a. maintain a record of each of the subcontractors and the Services being performed by each of them; and
 - b. promptly provide copies of any subcontracts to the Department at the request of the Contract Administrator.
- 6.4. Service Provider liability and obligations**
- 6.4.1. The Department's approval of any subcontract does not relieve the Service Provider from any liability or obligation under this Contract.
- 6.4.2. The Service Provider will be liable to the Department for the acts, omissions, defaults and neglect of any subcontractor or any representative of the subcontractor engaged in the performance of the Services as fully as if they were the acts, omissions, defaults or neglect of the Service Provider.
- 6.4.3. The Service Provider remains responsible for ensuring that:
- a. the work performed by each subcontractor meets the requirements of this Contract; and
 - b. no subcontractor further subcontracts any work valued at **Proposed** or more or where clause 6.1.2 applies without the prior written approval of the Department.
- 6.5. Subcontractor warranty**
- 6.5.1. The Service Provider warrants that each subcontractor:
- a. where applicable, is suitable to carry out the work under the subcontract and is accredited or qualified in accordance with relevant Laws, Australian Standards and Commonwealth requirements; and
 - b. will exercise the standard of skill, care and diligence that would be expected of an expert professional provider of services similar to the Services being provided by the subcontractor.
- 6.6. Service Provider to be the Department's sole point of contact**
- 6.6.1. The Service Provider acknowledges that the Department may, in its absolute discretion, contact any subcontractor directly as and when required in order to obtain information regarding the Services provided by that subcontractor.

6.6.2. Except as provided in clause 6.6.1, the Service Provider will be the Department's sole point of contact regarding the Services, including with respect to payment.

6.7. Locally engaged subcontractors

6.7.1. The parties intend that the Service Provider will seek to maximise local involvement in the delivery of the Services including engaging local entities as subcontractors. The parties recognise that it may not be possible for local entities or local Personnel to meet all of the Requirements of the Contract. The Service Provider will use its best endeavours to ensure that local Personnel meet the requirements of this Contract as much as possible. The terms on which local entities will be engaged will be agreed between the parties.

7. Document approval

7.1. Plans

7.1.1. The Service Provider will develop, update and deliver all draft plans to the Department in accordance with Schedule 1 [Statement of Work].

7.2. Review and approval of plans

7.2.1. The Department will:

- a. review; and
- b. approve or request changes to,

each draft plan. The Service Provider will promptly address any requested changes and deliver an updated draft plan to the Department in a timely manner. This clause 7.2.1 will apply to any updated draft plan.

7.2.2. Once approved, the Service Provider will comply with and perform the Contract in accordance with the approved plans.

7.2.3. Approval of a draft plan will:

- a. be construed as no more than an indication that the plan appears to the Department to be capable of being used as a basis for performing the Services;
- b. not be construed as limiting the Service Provider's responsibility to provide Services in accordance with the requirements of the Contract; and
- c. not be construed as a waiver of any right under this Contract or any cause of action arising out of any act or omission of the Service Provider or its Personnel or subcontractors.

8. Payments

8.1. Fees

8.1.1. Subject to this Contract, and in consideration of the Service Provider performing its obligations under this Contract, the Department agrees to make payment to the Service Provider in accordance with Schedule 2 [Fees and Payment].

8.2. Taxes, duties and government charges

8.2.1



8.2.2 Unless otherwise indicated, the fees and all other consideration for any supply made under this Contract is exclusive of any GST imposed on the supply.

8.2.3 If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Contract, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

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

8.2.5 For the avoidance of doubt, any goods and services tax imposed under the Goods and Services Tax Act 2003 of PNG on the supply of goods or services in or in relation to or import into PNG by the Service Provider pursuant to this Contract is considered under this clause 8.2 to be a Pass-Through Cost that the Department will reimburse to the Service Provider.

8.3. Currency

8.3.1. All payments will be made in Australian Dollars unless otherwise agreed.

9. Confidentiality of Official Information and security

9.1. Interpretation

9.1.1. In this clause 9:

- | | |
|---------------------------|--|
| Official Resources | includes: <ul style="list-style-type: none">s. Official Information;t. people who work for or with the Department; andu. assets belonging to (even if in the possession of contracted providers) or in the possession of the Department; |
|---------------------------|--|

9.2. Confidentiality of Official Information

9.2.1. The Service Provider will not, without prior written authorisation of the Department, disclose any Official Information to any person (unless required to do so by law).

9.2.2. The Service Provider is authorised, subject to clause 9.3, to provide Official Information to those Personnel and subcontractors who require access for the purposes of this Contract.

9.2.3. The Service Provider agrees to secure all Official Information against loss and unauthorised access, use, modification or disclosure.

9.3. Other security obligations of Service Provider

9.3.1. The Service Provider agrees to comply with any security requirements notified by the Department from time to time.

9.3.2. The Service Provider agrees to implement security procedures to ensure that it meets its obligations under this clause 9 and will provide details of these procedures to the Department on request.

9.4. Management of Copies

9.4.1. In this clause 9.4:

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

9.4.2. The Service Provider agrees, on expiration or termination of this Contract, to deal with all Copies as directed by the Department, subject to any requirement of law binding on the Service Provider.

10. Confidential Information of Service Provider

10.1. Confidential Information not to be disclosed

10.1.1. Subject to clause 10.2 the Department will not, without the prior written authorisation of the Service Provider, disclose any Confidential Information of the Service Provider to a third party.

10.2. Exceptions to obligations

10.2.1. The obligations of the Department under this clause 10 will not be taken to have been breached to the extent that Confidential Information:

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

- d. is disclosed by the Department in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - e. is shared by the Department within the Department's organisation, or with another Commonwealth Department, where this serves the Commonwealth's legitimate interests;
 - f. is authorised or required by law to be disclosed; or
 - g. is in the public domain otherwise than due to a breach of this clause 10.
- 10.2.2. Where the Department discloses Confidential Information to another person pursuant to clauses 10.2.1.a - 10.2.1.e, the Department will notify the receiving person that the information is confidential.
- 10.2.3. In the circumstances referred to in clauses 10.2.1.a, 10.2.1.b, and 10.2.1.e the Department agrees not to provide the information unless the receiving person agrees to keep the information confidential.
- 10.3. Period of confidentiality**
- 10.3.1. The obligations under this clause 10 in relation to an Item of information described in Schedule 5 continue for the period set out there in respect of that Item.

11. Intellectual Property

11.1. Use of Commonwealth Material

- 11.1.1. The Department grants (or will procure) a royalty-free, non-exclusive licence for the Service Provider to use, reproduce and adapt Commonwealth Material provided to the Service Provider for the purposes of this Contract.
- 11.1.2. The Service Provider agrees to use the Commonwealth Material strictly in accordance with any direction from the Department.

11.2. Rights in Contract Material

- 11.2.1. Intellectual Property in all Contract Material vests or will vest in the Department.
- 11.2.2. Clause 11.2.1 does not affect the ownership of Intellectual Property in:
 - a. any Commonwealth Material incorporated into Contract Material; or
 - b. any Material in existence at the Execution Date and specified below
None
- 11.2.3. The Service Provider grants to (or will procure for) the Department a perpetual, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, perform, distribute, communicate and exploit any existing Material referred to in clause 11.2.2.b incorporated into or that otherwise forms part of the Contract Material, for any purpose.

11.2.4. The Service Provider agrees that the licence granted in clause 11.2.3 includes a right for the Department to licence the existing Material in conjunction with the Contract Material to the public under an Open Access Licence.

11.2.5. The Service Provider agrees, on request by the Department, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 11.2.

11.2.6. The Service Provider warrants that:

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

to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause 11.2.

11.3. Moral Rights

11.3.1. In this clause 11.3:

Permitted Acts means any of the following classes or types of acts or omissions:

- v. using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution or authorship;
- w. supplementing the Contract Material with any other Material;
- x. using the Contract Material in a different context to that originally envisaged;
- y. releasing the Contract Material to the public under an Open Access Licence;

but does not include false attribution of authorship.

11.3.2. The Service Provider agrees:

- a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Department or any person claiming under or through the Department (whether occurring before or after the consent is given) and, on request, to provide the executed original of any such consent to the Department; and
- b. to ensure that each author's attention is drawn to the Department's general policies and practices regarding Moral Rights.

11.3.3. This clause 11.3 does not apply to any Commonwealth Material incorporated in the Contract Material.

12. Indemnity and insurance

12.1. Proportionate liability regimes excluded

12.1.1. To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Service Provider under or in connection with this Contract.

12.2. Indemnity

12.2.1. [Redacted]

- [Redacted]
- [Redacted]

[Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

12.2.2. The Service Provider's liability to indemnify the Department under clause 12.2.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of the Department or its Personnel contributed to the relevant cost, liability, loss, damage or expense.

12.2.3. The right of the Department to be indemnified under this clause 12.2 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Department is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

12.3. Limitation of liability

12.3.1. **Proposed Redaction** [Redacted]

- [Redacted]
- [Redacted]

12.3.2. Clause 12.3.1 does not apply in relation to liability relating to:
a. personal injury (including sickness and death);

- b. breach of another person's intellectual property rights;
- c. damage or loss to the property of a person other than the Department;
- d. malicious, wilful, fraudulent or illegal acts or omissions of the Service Provider or its Personnel.

12.3.3. The parties acknowledge that the limitation of liability specified in clause 12.3.1 will be subject to review in the event that the contract is varied or extended.

12.4. Insurance

12.4.1. Proposed Redaction [Redacted text block]

12.4.2. The Department may require the Service Provider to obtain additional insurance or higher levels of insurance. If this results in the Service Provider incurring an increased premium, the Department will reimburse the additional premium (without mark-up).

12.5. Performance securities

12.5.1. The Service Provider must provide to the Department, within [Redacted] of the Execution Date, financial security [Redacted].

12.5.2. The financial security must be unconditional, from a financial institution acceptable to the Department and in a form approved by the Department. The financial security must have an expiry date at least 6 months after the expiration of the initial Term. In the event the Contract is extended, the financial security must be extended or replaced with a new financial security with an expiry date at least 6 months after expiration of the extended Term.

12.5.3. The financial security will be exercisable by the Commonwealth for either or both of the following:

- a. to obtain compensation for loss suffered in the event that the Service Provider fails to perform the Contract, including upon termination of the Contract; or
- b. to recover any amounts due to the Department in relation to the Contract.

13. Publicity, media and external relationship management

13.1. Publicity and media to be managed by the Department

13.1.1. The Service Provider acknowledges and agrees that the Department will have management and control of:

- a. all publicity, dealings with, inquiries from, comments to or other matters related to the media that are directly or indirectly related to this Contract including, without limitation, regarding the Department and any matter related to the Services, any Transferees, or the relationship or issues between the Service Provider and the Department; and
- b. the relationship and dealings with stakeholders and external parties (including industry groups, special interest or lobby groups, and the community), except to the extent that such contact has been approved by the Department in writing.

13.1.2. Any contact with or release to the media which specifically names the Service Provider is to be approved by the Service Provider prior to any statement being made or material being released, which consent or approval must not be unreasonably withheld or delayed.

13.2. Service Provider not to make public statements

13.2.1. The Service Provider must not, and will ensure that its Personnel and subcontractors do not:

- a. make any public statement;
- b. release any information to, make any statement or comment to, deal with any inquiry from or otherwise assist or advise the media;
- c. publish, distribute or otherwise make available any information or material to third parties,

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

- d. an individual Transferee;
- e. the processing of a claim for asylum for an individual or group of Transferees;
- f. the health or wellbeing of an individual or group of Transferees;
- g. the wellbeing of the relatives of a Transferee;
- h. the Department, its Personnel or its subcontractors (whether specifically referred to or not);
- i. the Services;

- j. the relationship between the parties; or
- k. any other matter directly or indirectly related to this Contract,
other than:
 - l. to direct any such inquiry to the Department;
 - m. as is specifically authorised by and to the minimum extent necessary to fulfil the Service Provider's obligation under this Contract or comply with the Law;
or
 - n. as may be otherwise specifically authorised in writing by the Department.

14. Dispute resolution

14.1. Procedure for dispute resolution

- 14.1.1. The parties agree that a dispute arising under this Contract will be dealt with as follows:
 - a. a party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
 - b. within 5 Business Days of the notice, the Contract Administrator and a senior representative of the Service Provider will meet and try to settle the dispute by direct negotiation between them;
 - c. if the parties are not able to resolve the dispute within a further 15 Business Days, the parties will refer the dispute to the Contract Authority and a more senior representative of the Service Provider who will meet and try to settle the dispute.
- 14.1.2. If the parties have been unable to resolve the dispute within 20 Business Days of the dispute being referred under clause 14.1.1.c;
 - a. the parties may agree to refer the dispute to mediation on terms to be agreed between the parties at the time; or
 - b. where the parties do not agree to refer the dispute to mediation or where the dispute remains unresolved after 20 Business Days of the dispute being referred to mediation, either party may commence legal proceedings in relation to the dispute.
- 14.1.3. Each party will bear its own costs of complying with this clause 14.

14.2. Continued performance

- 14.2.1. Despite the existence of a dispute, the Service Provider will (unless requested in writing by the Department not to do so) continue to perform the Services in accordance with the Contract to the extent possible.

14.3. Exemption

- 14.3.1. This clause 14 does not apply to:
 - a. action by the Department under or purportedly under clause 15;

- b. legal proceedings by either party seeking urgent interlocutory relief.

15. Termination

15.1. Termination without default

- 15.1.1. In addition to any right to terminate at law, the Department may by written notice at any time and in its absolute discretion:
 - a. terminate this Contract, in which case at least 4 weeks notice will be given; or
 - b. reduce the scope of the Services, in which case the notice will unless specified otherwise by the Department in the notice take effect immediately.
- 15.1.2. The Service Provider agrees, on receipt of a notice issued under clause 15.1.1:
 - a. to stop or reduce work as specified in the notice;
 - b. to take all available steps to minimise loss resulting from that termination or reduction; and
 - c. to continue work on any part of the Services not affected by the notice.
- 15.1.3. In the event of termination under clause 15.1, the Department will be liable only:
 - a. to pay any fees relating to Services completed before the effective date of termination; and
 - b. to reimburse any expenses the Service Provider unavoidably incurs relating entirely to Services not covered under clause 15.1.3.a including for the avoidance of doubt any demobilisation costs reasonably incurred.
- 15.1.4. The Department will not be liable to pay amounts under clause 15.1.3.a and 15.1.3.b which would, added to any fees already paid to the Service Provider under this Contract, together exceed the fees set out in Schedule 2 [Fees and Payment].
- 15.1.5. In the event of a reduction in the scope of the Services under clause 15.1, the Department's liability to pay fees under clause 8 will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Services.
- 15.1.6. The Service Provider will not be entitled to compensation for loss of prospective profits.

15.2. Termination for default

- 15.2.1. In addition to any right to terminate at law, if the Service Provider fails to perform any obligation under this Contract, the Department - if it considers that the failure is:
 - a. not capable of remedy – may, by notice, terminate this Contract immediately;
 - b. capable of remedy – may, by notice require that the failure be remedied within the time specified in the notice (being a reasonable period having

regard to the circumstances of the failure) and, if not remedied within that time, may terminate this Contract immediately by giving a second notice.

- 15.2.2. The Department may also, by notice, terminate this Contract immediately (but without prejudice to any prior right of action or remedy which the Department has or may have) if the Service Provider:
- a. being a corporation, comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001*, or an order has been made for the purpose of placing the corporation under external administration; or
 - b. being an individual, becomes bankrupt or enters into a scheme of arrangement with creditors.

15.3. Transition out

- 15.3.1. If this Contract is terminated for any reason, the Service Provider must comply with any reasonable directions issued by the Department to achieve an orderly transition of the Services to the Department or an alternative provider. A transition out plan must be provided to the Department within 6 months of the Execution Date.

16. Notices

16.1. Format, addressing and delivery

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

- a. if given by the Service Provider to the Department - addressed to the Contract Administrator at the address specified in the definition of Contract Administrator under clause 1 or as otherwise notified by the Department; or
- b. if given by the Department to the Service Provider - given by the Contract Administrator (or any superior officer to the Contract Administrator) and addressed to (and marked for attention) of:

Commercial, Strategy and Systems Director

Transfield Services (Australia) Pty Ltd
Level 10, 110 Pacific Highway
North Sydney, NSW, 2060

- 16.1.2. A notice is to be:
- a. signed by the person giving the notice and delivered by hand; or
 - b. signed by the person giving the notice and sent by pre-paid post; or
 - c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

16.2. When effective

- 16.2.1. A notice is deemed to be effected:
- a. if delivered by hand - upon delivery to the relevant address;
 - b. if sent by post - upon delivery to the relevant address;
 - c. if transmitted electronically - upon actual receipt by the addressee.
- 16.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

17. General provisions

17.1. Excusable performance failure

- 17.1.1. Where an Excusable Performance Failure Event occurs, the Service Provider must immediately notify the Department in writing of the event specifying:
- a. the nature of, reason(s) for, and estimated duration of the Excusable Performance Failure Event; and
 - b. the obligations and Key Performance Measures affected by it and the extent of its effect.

A copy of any notice issued under this clause must be provided at the same time it is issued to the Department Operations Team Leader.

- 17.1.2. The Department will notify the Service Provider whether it accepts that an Excusable Performance Failure Event has occurred and the extent of its effect.

- 17.1.3. Where the Department accepts that an Excusable Performance Failure Event has occurred and the extent of its effect, subject to the Service Provider's compliance with its obligations under this clause, the Service Provider's obligations under this Contract and the relevant Key Performance Measures are suspended for so long as and to the extent they are affected by the Excusable Performance Failure Event (Excusable Performance Failure Period) and no failure or omission by the Service Provider to perform or meet a suspended obligation or Key Performance Measure during the Excusable Performance Failure Period will be a breach of this Contract or [REDACTED] under the Performance Management Framework.

- 17.1.4. During the Excusable Performance Failure Period, the Service Provider must:
- a. use its reasonable endeavours to remove, overcome or minimise the effects of that Excusable Performance Failure Event as quickly as possible;
 - b. continue providing the Services and complying with its obligations under this Contract and meeting the Key Performance Measures not affected by the Excusable Performance Failure Event;
 - c. implement and comply with the processes and procedures set out in the Performance Management Framework relating to the management of Excusable Performance Failure Events;

- d. provide the Department Operations Team Leader with daily updates on the Excusable Performance Failure Event and its impact on the performance or meeting of any suspended obligations or Key Performance Measures; and
- e. notify the Department in writing as soon as the Excusable Performance Failure Period ceases.

17.2. Conflict of interest

- 17.2.1. In this clause 17.1, **Conflict** means any matter, circumstance, interest, or activity affecting the Service Provider, its Personnel or subcontractors which may or may appear to impair the ability of the Service Provider to provide the Services to the Department diligently and independently.
- 17.2.2. The Service Provider warrants that, to the best of its knowledge after making diligent inquiry, at the Execution Date no Conflict exists or is likely to arise in the performance of the Services.
- 17.2.3. If, during the period of this Contract, a Conflict arises, or appears likely to arise, the Service Provider agrees:
 - a. to notify the Department immediately;
 - b. to make full disclosure of all relevant information relating to the Conflict; and
 - c. to take any steps the Department reasonably requires to resolve or otherwise deal with the Conflict.

17.3. Work health and safety

- 17.3.1. The Service Provider must at all times:
 - a. comply with, and ensure that its Personnel and subcontractors comply with WHS Law in the provision of the Services;
 - b. co-operate and ensure its Personnel and subcontractors co-operate as required with the Department in the Service Provider's performance of its work health and safety obligations under WHS Law, including participating in any consultation and representation required by the Department;
 - c. prepare and provide any report required under the WHS Law to the Department;
 - d. comply with any direction or requirement of the Department in relation to work health and safety;
 - e. not permit any act or omission that causes or may cause the Department to be in breach of the WHS Law;
 - f. immediately notify the Department of any notifiable incident as defined in the WHS Law; and
 - g. immediately notify the Department of any circumstance which may give rise to a work health and safety risk or a failure by the Service Provider, its Personnel, subcontractors or the Department to comply with WHS Law.

17.4. Privacy

- 17.4.1. The Service Provider agrees, in providing the Services:
- a. not to do any act or engage in any practice which, if done or engaged in by the Department, would be a breach of an Australian Privacy Principle; and
 - b. to comply with any directions, guidelines, determinations or recommendations specified by the Department, to the extent that they are consistent with the Australian Privacy Principles.
- 17.4.2. The Service Provider agrees to notify the Department immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 17.4.

17.5. Audit and access

- 17.5.1. The Service Provider agrees:
- a. to give the Contract Administrator, or any persons authorised in writing by the Contract Administrator, access to premises where the Services are being performed or where Official Resources are located; and
 - b. to permit those persons to inspect and take copies of any material relevant to the Services.
- 17.5.2. The rights referred to in clause 17.5.1 are subject to:
- a. the Department providing reasonable prior notice;
 - b. the reasonable security procedures in place at the premises; and
 - c. if appropriate, execution of a deed of confidentiality by the persons to whom access is given.
- 17.5.3. The Auditor-General and Information Officer (including their delegates) are persons authorised for the purposes of this clause 17.5.

17.6. Access to documents

- 17.6.1. In this clause 17.6, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982 (Cth)*.
- 17.6.2. The Service Provider acknowledges that this Contract is a Commonwealth contract.
- 17.6.3. Where the Department has received a request for access to a document created by, or in the possession of, the Service Provider or any subcontractor that relates to the performance of this Contract (and not to the entry into the Contract), the Department may at any time by written notice require the Service Provider to provide the document to the Department and the Service Provider must, at no additional cost to the Department, promptly comply with the notice.
- 17.6.4. The Service Provider must include in any subcontract relating to the performance of this Contract provisions that will enable the Service Provider to comply with its obligations under this clause 17.6.

17.7. Relationship of parties

17.7.1. The Service Provider is not by virtue of this Contract an officer, employee, partner or agent of the Department, nor does the Service Provider have any power or authority to bind or represent the Department.

17.7.2. The Service Provider agrees:

- a. not to misrepresent its relationship with the Department; and
- b. not to engage in any misleading or deceptive conduct in relation to the Services.

17.8. Waiver

17.8.1. A failure or delay by a party to exercise any right or remedy it holds under this Contract or at law does not operate as a waiver of that right.

17.8.2. 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.

17.9. Variation

17.9.1. The Department may, including in response to a suggestion from the Service Provider, request that the Service Provider develop a change proposal to address a proposed variation to the Contract. The Service Provider will prepare a contract change proposal, outlining the impact on the Contract of the proposed variation, including on Schedule 1 [Statement of Work] and Schedule 2 [Fees and Payment]. The parties will discuss any contract change proposal in a timely manner.

17.9.2. For the avoidance of doubt, this clause 17.9 will apply where there has been a change in any law or regulatory requirement that applies to the Services or this Contract where the change has a material impact on the provision of the Services or the performance of the obligations under this Contract and the change could not have been reasonably contemplated by an experienced service provider.

17.9.3. A variation of this Contract is binding only if agreed in writing and signed by the Parties.

17.10. Assignment

17.10.1. The Service Provider cannot assign its obligations, rights or interests under this Contract, or novate this Contract, without prior written approval by the Department.

17.10.2. The Department will not withhold its prior written approval if the Service Provider intends to fully assign its obligations, rights or interests under this Contract, or fully novate this Contract, to a subsidiary or related body-corporate.

17.10.3. The Department and Service Provider must discuss (in good faith) any intention by the Service Provider to partially assign its obligations, rights or interests under

this Contract, or partially novate this Contract, to a subsidiary or related body-corporate.

- 17.10.4. The Department may require the Service Provider (as a condition precedent for full or partial assignment and/or novation of this Contract) to execute:
- a. a performance guarantee in relation to the performance of all or partial obligations in this Contract (refer to Schedule 7); and/or
 - b. a deed of novation to fully or partially novate this Contract from the Service Provider to the subsidiary or related body-corporate (refer to Schedule 8).

- 17.10.5. The Service Provider must reimburse the Department for any unavoidable and reasonable costs associated with full or partial assignment and/or novation of this Contract.

17.11. Survival

- 17.11.1. Unless the contrary intention appears, the expiry or earlier termination of this Contract will not affect the continued operation of any provision relating to:

- a. confidentiality;
- b. privacy;
- c. intellectual property;
- d. audit and access;
- e. an indemnity;

or any other provision which expressly or by implication from its nature is intended to continue.

17.12. Applicable law

- 17.12.1. This Contract is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.

- 17.12.2. The parties submit to the jurisdiction of the courts of that Territory.

17.13. Step in Rights

- 17.13.1. At any time if:

- a. the Department is entitled under clause 15 to terminate this Contract; or
- b. the Secretary considers that circumstances exist which require the Department's intervention,

the Department may, in its absolute discretion, suspend the performance of any service by the Service Provider, arrange for the Department or a third party to perform such suspended service or otherwise intervene in the provision of the Services by giving written notice to the Service Provider (Step-in Right).

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

- 17.13.3. The Service Provider must cooperate with the Department during the period that it exercises a Step-in Right by (but not limited to) ensuring compliance by the Service Provider and its Personnel with all directions given by the Department.
- 17.13.4. Nothing in this clause 17.13 obliges the Department to exercise the powers given under this clause 17.13.
- 17.13.5. The exercise of the powers under this clause is without prejudice to any other rights the Department may have to enforce or terminate this Contract.

Executed by **the Commonwealth of Australia represented by Department of Immigration and Border Protection** by its duly authorised delegate:

..... Signature of witness Signature of delegate
..... Name of witness (print) Name of delegate (print)
 Position of delegate (print)

Executed by **Transfield Services (Australia) Pty Ltd**
by its duly authorised representative:

..... Signature of witness Signature of authorised representative
..... Name of witness (print) Name of authorised representative (print)
 Position of authorised representative (print)

SCHEDULE 1 STATEMENT OF WORK

PART 1: NATURE OF THE SERVICES

1. General background and nature of services

1.1. Background

- 1.1.1. The Department has a requirement for the provision of garrison and welfare services, outlined in this Schedule, to Transferees and Personnel at Offshore Processing Countries (OPCs). The Department has a key role in developing and implementing an appropriate and sustainable offshore processing model (Offshore Processing) as part of the regional solution to combat people smuggling (Operation Sovereign Borders). The model will support the government policy that all people arriving in Australia by boat will be transferred to an Offshore Processing Country. This will include appropriate accommodation and services including enhanced medical facilities onsite.
- 1.1.2. The Department is working to design, develop and facilitate an efficient and effective model for infrastructure and services to support Offshore Processing both in the Manus Province, Papua New Guinea (PNG), and the Republic of Nauru (Nauru). The focus is on an end to end process, encompassing transfers, coordination and logistical services, governance, Offshore Processing Centre (OPC) services, refugee determination assessment and review and outcomes, removals and returns and settlement in host countries. Host governments are responsible for in-country arrangements and operations with support being provided by the Australian government.
- 1.1.3. A key requirement for the Service Provider is achieving innovation and efficiency in service delivery and to enhance value for money for the Commonwealth.
- 1.1.4. Security infrastructure at existing sites will be improved and security arrangements are to be enhanced to reduce the risk of damage from major disturbance such as occurred on 19 July 2013 on Nauru. The Service Provider is expected to put in place policies and procedures to support security enhancements and to minimise tensions at OPCs.
- 1.1.5. The parameters within which Offshore Processing will operate include Australian and Host country legislation, Ministerial directions, Joint Agency Task Force (JATF) arrangements, Regional Resettlement Arrangement Memoranda of Understanding and Regional Resettlement Arrangement Administrative Arrangements. Australia's international obligations, such as the United Nations Refugee Convention and Convention on the Rights of a Child, also provide parameters.
- 1.1.6. The longer term objective is to support Regional Processing Countries to manage and administer the suite of Offshore Processing activities with a view to them becoming increasingly independent in this regard.
- 1.1.7. In addition, the development of supporting infrastructure and services in Regional Processing Countries will contribute to their nation building. Alignment

with stakeholders' expectations is therefore critical and an effective working relationship with the respective governments of Nauru and PNG needs to be maintained.

- 1.1.8. The current focus for the Department is on rapidly increasing OPC infrastructure, operations and service capacity to support and effect an increase in Transferee numbers. Manus Province is to accommodate 2400 Transferees and Nauru 3200 Transferees. A description of the Sites (including indicative capacity) requiring services is outlined below:

Nauru

- a. Marquee-style temporary accommodation at both OPC2 (1300 beds) and OPC3 (1900 beds) and accommodation for at least 900 staff at various sites including OPC1.

PNG

- b. 2400 Transferee beds in marquee style accommodation at Lombrum Naval Base and accommodation for approximately 800 Personnel.
- c. A high security facility in Lombrum for up to 600 Transferees who receive a negative refugee status determination. The Service Provider should note that Services for this facility will be provided as agreed between the parties.

Other Sites (currently not requiring services under the scope of this contract)

- d. A 600 bed site or smaller sites comprising a similar quantity of accommodation on Nauru suitable to house those families whose claims have been found to engage Nauru's protection but for whom accommodation on Nauru is not yet available.
- e. At East Lorengau in Manus Province, re-scope the currently approved OPC to provide 750 beds for single adult men who have been found to engage PNG's protection but settlement places are not yet available.

- 1.1.9. OPCs accommodate individuals in accordance with the Minister's direction under s 198AD(5) of the Migration Act 1958 of 29 July 2013. At this stage, Manus accommodates Single Adult Males (SAMs) only whereas Nauru accommodates SAMs, families, single adult females and it is expected, in due course, unaccompanied minors. It will be important that services are able to scale up and down in an effective and timely manner to meet forecasted requirements.

- 1.1.10. Offshore Processing is subject to significant scrutiny and the Service Provider is required to liaise with stakeholders and manage expectations effectively.

- 1.1.11. The Service Provider must perform the Services in a manner that is:
- a. adaptable to and readily accommodates changes in Commonwealth policy during the term of the Contract to ensure that the Services are delivered in accordance with Commonwealth policy;
- b. appropriate to the individual needs of each Transferee; and

- c. adaptable to and readily accommodates changes in Transferee numbers (which may significantly increase or decrease during the term of the Contract).

1.2. Provision of works and services in Papua New Guinea (PNG) and Nauru

- 1.2.1. The Service Provider must hold all necessary local PNG and Nauru company registration and accreditation requirements to be able to carry on business in PNG and Nauru.
- 1.2.2. The Service Provider will provide Services that are the best available in the circumstances, and utilising facilities and Personnel on the Sites and that as far as possible (but recognising any unavoidable limitations deriving from the circumstances of the Sites) are broadly comparable with services available within the Australian community.
- 1.2.3. The Service Provider should note that the Australian Government is committed to promoting employment and training opportunities for local PNG and Nauruan people and businesses.
- 1.2.4. The Service Provider is required to identify and provide training and employment opportunities to local people and to demonstrate that best efforts have been undertaken to engage local contractors to the maximum extent possible within the parameters of the services.

1.3. Stakeholder management

- 1.3.1. The Service Provider will have significant stakeholder management and consultation requirements including with the Department and PNG and Nauruan government authorities. The Service Provider must adopt a collaborative approach to the complex stakeholder and governance issues.

1.4. Service Provider Personnel

- 1.4.1. The Service Provider is responsible for ensuring that the Personnel levels at each Site are adequate to deliver the Services.
- 1.4.2. The Service Provider must engage with the local community to employ local personnel or subcontract local businesses who meet the requirements of this Statement of Work. The following levels of local personnel should be maintained as a minimum:

<i>Service</i>	<i>Percentage</i>
██████████	████
██████████	████
██████████	████
██████████	████

- 1.4.3. Where local capacity exists, the Service Provider is required to utilise this capacity as far as possible.
- 1.4.4. The Service Provider must ensure that all Personnel:
- i. are, and remain, of good character and good conduct;
 - ii. have a current 'working with children' check or certificate, where required from an Australian jurisdiction or equivalent from the Australian Federal Police or, in the case of any local Personnel, where any similar check or certificate is required by local law taking into account the nature of their involvement in the Services, such check or certificate;
 - iii. are considered suitable by the Department having regard to any issues identified in an Australian Federal Police background check and brought to the attention of the Department;
 - iv. undergo induction and orientation training that complies with the Department requirements when commencing employment with the Service Provider or starting work in relation to the Services;
 - v. are appropriately skilled, trained and qualified to provide the Services described in this Statement of Work;
 - vi. are authorised, registered or licensed in accordance with any applicable regulatory requirements for the purposes of or incidental to the performance of the Services;
 - vii. possess all relevant industry body, supplier, manufacturer accreditation or scheme memberships and professional association membership that might be reasonably expected of providers of the Services, and produce evidence of such authorisation, registration, license, accreditation or membership to the Department upon request at any time during the term of this Agreement; and
 - viii. will be subject to internal disciplinary processes.

1.5. Offshore Processing Guidelines

- 1.5.1. The Service Provider must, in collaboration with other relevant service providers, develop Offshore Processing Centre Guidelines (OPC Guidelines). The Service Provider's contribution to the OPC Guidelines shall be limited to only such matters as are relevant to the scope of services being provided by the Service Provider under this Agreement.
- 1.5.2. The Service Provider must provide a draft version of its contribution to the OPC Guidelines to the Department for review/approval.
- 1.5.3. The Service Provider must amend its draft section of the draft OPC Guidelines (as directed by the Department) and provide the amended/updated draft version to the Department for review/approval.

- 1.5.4. The Service Provider must not implement the OPC Guidelines until it receive prior written approval from the Department.
- 1.5.5. The Service Provider must ensure that its Personnel receive timely and adequate training and/or information about the OPC Guidelines.
- 1.5.6. The Service Provider must (in conjunction with other relevant service providers) complete a review of the OPC Guidelines upon each 12-month anniversary of the Execution Date of this Contract.
- 1.6. Service Provider Personnel Medical Screening & Immunisation**
- 1.6.1. The Service Provider must ensure its Personnel and Australian-based Subcontractors complete and pass a medical screening consistent with accepted industry standards prior to initial deployment to the Regional Processing Countries (or as soon as possible once persons are deployed to the Regional Processing Countries).
- 1.6.2. The Service Provider must ensure its Personnel and Australian-based Subcontractors receive appropriate immunisations for the location in which they will work as advised by a qualified medical practitioner (or directed by the Department) prior to initial deployment to the Regional Processing Countries (or as soon as possible once persons are deployed to the Regional Processing Countries).
- 1.7. Service Provider Personnel Mental Health Training**
- 1.7.1. The Service Provider must develop and implement a training programme for its Personnel and Australian-based Subcontractors that addresses the Department's Psychological Support Program policy (PSP) and any other mental health and wellbeing policy (as notified by the Department from time to time).
- 1.7.2. The Service Provider must ensure that the training programme for the PSP and other mental health and wellbeing policy reflects amendments to the respective policy as notified by the Department.
- 1.7.3. The Service Provider must ensure its Personnel and Australian-based Subcontractors complete PSP training programme prior to initial deployment to the Regional Processing Countries (or as soon as possible once persons are deployed to the Regional Processing Countries).
- 1.7.4. The Service Provider must (if directed by the Department) participate in any quality assurance and/or evaluation activity that relates to the Service Provider's training programme for the PSP and other mental health and wellbeing policy.
- 1.7.5. Notwithstanding any other provision of the Contract, Schedule 2 [Fees and Payment] does not include the Service Provider's fees, costs or expenses for providing the services described in this clause 1.7. The fees, costs and expenses to be paid to the Service Provider for such services shall be as agreed or where not so agreed, determined by the Department having regard to reasonable rates and prices (including profit and overhead).

PART 2 TRANSFEREE WELFARE SERVICES

1. General Services

1.1. Overview

- 1.1.1. The Service Provider is required to provide and assist with a range of Transferees Services at the Sites, and facilitate and encourage Transferees to access these Services.
- 1.1.2. All Service delivery decisions taken by the Service Provider will take account of the individual needs of Transferees, and will aim to improve health, welfare and well-being outcomes for each Transferee.
- 1.1.3. The Service Provider will provide a range of Services to promote the welfare and well-being of Transferees and create an environment that supports security and safety at the Site.
- 1.1.4. The Service Provider is required to take reasonable steps to ensure that it and all its Personnel treat Transferees equitably and fairly, with dignity and respect.
- 1.1.5. The Service Provider is required to focus on the well-being of each Transferee and will make every effort to ensure visits from support groups are facilitated, while maintaining safety of all Transferees.
- 1.1.6. The Service Provider will encourage interaction between Transferees, where safe and appropriate.
- 1.1.7. The Service Provider will develop and facilitate activities to enhance the ongoing emotional and mental health of each Transferee.

2. Individual Management

2.1. General

- 2.1.1. The Service Provider is required to:
 - a) promote and maintain an environment conducive to the health and welfare of Transferees where the needs of Transferees are identified and responded to openly and with integrity;
 - b) establish processes to prevent Transferees being subjected to illegal and anti-social behaviour and, where such behaviour becomes apparent, to deal with the issues cooperatively with the local authorities, the Department and other Service Providers;
 - c) promote a culture in which Personnel interact with Transferees on a regular basis in both formal and informal settings, developing trust and effective communication channels in undertaking their duties;
 - d) take all reasonable steps to ensure all interaction between Personnel and Transferees is conducted in a culturally appropriate manner; and
 - e) ensure all interaction between Personnel and Transferees is conducted in a professional manner.

2.2. Interaction with Transferees

2.2.1. The Service Provider is required to implement and support:

- a) policies and procedures at the Site that promote high levels of positive and culturally sensitive interaction between Personnel and Transferees to deliver a healthy environment and assist Transferees to achieve greater self-sufficiency over their daily routine in preparation for post-release;
- b) policies and procedures that set out the standards and qualities the Service Provider expects of its Personnel when they interact with Transferees, other Service Providers and stakeholders, including:
 - i. Personnel being required to clearly identify themselves when communicating with Transferees, other Service Providers and other stakeholders including wearing a name badge; and
 - ii. supporting Personnel to develop communication skills to interact and communicate with Transferees, other Service Providers and other stakeholders in a positive and effective manner.

2.2.2. The Service Provider must ensure that all Personnel:

- a) read, sign and understand the code of conduct and confidentiality forms provided by the Department before commencing duty in the Site;
- b) maintain regular contact with Transferees;
- c) coordinate access by Transferees to available Services;
- d) proactively manage issues relating to Transferees as they arise and before they impact on the Transferee's well-being or that of other Transferees in the Site; and
- e) document and report any matters they consider material to the welfare of Transferees in individual management plans and advise the Department.

The Service Provider must ensure that its Personnel do not provide any form of advice in relation to the visa status or other migration related matters of any Transferee. The Service Provider should also ensure that their Personnel are aware of government policies and that all communications with Transferees are consistent with these policies.

2.3. Individual management plans

2.3.1. The Service Provider is required to develop and implement Individual Management Plans for each Transferee in line with Departmental Guidelines issued from time to time.

2.3.2. The Service Provider is required to review Individual Management Plans in line with Department Guidelines issued from time to time.

2.3.3. The Service Provider is required to ensure that each Individual Management Plan:

- a) identifies and tailors ongoing care and services required for the wellbeing of each Transferee; and
- b) maintains a historical record of the care and services provided to Transferees.

2.4. Case Management Training

- 2.4.1. The Service Provider is required to develop and provide case management Personnel with appropriate training prior and during deployment to a RPC.
- 2.4.2. Case Management training must be implemented as soon as possible and finalised Case Management material will be provided to the Department six weeks after Contract Execution for approval by the Department.

2.5. Transferee Records

- 2.5.1. The Service Provider is responsible for the development and management of Transferee Records. Other Service Providers will contribute information for inclusion in the Transferee Records.
- 2.5.2. The Service Provider is required to develop and implement a Transferee Records management system for use by all Service Providers. The Service Provider and the Department will develop guidelines that set out in more detail the minimum requirements that are to be met by the Transferee Records management system ('Transferee Records Guidelines') including:
 - a) minimum categories of information to be recorded;
 - b) timeframes for updating Transferee Records;
 - c) reporting and data analysis, including frequency and format of standard reporting templates; and
 - d) format and processes for the transfer of data to the Department at regular intervals during the Term and at the expiration or termination of the Contract.
- 2.5.3. The Service Provider must ensure that other Service Providers and their Personnel are provided with training in the use of the Transferee management system.
- 2.5.4. The Service Provider is required to ensure that all relevant information relating to a Transferee is recorded in the management system in a timely manner in accordance with the Transferee Records Guidelines to assist with Transferee welfare and management of the Site.
- 2.5.5. The Service Provider is required to, on request from the Department and otherwise in accordance with the Transferee Records Guidelines, promptly provide reports and other information from the Transferee Records management system.
- 2.5.6. The Service Provider acknowledges that all Transferee information is accessible by the Department at all times, at request by the Department.

2.6. Referral of Transferee identity issues

- 2.6.1. The Service Provider has a duty of care to immediately refer any doubts or concerns regarding a Transferee's identity to the Department.
- 2.6.2. Where the Service Provider identifies that a Transferee that claimed to be 18 or over is under the age of 18, the provider must inform the Department and manage that Transferee in accordance with any Department instructions.

2.7. Provision of Services to people under the age of 18

- 2.7.1. The Service Provider is required to, in addition to the Services outlined elsewhere in this Schedule, take all reasonable steps to ensure that the best interests of any child/children are taken into account when performing or delivering Services involving children.

2.8. Families with children

- 2.8.1. The Service Provider will provide support to other Service Providers in delivering specialised services for the care and wellbeing of Transferee families with children.
- 2.8.2. The Service Provider will provide support to other Service Providers for Transferee families with children to understand and exercise parental responsibility while accommodated at the Site.

2.9. Health of Transferees

- 2.9.1. The Service Provider must ensure that any Transferee who requests, or appears to be in need of medical attention, is referred for appropriate medical attention.
- 2.9.2. Where it appears that a Transferee requires emergency medical attention, the Service Provider must:
- a) provide first aid by suitably qualified Personnel;
 - b) seek emergency medical attention for the Transferee immediately, including arranging for transport of the Transferee to the nominated medical facility at the Department's cost;
 - c) inform the Service Provider responsible for health services of the Transferee's condition as soon as the initial response is complete; and
 - d) inform the Department of the Transferee's condition as soon as the initial response is complete.

2.10. Transferees under the influence of drugs or alcohol

- 2.10.1. The Service Provider is required to:
- a) ensure that a Transferee who appears to be under the influence of drugs or alcohol is supervised by Personnel until the Transferee appears to be no longer affected; and
 - b) refer the Transferee for assessment by the Health Service Provider within 12 hours, unless emergency medical attention is required.

2.11. Mental health awareness

- 2.11.1. The Service Provider is required to ensure all relevant Personnel attend mental health awareness training provided by the Department.

2.12. Behavioural management of Transferees

- 2.12.1. The Service Provider is required to develop a behavioural management strategy within six (6) weeks of execution of the Contract for submission to the Department for approval. The strategy will include:

- a) agreed behavioural management strategies for an Incident or unforeseen event requiring immediate intervention; and
 - b) agreed behavioural management strategies that aim to defuse tensions and conflict before they escalate or become serious or violent, or to manage behaviour following an Incident or unforeseen event.
- 2.12.2. The Service Provider is required to take the lead on the implementation of agreed behavioural management strategies during an Incident, or any unforeseen event which requires immediate intervention, which may include, but is not limited to, placement in managed accommodation.
- 2.12.3. The Service Provider is required to implement agreed behavioural management strategies that aim to defuse tensions and conflict before they escalate or become serious or violent, or to manage behaviour following an Incident or unforeseen event.
- 2.12.4. The Service Provider must develop and implement Behavioural Management Plans in line with Department Guidelines issued from time to time.
- 2.12.5. The Service Provider is required to review Behavioural Management Plans in line with Department Guidelines issued from time to time.

2.13. Managed Accommodation

- 2.13.1. The Service Provider is responsible for the establishment of and provision of Services at Managed Accommodation at OPCs, including:
- a) the decision to place or remove a Transferee in Managed Accommodation in consultation with other Service Providers and the Department;
 - b) maintenance, cleaning and catering;
 - c) provision of welfare services; and
 - d) provision of security services.
- 2.13.2. The Service Provider is responsible for developing procedures for the provision of Services at the Managed Accommodation, to be approved by the Department.

2.14. Illegal and anti-social behaviour

- 2.14.1. The Service Provider is required to develop and implement processes, in cooperation with the Department, local authorities and other Service Providers, for managing instances where Transferees are engaged in behaviour that is illegal, has breached the rules applicable at the Site or is anti-social in nature.
- 2.14.2. For the purposes of this clause undesirable behaviours may include:
- a) bullying;
 - b) verbal abuse;
 - c) sexual or other forms of harassment;
 - d) assault;
 - e) malicious destruction of property; and
 - f) possession of weapons or illegal drugs.
- 2.14.3. The Service Provider is required to communicate the Site policy on anti-social behaviour to all Transferees during the induction process.

2.14.4. Where the Service Provider has identified, or suspects, that a Transferee has engaged in illegal, non-compliant or antisocial behaviour, the provider must immediately inform the Department and other relevant service providers and develop and implement behavioural management strategies, as specified in Clause 2.12 of this Schedule 1, for:

- a) dealing with the perpetrator(s);
- b) preventing recurrence;
- c) the recording of details of and responses to known or suspected instances of individual illegal, non-compliant or antisocial behaviour by Transferees; and
- d) ensuring that Transferees identified as victims of anti-social behaviour are supported by Personnel and other Service Providers, with relevant details recorded.

2.14.5. The Department is responsible for involving the police or other authorities as required, except where reporting is mandatory under the law.

2.15. Complaints Management System

2.15.1. The Service Provider will provide Transferees in their care access to a complaints procedure whereby issues of concern can be resolved effectively, fairly and efficiently.

2.15.2. The Service Provider is required to develop and implement a Complaints Management System within 10 days of execution of the contract and to respond to all Transferee complaints within a reasonable timeframe, as approved by the Department.

2.15.3. The Service Provider is required to allocate complaints to other Service Providers, where appropriate, and coordinate responses from other Service Providers to meet a reasonable timeframe.

2.15.4. Transferee complaints will be treated with confidentiality and integrity, and no Transferee will be prevented from providing their complaint to an external party.

2.15.5. The Service Provider will develop a complaints handling process, including:

- a) promoting informal early rectification of issues;
- b) referring complaints to relevant stakeholders; and
- c) responding in a timely manner to transferees.

2.16. Private interview rooms

2.16.1. The Service Provider will:

- a) where possible, facilitate Transferee contact in a private interview room with the Australian and relevant RPC government officials and representatives; and
- b) where possible, facilitate contact in a private interview room with any other visitor approved by the Department

3. Programmes and activities

3.1. Overview

- 3.1.1. The Service Provider is required to:
- a) develop, manage and deliver structured and unstructured programmes and activities designed to provide educational and recreational opportunities, and provide meaningful activities that will enhance the mental health and wellbeing of individuals accommodated at the Site;
 - b) develop strategies to encourage Transferees to participate in programmes and activities, but enable Transferees at the Site to determine their own level of participation and involvement;
 - c) ensure programmes and activities cater for the diverse needs of Transferees;
 - d) take feedback from Transferees into account when developing programmes and activities;
 - e) arrange, in accordance with the procedures for the sourcing of equipment advised by the Department, for the supply of equipment required to support the activities; and
 - f) ensure suitably qualified Personnel are provided to support the activities.
- 3.1.2. The Service Provider is required to develop a consolidated Programmes and Activities Plan that sets out in more detail the programmes and activities that meet the requirements of this Statement of Work and the processes that will be used to monitor compliance with these requirements within 10 days of execution of the Contract.
- 3.1.3. The Service Provider must update the Programmes and Activities Plan on a quarterly basis.
- 3.1.4. The Programmes and Activities Plan will include the following programme and activity programme areas:
- a) education programme;
 - b) religious programme;
 - c) recreation programme;
 - d) sporting programme; and
 - e) excursions.
- 3.1.5. The Service Provider is required to provide a Programmes and Activities Schedule to the Department on a monthly basis, which outlines the consolidated programmes and activities available to Transferees.
- #### **3.2. Education Programme**
- 3.2.1. The Service Provider is required to develop and implement a robust education programme, which provides Transferees an opportunity to develop and learn a range of skills including English language skills.
- 3.2.2. The Service Provider is required to develop an Education Programme Plan.

3.3. Religious Programme

- 3.3.1. The Service Provider must ensure all Transferees are free to practice their religion of choice individually or communally in accordance with Departmental guidelines issued from time to time and subject to the overriding safety and security of Transferees.
- 3.3.2. The Service Provider will provide religious services to Transferees including religious activities and cultural liaison, transport to and from the religious service and appropriate equipment for use during the religious service.
- 3.3.3. The Service Provider is required to develop and update a Religious Programme Plan.
- 3.3.4. The Service Provider is required to provide space for Transferees to practice all religious faith including religious classes.

3.4. Recreation Programmes

- 3.4.1. The Service Provider is required to provide opportunities for Transferees to participate in unstructured recreational activities within the OPC. This may include arts and crafts, chess, table tennis games and television.
- 3.4.2. The Service Provider is required to ensure adequate recreational equipment is available to Transferees.
- 3.4.3. Swimming may be offered as a recreational activity. The Service Provider will provide suitably qualified supervision of Transferees with varying swimming abilities to participate in activities in or near water.
- 3.4.4. The Service Provider is required to develop and update a Recreation Programme.

3.5. Sporting Programme

- 3.5.1. The Service Provider is required to provide opportunities for Transferees to participate in structured sporting activities both within and outside of the OPC. This may include soccer, cricket and volleyball.
- 3.5.2. The Service Provider is required to ensure adequate sporting equipment is available to Transferees.
- 3.5.3. The Service Provider is required to develop and update a Sporting Programme.

3.6. Excursions

- 3.6.1. The Service Provider is required to provide opportunities for Transferees to participate in structured excursions outside the RPC. This may include, but is not limited to, sporting tournaments, community activities and religious services.

- 3.6.2. The Service Provider will develop and update an Excursion Plan.
- 3.6.3. The Service Provider must work in collaboration with other Service Providers and the host country community in developing a schedule of excursions and encourage community participation.

3.7. Individual Allowance Programme and Canteen

- 3.7.1. The Service Provider is responsible for the operation and management of the Individual Allowance Programme (IAP) for Transferees in accordance with the guidelines issued by the Department from time to time.
- 3.7.2. The Service Provider is required to:
- a) stock and manage a shop that trades IAP points for items including, but not limited to, personal care products, telephone cards, stamps, writing paper, tobacco and snack food;
 - b) consider requests of Transferees when determining what items are to be stocked in the shop;
 - c) seek the Department's approval for all items available to Transferees at the canteen;
 - d) prominently display prices and opening hours in the shop, with signage in all relevant languages as appropriate to the Site's population; and
 - e) adequately stock the canteen to meet Transferee needs.
- 3.7.3. The Service Provider is responsible for managing all procurement associated with the operation of the canteen.

3.8. Gym

- 3.8.1. The Service Provider will provide fair and equitable Transferee access to a gymnasium, where available.
- 3.8.2. The Service Provider is required to develop a procedure for the equitable use and access to the gymnasium for all Transferees.
- 3.8.3. The Service Provider is required to support other Service Providers in the maintenance and security of gymnasium equipment, including a daily records log of gymnasium equipment.
- 3.8.4. All Personnel who supervise use of gymnasium facilities by Transferees are required to hold at least a Certificate III in gymnasium management or equivalent.

4. Reception, transfer and discharge of Transferees

4.1. General responsibilities

- 4.1.1. The Service Provider will coordinate the reception, transfer and discharge processes at the Site.
- 4.1.2. The Service Provider is required to:

- a) conduct reception processes upon the arrival of Transferees at the Site;
- b) provide transfer processes to ready a Transferee for transfer to other locations, advised by the Department;
- c) provide discharge processes in a manner that promotes the Transferee's well-being, dignity and safety;
- d) ensure that Transferees are regularly informed about what is happening to them in a language they understand through the use of interpreters provided by other Service Providers if required; and
- e) take primary responsibility for induction including provision of an induction booklet.

4.2. Processing times

4.2.1. The Service Provider is required to:

- a) ensure Personnel are available to undertake reception, transfer and discharge activities at any time;
- b) commence the reception process, immediately after a Transferee arrives at the Site and complete the reception process within 12 hours of their arrival at the Site;
- c) commence the induction processes as soon as reasonably practicable after the Transferee's arrival at the Site and complete the induction processes within two (2) days of the Transferee arriving at the Site - the induction process includes providing information regarding how the Site operates and explaining relevant policies, procedures and roles;
- d) undertake transfer and discharge processes in accordance with timeframes determined by the Department on a case by case basis; and
- e) undertake discharge processes immediately after the Service Provider is advised by the Department of a Transferee's release.

4.3. Reception

4.3.1. The Service Provider is required to:

- a) set up and manage a reception area;
- b) develop and implement a reception process and checklist;
- c) review, update and, if necessary, reissue identification cards to Transferees;
- d) ensure the reception process is coordinated with the Department and any other relevant stakeholders;
- e) ensure that Personnel involved in the reception process are specifically trained to manage the reception process in a non-threatening and threat-reducing way, with a focus on the well-being of Transferees at all times;
- f) ensure that before new Transferees arrive at the Site, culturally appropriate food is available and other Transferees at the Site are informed of the new arrival/s;
- g) record skills of Transferees;
- h) make available leaflets on the reception and induction processes in a range of languages to explain the reception and induction processes;
- i) offer food and drink and access to bathroom facilities and toiletries to Transferees upon admission to the Site; and
- j) provide a copy of reception reports to the Department within 48 hours of a Transferee being received at the Site.

- 4.3.2. The reception process will include providing clear information to Transferees regarding their right to complain and the process to be followed.

4.4. Transferee health induction assessment

- 4.4.1. The Service Provider will provide all necessary support to enable each Transferee to undergo a health induction assessment during the reception process in conjunction with other Service Providers.
- 4.4.2. Where a Transferee undergoes a health induction assessment, the Service Provider may request a summary of relevant and non-confidential health information about the Transferee from the health Service Provider for the Transferee Record, as soon as practicable. The health Service Provider will make a determination on what information is considered confidential.

4.5. Bedding, clothing, footwear and Items

- 4.5.1. The Service Provider must ensure each Transferee is allocated with the following items during the reception process:
- a) bedding that is clean and fit for purpose;
 - b) freshly laundered linen that is in good condition and suited to the local climate;
 - c) where required, clothing and footwear that is new, suited to the local climate and the Transferee's cultural needs;
 - d) a starter pack of toiletries that includes:
 - i. soap, shampoo and conditioner;
 - ii. toothbrush and toothpaste;
 - iii. hairbrush or comb;
 - iv. deodorant, moisturiser and talcum powder;
 - v. sanitary items (for female Transferees)
 - vi. razor and shaving cream (if required on a one for one basis);
 - vii. nail clippers;
 - viii. sunscreen and insect repellent; and
 - e) where required, information and equipment required for self-catering.
- 4.5.2. Bedding, clothing, footwear and self-catering items are to be replenished as required or to be purchased by IAP points in accordance with Departmental Guidelines issued from time to time.

4.6. Arrival phone call

- 4.6.1. As part of the induction process, the Service Provider must advise Transferees that they may make a telephone call to advise family, friends or other support networks of their arrival at the Site. The Service Provider will facilitate this phone call.

4.7. Transferees security risk assessment

- 4.7.1. During the reception process, and within 24 hours of arrival, the Service Provider must conduct a security risk assessment for each Transferee, which includes an examination of any previous risk assessments and information about the Transferee that might be provided by the Department or other government agencies.

4.7.2. The Service Provider may:

- a) use a Transferees security risk assessment framework provided by the Department; or
- b) develop and use an alternative framework, providing it has been developed in accordance with the AS NZS 4360:2004 Standard for Risk Management and approved by the Department.

4.7.3. The Service Provider is required to:

- a) review the security risk assessment for each Transferee at the Site monthly;
- b) re-assess the Transferee's security risk assessment after the Transferee has been involved in any disturbance or received information that may adversely impact on their disposition; and
- c) consider the Transferee's security risk assessment when developing individual management plans and when conducting accommodation placement reviews.

4.8. Induction Briefing

4.8.1. The Service Provider will develop and provide induction briefing information to Transferees, relevant to each Site including:

- a) a description of facilities and services that are available;
- b) the roles and responsibilities of the Department, Personnel and other Service Providers;
- c) how to communicate with Personnel;
- d) information on Transferees' committees and how to be involved;
- e) photographs or basic identifiers of key Personnel;
- f) which items are not permitted at the Site and why; and
- g) other relevant information as determined by the Service Provider or as notified by the Department.

4.9. Placement review

4.9.1. The Service Provider is required to:

- a) notify the Department, where the Service Provider believes that existing placement is inappropriate for the Transferee and include reasons why they formed this view; and
- b) record accommodation details for Transferees.

4.10. Stores Management

4.10.1. The Service Provider is required to provide fair and equitable Transferee access to a Store Room for replacement clothing and toiletries.

4.10.2. The Service Provider is required to develop a procedure for the allocation and replacement of clothing and toiletries, to be approved by the Department.

4.10.3. The Service Provider is required to support the effective procurement and stock of appropriate and climate specific clothing and toiletries.

4.11. Transfer

- 4.11.1. When notified by the Department, the Service Provider is required to support and prepare Transferees for transfer including:
- a) providing briefing notes for the next party that will take the Transferee into its care that outline any known management or behavioural issues relevant to the Transferee;
 - b) ensuring that the Transferee's security risk assessment has been reviewed and updated;
 - c) ensuring that medications and other essential items are prepared, in consultation with the health Service Provider;
 - d) ensuring that all personal property of the Transferee is transferred with the Transferee and the Transferee signs an agreement for this to occur;
 - e) ensuring that all hard copy Transferee Records are provided to the escort for transfer to the same destination as the Transferee;
 - f) taking all reasonable steps to ensure that the Transferee has been provided with clothing that is appropriate for the journey and the destination climate; and
 - g) cooperating with the Department and any other stakeholders involved in the transfer process.

4.12. Discharge

- 4.12.1. When notified by the Department, the Service Provider is required to support the preparation of a Transferee for discharge from the Site including:
- a) confirming that the identity of the Transferee matches that in the Department's documentation;
 - b) taking all reasonable steps to ensure the Transferee has been provided with clothing appropriate to the journey and destination climate; and
 - c) ensuring all personal belongings are returned to the Transferee on discharge, or the Transferee's escort if required by the Department.

4.13. Discharge for return

- 4.13.1. When notified by the Department that a Transferee is being returned, the Service Provider must:
- a) update the Transferee's security risk assessment before they travel and complete the Service Provider assessment of a Transferee for aviation travel;
 - b) organise packing and weighing of the property of Transferees; and
 - c) assist the Department and any other Service Providers or government officials to facilitate the return.

5. Property of Transferees

5.1. General

- 5.1.1. The Service Provider is required to develop and implement a procedure to:
- a) inform Transferees of the procedures for management of their property;
 - b) manage the secure storage of:

- i. all property of Transferees provided voluntarily by the Transferee for storage; and
- ii. all excluded Items.

5.2. Storage of and access of Transferees property

5.2.1. The Service Provider is required to develop and implement a procedure to:

- a) securely and separately store Transferees property;
- b) document all property of the Transferee which has been handed to the Service Provider for storage;
- c) provide Transferees with a receipt for all property that is to be stored by the Service Provider;
- d) provide Transferees with access to their property, while ensuring they do not have access to excluded Items ; and
- e) maintain a register to record all access to the secure store and ensure that all access is monitored.

5.3. Recording of Transferees property in storage

5.3.1. The Service Provider is required, in accordance with Departmental Guidelines, to:

- a) record all property of Transferees in the Transferee's presence;
- b) record all property retained by a Transferee while in the Site;
- c) record all property provided to the Service Provider for storage;
- d) record all illegal and excluded Items which have been removed and held in trust by the Service Provider; and
- e) provide a receipt to the Transferee.

5.4. Returning property to Transferees

5.4.1. The Service Provider is required to:

- a) provide the opportunity for Transferees to inspect their property in storage on discharge; and
- b) provide the opportunity for the Transferee to sign a statement indicating their satisfaction or otherwise with the items returned and their condition.

5.5. Lost, stolen or damaged property of Transferees in the care of the Service Provider

5.5.1. Where property in care of the Service Provider is lost, stolen or damaged, the Service Provider is required to reimburse, at its own cost, the Transferee for the commercial replacement value of the property.

5.5.2. Subject to the above, the Service Provider is not responsible for any property retained by the Transferee at the Site that is lost, stolen or damaged.

5.5.3. The Service Provider is responsible for costs associated with any property retained by the Transferee in the Site that is lost, stolen or damaged where that loss, theft or damage is caused by any act, omission or neglect on the part of the Service Provider or its Personnel.

5.6. Excluded and Illegal Items

- 5.6.1. The Service Provider is required to identify and continually review a list of excluded and illegal items which cannot enter the Site, either through risk assessment or to meet requirements of host country law and legislation.
- 5.6.2. The Service Provider is required to advise Transferees what items are excluded and illegal, in accordance with any Departmental policies and procedures notified to the Service Provider. The Service Provider is required to notify the Department if an excluded or illegal item is observed at the Site or in the possession of a Transferee that has not been surrendered.
- 5.6.3. Where a Transferee surrenders an excluded item, the Service Provider is required to:
- a) record the excluded Item;
 - b) securely store the excluded Item;
 - c) return all excluded items that the Transferee may legally possess to the person immediately upon release; and
 - d) provide all excluded items that the Transferee may legally possess to an escorting officer where required by Departmental policy.
- 5.6.4. Where a Transferee surrenders an illegal item, the Service Provider will be required to:
- a) ensure the illegal item does not pose an ongoing safety risk to the Site or any persons at the Site;
 - b) notify the Department and local authorities in accordance with incident management reporting requirements issued by the Department;
 - c) record all identifying details concerning the illegal items; and
 - d) securely store the illegal item in a manner that protects the integrity of any evidence until custody of the illegal item can be transferred to the relevant authority.

6. Communication management

6.1. Access to communication services

- 6.1.1. The Service Provider will ensure Transferees have access to communication services, unless advised by the Department, including:
- a) all required equipment and infrastructure;
 - b) telephones - in the Transferee area;
 - c) computers and printers - for Transferees to perform functions such as word processing, spread sheets, internet and email for their private use and for the preparation of documents related to their immigration outcome;
 - d) internet services - ensuring appropriate filtering software and other measures as necessary are in place, in accordance with Departmental requirements, to control and limit access at the Site by Transferees to:
 - i. pornographic and other prohibited Sites, containing or promoting illegal acts;
 - ii. personal software;
 - iii. file transfer protocol Sites, software or data; and

- iv. prohibited Sites in foreign languages.
- e) television and other media - with services covering news, current affairs and other content that the Service Provider or other Service Providers may recommend to promote the well-being for Transferees; and
- f) mail services.

6.2. Management of access

- 6.2.1. The Service Provider will provide management and supervision of access to and use of the communications services by Transferees.
- 6.2.2. The Service Provider is required to inform Transferees that their access to communication services may be recorded and/or monitored for security purposes.

6.3. Access and use of mail services and facsimiles

- 6.3.1. The Service Provider is required to:
 - a) register all received mail and facsimiles which are addressed to a Transferee;
 - b) ensure mail does not contain prohibited goods; and
 - c) manage the distribution of mail and facsimiles to Transferees.
- 6.3.2. Postage costs for mail sent by a Transferee will be at the Transferee's expense except when a Transferee does not have the means to pay for postage, in which case the Service Provider will be required to refer to the Department for instructions.

6.4. Television and other media

- 6.4.1. The Service Provider is required to, where available, facilitate access to free-to-air television and other broadcast services, covering news, current affairs and other content that the Service Provider or other Service Providers may recommend to promote the well-being of Transferees.
- 6.4.2. Television and other media must be appropriate for the viewing audience.

PART 3 GARRISON SERVICES

1. Garrison Services

1.1. General

1.1.1. The Service Provider is required to provide a range of garrison services to Transferees and Personnel, including:

- a) management and maintenance of assets;
- b) Cleaning;
- c) Security;
- d) Catering;
- e) Environmental management;
- f) Work health and safety;
- g) Management of emergencies;
- h) Logistics;
- i) Personnel accommodation; and
- j) Transport and escort.

1.1.2. The Service Provider is not responsible for project management of capital works at OPCs (subject to clause 12.2 in Part 3 in Schedule 1).

2. Management and maintenance of assets and the Site

2.1. General

2.1.1. The Service Provider is responsible for a range of maintenance and asset management tasks. During the Term of the Contract, unless additional requirements are notified by the Department, the Service Provider's responsibilities in relation to assets are to:

- a) manage assets at the Site, including:
 - i. operating and maintaining assets in a manner that ensures, to the greatest extent possible, that they achieve their design life;
 - ii. that the incidence of emergency and breakdown repairs is minimised having regard to the condition in which the assets were on the Commencement Date of the Contract and the local conditions, such as exposure to weather and proximity to the ocean.
- b) ensure that the assets are always safe to use and comply with all applicable laws and Australian Standards (or are withdrawn from use if they are not);
- c) procure and manage loose assets (such as sports equipment, books, kitchen utensils, DVDs), ensuring appropriate security and meeting the amenity requirements of the Transferees and as agreed with the Department;
- d) only dispose of or write-off an asset that is owned or paid for by the Department with the prior written approval of the Department; and
- e) provide details of all new, replacement and written-off assets to the Department.

2.1.2. The Service Provider is required to immediately notify the Department in writing of any loss, destruction, damage to or defect in the Site facilities or Departmental assets (or any part thereof).

2.2. The Service Provider and Departmental assets

2.2.1. The Service Provider is required to provide all assets which are required in order to perform its obligations under this Contract, that are not otherwise provided by the Department. Assets required to perform the Services in the OPC will be at the Department's expense, subject to any requirements detailed by the Department from time to time. The Department will not be responsible for costs associated with any assets used by the Service Provider in Australia or for assets used in the RPC in relation to activities of the type covered by the Corporate Overhead Fee.

2.2.2. The Service Provider is required to label its own assets located in the OPC to enable the parties to distinguish between the Service Provider's assets and other assets.

2.2.3. Where the Department provides or pays for an asset at the Sites (including as a Pass Through Cost), the asset will remain or become the property of the Department.

2.2.4. The assets provided by the Department will include a fleet of vehicles. The fleet profile will be determined by the Department having regard to population at the Site, the environment of the Site and its surrounds, maintenance and Personnel requirements.

2.2.5. Where any asset (defined as any portable or attractive item valued between [REDACTED] and any other item valued over [REDACTED]) breaks down and is irreparable prior to the date scheduled for disposal of that asset (as specified in the Maintenance Management Plan, refer to clause 2.4.4), the Service Provider will seek the Department's approval prior to replacing the relevant asset. If the Service Provider substantiates to the Department's satisfaction that an asset is critical to the delivery of the Services, the Department will approve the replacement of the asset on any conditions it sees fit.

2.2.6. The Service Provider will be responsible for indemnifying the Department in respect of loss, destruction or damage to assets to the extent that it is caused by:

- a) any breach of this Contract by the Service Provider; or
- b) any negligent act or omission, fraudulent, criminal actions, or wilful default of the Service Provider in connection with this Contract.

2.2.7. The Service Provider will not be liable for the costs of repair or replacement of assets where, in the reasonable opinion of the Department, the repair or replacement results from reasonable wear and tear of the asset.

2.3. Asset register

2.3.1. The Service Provider is required to work with the Department and other service providers to set up a system for identifying and managing assets at the Sites to be recorded in a register.

2.3.2. The Service Provider is required to undertake an entry stocktake of all assets at the Sites.

2.3.3. The Service Provider is required to ensure that the asset register is up to date, including:

- a) undertaking quarterly stocktakes of all assets at the Sites;
- b) adding new assets as soon as they arrive at the Sites; and
- c) providing a report to the Department of any damaged, lost or replaced assets.

2.4. Maintenance of Assets, Infrastructure and Grounds

2.4.1. The Service Provider is responsible for the management and maintenance of assets and infrastructure. The Department will be responsible for accepting and commissioning all infrastructure. The Service Provider must ensure that all required technical manuals and information are available for use at the Site and that Service Provider Personnel receive the associated operations, maintenance and safety training inductions and information.

2.4.2. The Service Provider must maintain assets and infrastructure to provide a safe, secure and healthy environment, including:

- a) planning, scheduling and performing maintenance; and
- b) planning, scheduling and performing modifications where approved by the Department.

2.4.3. The Service Provider is required to manage and maintain all grounds, including landscaping, planting and horticultural services and built infrastructure (such as roads, stormwater, drains and fences), to ensure the amenity of the Site is maintained in accordance with local community standards and sound environmental management practices (excluding construction works to (for instance) roads, stormwater drains and fences, and any works requiring any specialist or large equipment). Works beyond the capacity of the Service Provider's nominated manning levels and equipment are also considered out of scope.

2.4.4. A maintenance management plan is required to be developed by the Service Provider for assets and infrastructure at the Sites. The maintenance management plan will be required to set out arrangements for the Service Provider to maintain all assets at the Sites, including all building, fittings, plant and equipment, vehicles, engineering services, grounds and infrastructure elements. The maintenance plan will address all maintenance activities, including inspection, testing and servicing. The Service Provider will be required to implement and manage that plan.

2.4.5. When directed by the Department, the Service Provider is required to develop a Maintenance Management Plan for the Sites for approval. This Maintenance Management Plan will set out arrangements for the Service Provider to maintain all assets at the Site to preserve their functionality and value, including all buildings, fittings, plant and equipment, vehicles, engineering services, grounds and infrastructure elements, by conducting maintenance activities that include all inspection, testing and servicing. The Maintenance Management Plan will also address the integration and management of relevant third party arrangements, including any manufacturer or builder warranties or defects liability obligations which may apply to the assets.

2.4.6. The Service Provider is responsible for implementing and managing maintenance in accordance with the developed maintenance management plan.

2.5. Emergency and breakdown repairs

2.5.1. The Service Provider is required to:

- a) repair all Site service breakdowns as soon as possible; and
- b) record all details related to each defect, fault or damage and subsequent action taken in response to emergency breakdowns.

2.6. Alternative arrangements during Maintenance

2.6.1. In the event that an asset is defective or must be taken out of service for maintenance, the Service Provider must:

- a) make reasonable alternative arrangements to maintain security and work health and safety and environmental standards until the asset is returned to service; and
- b) notify the Department of the alternative arrangements and any impact these arrangements may have on the provision of the Services.

2.7. Damage or loss by Transferees

2.7.1. If Transferees damage or lose assets, the Service Provider must:

- a) notify the Department Operations Team Leader;
- b) repair or replace the assets as requested by the Department; and
- c) record the cost of repairing or replacing assets damaged by Transferees as a separate item.

2.7.2. The Service Provider is responsible for the costs to repair or replace damaged or lost assets where the damage or loss has occurred due to the Service Provider's negligence, such as ineffective asset management practices.

2.8. Security systems

2.8.1. The Service Provider is required to, in accordance with arrangements notified by the Department, maintain and test security systems at the Site to ensure the security systems remain functional at all times.

2.9. Emergency systems and services

2.9.1. The Service Provider is required to maintain and test emergency installed systems processes and equipment at the Site in accordance with applicable law, emergency services recommended procedures, manufacturer's instructions and any other requirements notified by the Department.

2.9.2. For the purposes of this section, emergency systems include:

- a) firefighting systems, including suitably qualified Personnel;
- b) alarm systems;
- c) safety and emergency signage;
- d) systems for managing power outages, in particular standby diesel generators and uninterrupted power supplies; and
- e) first aid equipment.

2.10. Work practices

2.10.1. The Service Provider is required to:

- a) ensure all maintenance work practices are compatible with the Sites; and
- b) where maintenance or modifications are conducted at the Sites:
 - i. maintain safety in the Sites;
 - ii. organise for maintenance or modifications to be done during Business Hours as far as is reasonably practicable (this requirement does not apply to repairs to critical systems);
- c) ensure tools are controlled at all times and remain inaccessible to Transferees; and
- d) ensure all the Service Provider Personnel abide by any conditions of entry to the Sites.

2.10.2. The Service Provider is required to provide interested Transferees with the ability to participate in gardening activities, and where this occurs the Service Provider must:

- e) ensure that all maintenance tools are controlled by the Service Provider Personnel as far as is reasonably practicable, in accordance with a documented control of tools procedure;
- f) closely supervise Transferees during any gardening activities;
- g) develop and implement specific induction procedures to be delivered to Transferees participating in gardening activities; and
- h) satisfy any specific Departmental requirements regarding the use of tools.

2.11. Communication about maintenance and modifications

2.11.1. The Service Provider is required, as far as is reasonably practicable, to:

- a) ensure all people affected by any maintenance work or modifications being undertaken at a Site are aware of the nature and extent of the activity; and
- b) communicate details of actions required to maintain safety, such as:
 - i. prevention of unauthorised access to areas under maintenance, repair or modification;
 - ii. erecting barriers and signage in accordance with the requirements of all relevant work health and safety laws and Australian Standards; and
 - iii. notifying Transferees and other people affected of any alternative arrangements and the duration that they may be in place.

3. Cleaning services

3.1. General

3.1.1. The Service Provider is responsible for all routine and non-routine cleaning of the Sites to ensure the safety, hygiene and well-being of Transferees, and all other people at the Sites.

- 3.1.2. Cleaning includes cleaning of all infrastructure (including temporary arrangements) that forms part of the Sites including areas occupied by the Department, other government agencies and other service providers.
- 3.1.3. The Service Provider is required to conduct all cleaning services in accordance with *Work Health and Safety legislation*.
- 3.1.4. The Service Provider is required to undertake routine and non-routine cleaning at the Sites. Such cleaning must:
- a) meet the detailed requirements as agreed with the Department; and
 - b) be in accordance with Work Health and Safety law requirements, including codes of practice.
- 3.1.5. The Service Provider is required to implement cleaning comment books in appropriate locations throughout the Sites within 14 days of the Execution Date of the Contract, including:
- a) the cleaning schedule for each area;
 - b) a section for 'last cleaned' entry by cleaning Personnel; and
 - c) details to allow for a quick assessment of cleaning effectiveness and conformance to the cleaning schedule.

3.2. Cleaning services plan

- 3.2.1. The Service Provider is required to develop a cleaning services plan which explains how cleaning services will be delivered on site, including schedules for routine cleaning within one week of Transition.

3.3. Non-routine cleaning

- 3.3.1. The Service Provider must ensure there are Personnel available at all times to respond to non-routine cleaning requirements, which may be required after:
- a) accidents;
 - b) equipment malfunction; and
 - c) incidents.
- 3.3.2. Where non-routine cleaning of occupied Transferee accommodation is required, the Service Provider is required to gain the consent of the Transferee prior to conducting the cleaning.
- 3.3.3. The Service Provider is required to ensure that training is provided to Personnel to ensure that, where an emergency cleaning requirement cannot be met by the available cleaning Personnel, contingency plans are enacted to reduce the potential impact on Transferees.

3.4. Cleaning accommodation

- 3.4.1. The Service Provider is responsible for cleaning all accommodation on the Site, including accommodation occupied by Transferees and Personnel.
- 3.4.2. In addition, the Service Provider is required to clean accommodation occupied by Transferees and Personnel in the following circumstances:

- a) before a Transferee or Personnel member, or group of Transferees or Personnel, occupies the accommodation; and
- b) when it is necessary, especially for Transferees or Personnel who may not be able to clean their accommodation themselves.

3.5. Housekeeping services for Personnel accommodation

3.5.1. The Service Provider is required to provide housekeeping services specifically for Personnel accommodation, including but not limited to:

- a) cleaning of the room;
- b) replacing linen;
- c) ensuring adequate linen and consumables are provided and re-stocking where required; and
- d) emptying of waste bin.

3.5.2. The Service Provider is responsible for ensuring that there is an appropriate level of linen and consumables at all times by re-stocking and servicing rooms:

- a) on a weekly basis whilst occupied;
- b) after staff have vacated the accommodation/room; and
- c) after an incident or accident.

3.5.3. Linen for each room will include at a minimum:

- a) 2 x pillows and pillow cases per bed;
- b) 2 x sheets per bed;
- c) 2 x towels per bed;
- d) 1 x bath mat per bathroom;
- e) 1 x coverlet per bed; and
- f) 1 x mattress cover per bed.

3.5.4. The Service Provider is required to service the room when the room is vacated by Personnel and prior to the room being occupied, including the changing of used linen and towels.

3.6. Laundry Services

3.6.1. The Service Provider is responsible for the laundering (on a regular basis and as required):

- a) Transferee linen and clothing (clothing as provided by Transferees to the Service Provider); and
- b) Personnel linen.

3.6.2. The Service Provider must ensure Transferees and Personnel are aware of:

- c) the frequency of the laundry service;
- d) where to access the laundry service; and
- e) the availability of self-laundering facilities.

3.6.3. Subject to departmental approval, the Service Provider is required to make arrangements for laundry services at all Accommodation Sites for all linen including

the collection, transportation and laundering of linen used at the Accommodation Site.

- 3.6.4. The Service Provider must ensure Transferees and Personnel have access to clean linen.
- 3.6.5. The Service Provider may from time to time discuss with the Department alternative ways and means of delivering the laundry services. The Service Provider must advise any proposed changes to the Department, and the Department will in its sole discretion determine the changes to the delivery of those services.
- 3.6.6. The Service Provider is responsible for the procurement of all assets associated with laundry services, as directed by the Department.

3.7. Minimise disturbance to Transferees and exposure to hazards

- 3.7.1. The Service Provider is required to minimise disturbance to Transferees, and must not expose Transferees or any other person to hazards caused by cleaning activities, including:
 - a) coordinating cleaning schedules with the daily routine of Transferees;
 - b) placing warning signs where cleaning operations may create a hazard; and
 - c) preventing Transferees from accessing areas that are being cleaned or treated.

3.8. Cleaning equipment and chemicals

- 3.8.1. The Service Provider is required to take all reasonable steps to ensure all equipment and chemicals used by the Service Provider for cleaning are safe, suitable for purpose, environmentally friendly (such as biodegradable) and stored securely when not in use, subject to access to secure storage facilities.
- 3.8.2. The Service Provider is required to ensure cleaning equipment is available to Transferees and Personnel to enable them to self-clean their accommodation, if appropriate and subject to availability.

4. Security Services

4.1. General

- 4.1.1. The Sites need to provide a safe and secure environment for Transferees and Personnel at the Sites, ensuring that each individual's human rights, dignity and well-being are preserved.
- 4.1.2. The Service Provider is required to deliver structured security services at the Sites that are consistent with the goals of the Sites, enable the Service Provider to manage routine events at the Sites and respond promptly and flexibly to any incident.
- 4.1.3. The Department will provide security infrastructure at the Sites, which may include perimeter fencing, lighting towers and an entry gate.

- 4.1.4. The approach to safety and security will be required to ensure that the needs of Transferees are met. The approach and procedures should emphasise communication and interaction strategies that address potential or actual risks before they escalate and effect their de-escalation.
- 4.1.5. Security services should be supported and informed by intelligence collection and analysis measures.

4.2. Integrity of the Site

- 4.2.1. The Service Provider is required to take reasonable steps to ensure:
 - a) Transferees and Personnel behave at all times in accordance with relevant provisions of the visa granted to them by the host country Government; and
 - b) relevant authorities and the Department are immediately notified if a Transferee does not return to a Site at a time required by local authorities.

4.3. Safety and security plan

- 4.3.1. The Service Provider is required to draft and comply with an interim safety and security plan.
- 4.3.2. The Service Provider is required to develop a more detailed safety and security plan that will:
 - a) be based on AS/NZS ISO 31000:2009 Risk management – Principles and guidelines; and
 - b) include details of:
 - i. how the Service Provider plans to implement the security services contained in this Schedule;
 - ii. how the Service Provider will brief all service providers on safety and security matters; and
 - iii. how the Services will be delivered in accordance with Clause 1.1.2 and 1.2.2 contained in this Schedule.

4.4. Security Personnel

- 4.4.1. The Service Provider must provide trained Personnel to:
 - a) deliver security services 24 hours a day and seven days a week at the Site;
 - b) respond effectively to unforeseen Incidents while treating Transferees with dignity and respect; and
 - c) engage with Transferees and other stakeholders to detect possible incidents before they occur.
- 4.4.2. The Service Provider is required to provide dedicated Personnel drawn from outside of its normal staffing levels to deal with major incidents, without reducing business as usual capability.
- 4.4.3. Personnel will be responsible for:
 - a) collecting biometric information;
 - b) operating surveillance systems; and

- c) completing a training course developed by a Level IV accredited trainer in security operations prior to commencing work at the Site.

4.4.4. The Service Provider is required to implement arrangements for refresher training of relevant Personnel when necessary.

4.4.5. The Service Provider is required to:

- a) ensure daily rosters of Personnel for the Sites provide a reasonable number of Personnel with the skills, experience and fitness required to manage the security environment in a manner that addresses identified risks in the security risk assessment; and
- b) provide the Department with rostering arrangements at the commencement of each alternate business week for the coming fortnight.

4.5. Safety and security information obligation

4.5.1. The Service Provider is required to:

- a) gather and record safety and security information to inform the development of the Sites and Transferees' security risk assessments, and maintain the safety and security of the Sites;
- b) gather and store safety and security information in accordance with the record keeping obligations, including privacy and confidentiality obligations, set out in the Contract; and
- c) provide this information to the Department as directed.

4.5.2. Safety and security information includes information to be provided by other service providers and covers, amongst other things:

- a) unusual occurrences;
- b) information received from a Transferee;
- c) a Transferee or group of Transferees, acting unusually or out of character;
- d) Incident Reports;
- e) trends in incidents; and
- f) relevant information received from any source.

4.6. Site security risk assessment

4.6.1. The Service Provider must comply with the security risk assessment for the Sites.

4.6.2. The Service Provider will develop a more detailed security risk assessment which accords with AS 4360 Risk Management Standard. In developing the security risk assessment, the Service Provider is required to take account of:

- a) the number and risk profile of the Transferees at the Sites;
- b) the overall security situation (including any information that might be made available by the Department, other government agencies or other sources), including:
 - i. visits;
 - ii. arrivals and departures of Transferees;
 - iii. protests and rallies;
 - iv. special events;

- v. significant dates;
- vi. availability of and response times for emergency services; and
- vii. the condition and arrangement of built infrastructure and associated technology, including any temporary arrangements for new construction or facilities maintenance.

- 4.6.3. The Service Provider is required to review the Site security risk assessment as requested by the Department or following any significant incident. The Service Provider and the Department will agree on timeframes for periodic review of the assessment.
- 4.6.4. The Service Provider is required to provide the Department with a copy of the current security risk assessment, in the form requested by the Department, within five Business Days of any Department request.
- 4.6.5. The Service Provider is required to make available to the Department copies of all security audits conducted, at the completion of the audit or report, including any operational responses to issues raised in the findings of these audits.

4.7. Communication of safety and security requirements

- 4.7.1. The Service Provider must communicate Site safety and security requirements to all people on Site (including Transferees, Personnel and visitors). This communication is required to:
 - a) contain only information required by the target audience;
 - b) encourage compliance with the Site safety and security rules;
 - c) be in a language and form understood by the target audience; and
 - d) accommodate people with special needs, such as illiteracy or visual impairment.
- 4.7.2. The Service Provider is required to ensure Transferees and other people in the Sites are aware of contingency plans for the Site.

4.8. Entry control

- 4.8.1. The Service Provider is required to facilitate controlled and efficient access to the Site by all persons (including Personnel, visitors, government agency officials and Transferees), vehicles and goods in an efficient manner. The access control procedures will be required to be sufficiently robust to eliminate the possibility of unauthorised access and enable tracking Personnel movements in the event of an emergency.
- 4.8.2. The Service Provider must ensure that all visitors to the Site are treated with dignity and respect throughout the entry process.
- 4.8.3. The Service Provider is required to develop entry and egress procedures for all persons requesting access to the Sites.

4.9. Identification

- 4.9.1. The Service Provider is required to develop and implement a system to identify all people seeking access to the Site and provide a visual means of readily identifying all people while they remain on the Site, including:

- a) confirming access rights and escort requirements;
- b) creating and issuing identification passes; and
- c) discreetly monitoring the movement and location of all people on the Site.

4.10. Access to controlled areas

4.10.1. The Service Provider is required to develop and implement systems to manage access to controlled areas within the Site, including implementing a strict control regime for access keys and locks, and static guarding where required. Controlled areas are:

- a) secure storage areas;
- b) administration areas;
- c) hazardous materials stores;
- d) medical facilities;
- e) control room;
- f) tool and vehicle stores;
- g) plant and equipment; and
- h) other areas designated by the Department or the Service Provider as controlled areas.

4.11. Operations logs

4.11.1. The Service Provider is required to:

- a) maintain operations logs at the Site as needed to record the date, time and location for all security related events and actions taken, and constitute an official record of activities and events within the Site;
- b) ensure operations logs provide a comprehensive and accurate account of all Site operations;
- c) inform the Department Operations Team Leader of the range, intent and scope of operations logs in use, and will be required to advise any changes; and
- d) provide operations logs as soon as is reasonably practicable to the Department Operations Team Leader upon receiving a written request.

4.12. Digital records

4.12.1. The Service Provider is required to digitally record an audio and visual record of all instances where there is any incident where the Service Provider, acting reasonably, knows that the Department or local authorities may require evidence of the actions of Personnel.

4.12.2. Where such recordings have been made, the Service Provider must within one hour of producing the recording:

- a) make an unedited copy of the recording;
- b) label the original and copy of the recording with the date and time of the recording and the names of people who appear in the recording; and
- c) provide the original recording to the Department.

4.13. Incidents

4.13.1. The Service Provider is required to:

- a) take all reasonable steps to manage all incidents to ensure the safety and welfare of Transferees and other people at the Sites;
- b) seek to resolve all incidents using negotiation and other de-escalation techniques; and
- c) restore safety and security in the Site as quickly as possible.

4.14. Checks to verify all Transferees are present and safe

- 4.14.1. The Service Provider is required to, in conjunction with other service providers, verify that all Transferees are present and safe in the Site at least twice each day, at times which take account of any curfew arrangements.
- 4.14.2. The Service Provider is required to work with other service providers to implement processes and procedures for random identification checks and movement restrictions to be able to better account for Transferees.
- 4.14.3. The check conducted by the Service Provider must be conducted in a manner that respects the cultural, religious, gender and privacy needs of Transferees.
- 4.14.4. Personnel undertaking checks need to be skilled in identifying Transferees who may be unwell or not coping, including in circumstances where the Transferee may be attempting to hide a problem.
- 4.14.5. The Service Provider must immediately report to the Department Operations Team Leader any concerns about a Transferee's safety, well-being and security.

4.15. Searches

- 4.15.1. The Service Provider is required to only conduct searches within the Site:
 - a) with the prior approval of the Department; or
 - b) on request of the Department.

4.16. Use of Force

- 4.16.1. The Service Provider is required to exercise use of force within the Site only:
 - a) in unavoidable and unforeseen circumstances, to avoid the risk of Transferee self-harm or harm to Personnel; and
 - b) in accordance with the relevant RPC legislation.

4.17. Visitor escorts

- 4.17.1. The Service Provider must ensure that:
 - a) visitors to the Sites who are assessed by the Service Provider as requiring a visitor escort are accompanied by Personnel at all times;
 - b) visitor escorts are conducted as discreetly as possible, allowing for private conversations between Transferees and visitors; and
 - c) contractors requiring access are provided with an escort.

4.18. Perimeter security

- 4.18.1. The Service Provider must ensure that the security of the perimeter of the Site is maintained at all times in accordance with departmental policies and procedures as notified from time to time by the Department.

4.19. Contingency plans and procedures

4.19.1. The Service Provider is required to:

- a) develop and implement an interim contingency plan for the Site within 7 days of execution of the Contract for approval by the Department, that details the control arrangements, communications, and other processes and procedures required for the Service Provider to maintain the safety and security of Transferees and other people who may be in the Site at the time;
- b) develop a more detailed plan in accordance with clause 1.1.2 of this Schedule 1. The contingency plan will address a range of plausible contingencies, be developed and maintained in accordance with ASNZS 3745 and include:
 - i. procedures for notifying the Department and other service providers that the contingency plan is in effect;
 - ii. coordination procedures with the Department and other service providers and other authorities;
 - iii. processes for communicating emergency procedures to Transferees, Personnel and all other people at the Site to ensure they understand the emergency procedures;
 - iv. plans and arrangements for applicable emergency services (such as ambulance services, fire services, police services, utilities and nominated contractors) to access and move through the Site;
 - v. procedures which apply to a variety of emergency situations (to include evacuation where warranted); and
 - vi. frequency of emergency drills and tests.

4.20. Safety and security exercises

4.20.1. The Service Provider is required, in conjunction with other service providers, to:

- a) implement a departmental approved schedule of monthly (or fortnightly, if otherwise required by the Department) safety and security exercises to test security and Incident response capabilities for Personnel of all service providers; and
- b) at the conclusion of each safety security exercise, provide a written report to the Department on the outcomes from the exercise, including any proposals for continuous improvement.

5. Catering at the Site

5.1. Nutritional and Food Safety

5.1.1. The Service Provider is required to:

- a) ensure Transferees and all Personnel requiring catering are provided with access to food and beverages that are sufficient in quantity, offer variety and are nutritious and culturally appropriate;
- b) ensure compliance with all applicable health and food safety regulations; and
- c) accommodate catering for dietary requirements, where possible and as requested, such as allergies, gluten intolerance, vegetarian and vegan.

5.2. Quantity of food and beverages

- 5.2.1. The Service Provider must provide food and beverages in quantities that are at least 10% more at lunch times and 10% more at dinner times than the quantities identified in the Dietary Guidelines for Australian Adults published by the National Health and Medical Research Council.

5.3. Halal arrangements

- 5.3.1. The Service Provider is required to ensure that food prepared for Transferees of Islamic faith is halal, including:
- a) sourcing produce certified as halal by a recognised halal food certification organisation; and
 - b) preventing any cross-contamination between halal food and preparation areas and any other food and preparation areas.

5.4. Self-service snacks

- 5.4.1. The Service Provider must provide self-service snacks and refreshments that are available at all times.

5.5. Transport of food and beverages

- 5.5.1. The Service Provider is required to :
- a) comply with all applicable laws and food safety standards in Australia and New Zealand applying to the transport of food and beverages at all times to the extent reasonably possible, considering the logistic supply routes; and
 - b) clean and maintain hot boxes and eskies used to transport food and beverages.

5.6. Cleaning of food preparation and service areas

- 5.6.1. The Service Provider must keep all food transportation, storage preparation, service, dining and waste storage areas (including designated self-catering and barbeque areas) and associated equipment clean and hygienic in accordance with:
- a) food safety standards in Australia and New Zealand;
 - b) food safety standards applicable to the RPC; and
 - c) any applicable manufacturer's or supplier's specifications for cleaning and catering equipment.
- 5.6.2. The Service Provider must ensure that sufficient Personnel are employed on each shift to allow for efficient cleaning of all food transportation, storage, preparation, service, dining and waste storage areas and equipment.
- 5.6.3. The Service Provider is required to organise periodic inspections of all catering facilities to ensure relevant standards are maintained.

5.7. Catering

- 5.7.1. Personnel responsible for managing catering at the Site will be required to:
- a) hold at least a Certificate III in Hospitality (Kitchen Operations) or equivalent; and

- b) have acquired at least three years' experience in managing a commercial kitchen.

5.7.2. All other catering Personnel engaged by the Service Provider for the preparation of food and beverages will be required to hold at least a Certificate II in Hospitality (Kitchen Operations) or equivalent.

5.7.3. All staff engaged by the Service Provider for the serving of food and beverages will be required to hold at least a Certificate II in Hospitality or have relevant work experience and be supervised by a person holding a Certificate II in Hospitality, other than Transferees who volunteer to assist.

5.8. Display of signage

5.8.1. The Service provider is required to develop and implement within 21 days of the Commencement Date a document that contains instructions for the cleaning and maintenance of hygiene and safety in food preparation and designated self-catering areas in accordance with any departmental instructions. Once developed, the document will be required to be displayed prominently.

5.9. Dining room

5.9.1. The Service Provider is required to:

- a) provide lunch and dinner in designated dining rooms (where a dining room exists in the Site);
- b) provide breakfast and snacks in designated common areas;
- c) open the dining area for lunch between 1230 and 1400 and dinner between 1830 and 2000 except where agreed with the Department; and
- d) open the dining area to serve meals to Transferees of the Islamic faith before dawn and after sunset during Ramadan.

5.10. Late Arrivals

5.10.1. The Service Provider is required to provide a meal and beverage within one hour to Transferees who arrive at a Site between 1830 and 0600.

6. Environmental management

6.1. Environmental management principles

6.1.1. The Service Provider is required to develop environmental management principles for the Sites in accordance with this Schedule 1 to manage energy consumption, the use of natural resources, waste disposal and vermin and pest control that include:

- a) objectives for environmental management;
- b) a risk assessment of the environmental impacts of the individual Site operations;
- c) measures to manage energy consumption, the use of natural resources, waste disposal and pest control;
- d) procedures and documentation for the implementation, development, review and continuous improvement of the environmental management principles;
- e) a self-assessment programme; and

- f) a process for independent annual auditing of the environmental management principles.

6.2. Energy and water

- 6.2.1. The Service Provider is required to implement any reasonable and cost-effective measures to minimise energy and water use in the Site, including:
 - a) identifying and correcting any wasteful operation or practices;
 - b) conducting routine Maintenance of systems to achieve peak operational efficiency;
 - c) promoting the responsible use of energy, natural resources and water to Transferees and Service Provider Personnel to acknowledge the local conditions; and
 - d) complying with any applicable local water restrictions or other water saving measures notified by the Department.
- 6.2.2. The Service Provider is responsible for ensuring sufficient supplies of water at the Site. For the avoidance of doubt, water carting at Manus Island is not required and outside of scope.

6.3. Waste management

- 6.3.1. The Service Provider will work with the Department to implement cost effective measures to manage, in accordance with all applicable laws, disposal of:
 - a) general liquid, sanitary and solid waste;
 - b) non-serviceable or unused fixtures, fittings and equipment (such as white goods, mattresses and fluorescent light tubes);
 - c) hazardous materials and waste; and
 - d) garden waste
- 6.3.2. When undertaking disposals, the Service Provider must seek to maximise recycling and, where applicable, composting of waste.
- 6.3.3. Waste management practices will be required to acknowledge the surroundings and local conditions.

6.4. Vermin and pest control

- 6.4.1. The Service Provider is required to develop and implement a vermin and pest control plan in accordance with this Schedule 1, that:
 - a) is based on Australian Pest Controllers Association best practice;
 - b) is compliant with all applicable Law; and
 - c) includes measures that will be required to be taken to prevent or eradicate vermin or pest infestations (including mosquitoes, vector, fleas, bed bugs, poisonous animals such as snakes and spiders, rats, mice and other rodents), such as:
 - i. environmental and habitat measures to disrupt breeding and life-cycles;
 - ii. low level chemical measures such as localised dusting and misting; and
 - iii. the scope of the measures to be implemented and the frequency.

6.5. Disruption and health implications of vermin or pest control activities

6.5.1. The Service Provider is required to, to the extent possible having regard to the available infrastructure and facilities, avoid exposing any person to hazards caused by vermin and pest control activities and will be required to minimise disturbance to Transferees caused by vermin and pest control activities by implementing measures, including:

- a) coordinating vermin and pest control activities with the daily routine of Transferees;
- b) preventing Transferees from accessing areas that are being treated with hazardous chemicals; and
- c) consulting with the Department before commencing any pest or vermin control activities that will significantly disrupt daily activities in a Site.

7. Work Health and Safety

7.1. General

7.1.1. The Service Provider is required to:

- a) develop and implement a work health and safety (WHS) plan in consultation with other service providers and the Department;
 - b) comply with all applicable Laws for WHS, which include for the avoidance of doubt the *Work Health and Safety legislation*, regulations and codes of practice as well as any applicable local laws and, where there is any conflict, comply with the highest standard;
 - c) establish a WHS committee to oversee compliance with WHS requirements for the site as a whole - representation from other service providers is encouraged; and
- a) participate, with other service providers, in the WHS committee to oversee compliance with WHS requirements for the Site as a whole.

7.1.2. An interim WHS plan must be in place within 14 days of execution of the Contract. A more detailed WHS plan must be developed and implemented within six weeks of the Contract Commencement Date.

7.1.3. The Service Provider is required to comply with the interim WHS plan until the more detailed WHS plan has been developed and approved by the Department.

7.2. Safety precautions in performing the Services

7.2.1. The Service Provider is required to take all reasonable steps to ensure all people within the Sites observe all the WHS rules for that Site, including rules applicable to:

- a) the storage, transport, and use of materials; and
- b) safe work processes and the incorporation of any safety precautions.

7.2.2. The Service Provider is required to provide appropriate employment assistance programmes for all Personnel, where appropriate. The Service Provider must ensure that all Personnel are aware of and have access to these programmes at all times, particularly while working at a Site and after any deployment.

7.3. Use of hazardous substances and chemicals

- 7.3.1. The Service Provider must take all reasonable steps and work with the other service providers to ensure that:
- a) Transferees, visitors and Personnel are not exposed to hazardous chemicals; and
 - b) the material safety data sheets of all chemicals used in the delivery of Services are readily available in case of emergency to be available within 28 days of the Commencement Date of the Contract.
- 7.3.2. For the purposes of this section, hazardous chemicals have the meaning given in the *Work Health and Safety legislation*.

8. Management of emergencies

8.1. General

- 8.1.1. The Service Provider is required to:
- a) operate and maintain the Site as a safe and secure environment for people to live and work in; and
 - b) comply with all applicable Laws (which may include both RPC and Australian laws) and Australian Standards for the control and management of emergencies.
- 8.1.2. The Service Provider must, within 7 days of execution of the Contract, develop and implement an interim emergency management plan to be approved by the Department (including the Service Provider's procedures for managing and responding to all emergencies) for the Site, to ensure the safety and security at the Site of all Transferees, Personnel and visitors. A more detailed plan is to be developed within six weeks of the Contract Commencement Date.
- 8.1.3. The Service Provider must comply with the interim emergency management plan until the more detailed emergency management plan has been developed and approved by the Department.

8.2. Compliance with Australian Standards

- 8.2.1. The Service Provider must comply with all applicable Australian Standards including Australian Standard 3745: Emergency Control Organisation and Procedures for Buildings, Structures and Workplaces and any update to that standard.

8.3. Emergency Control Organisation

- 8.3.1. The Service Provider is required to develop and implement, in conjunction with the Department Operations Team Leader and other service providers, an Emergency Control Organisation at each Site, which will be responsible for:
- a) implementing emergency procedures as prescribed in the emergency plan and procedures;
 - b) ensuring that all Personnel within the Site are trained for their role in an emergency;
 - c) reporting any matters likely to affect the viability of the emergency plan and procedures;

- d) checking on the effectiveness of emergency systems and equipment; and
- e) controlling emergency situations until the appropriate emergency service arrives to take control, at which time the Emergency Control Organisation will work in conjunction with that service.

8.3.2. The Emergency Control Organisation will be required to meet quarterly and after any emergency.

8.4. Emergency exercises

8.4.1. The Service Provider must in conjunction with other service providers:

- a) conduct all emergency exercises required by law or as directed by the Department Operations Team Leader at the Sites; and
- b) maintain records of all emergency exercises conducted.

8.5. Access to the Site

8.5.1. The Service Provider is required to, at all times, with or without notice, provide access to any part of the Site to Department personnel, the Auditor-General and the Privacy Commissioner and members of the Council for Immigration Services and Status Resolution.

8.5.2. Subject to their compliance with any applicable security requirements, the Service Provider is required to facilitate access to the Site by representatives of those government agencies who have entered into a Memorandum of Understanding with the Department, in order to enable them to provide the Services referred to therein.

8.5.3. The Service Provider must not knowingly provide access to the Site for media visits and external agencies except with the approval of the Department and in accordance with the procedures and conditions specified by the Department.

8.5.4. The Service Provider must develop entry and egress procedures for all persons requesting access to the Sites, which includes Personnel and visitors.

8.6. Fire Fighting Services for the Regional Processing Centre on Manus Island

8.6.1. The Service Provider is required to use best endeavours to provide fire fighting services for the Regional Processing Centre at Manus Island equivalent to the standard provided by its predecessor prior to the Commencement Date. For avoidance of any doubt:

- (a) this shall require the Service Provider to use equipment made available to the Service Provider by the Commonwealth at the Commencement Date;
- (b) this shall not require the Service Provider to use standards and equipment comparable to Australian standards and requirements relating to the provision of fire fighting services;
- (c) the fire fighting services shall be provided initially by using the limited local resources available until such time as the Services Provider is able to procure sufficient other resources.

- 8.6.2 Within a reasonable period after the Commencement Date, the Services Provider is required to have fire fighting services that consist of:
- a) a minimum of 2 lead fire fighters with appropriate Australian qualifications per shift;
 - b) a minimum of 4 fire fighters per shift who are employed locally; and
 - c) equipment available on the site at Manus Island at the Commencement Date.

9. Logistics

9.1. General

- 9.1.1. The Service Provider is required to work cooperatively with the Department, local authorities and other service providers to ensure that logistics are completed in a timely manner.
- 9.1.2. The Service Provider is required to develop a logistics plan that sets out in more detail the logistics arrangements that will apply at the Site. This plan should include the procurement of consumables required on a regular basis and appropriate storage and inventory management. All procurement for items specified in clause 6.1.1) in Schedule 2 [Fees and Payment] must comply with Commonwealth Procurement Rules and other guidelines issued by the Department. Once approved, the service provider will be required to comply with and implement the plan.

10. Personnel accommodation

10.1. General

- 10.1.1. The Service Provider is required to provide the Services set out in this Schedule at Personnel accommodation sites (Accommodation Site) (# of beds are subject to change by the Department):

Nauru:

Site number	Location/description	# of beds
1	Site 1 Anibare	272
2	Site 2 location TBC	32
3	Site 3 OPC 1 Construction Camp	900
4	Baitsi District (4 bed house)	12
5	Anabar District (2 bed house)	8
6	Anibare Bay (3 bed house)	12
7	Meneng District (2 bed house)	8

8	Meneng District (3 bed house)	12
9	Nursery Camp Construction	102

Manus:

Site number	Location/description	# of beds
1	Bibby Progress	635
2	Hardstand Site 1	188

10.1.2. The Department will provide the Service Provider with two weeks' notice prior to the requirement of Services at a new Accommodation Site. The Service Provider is required to provide Services in the timeframe specified by the Department.

10.1.3. The Department may vary existing capacity or add an Accommodation Site to the Contract at any time by providing two weeks' notice in writing.

10.2. Reception

10.2.1. The Service Provider is required to provide all administration and reception services associated with the Accommodation Sites.

10.2.2. The Service Provider is required to develop and implement a booking system to:

- (a) identify all Personnel seeking access to the Accommodation Site;
- (b) confirm and advise whether staff are able to be accommodated on the dates requested;
- (c) fulfil record keeping requirements;
- (d) manage the check-in and out process; and
- (e) avoid duplication of bookings.

11. Transport and Escort

11.1. General

11.1.1. The Service Provider is required to:

- (a) supply transport and escort services for the Sites;
- (b) transport and escort Transferees and their property in accordance with the Department's requests, where the transport is voluntary or due to medical evacuation;
- (c) transport Transferees for the purposes of programmes and activities and local appointments;

- (d) supply transport via a shuttle bus service for Transferees and Personnel; and
- (e) transport Personnel to and from accommodation facilities for the commencement and end of each shift.

11.2. Delivery of transport and escort Services

11.2.1. The Service Provider is required to:

- (a) deliver transport and escort services in a manner that takes into account the Department's requirements, the needs and wellbeing of passengers, the integrity of other service providers and contingency situations and related risks;
- (b) operate appropriate vehicles and inclusions, including communication devices;
- (c) provide appropriately trained Personnel to undertake the Services;
- (d) where the transport and escort is for a Transferee voluntary return, ensure the Transferee being transported is the person nominated in the transport request before the task commences;
- (e) ensure that passengers are aware of where they are going and the expected time of departure and arrival;
- (f) develop and distribute schedules for scheduled transport and escort Services; and
- (g) provide all meals, beverages and medications for the transport and escort task where appropriate.

11.2.2. Modes of transport applicable for transport could be by air, sea or vehicle.

11.3. Vehicles

11.3.1. The Service Provider is required to:

- (a) provide vehicles in types and quantities of vehicles suitable for transporting Transferees and Personnel;
- (b) ensure all vehicles:
 - i. comply with applicable laws for passenger transport vehicles;
 - ii. are clean and tidy;
 - iii. are appropriate to the number of people being transported;
 - iv. carry the appropriate equipment, such as a first-aid kit and fire extinguisher;
 - v. are serviced and maintained;
 - vi. are insured and registered;
 - vii. are operated by licenced drivers; and
 - viii. have log books and supporting records maintained.

12. Facilities Maintenance Programme and Minor Capital Works

12.1. Facilities Maintenance Programme and Fund

- 12.1.1. The Service Provider must provide, no later than 8 weeks after the Execution Date (or as otherwise reasonably agreed), a draft Facilities Maintenance Programme (FMP) to the Department that includes:
- (a) an itemisation of recommended maintenance and upgrades to the Sites (excluding Services specified in Part 3 of Schedule 1 of this Contract);
 - (b) an estimate total cost for each FMP item and overall total cost for the FMP;
 - (c) estimate timeframe to practically complete each FMP item (the Service Provider must complete the approved FMP within the Term of this Contract);
 - (d) identification of subcontractors (if any) that the Service Provider intends to engage a FMP item (wholly or partially); and
 - (e) any assumptions, qualifications or issues in relation to each FMP item (if any).
- 12.1.2. The Department will provide written notification to the Service Provider that it approves the FMP or specific FMP items.
- 12.1.3. The Service Provider must amend FMP items (as rejected by the Department) and provide the amended/updated FMP items to the Department for review/approval within 1 month after any item is so rejected by the Department.
- 12.1.4. The Service Provider must not implement the FMP or specific FMP items until it receives prior written approval from the Department.
- 12.1.5. The Service Provider may submit updated FMPs to the Department during the Term of the Contract (subject to the Service Provider's obligations specified clause 12.1.1 – 12.1.4 in Schedule 1 (as above)).
- 12.1.6. The Department will pay a Facilities Management Cost (FMC) of **Proposed** [REDACTED] each month to the Service Provider (subject to the Service Provider's requirements specified Clause 9.1 of Schedule 2 of this Contract) to facilitate the approved FMP items (such amount is included in the monthly Service Delivery Fee calculation as set out in clause 3.1 of Schedule 2).
- 12.1.7. The Service Provider and the Department acknowledge and agree that the FMC will not exceed (in aggregate) **Proposed Redaction** [REDACTED] during the Term unless varied in accordance with clause 17.9 of this Contract.
- 12.1.8. The Service Provider will consult with the Department so as to agree to a reasonable timetable for commencement of one or more of the approved FMP items at a time where sufficient FMC has been accumulated by the Service Provider to reasonably cover the costs and expenses of carrying out the approved FMP item or items.
- 12.1.9. The Service Provider must ensure that hourly rates for its Personnel to undertake the any FMP item does not exceed the hourly rates specified in Attachment A in Schedule 2 (excluding hourly rates for subcontractor personnel that undertake an FMP item (as approved by the Department)).

12.1.10. The Service Provider must substantiate (to the Department's reasonable satisfaction) the final actual cost for each FMP item and the overall total actual cost for carrying out the FMP no later than 2 weeks after completion of the FMP (but no later than 2 weeks before expiry of the Term). The Department agrees that all goods, materials, consumables, equipment and any specialist subcontractors engaged will be invoiced and charged to the Department at cost plus **Proposed** mark-up.

12.1.11. The Service Provider must reimburse the Department any unexpended amount of the FMC no later than 2 weeks before expiry of the Term.

12.1.12. The Service Provider is not entitled to payments that exceed the FMC (notwithstanding the Service Provider's substantiation of actual expenditure that exceeds the FMC) unless approved in writing by the Department.

12.2. Minor Capital Works

12.2.1. In this clause, **Minor Capital Works** (or **MCW**) means construction services as defined in the Commonwealth Procurement Guidelines (not Site maintenance or upgrades) that are valued (in total) less than **Proposed** (inc. GST).

12.2.2. The Department may, during the Term of this Contract, submit a brief to the Service Provider to undertake MCW. The Department must ensure that the brief includes (as minimum):

- (a) Site and location for the MCW;
- (b) required functionality of the MCW;
- (c) preliminary design/specifications for the MCW (if available);
- (d) required lifetime of the MCW;
- (e) any assumptions, qualifications or issues in relation to the MCW;
- (f) anticipated date for practical completion for the MCW; and
- (g) preferred defects liability period for the MCW (if required);
- (h) draft proposed contract terms

12.2.3. If the Service Provider is agreeable to providing a MCW proposal to the Department, the Service Provider will submit a MCW proposal to the Department no later than 2 weeks after it receives the Department's brief (as above) that includes (as a minimum):

- (a) total cost (and preferred payment milestones) of the MCW;
- (b) earliest commencement date for the MCW;
- (c) full design/specifications for the MCW;
- (d) date for practical completion for the MCW;
- (e) any assumptions, qualifications or issues in relation to the MCW; and
- (f) confirmation as to whether the proposed contract terms for the MCW are acceptable.

12.2.4. The Service Provider must amend its MCW proposal (if rejected by the Department) and provide the amended/updated MCW proposal to the Department no later than 1

week after it receives the Department's notification that it rejected the initial MCW proposal.

- 12.2.5. The parties will execute a MCW contract (on such terms as are to be reasonably agreed between the parties) if the Department accepts the Service Provider's MCW proposal.

PART 4 GOVERNANCE

1. Governance arrangements

1.1. General:

1.1.1. This Part:

- a) outlines the Department's governance framework to support the effective delivery of Services; and
- b) discusses the partnering approach expected of the Service Provider, the Department and other Service Providers to build long term relationships and improve service delivery for Transferees; and
- c) describes the contract management structure that will be in place at a Site and national level, including the committees and joint initiatives the Service Provider is required to participate in.

1.2. Governance framework

1.2.1. The Service Provider is required to comply with the governance framework developed by the Department, which may change from time to time.

1.2.2. The Service Provider is required to cooperate with the Department by actively participating in committees and meetings that have been (or will be) established. The Department will notify the Service Provider in writing of any changes to governance arrangements.

1.2.3. The Service Provider is required to cooperate with the Department, other Service Providers, and stakeholders, to meet the needs of Transferees and assist the Department to meet its obligations.

1.2.4. The Service Provider is required to attend, but is not limited to, the following local management meetings:

- a) daily morning meetings with the Department and other Service Providers;
- b) Transferee consultative committee meetings with Transferees, other Service Providers and the Department;
- c) weekly Individual and Behavioural Management Committee meetings with the Department and other Service Providers to review Transferee Individual Management Plans, Behavioural Management Plans and to identify Transferees at risk;
- d) Work Health and Safety (WHS) Committee meetings with the Department and other Service Providers to review WHS concerns at an OPC;
- e) weekly Departmental review meetings with the Department and other Service Providers to review performance and service delivery at an OPC;
- f) OPC Security Committee meetings with the Department and other Service Providers to review security arrangements; and
- g) monthly OPC level board meetings with the Department and other Service Providers to review the effectiveness of governance arrangements, risks and issues affecting the OPC.

Unless otherwise advised by the Department, local management meetings will be held on Site.

- 1.2.5. The Service Provider is required to participate in, and action agreed items resulting from all meetings, consultative committees and forums at the request of the Department.
- 1.2.6. In certain situations, and particularly at the local management level of governance, the Service Provider is required to chair and lead a meeting.
- 1.2.7. The Service Provider is required to provide updates, reports and briefings for meetings, consultative committees and forums at the request of the Department. These meetings may be held at the Department's National office in Canberra and the frequency will be agreed between the parties.
- 1.2.8. The Service Provider with the Department, relevant OPC government and communities will be required to:
 - a) participate in and contribute to regular meetings with community leaders;
and
 - b) develop and maintain good working relationships with key community members.

The Department will take a lead role in the development and implementation of any community consultations or meetings.

SCHEDULE 2 FEES & PAYMENTS

1. Service Fee

1.1. Elements of the Service Fee

- 1) The Service Fee for the Services will comprise the following elements which are described further below:
 - a. a Corporate Overhead Fee;
 - b. a Service Delivery Fee (which for the avoidance of doubt includes the FMC referred to in clause 12.1.6 of Part 3 of Schedule 1);
 - c. Personnel Accommodation Services Fee;
 - d. Transition-In Fee and Transition-Out Fee;
 - e. Pass-Through Costs (without mark-up);
 - f. Payments under the cost reduction and incentive framework;
 - g. Any other amounts payable under this Contract.
- 2) The Service Provider is not entitled to any other payments in relation to the delivery of the Services.

1.2. Adjustment of Service Fee for Contract extension

- 1) 
- 2) The Service Provider must submit the proposal to the Department no later than 2 weeks after the date it receives notification from the Department that it proposes to extend the Contract.
- 3) The parties will negotiate and finalise (in good faith) the proposed adjustment to the relevant fees prior to the commencement date of the extension to the Term.
- 4) 
- 5) 



1.3. Exchange Rate

- 1) If the Department and the Service Provider are required (for any reason) to convert local currency on the Regional Processing Countries to AUD\$ (or vice versa) the parties will utilise the following currency conversion rate:



- 2) The exchange rate is to apply to all transactions denominated in Kina and includes the reimbursement of meal monies to the Department.
- 3) No variation to this exchange rate will be considered in the initial Term of the Contract.
- 4) If the Department extends the Contract in accordance with clause 2.4.2, adjustment to the PNG Kina exchange rate will be made by having regard to any change between the exchange rate in clause 1.3 1 above and the PNG Kina exchange rate (expressed in AUD) published by the Reserve Bank of Australia at commencement date of the extension to the Term.
- 5) Conversion of currency other than PNG Kina will be at the rate published on the Reserve Bank of Australia website on the date the invoice or closest business day if the date of the invoice is a bank holiday or weekend.

1.4. Performance Linked Fee

- 1) The Performance Linked Fee comprises the total financial amount put at risk by the Service Provider for any Financial Abatement for Performance Failures for which the Service Provider may be liable under Schedule 6, Part 9.2 in any month.
- 2) The maximum Performance Linked Fee put at risk for each month is the sum of the applicable 'Monthly Corporate Overhead Fee at Risk' for Nauru and Manus Sites as listed in Column 1 - Nauru and Column 2 – Manus in Attachment C of Schedule 2, calculated at the applicable Transferee Band for that Site for the relevant month.
- 3) If the number of transferees fluctuates between bands throughout the course of the month on a Site, for which the Service Provider is determined to be liable under the Contract for any Financial Abatement for Performance Failures, the Performance Linked Fee for that month will be calculated on a pro-rata basis based on the number of calendar days in that month as relevant to each Site.

2. Corporate Overhead Fee

- 1) The Corporate Overhead Fee is a monthly fee linked to capacity bands based on the number of transferees on island, calculated daily. See below.

Proposed Redaction	[Redacted]									
	[Redacted]									
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
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[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
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[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

Proposed Redaction	[Redacted]									
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[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
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[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

- 4.2. The 'Components of the Service Charge' specified in clause 4.1 in Schedule 2 (as above) are based on Personnel Accommodation Sites on the Execution Date, being:
- a. Nauru – 1,358 beds; and
 - b. Manus – 823 beds.
- 4.3. In the event the Department increases the bed capacity in the Personnel Accommodation Sites during the Term of the Contract, the 'Components of the Service Charge' specified in clause 4.1 in Schedule 2 (as above) will be multiplied by the revised number of beds .

- 4.4. If the number of transferees fluctuates between capacity bands throughout the course of the month, the monthly fee will be applied on a pro-rata basis based on the number of calendar days in that month.

5. Transition-In and Transition-Out Fees

- 5.1. Transition-In Fees and Transition-Out Fees are fixed, reflecting the maximum transition fee payable, and apply for the timeframes specified in the Service Provider's Transition-In Plan and Transition-Out Plan (as approved by the Department in accordance with the clause 2.5 and 15.3).



6. Pass-Through Costs and Pass Through Costs Fee

6.1. Approval of Pass-Through Costs

- 1) The Department will reimburse reasonable approved costs incurred by the Service Provider that are not covered by the Corporate Overhead Fee or the Service Delivery Fee in relation to the following:
- a. [Redacted];
 - b. [Redacted];
 - c. [Redacted];
 - d. [Redacted];
 - e. [Redacted];
 - f. [Redacted];
 - g. [Redacted];

h.



2) Pass-Through Costs are linked to capacity bands and are estimated as follows:



- 3) The Department will reimburse any requirement to replace Transferee property or compensate a Transferee for loss or damage to their own property other than where the loss or damage was caused or contributed to by an act or omission of the Service Provider. No mark-up is to be applied to reimbursement of these costs.
- 4) The parties will develop a joint procedure for the management, approval and reporting of procurement and Pass-Through Costs that are subject to approval

by the Department within the scope of the Contract. All Pass-Through Costs subject to Departmental approval must:

- a. be approved by the Department in advance in writing; and
- b. be claimed within 3 months of the date on which the relevant goods or services are provided to the Service Provider, with no Pass-Through Costs able to be claimed more than 60 days after the expiration or earlier termination of the Contract.

7. Additional Services

- 7.1. The Department may (from time to time) request the Service Provider to provide additional or out-of-scope services (i.e. services not currently specified in the Statement of Work). Hourly rates for labour for the Service Provider Personnel to undertake the additional or out-of-scope services are specified in the Attachment A.
- 7.2. No additional fees will apply to additional or out-of-scope services unless approved by the Department prior to commencement of the particular services.
- 7.3. Additional fees may include reimbursement for pass through costs such as materials, consumables, equipment and any specialist subcontractors, which will be invoiced at cost plus **Proposed** mark-up. Reimbursements will only be processed if prior approval for the expenditure has been obtained by the Service Provider from the Department.
- 7.4. Exchange rate provisions included at section 1.3 of Schedule 2 will apply to any additional fees.
- 7.5. Additional Services under clause 7 should be invoiced separately from regular Service Fees.
- 7.6. Respondents may also specify additional types of Personnel and respective hourly rates for further consideration by the Department.

8. Cost Reduction Incentive Framework

8.1. Reduction of Corporate Overhead Fee and Service Delivery Team Fee

8.1.1 The Service Provider is entitled to **Pro** of any saved amount of the Corporate Overhead Fee that is determined as follows:

Proposed Redaction [Redacted]

P [Redacted]
r [Redacted]
o [Redacted]
n [Redacted]

P
r
o
n

[Redacted]

8.1.2 The Service Provider is entitled to Pro of any saved amount of the Service Delivery Fee that is determined as follows:

Proposed Redaction [Redacted]

[Redacted]

[Redacted]

8.1.3 The Department will pay the monthly amount determined after applying calculations in clause 8.1.1 and 8.1.2 in Schedule 2 (as above) in addition to the monthly Corporate Overhead and monthly Service Delivery Team Fee.

8.1.4 The Department will pay the pro-rata amount of the amount determined after applying the calculations in clause 8.1.1 and 8.1.2 in Schedule 2 (as above) if the parties vary (during a particular month) the monthly Corporate Overhead Fee and/or monthly Service Delivery Fee.

8.2. Reduction of indicative total Pass-Through Costs

8.2.1 The Service Provider is entitled to payment of Pro of any reduced/saved amount of the Pass-Through Costs that is determined as follows:

Proposed Redaction [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]



- 8.2.2 The Service Provider must separately substantiate (to the Department's reasonable satisfaction) the saved amount for Period 1, 2 and 3.
- 8.2.3 The Department will pay the approved saved amount **Propo** for Period 1, 2 and 3 no later than 30 days after the expiry date of Period 1, 2 and 3 (subject to the Service Provider's requirements specified Clause 6.1 of Schedule 2 of this Contract).

9. Payment Arrangements

9.1. Invoices

- 1) The Service Fee (including the monthly component of the FMC (refer clause 12.1.6 of Part 3 of Schedule 1) will be invoiced and submitted as soon as possible and in any event no more than 3 Business Days after the last working day of each month and be paid by the Department monthly in arrears within 14 days of receipt by the Department of a correctly rendered invoice.
- 2) Approved Pass Through Costs, Additional Services Fees and Transition In and Transition-Out Fees will be invoiced and submitted as soon as possible after the 15th day of each month and be paid by the Department monthly in arrears within 21 days of receipt by the Department of a correctly rendered invoice.
- 3) Unless otherwise agreed, any payments under this Contract will be made by electronic transfer directly to a nominated bank account. Payments will be net of payment reductions for abatement for which the Service Provider is liable under the Agreement.
- 4) An invoice must:
 - a. meet Australian Taxation Office requirements of a tax invoice as required by GST Law;
 - b. be accurate;
 - c. meet the requirements of the Financial Management and Accountability Act 1997;
 - d. provide disclosure of the basis of all components of the Services Fee and FMC charged to the Department (including relevant calculations); and
 - e. provide full substantiation for any Pass-Through Costs claimed by the Service Provider and include confirmation that the Pass-Through Costs are

properly recoverable (including compliance with clause 6.1.4 in Schedule 2 (as above)).

- 5) An invoice will not be considered correctly rendered until the end of the relevant service period.

9.2. Disputes about invoices

- 1) If the Department in good faith disputes the whole or any portion of the amount claimed in an invoice, the Department:
 - a. may withhold payment of any part of the Service Delivery Fee, any Pass-Through Costs or FMC that are in dispute until the dispute is resolved; and
 - a. must notify the Service Provider in writing (within 30 days of receipt of the invoice) of the reasons for disputing the remainder of the invoice.

9.3. Incorrect Invoices

- 1) If an invoice is found to have been rendered incorrectly, any underpayment or overpayment will be recoverable by or from the Service Provider, as the case may be, and, without limiting recourse to other available remedies, may be offset against any amount subsequently due from the Department to the Service Provider. In such circumstances the Service Provider must provide to the Department a correctly rendered Tax Adjustment Note.

9.4. Insurance

- 1) From time-to-time there may be a need to seek reimbursement of items that will be subject to an insurance claim. These items should be invoiced to the Department separately from regular Service Fees and Pass Through Costs and should clearly identify the claim number on the face of the invoice.

10. Petty Cash

10.1. Nauru

- 1) To replenish the Nauru float, the Advance Holder should forward an email to odrtg.finance@immi.gov.au requesting approval for a cash advance, usually of **Prop**
- 2) Once approved, the Finance Manager for ODRTG will email the Advance Holder and the Service Provider, advising that the cash advance of **Prop** has been approved and that the Service Provider may add the **Prop** expense to the DIBP Invoice.
- 3) The Advance Holder may then physically collect the **Prop** cash and receipt, from the Finance Section in the Service Provider's office.
- 4) The Advance Holder should scan and save the collection receipt, then email it to revenue.management.unit@immi.gov.au and odrtg.finance@immi.gov.au.

- 5) When completing the monthly reconciliation, the Advance Holder should record the new cash advance as a payment to the float in the Petty Cash Ledger.
- 6) Once the monthly reconciliation is completed, the Advance Holder should scan and email all of the receipts to revenue.management.unit@immi.gov.au and odrtg.finance@immi.gov.au by 2:30pm Tuesdays.
- 7) **Manus**
- 8) To replenish the Manus float, the Advance Holder should forward an email to odrtg.finance@immi.gov.au requesting approval for a cash advance, usually of **Prop**
- 9) Once approved, the Finance Manager for ODRTG will email the Advance Holder and the Service Provider, advising that the cash advance of **Prop** has been approved and that the Service Provider may add the **Prop** expense to the DIBP Invoice.
- 10) The Advance Holder may then physically collect the **Prop** cash and receipt, from the Finance Section in the Service Provider's office.
- 11) The Advance Holder should scan and save the collection receipt, then email it to revenue.management.unit@immi.gov.au and odrtg.finance@immi.gov.au.
- 12) When completing the monthly reconciliation, the Advance Holder should record the new cash advance as a payment to the float in the Petty Cash Ledger.
- 13) Once the monthly reconciliation is completed, the Advance Holder should scan and email all of the receipts to revenue.management.unit@immi.gov.au and odrtg.finance@immi.gov.au by 2:30pm Tuesdays.

11. Meal monies

- 11.1. Meal monies collected from Departmental staff and Service Providers should be separately banked and returned to the Department monthly.
- 11.2. **Nauru**
 - 1) Meal monies will be collected in \$AUD.
 - 2) Following the end of the month, and no later than 5 business days after the end of the month, the Service Provider should advise the Department the amount that has been collected for meal monies.
 - 3) The advice should be accompanied by a reconciliation confirming the amount.
 - 4) Following acceptance of this advice and reconciliation, the Department will raise an invoice to the Service Provider requesting reimbursement of this amount within 30 days.
 - 5) The Service Provider must pay this invoice and cannot provide a credit note or request that these monies be offset against outstanding invoices.

- a. subsidised meals for Personnel in accordance with Department policy.

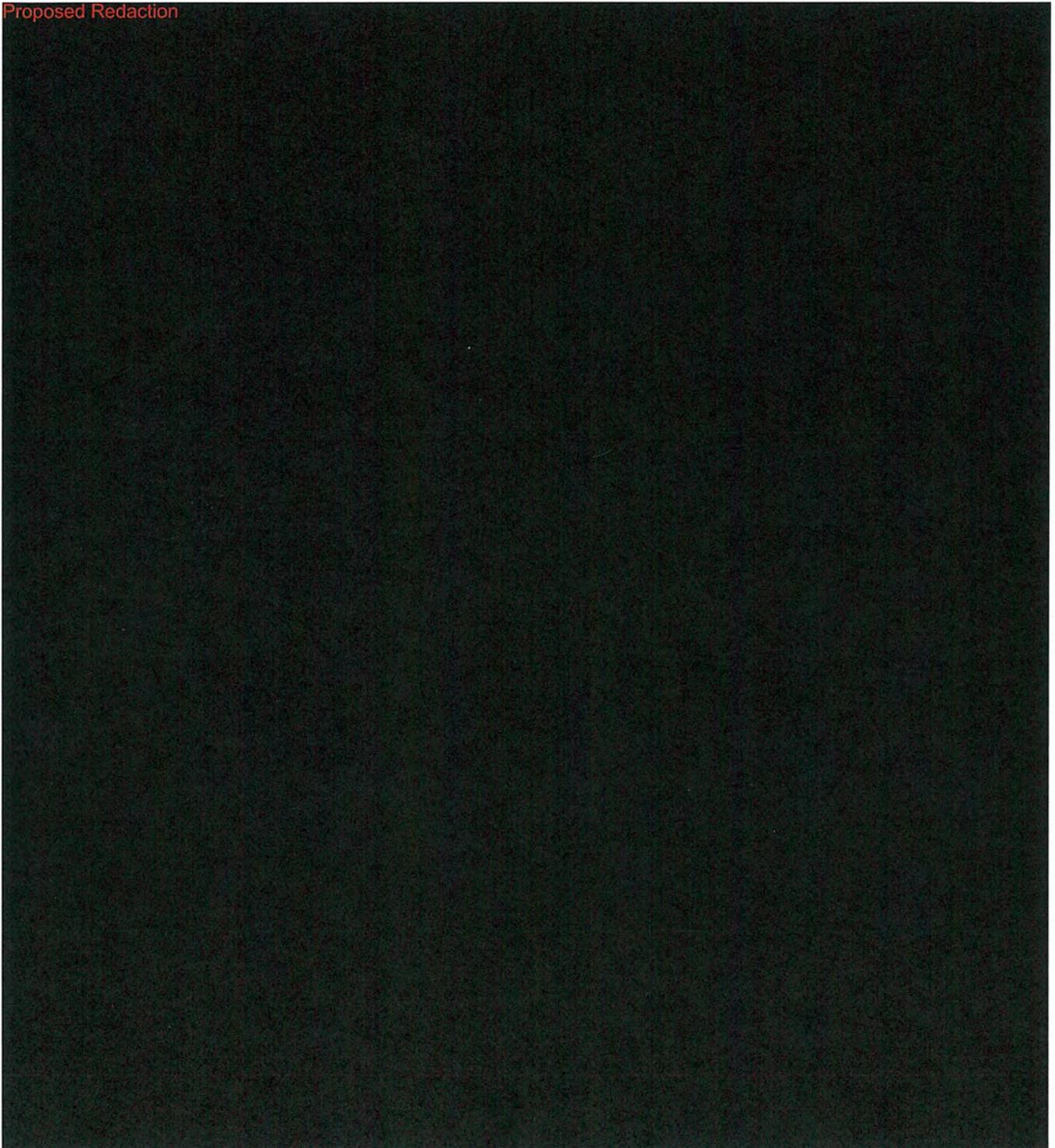
13. Cost assumptions

- 1) The Service Provider's agreed cost assumptions are at Attachment B.

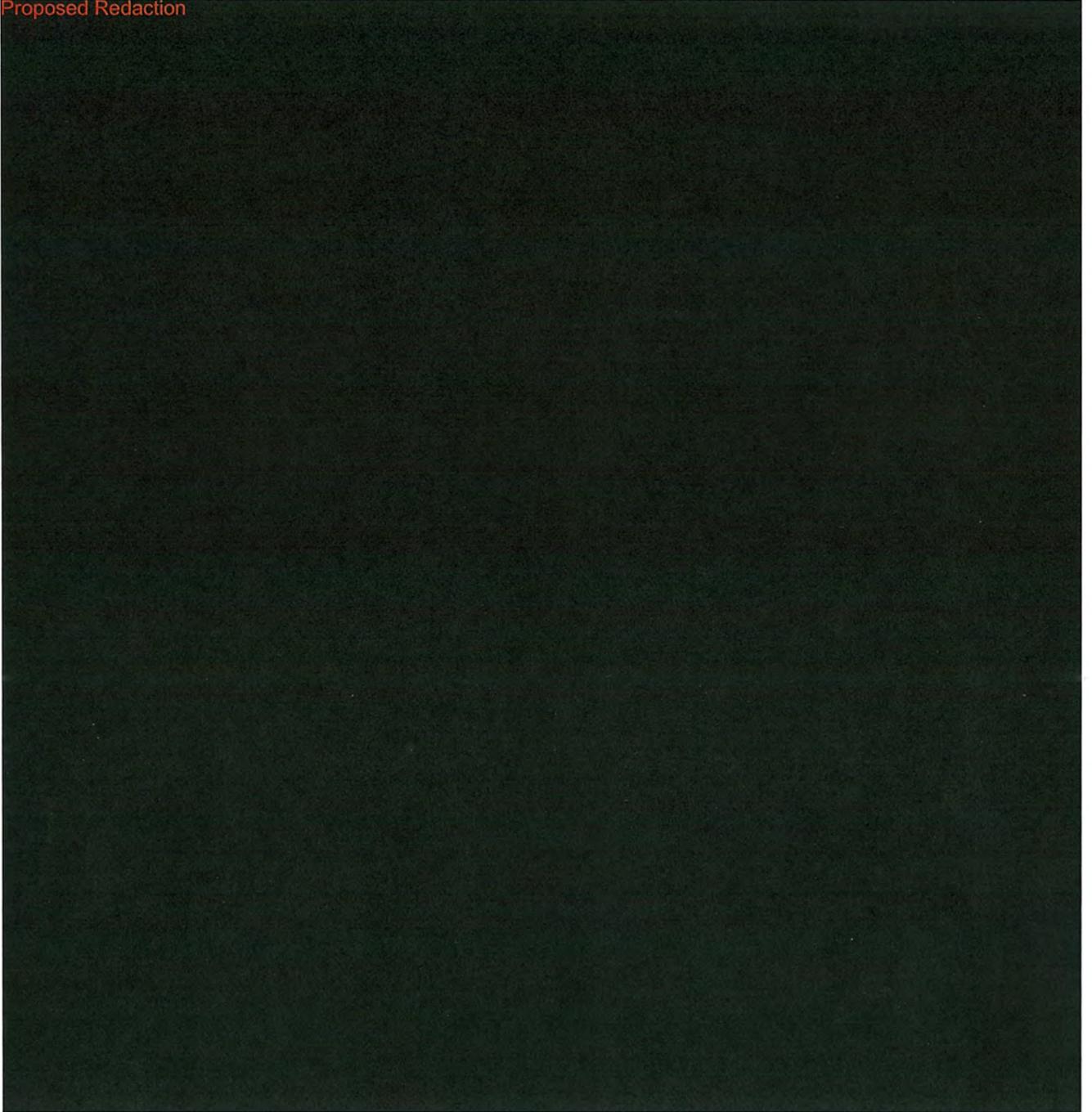
Attachment A – Additional Services

The Additional Services Fee will be determined using the following hourly rates for labour:

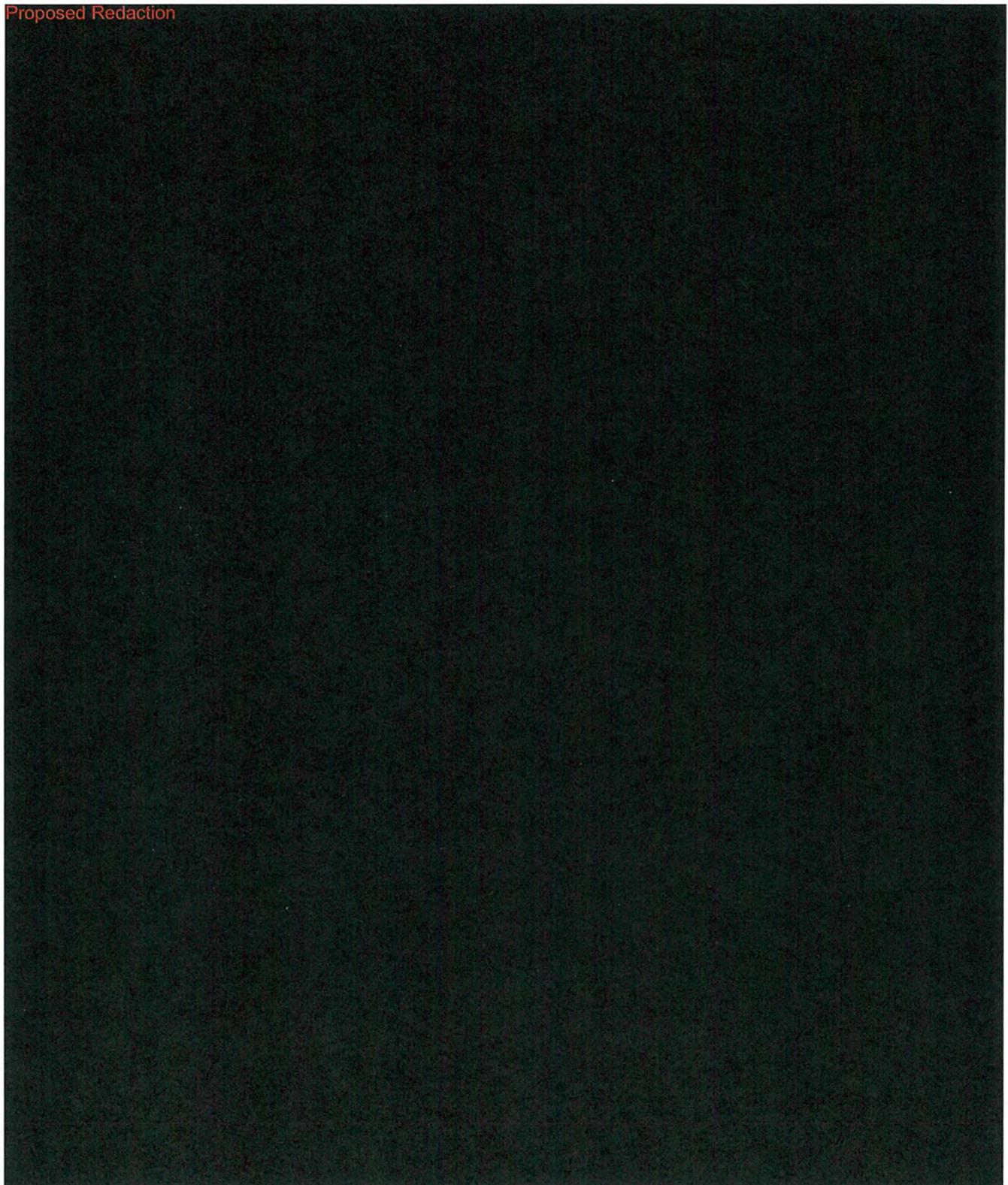
Proposed Redaction



Proposed Redaction



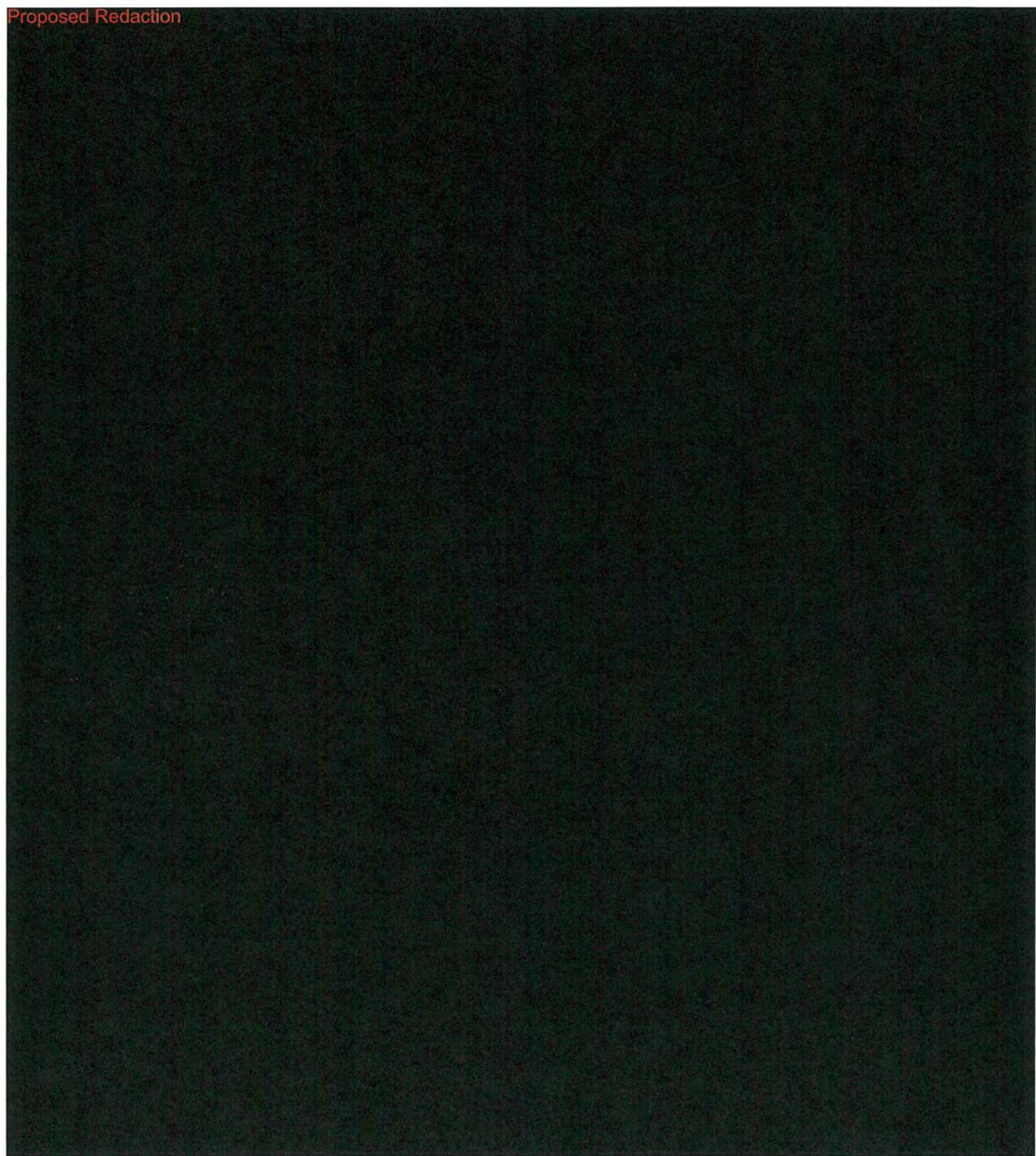
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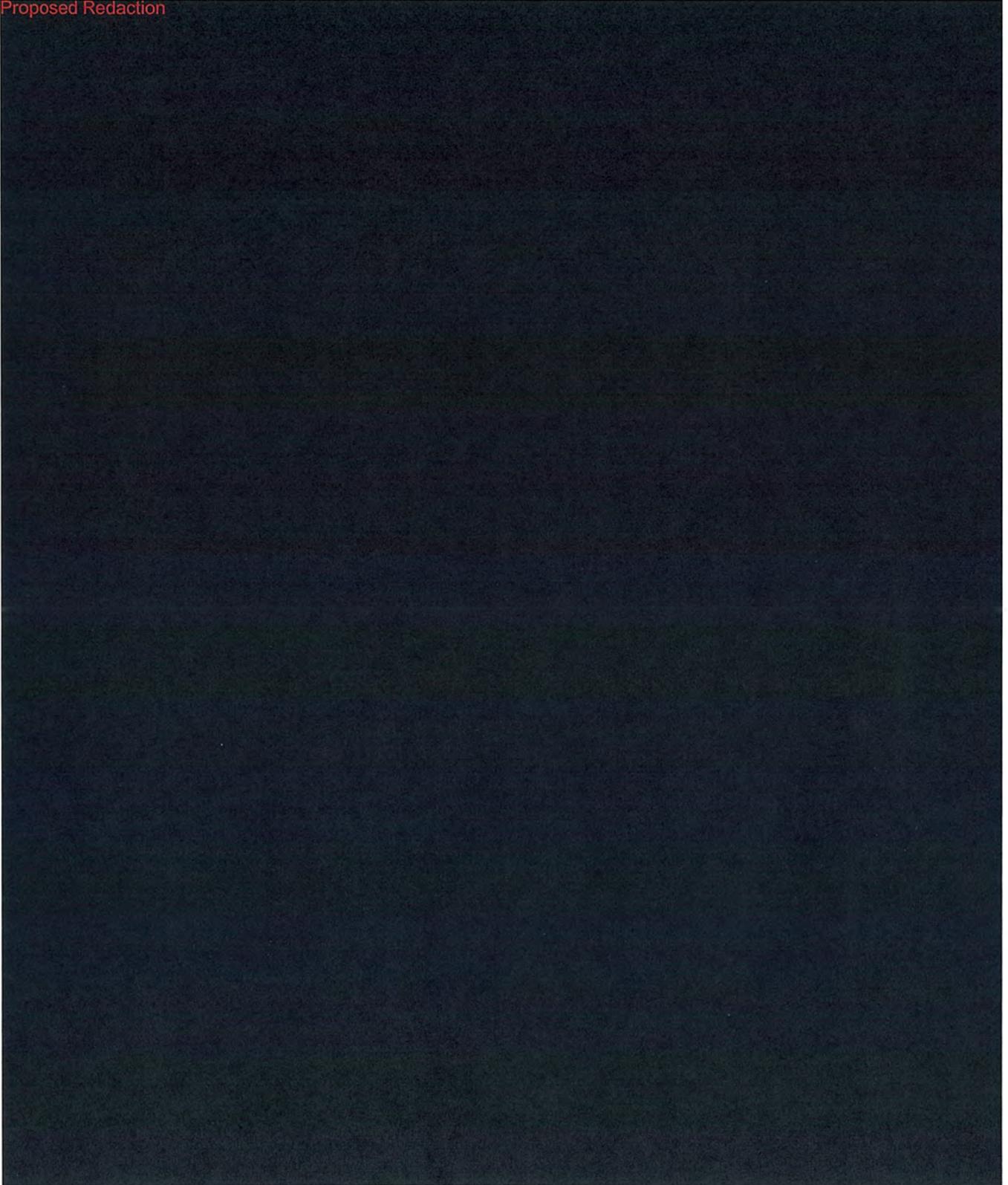
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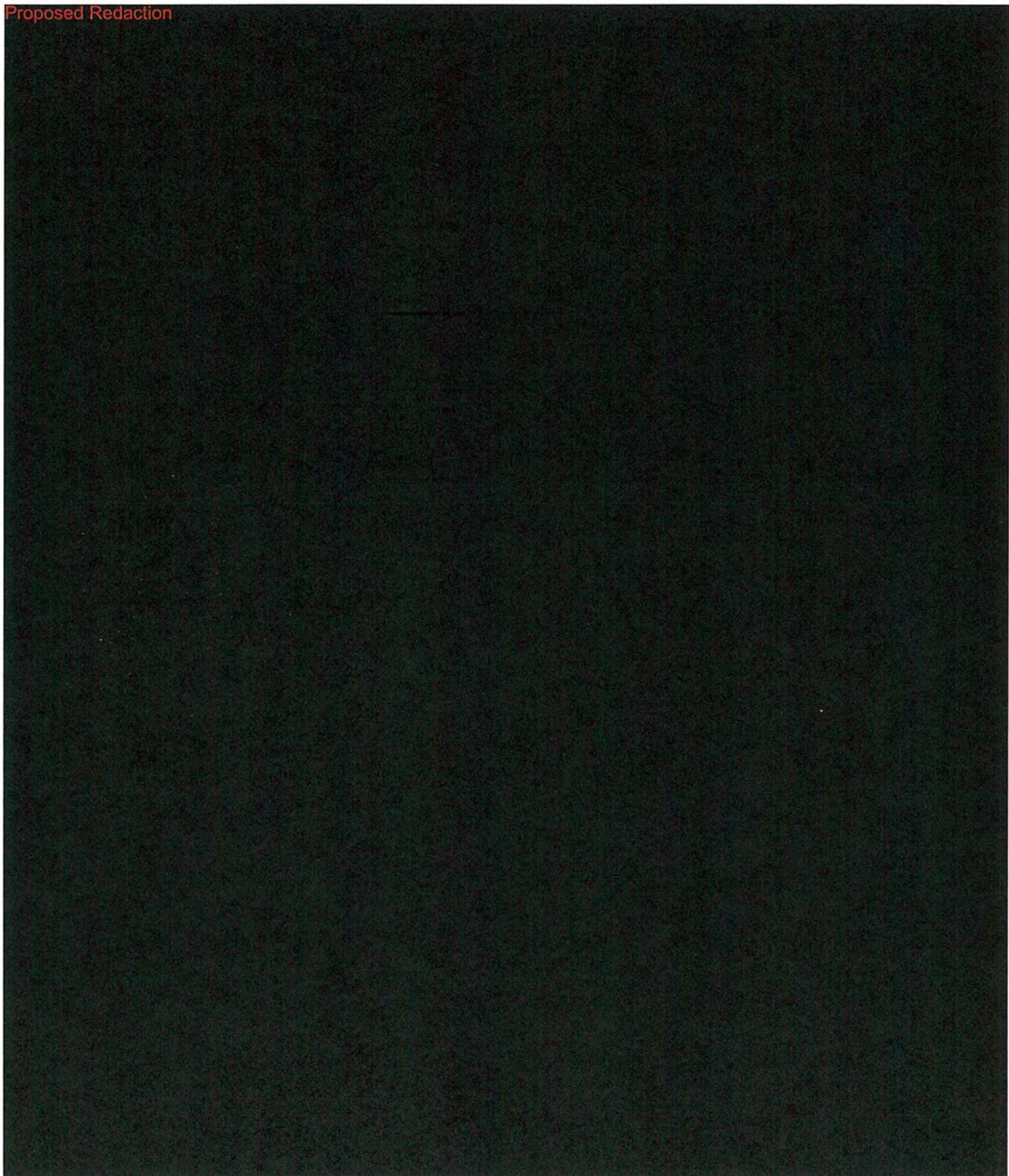
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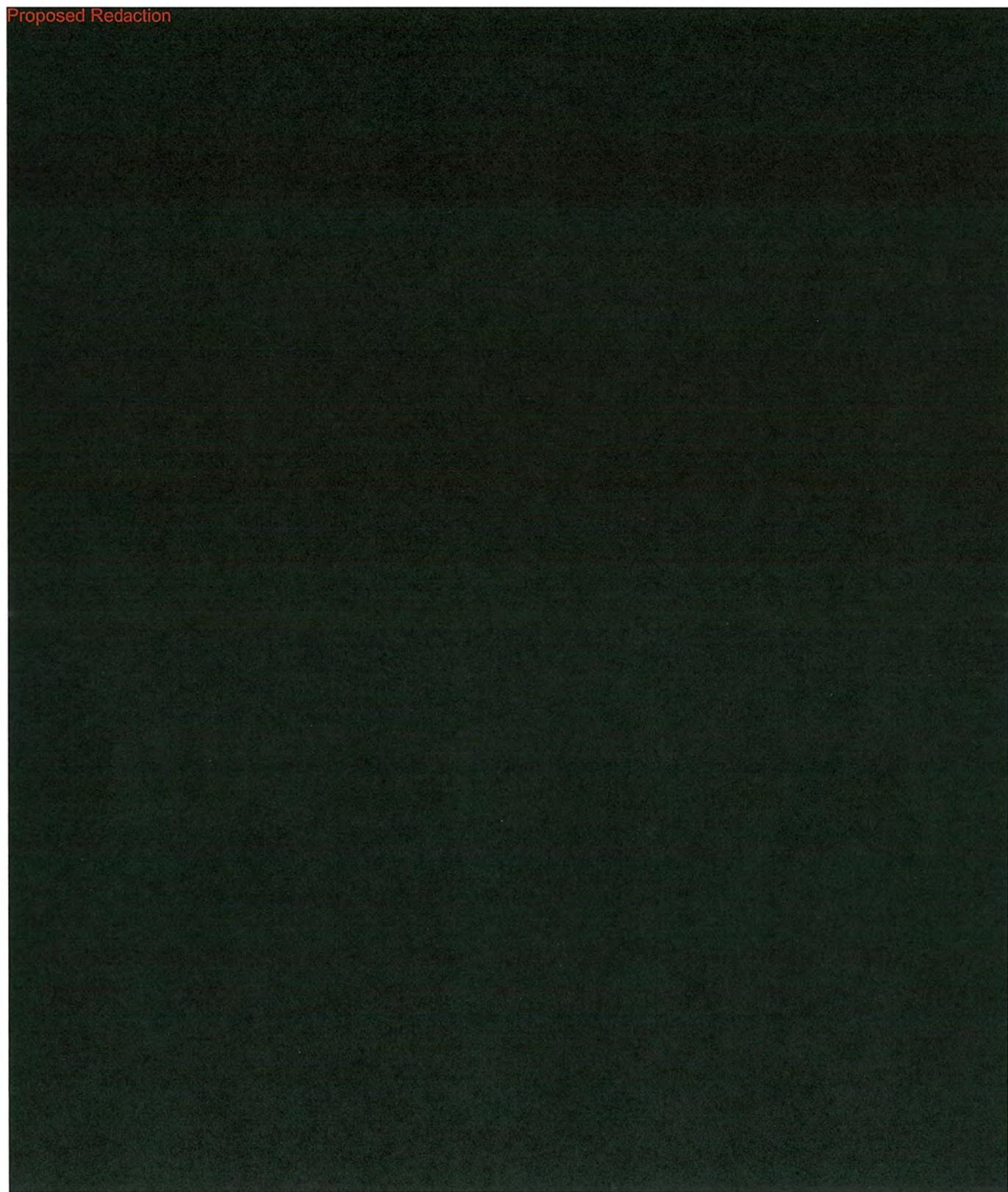
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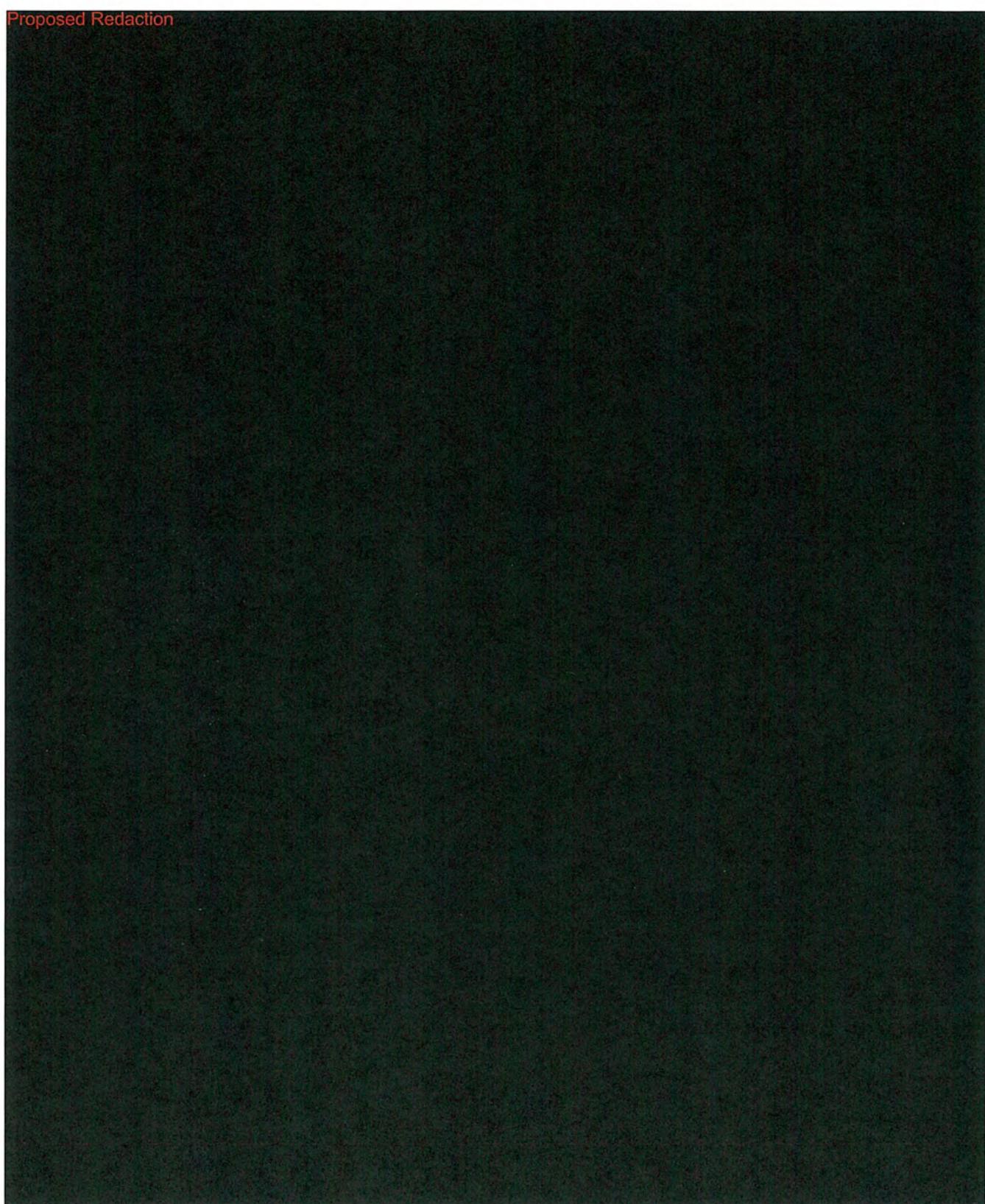
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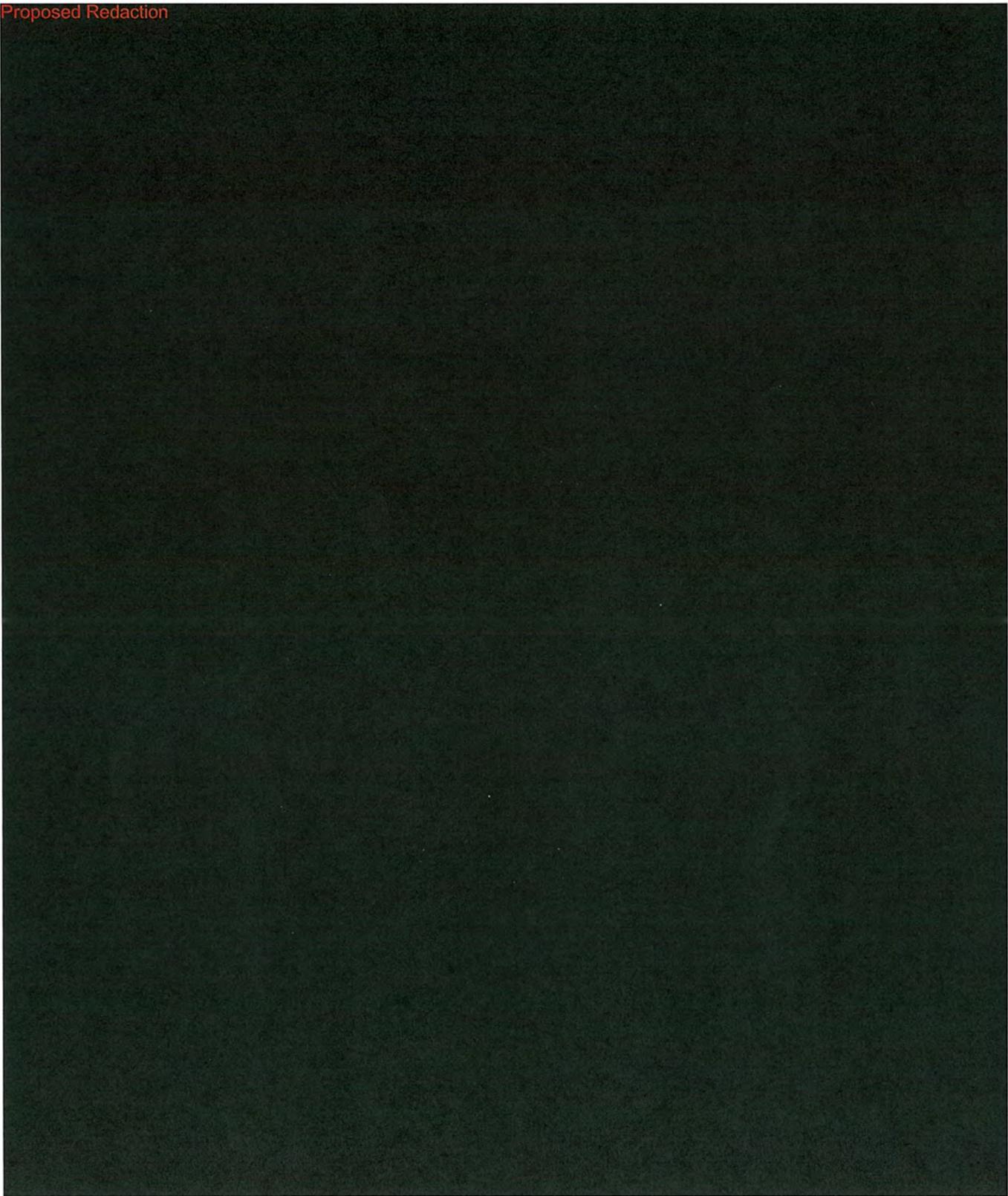
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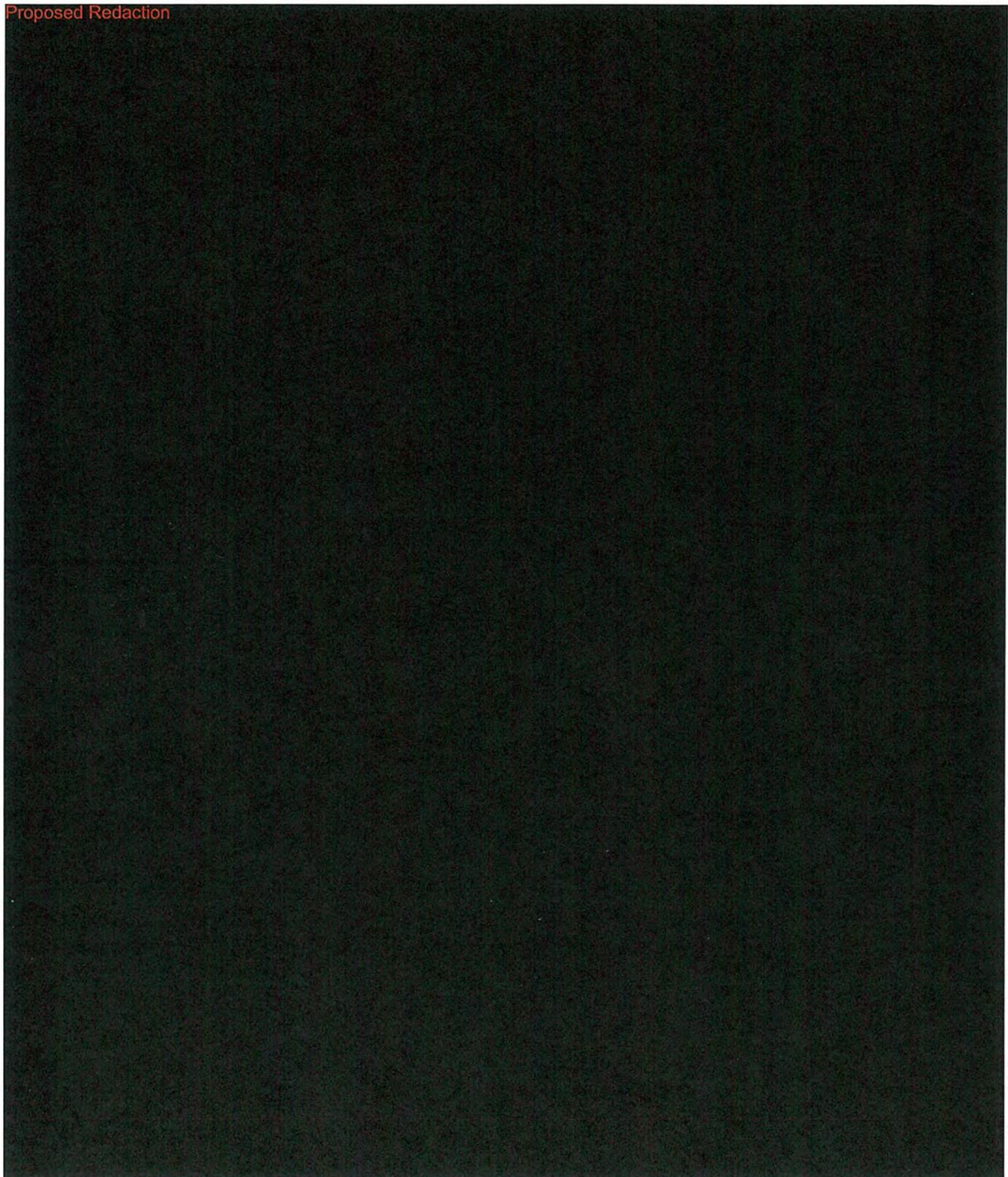
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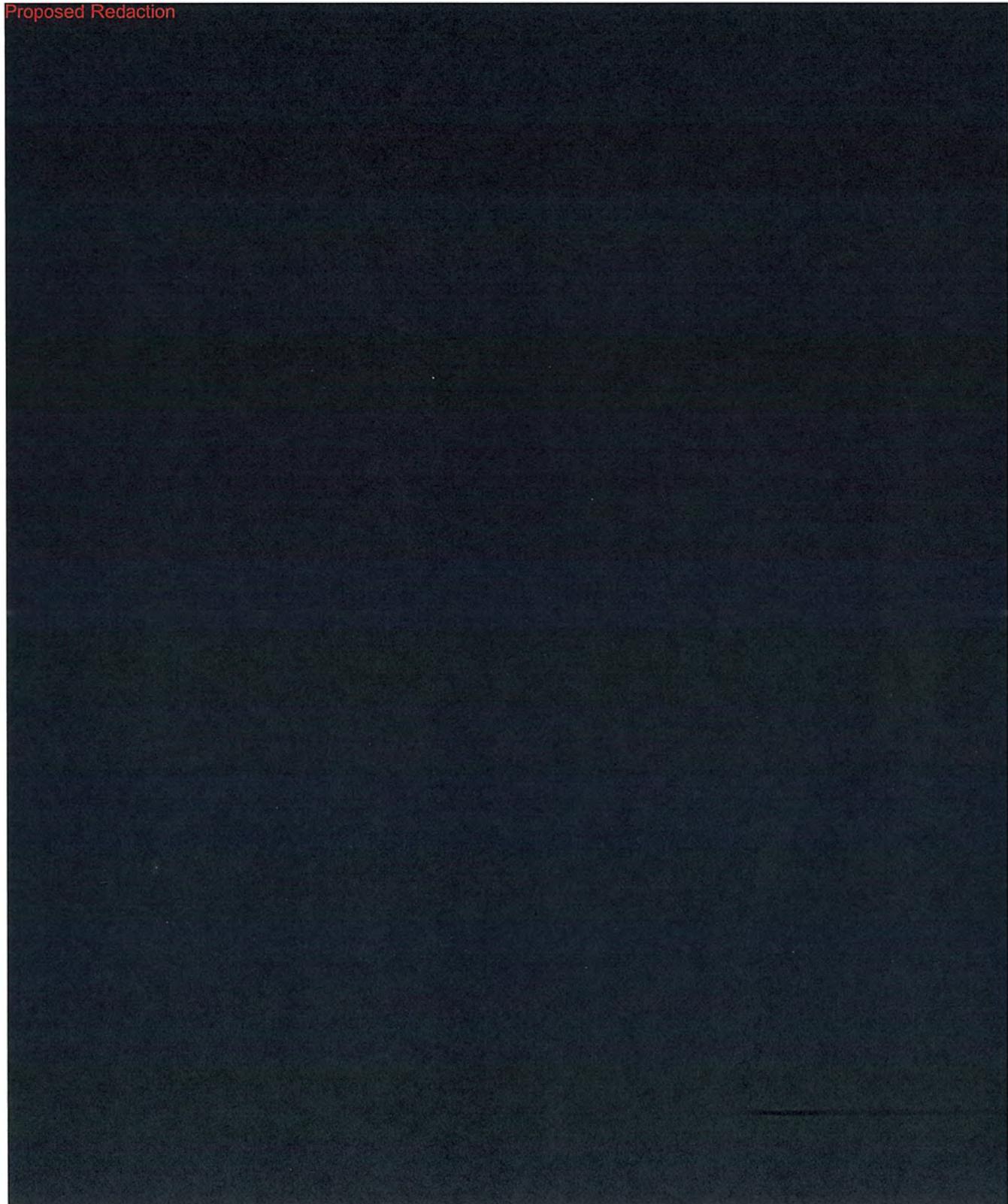
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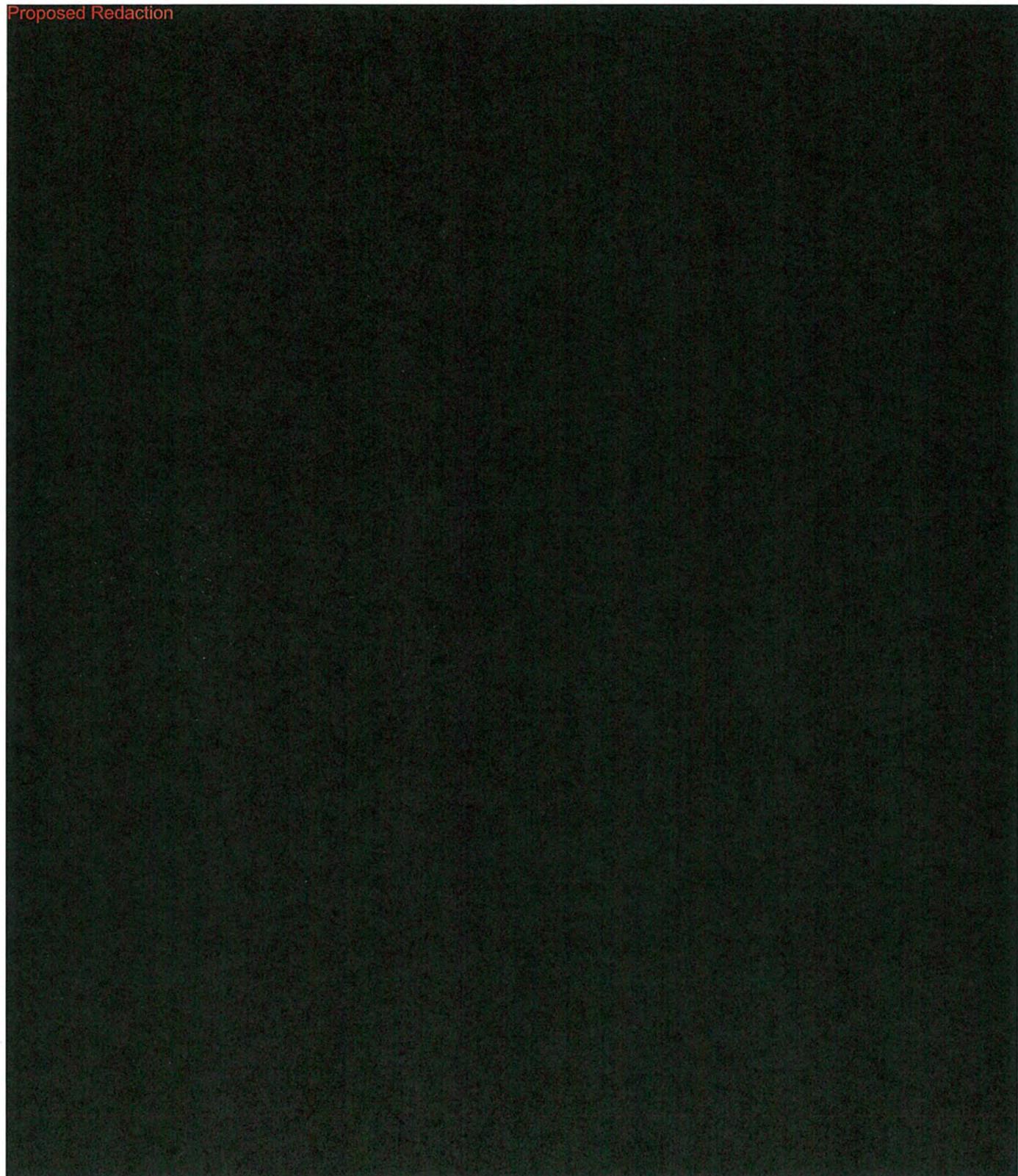
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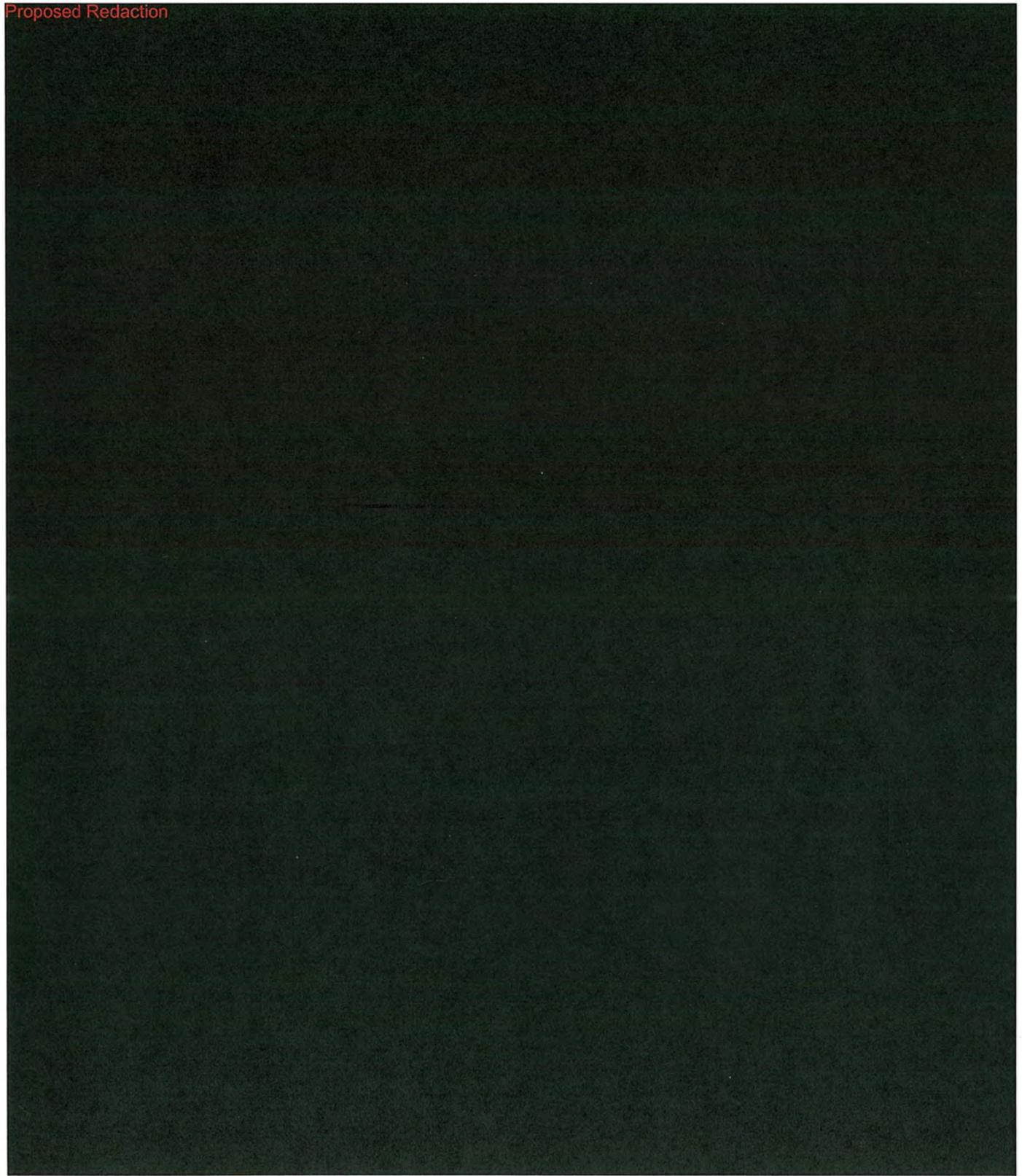
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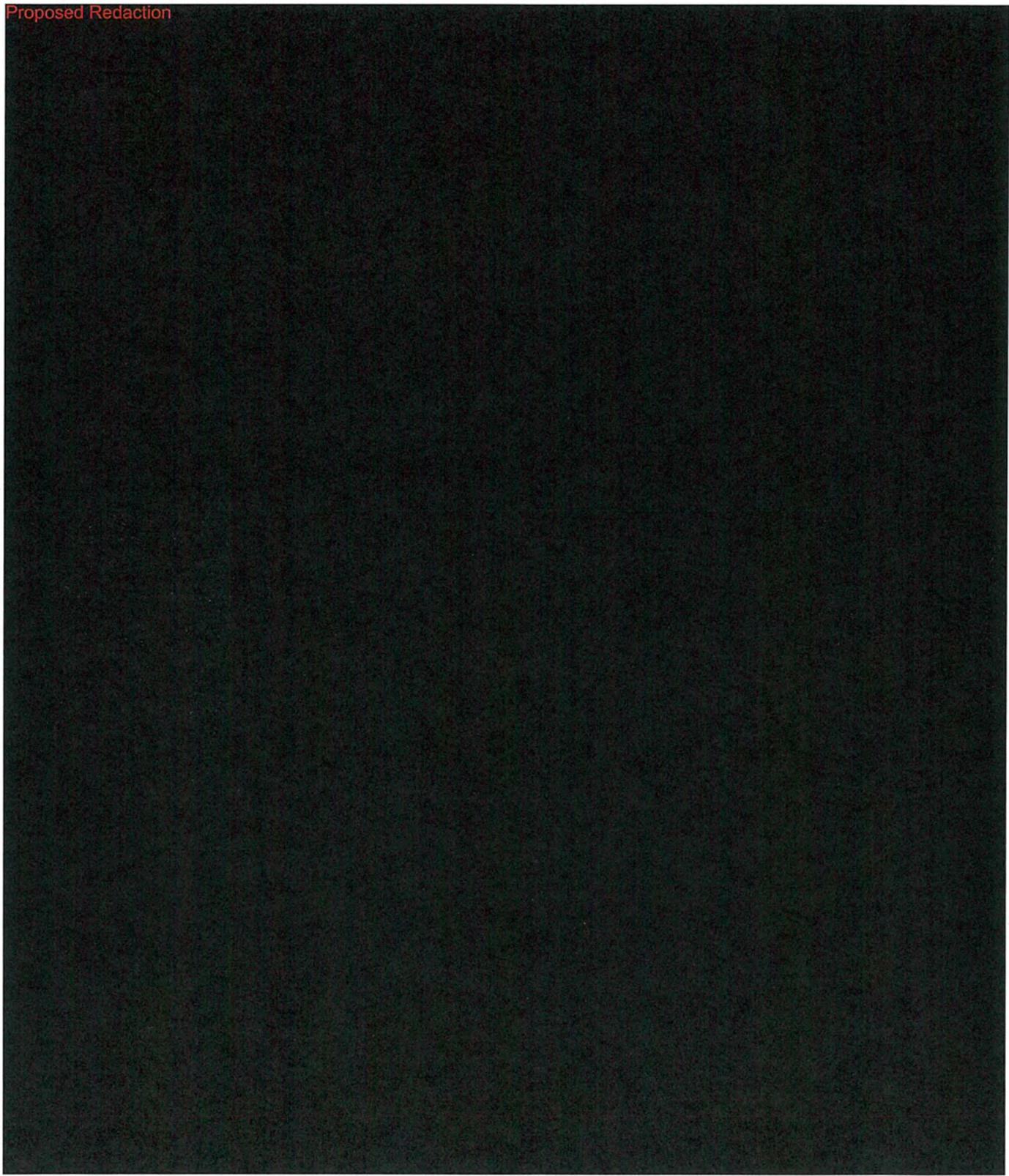
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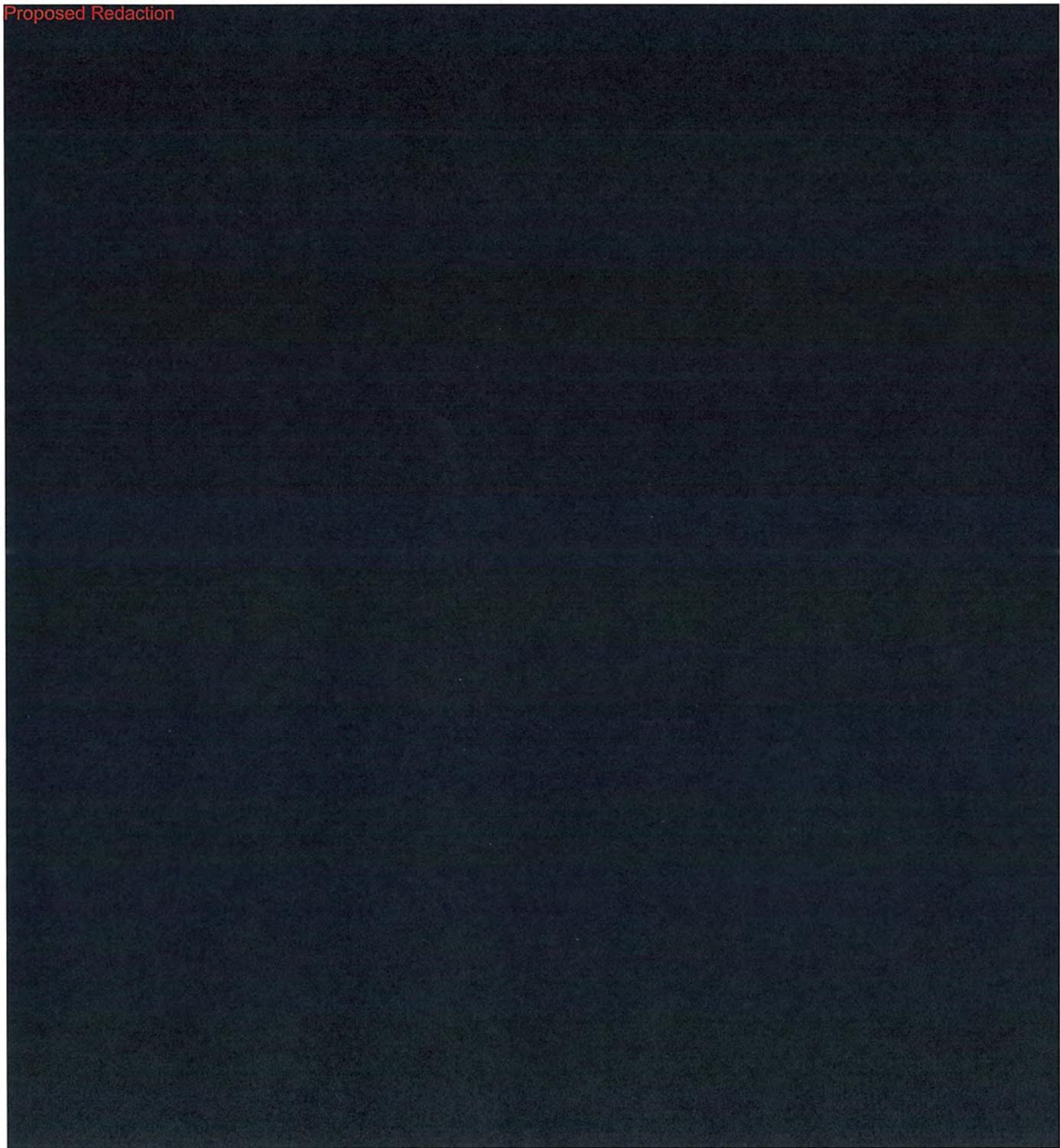


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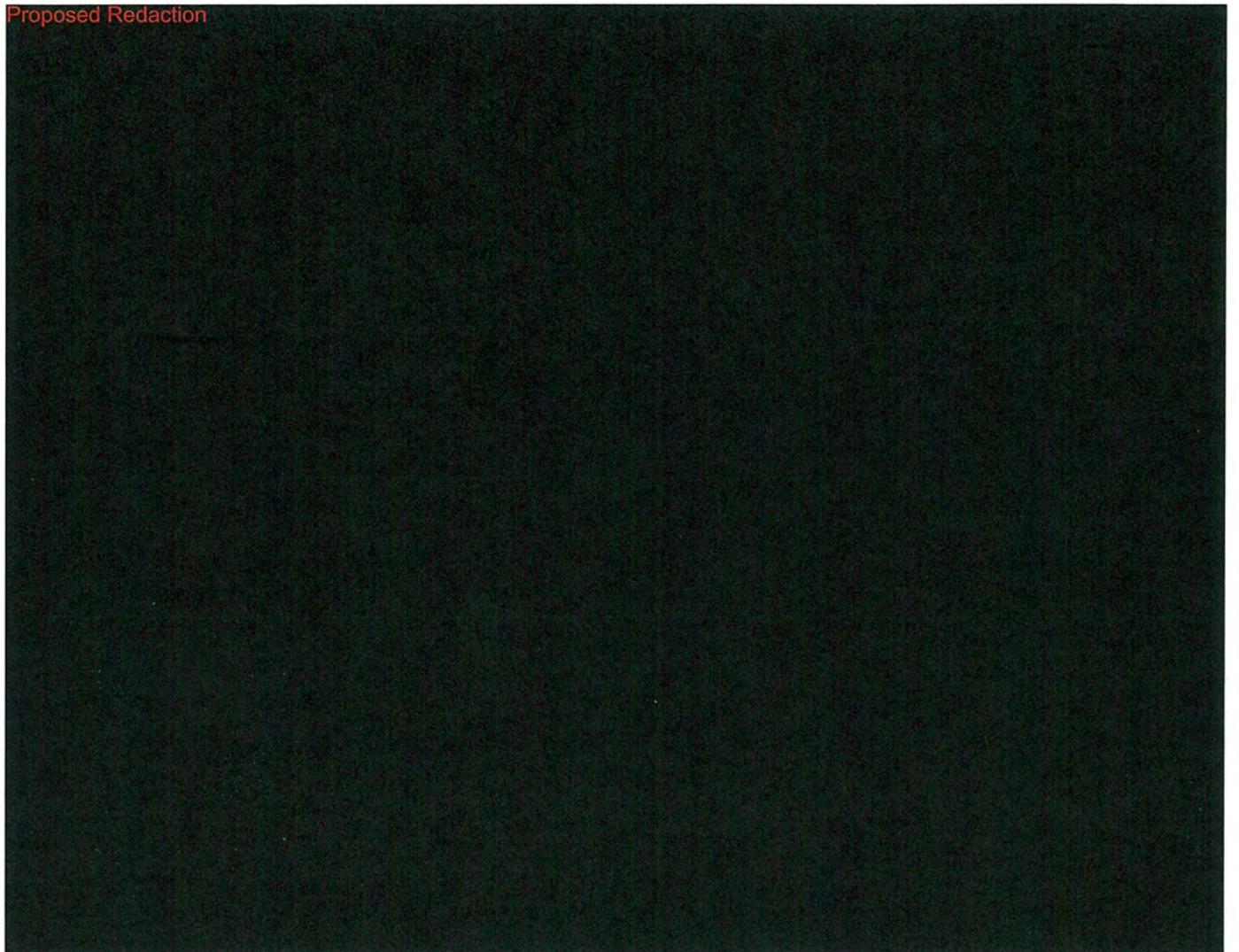


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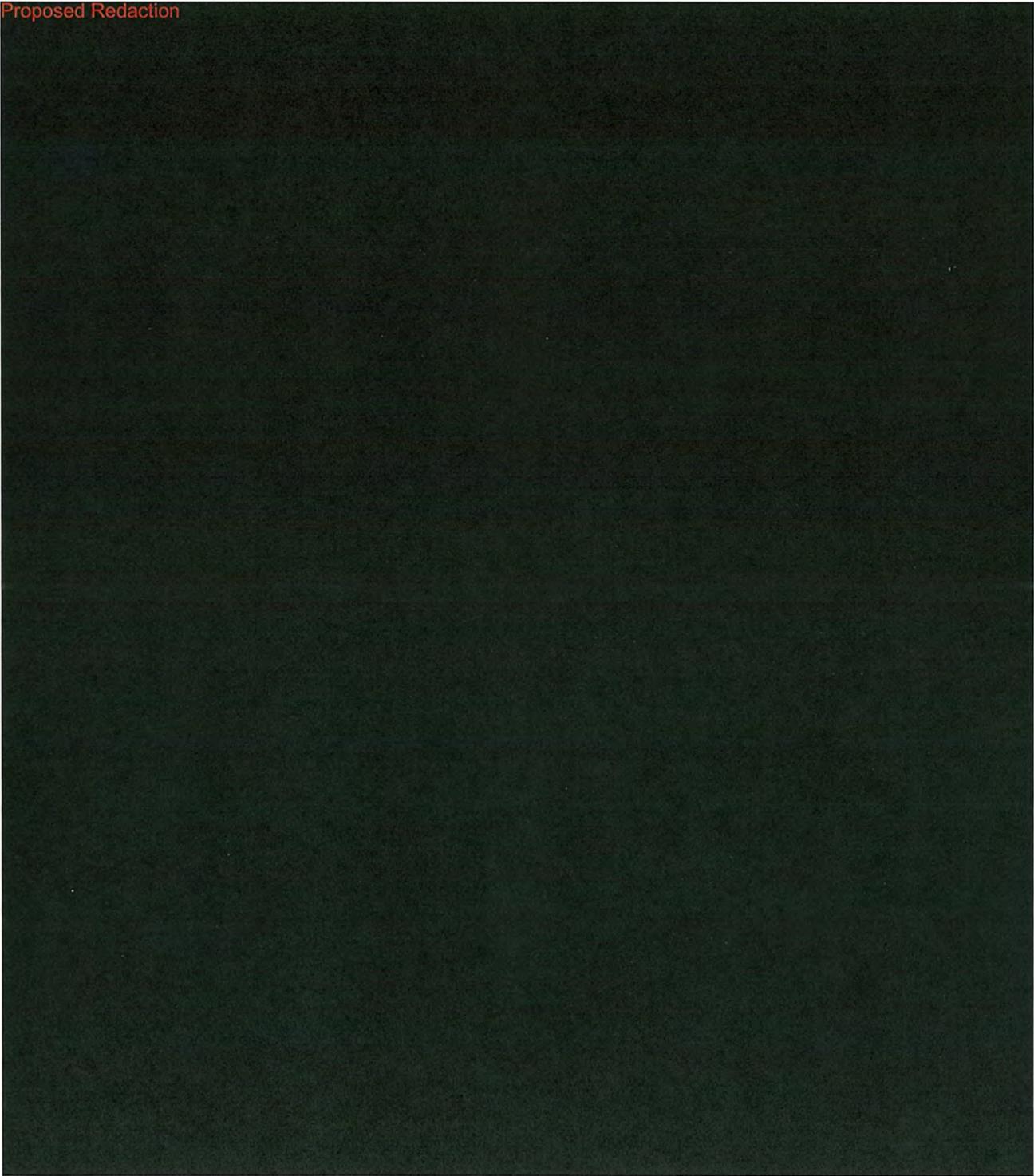


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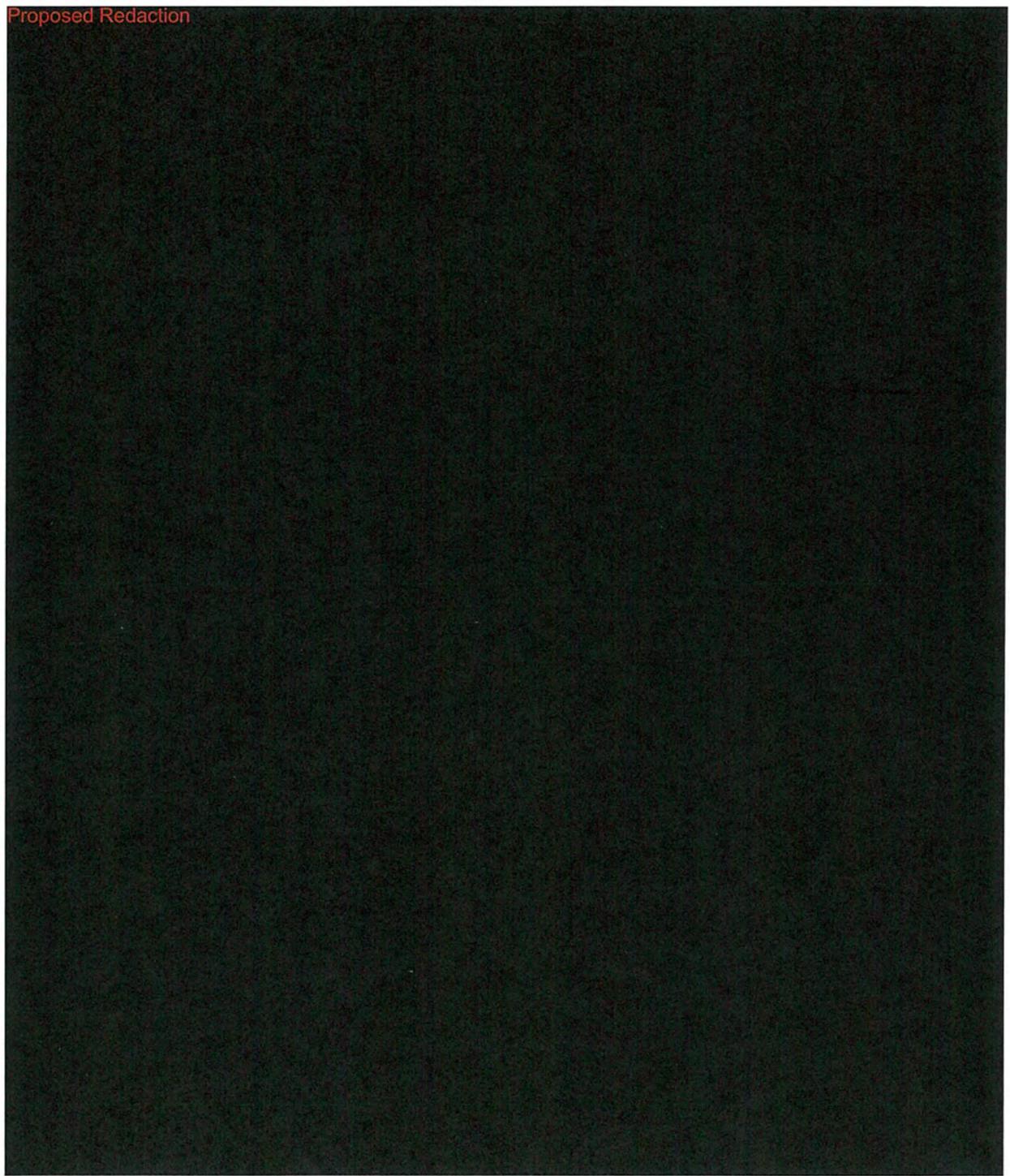


Attachment B – Cost Assumptions

Proposed Redaction

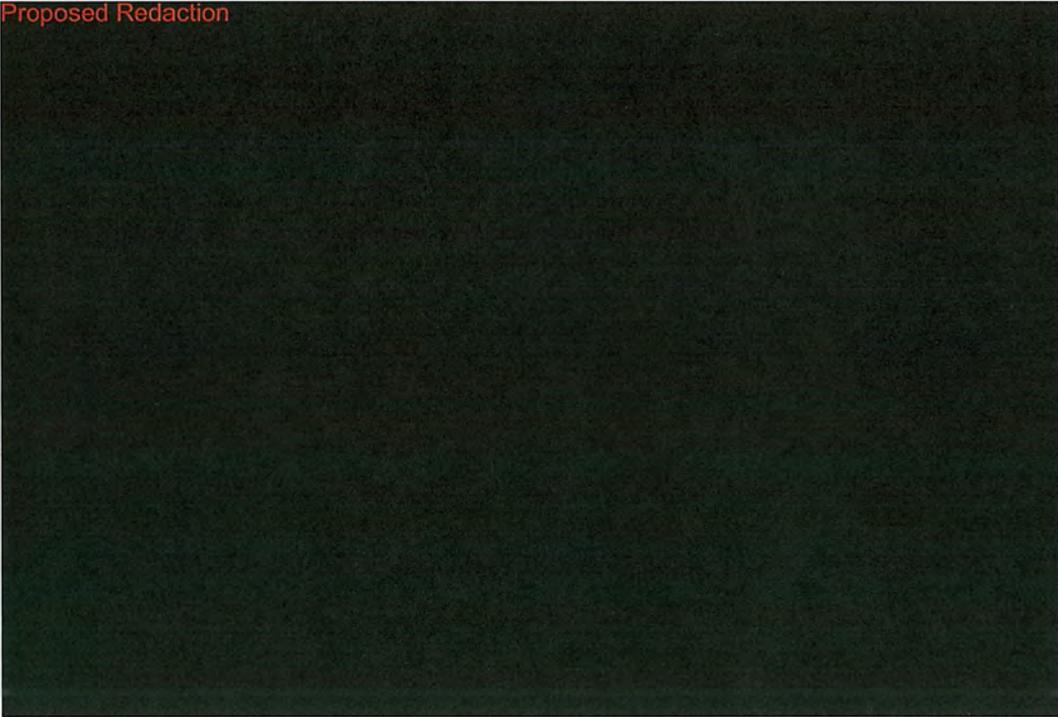


Proposed Redaction



**Attachment C – ‘Monthly Corporate Overhead Fee at Risk’ for Nauru and Manus Sites
for Performance Linked Fee**

Proposed Redaction



NB: All fees quoted in in this Attachment C (Columns 1, 2 and 3) above are GST excl.

SCHEDULE 3 CONFIDENTIALITY DEED

THIS DEED POLL is made the _____ day of _____ 2013 in favour of the **COMMONWEALTH OF AUSTRALIA** represented by the Department of Immigration and Border Protection (**the Department**)

BY _____ (the **Confidant**)

RECITALS

A The Department and Transfield Services (Australia) Pty Limited (**Service Provider**) have entered into a Contract under which the Service Provider will provide the Services to the Department.

B. The performance of the Services requires access to information confidential to the Department.

C. The Confidant will be performing Services.

THE CONFIDANT DECLARES AS FOLLOWS:

1. INTERPRETATION

1.1 All terms used in this Deed have the same meaning as is given to them in the Contract, and in particular, the following terms have the following meaning:

Contract means the Contract between the Department and the Service Provider for the provision of Services on Regional Processing Countries.

Department Confidential Information means information that:

- a. is by its nature confidential;
- b. is designated by the Department or any law as confidential; or
- c. the Confidant knows or ought to know is confidential;
and includes to the extent that it is confidential:
- d. information comprised in or relating to any Intellectual Property of the Department;
- e. information relating to contractors or suppliers to the Department; and
- f. information relating to Department Data,
but does not include information which:
- g. is or becomes public knowledge other than by breach of the Contract or any other confidentiality obligation; or
- h. has been independently developed or acquired by the Confidant as established by written evidence.

Department Data means all data and information relating to the Department, and its operations, facilities, customers, clients, constituents, personnel, assets and programs in whatever form that information may exist and whether entered into, stored in, generated by or processed through the Services by or on behalf of the Department and any other data in relation to which the Services are provided.

Intellectual Property or IP includes business names, copyrights, and all rights in relation to inventions, patents, registered and unregistered trade marks (including service marks), registered designs, and semi-conductor and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Services means the Services specified in the Contract.

2. NON DISCLOSURE

2.1. Subject to **clause 3** of this Deed, the Confidant must not copy, reproduce or disclose any Department Confidential Information without the prior written consent of the Department, which consent the Department may grant or withhold in its absolute discretion.

3. RESTRICTION ON USE

3.1. The Confidant must use Department Confidential Information only for the purpose of performing the Services. In particular the Confidant must not access, use, modify, disclose or retain any Personal Information the Confidant has acquired through the performance of the Services except for the purpose of performing the Services.

4. CRIMES ACT

4.1. The Confidant acknowledges that section 3(1) of the *Crimes Act 1914* (Cth) states that the term "Commonwealth officer" includes a person who "performs services for or on behalf of the Commonwealth".

4.2. The Confidant acknowledges that the publication or communication by the Confidant of any fact or document which has come to their knowledge or into their possession or custody by virtue of the performance of the Contract (other than to a person to whom the Confidant is authorised to publish or disclose the fact or document) may be an offence under the *Crimes Act 1914*, punishment for which may include imprisonment.

5. DELIVERY UP OF DOCUMENTS

5.1. The Department may, at any time and without notice, demand, either orally or in writing, the delivery to the Department of all documents in the possession or control of the Confidant which contain Department Confidential Information.

6. CONFLICT OF INTEREST

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

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

7. SURVIVAL OF OBLIGATIONS

7.1. The obligations in this Deed are perpetual.

8. INDEMNITY

Note: *This clause can be deleted where the Confidant is an individual.*

8.1. The Confidant indemnifies the Department and its officers, employees and agents against any claim, loss, liability or expense incurred by them which is caused or contributed to by:

- a. the Confidant's failure to comply with this Deed; or
- b. the act or omission of the Confidant's employees, agents or subcontractors in relation to Department Confidential Information.

8.2. The Services Provider agrees that the Department may enforce the indemnity in clause 8.1 in favour of any Department officers, employees or agents.

Executed as a Deed

Drafting Note: *Signature block appropriate to the nature of the Confidant to be used.*

SIGNED, SEALED and DELIVERED by

[**Confidant**] in the presence of:

Signature of Recipient

Signature of witness

Name

THE COMMON SEAL of [**Confidant**], the fixing of which was witnessed by:

Signature of director

Signature of director/secretary

Name

Name

SCHEDULE 4 DEED OF NON-DISCLOSURE PERSONAL

THIS DEED POLL is made the _____ day of _____ 2013
in favour of the COMMONWEALTH OF AUSTRALIA represented by the Department of
Immigration and Border Protection (**the Department**)

BY (the **Confidant**)

1. The Confidant understands that in the course of performing duties in relation to a Contract between the Department and Transfield Services (Australia) Pty Limited (**Service Provider**) (**Contract**) for the services on Regional Process Countries, the Confidant may have access to personal information, being information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion (**Personal Information**).
2. The Confidant acknowledges and agrees that it may not access, use, disclose, publish, communicate or retain, or otherwise deal with in any way, Personal Information except in the course of, and for the purpose of, performing its duties in relation to the Contract.
3. The Confidant agrees, with respect to all Personal Information to which it has access in the course of performing duties in relation to the Contract, to:
 - a. not do any act, or engage in any practice that would breach:
 - i. the Services Provider's obligations under the Contract to protect Personal Information if done or engaged in by the Services Provider; or
 - ii. the Australian Privacy Principles set out in the *Privacy Act 1988* (Cth) (**Privacy Act**) if done or engaged in by the Department;
 - b. implement all reasonable measures to assist the Department in meeting the obligations under the Privacy Act concerning the security, use and disclosure of information to which the Department is subject in respect of that Personal Information;
 - c. co-operate with any reasonable demands or enquiries made by the Commonwealth Privacy Commissioner;
 - d. not disclose such Personal Information without the written authority of the Department except in the course of, and for the purpose of, performing the Contract, and it will immediately notify the Department where it becomes aware that a disclosure of such information may be required by law;
 - e. ensure that any person who has an access level which would enable that person to obtain access to any information in respect of which the Department has obligations under the Privacy Act is made aware of, and undertakes in writing, to observe the provisions of this Deed;

- f. take all reasonable measures to ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only Service Provider Personnel have access to it. For the avoidance of doubt, Personal Information must not be used for, or in any way relating to, any direct marketing purpose;
- g. not transfer such Personal Information outside Australia, or allow parties outside Australia to have access to it, without the prior approval of the Department;
- h. inform any person, on his or her request, in writing of the content of any provision of the Contract that is inconsistent with an approved privacy code binding the Service Provider or a Australian Privacy Principle as set out in the Privacy Act, in accordance with the Service Provider's obligations under section 95C of the Privacy Act;
- i. immediately to notify the Department when the Confidant becomes aware of a breach of any obligation concerning security, use and disclosure of such Personal Information relating by itself or any representative, employee or officer;
- j. notify the Department of, and co-operate with the Department in the resolution of, any complaint alleging an interference with privacy;
- k. give to any person, on his or her request, having taken reasonable steps to satisfy itself of that person's identity, access to that person's Personal Information held by the Service Provider, except to the extent that the Service Provider is required or authorised by law to refuse to provide the person with access to that Personal Information;
- l. if requested to correct or update such Personal Information by a person to whom the Personal Information relates, take reasonable steps to correct or update the Personal Information;
- m. upon written notice from the Department, destroy or permanently de-identify any Personal Information as soon as practicable after it is no longer required for the purpose for which it was originally collected;
- n. not adopt as its own identifier of a person an identifier that has been assigned by the Department, or use or disclose any such identifier except for the purpose of fulfilling its obligations under the Contract, or where required or authorised by law; and if the Personal Information is sensitive information or health information, as those terms are defined in the Privacy Act, not collect, use or disclose such information without the consent of the person to whom that information relates, subject to any exception provided for by law.

4. The Confidant agrees that its obligations under this Deed and to perform duties in relation to the Contract:
 - a. to the extent of any inconsistency with the Australian Privacy Principles in the *Privacy Act 1988* (Cth) or any privacy codes or privacy principles contained in, authorised by or registered under any law, take priority to the fullest extent permitted by applicable law; and
 - b. to the extent not so inconsistent, are in addition to any obligations the Confidant may have under the *Privacy Act 1988* (Cth) or any privacy codes or privacy principles contained in, authorised by or registered under any law.
5. The Confidant acknowledges that failure by it to comply with the obligations under the Privacy Act in accordance with paragraph 3 may result in the Service Provider or the Department taking action against the Confidant (including, without limitation, disciplinary action).
6. The Confidant acknowledges that any unauthorised access, alteration, removal, addition, possession, control, supply or impediment to the access, reliability, security or operation of data held in any computer (or, in some cases, any storage device) in the course of performing a Contract with the Commonwealth may be an offence under Part 10.7 of the *Criminal Code 1995* (Cth) for which there are a range of penalties, including imprisonment.
7. The Confidant acknowledges that:
 - a. section 3(1) of the *Crimes Act 1914* (Cth) states that the term "Commonwealth officer" includes a person who "performs services for or on behalf of the Commonwealth";
 - b. the publication or communication by the Confidant of any fact or document which has come to its knowledge or into its possession or custody by virtue of the performance of the Contract (other than to a person to whom the Confidant is authorised to publish or disclose the fact or document) may be an offence under the *Crimes Act 1914* (Cth), punishment for which may include imprisonment; and
 - c. it is an offence under Division 137 of the *Criminal Code 1995* (Cth) to give false and misleading information to the Commonwealth or its officers or agents.
8. The Confidant agrees to treat all Personal Information with the utmost care and to protect that information at all times in accordance with all security and privacy requirements imposed by the Contract on persons performing duties in relation to the Contract.
9. The Confidant acknowledges and agrees that this Deed survives the termination or expiry of any contract providing for the performance of services by it (whether directly or indirectly) in relation to the Contract.
10. This Deed will be governed by, and construed in all respects in accordance with, the law of the Australian Capital Territory and the Confidant agrees to submit to the applicable jurisdiction of the Courts of that Territory in respect of all matters arising under, or in relation to, this Deed.

11. Without limiting the rights of the Department to enforce this Deed, the Department may also enforce this Deed against the Confidant.

Executed as a Deed

SIGNED, SEALED and DELIVERED by

[Confidant] in the presence of:

Signature of Recipient

Signature of witness

Name

THE COMMON SEAL of
[Confidant], the fixing of which
was witnessed by:

Signature of director

Signature of director/secretary

Name

Name

SCHEDULE 5 SERVICE PROVIDER CONFIDENTIAL INFORMATION

(a) Information contained in Contract:

Item	Period of Confidentiality
Schedule 2 [Fees and Payments] of the Contract and all references to pricing information and calculations (including those of the Service Provider's subcontractors and suppliers), and including financial information such as bank accounts.	Indefinitely
Any information that enables one to identify an individual personally or by name, including all personal information of the Service Provider's Personnel.	Indefinitely
Any organisational structures prepared or provided by the Service Provider to the Department.	Indefinitely
Any part of the Service Provider's offer to the Department.	Indefinitely
Details of insurances held by the Service Provider.	Indefinitely
Any clauses that describe any limitations of liability on (or indemnities from) the parties.	Indefinitely
Schedule 6 – Performance Management Framework Principles	Indefinitely
Schedule 7 – Performance Guarantee	Indefinitely

(b) Information obtained or generated in performing Contract:

Item	Period of Confidentiality
Any amendments or other documents referring to or describing the matters set out in (a) above.	Indefinitely
Management plans, policies, programs, recordings, reports, forms and procedures (including all drafts) prepared or provided by the Service Provider to the Department, including those prepared by its Personnel.	Indefinitely
Any information regarding the performance management framework, including any KPIs, performance against KPIs and any abatement.	Indefinitely
Any other documents that are commercially confidential to the Service Provider or its Personnel.	Indefinitely

SCHEDULE 6 PERFORMANCE MANAGEMENT FRAMEWORK PRINCIPLES

SCHEDULE 6 PERFORMANCE MANAGEMENT FRAMEWORK PRINCIPLES

1. Introduction to the Performance Management Framework

1.1. Overview

1.1.1. The Performance Management Framework (the Framework) describes the performance assessment process and outlines Key Performance Indicators that are expected of the Service Provider. The Framework has been designed to assist the Department in monitoring and evaluating the performance of the Service Provider against its contractual requirements and the Department's expected outcomes.

1.1.2. The Framework requires a collaborative approach between the Department and the Service Provider. The performance assessment process is risk based, and focuses primarily on performance against the responsibilities of the Service Provider as described in the Statement of Work. Successful performance by the Service Provider is expected to be achieved through quality service delivery, addressing identified risks and providing the Department with evidence of performance.

1.2. Attachment to Schedule 6

1.2.1. Attached to this Schedule 6 is the Individual Service Provider Report (ISPR) Instruction Manual which sets out the format, content and timing for completing the Monthly Performance Reporting process. Attached to the ISPR Instruction Manual, at appendix 1, is the ISPR Template that is used to record the results of the monthly performance assessment.

2. Key commercial principles of the Framework

2.1.1. [Redacted]

a. [Redacted]

[Redacted]

b. [Redacted]

c. [Redacted]

[Redacted]

benefit of the Department under Schedule 2, clause 8.1 'Reduction of Corporate

[Redacted]

d. [Redacted]

[Redacted]

3. Key elements of the Framework

3.1.1. The Framework applies to the Service Provider's performance at all Sites.

3.1.2. [Redacted]:

a. [Redacted]

b. [Redacted]

c. [Redacted]

d. [Redacted]

e. [Redacted]

f. [Redacted]

- [REDACTED]
- g. [REDACTED]
- h. [REDACTED]

4. Key Performance Indicators

4.1.1. The Service Provider's performance is assessed against Key Performance Indicators (KPIs). The KPIs represent critical areas or service lines that frame the Department's expected outcomes. The KPIs and the associated expected outcomes are summarised in Table 1:

Table 1 KPI areas and KPI Outcomes

KPI areas and service lines	KPI Outcomes
1. Welfare	The cultural, spiritual, social, mental and emotional wellbeing of transferees and transferee community is maintained and positively influenced by service provider involvement where practical.
2. Care	The physical wellbeing of transferees and the overall transferee community is maintained and positively influenced by service provider involvement.
3. Security	The safety, integrity and good order of the facility, its people and its operations are maintained.
4. Health and Medical	N/A to this Contract.
5. Education and recreation	Transferees are given the opportunity to access education services, achieving reasonable education and training outcomes to accepted professional standards.

KPI areas and service lines	KPI Outcomes
6. Counselling	Transferees are given the opportunity to access counselling services to accepted professional standards.
7. Interpreters	Transferees are given the opportunity to access interpreting services to facilitate communication
8. Logistics, Reporting and Support	The efficient, effective and economical operation of the centre is maintained. Performance reports are completed accurately and submitted in a timely manner.
9. Strategic and Relationships	The Service Provider takes a collaborative and integrated approach to the provision of services, will be effective in managing complex stakeholder and governance issues, and builds long term relationships with the Department and other service providers. The Service Provider drives continuous improvements in service delivery and actively puts forward innovative, value for money proposals that are for the benefit of Transferees and the Department.

5. Contract Responsibilities

- 5.1.1. The Service Provider's performance for each KPI will be assessed through the use of Contract Responsibilities (CRs) that reflect the services set out in the Statement of Work. The CRs are identified and defined in the ISPR Template.
- 5.1.2. An example of CRs for selected KPIs are provided in table 2 below (full definitions are set out in the ISPR Template).

Table 2 Example of Contract Responsibilities

KPI service line	Contract Responsibilities		
	Garrison Services	Transferee Welfare Services	Governance
Welfare	[n/a]	Ensure access to communication services {SOR 6.1}	[n/a]
Security	Effectively and efficiently manage and review security processes {SOR 4}	[n/a]	[n/a]
Strategic and	[n/a]	[n/a]	Build long term

	Contract Responsibilities		
KPI service line	Garrison Services	Transferee Welfare Services	Governance
Relationships			relationships and improve service delivery for Transferees {SOR3.1}

6. Risk assessment

6.1. Risk of non-compliance of Contract Responsibilities

- 6.1.1. In accordance with contract clause 4.4, within 8 weeks of the Execution Date the Service Provider and the Department will jointly agree on a Performance Management Framework which will include joint agreement on the Service Provider's risk of non-compliance against each identified CR, that is provide a Risk Rating against each CR. Risk Ratings are defined as either; Extreme, High, Medium, Minor or Low as explained in the ISPR Instruction Manual attached to this Schedule 6. The Service Provider is required to record its Risk Ratings in the ISPR Template (as set out in appendix 1 to the ISPR Instruction Manual).
- 6.1.2. For each CR with an assigned Risk Rating the Service Provider is required to detail its risk mitigation strategies setting out the controls and procedures it has in place to mitigate the risks.
- 6.1.3. At the commencement of each quarter following the Execution Date, the Service Provider is required to review, and if necessary update the Risk Ratings and submit them to the Department for approval. The Risk Ratings that were agreed and recorded in the ISPR Template for the previous quarter will remain in place until the updated Risk Ratings have been jointly agreed by Department and the Service Provider.
- 6.1.4. The Risk Ratings agreed at the commencement of each quarter are to be submitted to the Department's National Office for approval. The final decision on a Risk Rating rests with the Department's National Office.

7. Performance Measures

- 7.1.1. Performance Measures (PMs) measure the Service Provider's performance against its CRs and are used to inform Performance Ratings. The PMs provide a benchmark of expected performance standards.
- 7.1.2. The Service Provider's performance against each CR is either quantitatively or qualitatively assessed using the PMs described in the ISPR Template, as agreed between the Department and the Service Provider. The result of this performance assessment, referred to as the Performance Measure Result, is to

be supported by data recorded by the Service Provider and provides an evidence base to support the Performance Rating. Table 3 provides an example of a PM definition and PM Result.

Table 3 Example of Performance Measure

Proposed Redaction

7.1.3. The PMs will be jointly reviewed by the Department and the Service Provider on a six-monthly basis. The purpose of the review will be to examine the effectiveness and practicality of the PMs. If certain PMs are found to be ineffective or are unable to be accurately measured as described in the definition of the PM, the Department and the Service Provider may agree to amend the PMs. The updated PMs will be approved by the Department and the ISPR Template updated accordingly.

8. Performance Ratings

8.1.1. As part of the Framework’s Monthly Performance Reporting process, the Service Provider is required to assess its performance against the CRs and assign a Performance Rating. The Service Provider is required to inform its Performance Rating by reference to the quantitative and qualitative results of the Performance Measure Results. The Performance Rating definitions are summarised in table 4 below.

Table 4 Performance Rating definitions

Performance Rating	Definition
Exceptional (5)	Performance far exceeded expectations due to exceptionally high quality of work performed in all essential areas of responsibility, resulting in an overall quality of work that was excellent

Exceeds expectations (4)	Performance consistently exceeded expectations in all essential areas of responsibility and the quality of work overall was good.
Meets expectations (3)	Performance consistently met expectations in all essential areas of responsibility and the quality of work overall was satisfactory
Improvement needed (2)	Performance did not consistently meet expectations – performance failed to meet expectations in one or more essential areas of responsibility and/or one or more of the most critical goals were not met.
Unsatisfactory (1)	Performance was consistently below expectations in most essential areas of responsibility and/or reasonable progress toward critical goals was not made. Significant improvement is needed in one or more important areas.

8.2. Performance Failures

- 8.2.1. Performance Ratings of either a 2 (Improvement needed) or 1 (Unsatisfactory) are considered to be Performance Failures.
- 8.2.2. Performance Failures are subject to either financial Abatement and/or additional reporting through submission of Action Plans, as described under the Abatement regime at section 9 below.

8.3. Performance Rating Disputes

- 8.3.1. Performance Rating disputes between the Service Provider and the Department should be dealt with in the manner described in the ISPR Instruction Manual.

8.4. Excusable Performance Failure Event

- 8.4.1. An Excusable Performance Failure Event (EPF) is a circumstance or event which the Department recognises as being beyond the reasonable control of the Service Provider. EPFs are defined in clause 1.1 of the Contract.
- 8.4.2. An EPF may be requested by the Service Provider to excuse instances where a Performance Failure has occurred. If the Service Provider is seeking EPF relief, the Service Provider is required to notify the Department within three (3) business days of identification of the EPF and subsequently make a submission to the Department for consideration within five (5) business days of identification of the relevant EPF.
- 8.4.3. The process and format for making EPF submissions and the timeframe for approval by the Department is described in the ISPR Instruction Manual attached to this Schedule.

9. Abatement Regime

9.1.1. Where a Performance Rating of either 1 (Unsatisfactory) or 2 (Improvement needed) has been assigned to a CR, that is, a Performance Failure has occurred, the Service Provider may incur a financial Abatement and/or be required to provide additional reports to the Department as described below.

9.2. Financial Abatements for Performance Failures

9.2.1. Performance deductions (financial Abatements) may be applied in respect of the Service Provider's Performance Failures. The financial Abatement is in the form of a percentage deduction of the Service Provider's monthly Performance Linked Fee for the Sites. The Performance Linked Fee is defined in clause 1.4 of Schedule 2 Fees and Payment.

9.2.2. The percentage level of Abatement is dependent on:

- a. the Risk Rating assigned to the CR for which a Performance Failure has occurred and;
- b. the Frequency of Occurrence of the Performance Failure.

9.3. Frequency of Occurrence of Performance Failures

9.3.1. The Frequency of Occurrence of Performance Failures, together with the Risk Ratings, will determine whether a financial Abatement is to be: applied immediately or; a percentage of the monthly Performance Linked Fee withheld or; nil financial abatement is to be applied.

9.3.2. The Performance Failure Frequency of Occurrence is defined as:

- a. A first occurrence of a Performance Failure is referred to as an Initial Failure; a second occurrence of a Performance Failure is referred to as a Secondary Failure; and a third occurrence of a Performance Failure is referred to as a Third Failure.
- b. For a Performance Failure to become a Secondary or Third Failure, the same Performance Failure must have occurred in two or three consecutive reporting periods. For example, a Performance Failure occurring in July and August would constitute a Secondary Failure. A Performance Failure occurring in July, August and September would constitute a Third Failure. If a Performance Failure occurs in July and then again in September, it would not constitute a Secondary Failure, but would be considered an Initial Failure.

9.3.3. If a Performance Failure occurs in more than three consecutive monthly reporting periods, it will be treated as a Third Failure.

9.4. Tiered approach to applying financial Abatements

9.4.1. Based on the Risk Rating assigned to the Performance Failure and the Frequency of Occurrence, a tiered approach to financial Abatement is applied.

- 9.4.2. Where there has been a Performance Failure and the Risk Rating is:
- a. Extreme, a financial Abatement will be applied immediately (i.e. on invoicing at the end of the relevant Monthly Reporting period) regardless of the Frequency of Occurrence.
 - b. High or Medium, a percentage of the monthly Performance Linked Fee will be withheld until the Department approves that the Performance Failure has been rectified/addressed, unless the Frequency of Occurrence is a Secondary or Third Failure in which case immediate financial Abatement will apply.
 - c. Minor or Low, no financial abatement will apply unless the Frequency of Occurrence is a Secondary Failure in which case a percentage of the monthly Performance Linked Fee will be withheld until rectified, or Third Failure in which case immediate financial Abatement will apply.
- 9.4.3. Table 5 summarises the tiered approach to applying financial Abatements to the Service Provider's monthly Performance Linked Fee.

Table 5 Summary of tiered approach to applying financial Abatements

Proposed Redaction



9.4.4. Withholding financial Abatements

9.4.5. In Table 5, where an asterisk (*) appears next to 'yes' in the "Financial Abatement applicable" column, the corresponding financial Abatement will be withheld from the Service Provider (Withholding financial Abatement). The amount withheld will be released upon the Department approving that the Performance Failure has been rectified/addressed.

9.4.6. Action Plans to address Performance Failures

9.4.7. For each Performance Failure that is reported as part of the Monthly Performance Reporting, the Service Provider is to prepare an Action Plan. The Action Plan is required to outline the activities that the Service Provider will undertake to address the issues that led to the Performance Failure and include a timeframe for the implementation of a rectification strategy. The format of the Action Plan is set out in the ISPR Instruction Manual attached to this Schedule.

9.4.8. Where a Performance Failure has occurred in relation to a CR with an Extreme or High Risk Rating, an Action Plan is to be submitted to the Department within 48 hours of the Performance Failure being identified.

9.4.9. Example scenarios

9.4.10. The ISPR Instruction Manual attached to this Schedule 6 contains a number of examples of how the performance Framework would be applied given a range of scenarios.

9.4.11. Calculation of financial Abatement

9.4.12. The financial Abatement for each Performance Failure shall be calculated in accordance with the following formula [a detailed breakdown of the payment mechanism will be included in Schedule 2 Fees and Payment] :

Proposed Redaction



Proposed Redaction



Proposed Redaction



10. Performance and efficiency incentive

- 10.1.1. The Department expects that the Service Provider will, at least, meet performance expectations across all KPI areas as a whole (that is, KPIs 1 to 9 inclusive), and across all Sites.
- 10.1.2. To encourage the Service Provider to actively seek continuous improvements in service delivery that have the effect of achieving cost efficiencies for the benefit of Department, any Pass Through Cost savings that are identified and implemented by the Service Provider may be shared between the Department and the Service Provider on a **Propose** basis respectively and will be payable under the terms outlined in Schedule 2.

11. Strategic and relationship KPI – Qualitative survey

11.1.1. Qualitative survey

- 11.1.2. The extent to which the Service Provider has contributed to a collaborative relationship with the Department and other service providers, and has delivered a culture of continuous improvement, will be assessed based on the results of the qualitative survey for the Strategic and Relationship KPI (KPI 9).
- 11.1.3. The Department will conduct a quarterly survey questionnaire (completed by selected Department representatives) to assess the Service Provider's performance against KPI 9. The quarterly survey questions are set out in the ISPR Template.
- 11.1.4. The Department will qualitatively assess the Service Provider's performance against each survey and assign a Performance Rating. The average of the Performance Ratings for all survey questions will be recorded in the ISPR Template.

12. Innovation Bonus

- 12.1.1. The Department expects that the Service Provider will drive continuous improvements in service delivery and actively put forward innovative, value for money proposals that identify performance improvements and/or cost savings for the benefit of Department.
- 12.1.2. Where the Service Provider proposes to implement a new or changed service or system/procedure which has the effect of leading to cost savings for the benefit of the Department, the Service Provider may submit an Innovation Application (IA) to the Department. The Innovation Application should detail the nature of the innovation and incorporate a business case which demonstrates how it will benefit the Department.
- 12.1.3. An Innovation Bonus of **Prop** of the Department's cost savings as set out in the IA will be shared with the Service Provider under the terms outlined in Schedule 2.

13. Management of underperformance in KPIs

- 13.1.1. The Department may exercise the following options at its discretion to manage underperformance of KPIs:
- 13.1.2. If at any time the Service Provider has received, or is on a trajectory where it is likely to receive, three consecutive Performance Failures, then:
 - a. The Department may require the Service Provider to submit a Rectification Plan with respect to the Performance Failures. The content and format of a Rectification Plan is set out in the ISPR Instruction Manual.
 - b. If performance is not fully rectified in accordance with the Rectification Plan and within the agreed timeframe, then the Department may terminate the Service Provider's Contract.

14. Performance Framework Reporting

- 14.1.1. [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
- [REDACTED]

15. Audits of Monthly Performance Reports

- 15.1.1. The Department may periodically conduct audits of the Service Provider's compliance with its performance obligations under the Performance Management Framework, including the Service Provider's:
- a. Monitoring, measuring or reporting against any Performance Measure, for the purpose of verifying the derivation and calculation of any measure
 - b. Implementation of an Action Plan.
- 15.1.2. The audit may involve:
- a. Cross-checking and verification of data produced by the Service Provider
 - b. Site visits to any or all of the Sites; and
 - c. Interviews with key personnel.

Appendix 1 – ISPR Instruction Manual

Refer to ISPR Instruction Manual

consent of the Guarantor, or by any alteration, amendment or variation in the obligations assumed by the SDP or by any forbearance whether as to payment, time, performance or otherwise. The guarantee by the Guarantor in this Deed to assume the obligations of the SDP will continue in force and effect until the earlier of:

- (a) completion of all the SDP's obligations under the Agreement or until the completion of the undertakings under this Deed by the Guarantor; or
 - (b) 31 October 2015 or if the Term of the Agreement is extended by the Commonwealth beyond that date, such date to which it is extended.
6. The undertakings of the Guarantor under this Deed will not exceed the obligations of the SDP under the Agreement. Any liability of the Guarantor shall be coextensive, but not in excess of any liability of the SDP to the Commonwealth under the Agreement. The Guarantor shall be entitled to all rights, privileges and defences otherwise available, to the SDP with respect to any such liability, including without limitation all provisions of the Agreement relating to the limitation of liability and the resolution of disputes.
7. This Deed is subject to, and is to be construed in accordance with, the laws in force in the Australian Capital Territory and the Parties agree that the courts of that Territory have jurisdiction to entertain any action in respect of, or arising out of, this Deed and the Parties submit themselves to the jurisdiction of those courts.
8. For the purpose of this Deed, where an obligation of the SDP under the Agreement has not been performed, the SDP will be taken to have failed to perform that obligation notwithstanding that the SDP has been dissolved or is subject to external administration procedures under any law.
9. The guarantee in this Deed is a continuing guarantee to the Commonwealth until the obligations and liabilities of the SDP under the Agreement have in all respects been performed, observed and discharged.
10. The following notice arrangements apply:
 - (a) notice or other communication which may be given to or served on the Guarantor under this Deed will be deemed to have been duly given or served if it is in writing, signed on behalf of the Commonwealth and is either delivered by hand, posted or faxed or a copy transmitted electronically to the Guarantor or its agent at any registered office of the Guarantor or posted to the Guarantor's address set out above or such other address as is notified in writing to the Commonwealth from time to time;
 - (b) a notice or other communication which may be given to or served on the Commonwealth under this Deed will be deemed to have been duly given or served if it is in writing, signed by or on behalf of the Guarantor and is either delivered by hand, posted or faxed or a copy transmitted electronically to the Commonwealth at the address set out above or such other address as is notified in writing to the Guarantor from time to time;
 - (c) a notice sent by post will be deemed to have been given at the time when, in due course of transmission, it would have been delivered at the address to which it is sent; and

- (d) a notice sent by facsimile transmission or transmitted electronically will be deemed to have been given when the machine on which the notice is sent reports that the notice has been transmitted satisfactorily.
11. A statement, signed on behalf of the Commonwealth by any of its authorised representatives, as to any matter or any amount at the date specified in the statement is conclusive evidence in the absence of manifest error.
 12. Until the obligations of the SDP have been performed in full, the Guarantor may not:
 - (a) take any steps to enforce a right or claim against the SDP relating to any money paid by the Guarantor to the Commonwealth under this Deed;
 - (b) have or exercise any rights as surety in competition with the Commonwealth;
 - (c) receive, claim or have the benefit of any payment (including a payment under a guarantee), distribution or security interest from or on account of the SDP or any other person; and
 - (d) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any agreement or document to which the Commonwealth is a party.
 13. If, after the Commonwealth applies any amount against any of the obligations of the SDP, it forms the view that it is obliged to make a payment in respect of the amount so applied by it to any person under any law relating to bankruptcy, winding up or the protection of creditors the Guarantor shall immediately do anything (including the signing of documents) required by the Commonwealth to restore to the Commonwealth any guarantee to which it was entitled immediately before that application or the payment or transaction giving rise to it.

SIGNED, SEALED AND DELIVERED)
by the COMMONWEALTH OF)
AUSTRALIA represented by the)
Department of Immigration and)
Citizenship in the presence of:)

.....
Signature of witness

.....
Commonwealth Representative

.....
Name of witness (print)

THE COMMON SEAL of (Guarantor))
was affixed in the presence of, and the)
sealing is witnessed by:)
)

.....
Secretary
Name (Printed)

.....
Director
Name (Printed)

SCHEDULE 8 DEED OF NOVATION

THIS DEED is made

BETWEEN

THE COMMONWEALTH AS REPRESENTED BY THE DEPARTMENT OF IMMIGRATION AND BORDER PROTECTION (DIBP), of the first part.

AND

YYY [the original party] of the second part

AND

ZZZ [the new party] of the third part

WHEREAS:

- A. *(Details of original agreement (the 'Agreement')– possibly attach a copy)*
- B. YYY desires to be released and discharged from the Agreement and DIBP has agreed to release and discharge YYY upon ZZZ assuming the obligations of YYY under the Agreement as a party in lieu of YYY.
- D. The parties have agreed to novate the Agreement on the terms and conditions contained in this Deed.

IT IS AGREED as follows:

1. This Deed shall be deemed to enter into full force and effect as from ('**Effective Date**').
2. As from the Effective Date, ZZZ agrees to:
 - (a) assume all the liabilities of YYY subsisting under the Agreement;
 - (b) duly, punctually and faithfully observe, perform and be bound by the terms of the Agreement in every way as if ZZZ were a party to the Agreement in lieu of YYY; and
 - (c) accept any liability incurred by YYY under the Agreement from the date of execution of the Agreement.
3. As from the Effective Date, DIBP agrees to:
 - (a) accept the liability of ZZZ upon the Agreement in lieu of the liability of YYY; and

- (b) be bound by the terms of the Agreement in every way as if ZZZ was named in the Agreement as a party in place of YYY;
- and YYY releases and discharges DIBP from all actions, proceedings, claims, demands and all damages, costs and expenses (including on a solicitor and own client basis) which may exist against DIBP by YYY arising out of an act or omission by YYY in connection with the Agreement prior to the Effective Date.
4. ZZZ represents and warrants in favour of DIBP that:
- (a) it possesses the right and capacity to perform and fulfil its obligations under this Deed and the Agreement;
- (b) it is not as at the Effective Date engaged in any litigation or aware of any proposed litigation or claim by any third party against it which would jeopardise or seriously affect the performance of its obligations under the Agreement;
- (c) no application or order has been made for the winding up or liquidation of it; no action has been taken to seize or take possession of any of its assets; there are no unsatisfied judgments against it; and it is able to pay its debts as they fall due.
5. YYY and ZZZ acknowledge that DIBP has entered into this Deed in reliance on the representations and warranties in Clause 4.
6. ZZZ shall reimburse DIBP for its costs and expenses of and relating to the enforcement of, or preservation of any rights under this Deed, including legal costs and expenses on a full indemnity basis.
7. In the event of conflict between this Deed and the Agreement, the provisions of this Deed shall prevail.
8. Except as set out in this Deed, all other terms and conditions applying to the services provided to DIBP under the Agreement remain unchanged.
9. This Deed and the Agreement, when read together, contain the entire agreement of the parties with respect to the parties' rights and obligations under the Agreement and supersede all prior understandings and representations between the parties with respect to the parties' rights and obligations under the Agreement.
10. The provisions of this Deed shall not be varied either in law or in equity except by agreement in writing signed by the parties.
11. This Deed shall be governed by and construed in accordance with the laws of the Australian Capital Territory.
12. ZZZ shall pay any stamp duty payable on this Deed.

SCHEDULE 9 MINOR CAPITAL WORKS CONTRACT

[Not Used]