



**Australian Government**

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**Department of Immigration and Citizenship**

**serco**

**Detention Services Contract  
Immigration Detention Centres**

**VOLUME 1**

**Commonwealth of Australia  
represented by  
Department of Immigration and Citizenship**

**Serco Australia Pty Limited (ABN 44 003 677 352)**



**Australian Government**

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Immigration Detention Centres**

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## 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**)

**Serco Australia Pty Limited** of Level 10, 90 Arthur St, North Sydney NSW 2060, ABN 44 003 677 352 (**Service Provider**)

### RECITALS

- A. Non-citizens who are unlawfully in Australia may be detained under the *Migration Act 1958* (Cth) in accordance with the following seven Immigration Detention Values:
1. Mandatory detention is an essential component of strong border control.
  2. To support the integrity of Australia's immigration program, three groups will be subject to mandatory detention:
    - a. all unauthorised arrivals, for management of health, identity and security risks to the community;
    - b. Unlawful Non-Citizens who present unacceptable risks to the community; and
    - c. Unlawful Non-Citizens who have repeatedly refused to comply with their visa conditions.
  3. Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an Immigration Detention Centre.
  4. Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.
  5. Detention in Immigration Detention Centres is only to be used as a last resort and for the shortest practicable time.
  6. People in Detention will be treated fairly and reasonably within the law.
  7. Conditions of detention will ensure the inherent dignity of the human person.
- B. Since November 1997, the provision of detention services has been outsourced by the Department to private organisations.
- C. Having fully informed itself of all aspects of the work to be performed for the provision of the Services, the Service Provider submitted, in response to Request for Tender 07/23 issued by the Department on 24 May 2007, a proposal to provide the Services.

- D. The Department wishes to engage the Service Provider to provide the Services, and the Parties have agreed to enter into this Contract to set out their respective rights and obligations in relation to the Services.
- E. To implement the Immigration Detention Values, the Department operates the Detention Services Network, a network of facilities and forms of Immigration Detention. Over the last 3 years, the Department has extensively reviewed and reformed the Detention Services Network. During the Term, the Department and Service Provider will cooperate to continue this evolution of the Detention Services Network to reflect the changing needs and demographic profile of the People in Detention population and the evolving policy and legislative framework.

## OPERATIVE PROVISIONS

### PART 1 – ENGAGEMENT AND TERM

#### 1. ENGAGEMENT

##### 1.1 Engagement

The Department appoints the Service Provider, and the Service Provider accepts that appointment, to provide the Services during the Term, subject to the terms and conditions of the Contract.

#### 2. TERM

##### 2.1 Commencement

This Contract will commence on the Commencement Date and, subject to this Contract or Law, continue in force for the period of five years after the Commencement Date (**Initial Term**).

##### 2.2 Extensions to Term

- (a) The Department may, in its absolute discretion, extend this Contract by up to two additional periods of two years each from the applicable End Date (in each case the **Extended Term**) by providing no less than 90 days written notice to the Service Provider before the then End Date of any decision to extend this Contract.
- (b) The Detention Services Fee payable by the Department to the Service Provider during the Extended Term will be adjusted in accordance with this Contract and, in particular, **Schedule 5** (Detention Services Fee).
- (c) The Department is not obliged to extend this Contract or to enter any further agreement with the Service Provider on different provisions.

##### 2.3 Extension of the Term for Interim Periods

- (a) In addition to its rights under **clause 2.2**, the Department may in its absolute discretion extend the Term for periods of between three and six months (each an

**Interim Period**), provided that the aggregate of the Interim Periods must not exceed 11 months.

- (b) The Department will provide the Service Provider with, in the case of the first extension for an Interim Period, at least two months' written notice, and in the case of a subsequent extension for an Interim Period, at least one month's written notice.
- (c) The Detention Services Fee applicable during any extension pursuant to this **clause 2.3** will be calculated in accordance with this Contract and, in particular, **Schedule 5** (Detention Services Fee).

## **PART 2 – PROVISION OF THE SERVICES**

### **3. PROVISION OF THE SERVICES**

#### **3.1 Overview**

The Service Provider must provide the Services in accordance with the provisions of this Contract and, without limiting any other provisions of this Contract, the Service Provider must:

- (a) take full responsibility, subject to this Contract, for the management and control of the Facilities;
- (b) cooperate with the Department and other service providers to achieve delivery of the Services in accordance with the Immigration Detention Values;
- (c) provide the Services in a timely manner and in a manner which could reasonably be expected to protect the Department's interests;
- (d) ensure that the Services are:
  - (i) adequate to meet the requirements of the Department as expressed in this Contract; and
  - (ii) fit for their intended purpose;
- (e) exercise the standard of skill, care and diligence in the provision of the Services that would be expected of an expert provider of services similar to the Services;
- (f) meet or exceed the Indicator Metrics and Key Performance Indicators and any other standards expressed in this Contract or notified by the Department;
- (g) comply with the requirements of any models, plans, procedures, manuals and codes specified or referenced in this Contract; and
- (h) exercise good faith in the provision of the Services under this Contract.

### 3.2 The Department Relies on Service Provider's Expertise

Notwithstanding any other provision of this Contract, the Service Provider acknowledges that the Department is relying on the skill and expertise of the Service Provider.

### 3.3 Scope of Services

- (a) The scope of the Services is the Services as set out in the schedules to this Contract, including **Schedule 2** (Statement of Work), and may be increased or reduced in accordance with this Contract.
- (b) If incidental services or functions are required for the proper provision of the Services, they will be taken to be included in the scope of the Services and in the fees specified in **Schedule 5** (Detention Services Fees).
- (c) Except as specifically provided to the contrary in this Contract, the Service Provider must provide or have appropriate access to all resources, equipment, materials, spare parts, Consumables, inventory and every item necessary or desirable for it to perform and discharge its obligations under this Contract.
- (d) The Service Provider must ensure that each item in its inventory of resources, equipment, materials, spare parts, Consumables, inventory and other relevant items are at all times in a serviceable condition and fit for use.

### 3.4 Exclusivity of Service Provision

The Service Provider (and any Subcontractors appointed by the Service Provider in accordance with this Contract) will be the exclusive provider/s of Services to the Facilities except where:

- (a) the services are referred to in **clause 3.5**;
- (b) the Department determines, in its absolute discretion, that a Transport and Escort Service carries a level of risk or sensitivity that requires the Department to use an alternative means of transport and escort, or supplier, of such services;
- (c) the Service Provider is unable to or does not provide Additional Services when required by the Department in accordance with **clause 33**;
- (d) the obligation to perform any Service is suspended under **clause 55** as a Force Majeure Event;
- (e) the Department exercises a Step-in Right; or
- (f) a Default has occurred and the Service Provider has failed to provide the Services within the Cure Period specified in a Default Notice or such extended period as is agreed by the Department following submission of a Cure Plan, in accordance with **clause 66**.

### 3.5 Other contracts in the Immigration Detention Environment

The Service Provider acknowledges that:

- (a) the Department has entered into, or will enter into:
  - (i) a separate contract with the Health Services Manager for the provision of Health Services to People in Detention;
  - (ii) a separate contract with Christmas Island Maintenance Services for the provision of certain facilities management services to the Christmas Island Alternative Places of Detention;
  - (iii) a separate contract for the provision of services to People in Detention in Immigration Residential Housing and Immigration Transit Accommodation;
  - (iv) contracts for the delivery of various capital works from time to time; and
  - (v) Memoranda of Understanding with various government bodies for the provision of a range of services to the Facilities or to People in Detention; and
- (b) the services referred to in **clause 3.5(a)** are an exception to **clause 3.4**.

### 3.6 Compliance with Laws and Australian Government Policies

- (a) The Service Provider must comply with, and ensure that all Service Provider Personnel comply with, all Laws and Australian Government Policies of general application listed in **Schedule 16** (Legislation and Commonwealth Policies) or as notified to it by the Department from time to time.

### 3.7 Compliance with Department Specific Policies

- (a) The Service Provider must comply with, and ensure that all Service Provider Personnel comply with, all Department-specific policies listed in **Schedule 16** (Legislation and Commonwealth Policies) or as notified to it by the Department from time to time.

### 3.8 Changes to Department Specific Policies

- (a) The Department may give notice to the Service Provider of any change in a Department-specific Policy and the Service Provider must comply with that change (and ensure all Service Provider Personnel do the same) on and from the date of the Department's notice.
- (b) Prior to notifying the Service Provider of any change in a Department-specific Policy under **clause 3.8(a)**, the Department will endeavour to consult with the Service Provider and seek the Service Provider's views on the potential operational impact of the proposed change on the Service Provider's performance of this



Contract. The Department will consider the Service Provider's view when finalising the terms of the change to the Department-specific Policy.

- (c) The Service Provider must use its best endeavours to incorporate into the Services, or the manner in which the Services are performed, the requirements of the amended Department-specific Policy without an increase in the Detention Services Fees.
- (d) Subject to **clause 3.8(c)**, if, on receiving notice of a change under **clause 3.8(a)**, the Service Provider considers that the change materially increases or decreases the cost to the Service Provider of providing the Services, the Service Provider must within 10 Business Days of receiving notice of the change provide to the Department a report (**Policy Change Impact Assessment Report**) which:
  - (i) demonstrates that the change to the Department-specific Policy cannot be accommodated within the existing Detention Services Fee;
  - (ii) considers the impact of the change to the Department-specific Policy on the scope of services, resource allocation, pricing and any other relevant factors;
  - (iii) sets out the likely increase or decrease in the Detention Services Fee;
  - (iv) includes evidence supporting its statements; and
  - (v) may suggest amendments to the Department-specific Policy for the Department's consideration.
- (e) If the Department is satisfied that the Policy Change Impact Assessment Report demonstrates that the requirements of the Department-specific Policy cannot be incorporated into the Services (or the manner in which the Services are performed) without having a material impact on the Detention Services Fee, the Department will:
  - (i) incorporate the Service Provider's suggested amendments or such other amendments as the Parties agree, to the Department-specific Policy; or
  - (ii) in accordance with **clause 36**, amend the Services Fee to account for the increase or decrease of the Detention Services Fee.
- (f) For the purposes of **clause 3.8** a "change" to Department-specific Policy includes the addition of a new detention policy, the removal of an existing policy, or any variation to the content of an existing policy referred to in **Schedule 16** (Legislation and Commonwealth Policies).

### 3.9 Compliance with Code of Conduct

- (a) The Service Provider must comply with, and ensure that all Service Provider Personnel providing Services under this Contract comply with the Code of Conduct contained in **Schedule 4.2** (Governance Requirements).

- (b) The Department and the Service Provider may amend the Code of Conduct by mutual agreement in writing.

#### 4. HEALTH, SAFETY AND THE ENVIRONMENT

##### 4.1 Occupational Health and Safety

In providing the Services, the Service Provider must:

- (a) ensure that it and Service Provider Personnel at all times comply with all applicable Laws and Australian Standards relating to occupational health and safety;
- (b) manage all occupational health and safety issues at the Facilities;
- (c) take all reasonable safety precautions to prevent injury, illness or loss arising out of, or in relation to, the provision of the Services or the condition of the Facilities and must:
- (i) comply with any reasonable safety directions given by the Department; and
  - (ii) provide a monthly report detailing any injury, illness, death or property damage and action taken to prevent recurrence or minimise impact;
- (d) actively and continually assess its current and planned activities and areas of responsibility, including the Facilities, for potential safety and occupational health risks and implement plans, practices and procedures to prevent actual or potential breaches of safety or damage, injury or illness of any kind;
- (e) ensure that it and, to the extent relevant, its Service Provider Personnel and Subcontractors involved in the provision of the Services, at all times hold and maintain any applicable occupational health and safety accreditation (including accreditation under the Australian Government Building and Construction OHS Accreditation Scheme), licence, permit, authorisation, scheme membership, professional or industry body membership or commitment to any code of conduct that is required or might reasonably be expected for a person performing any activity or service within the scope of this Contract;
- (f) perform its obligations in such a way as to ensure that the Department is not in breach, and is able to make full use of the Services for the purposes for which they are intended without being in breach, of any occupational health and safety requirement; and
- (g) promptly advise the Department of any actual, potential or suspected breach of any Departmental occupational health or safety policy described in **Schedule 16** (Legislation and Commonwealth Policies) or specified in **Schedule 2** (Statement of Work), and generally advise the Department of any matter, fact or circumstance that the Service Provider believes is or may not be adequately dealt with by the Department's occupational health and safety policies or procedures or their related training, awareness and compliance programmes.

## 4.2 Environmental Protection

In providing the Services, the Service Provider must:

- (a) comply with the environmental requirements in **Schedule 2** (Statement of Work) and the Environmental Management System for each Facility;
- (b) actively and continually assess its current and planned activities and areas of responsibility for potential environmental risks and implement plans, practices and procedures to prevent actual or potential damage to the environment;
- (c) ensure that it and, to the extent relevant, its Service Provider Personnel involved in the provision of the Services, at all times hold and maintain any applicable environmental accreditation, licence, permit, authorisation, scheme membership, professional or industry body membership or commitment to any code of conduct that is required or might reasonably be expected for a person performing any activity or service within the scope of this Contract;
- (d) perform its obligations in such a way as to ensure that the Department is able to make full use of the Services without being in breach of any environmental requirement described in **Schedule 16** (Legislation and Commonwealth Policies) and/or specified in **Schedule 2** (Statement of Work); and
- (e) promptly advise the Department of any actual, potential or suspected breach of the Department's environmental policy or procedures and generally advise the Department of any matter, fact or circumstance that the Service Provider 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.

## 4.3 Responsibility for Environmental Issues

The Service Provider is not liable for any contamination or pollution at a Facility, except where that contamination or pollution is:

- (a) caused by the Service Provider or Service Provider Personnel;
- (b) brought to a Facility after the Commencement Date by sources other than the Service Provider or Service Provider Personnel and the Service Provider has been negligent or failed to comply with the Environmental Management System for the Facility; or
- (c) at a Facility prior to the Commencement Date, but from the Handover of the relevant Facility, the Service provider does not comply with the Environmental Management System upon becoming aware of the contamination or pollution.

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## PART 3 - TRANSITION IN ARRANGEMENTS

### 5. TRANSITION IN

#### 5.1 Transition In Plan

The Parties must work together cooperatively from the Commencement Date to enable each Party to fully meet their respective obligations on and from each Handover Date. The Service Provider must comply with its obligations in **Schedule 6** (Transition Requirements) and must cooperate with the Department and the Incumbent Service Provider for the purpose of facilitating the smooth transition of the provision of the Services to the Service Provider in accordance with **Schedule 6** (Transition Requirements).

#### 5.2 Transition In Obligations

The Service Provider must:

- (a) from the Commencement Date, commence performance of the Services described in **Schedule 6** (Transition Requirements);
- (b) meet all Milestones relevant to a particular Facility prior to the relevant Handover Date as required by **Schedule 6** (Transition Requirements);
- (c) from the relevant Handover Date or the date of receipt of the final relevant Certificate of Attainment in respect of a Facility (whichever is the later), assume full responsibility for the provision of the Services at the relevant Facility; and
- (d) within three months of the Handover Date for each Facility, complete the Acceptance Tests for the Facility.

#### 5.3 Transition In Committees

- (a) In order to facilitate the smooth transition of the provision of the Services to the Service Provider, the Parties have established the Transition Steering Committee.
- (b) The Service Provider will ensure that appropriate Service Provider Personnel (as specified in **Schedule 6** (Transition Requirements)) participate in meetings of the Transition Steering Committee (along with representatives of the Incumbent Service Provider and the Department) at the times and in the manner outlined in **Schedule 6** (Transition Requirements).

#### 5.4 Payment During Transition In Period

- (a) Subject to **clause 5.4(b)**, the Service Provider will be entitled to be paid a Transition In fee for each Facility up to the amount specified in **Schedule 5** (Detention Services Fee) for that Facility, which will be comprised of payments linked to Milestones as specified in the Transition In Plan.
- (b) With the exception of the first Milestone payment (as set out in **clause 15.1(b)** of **Schedule 5** (Detention Services Fee)), the Department is not liable to pay any part of the Detention Services Fee (including any milestone payment which forms part

of the Transition In fee, or fees in respect of a Service Line at a Facility) unless and until a Certificate of Attainment in respect of the relevant Milestones has been issued in accordance with **Schedule 6** (Transition Requirements).

- (c) The Department must promptly issue a Certificate of Attainment in respect of a Milestone when the Department is satisfied, acting reasonably, that the Milestone has been completed in accordance with **Schedule 6** (Transition Requirements).

## **6. ACHIEVEMENT OF MILESTONES AND ACCEPTANCE TESTING**

### **6.1 Milestones**

The Department will review the Service Provider's achievement of the Milestones specified in **Schedule 6** (Transition Requirements) to establish whether the Service Provider is able to assume full responsibility for the provision of the Services (or a Service Line) in accordance with this Contract.

### **6.2 Successful Completion of Milestones**

Upon successful completion of each Milestone, the Department will issue a Certificate of Attainment in respect of that Milestone.

### **6.3 Failure to Achieve Milestones**

- (a) If the Milestones are not satisfactorily completed, the Service Provider must do all things necessary (at no cost to the Department) to rectify any problems and ensure satisfactory provision of the Services in accordance with this Contract.
- (b) If required by the Department, the Service Provider must re-submit any deliverables specified in **Schedule 6** (Transition Requirements) or participate in any further tests required by the Department to ensure the Service Provider is able to assume full responsibility for the provision of the Services (or a Service Line) in accordance with this Contract.

### **6.4 Acceptance Testing**

- (a) Within three months after the Handover Date for each Facility, the Department will conduct the Acceptance Tests specified in **Schedule 6** (Transition Requirements) for each Facility in order to determine whether the Service Provider will be able to meet the minimum performance requirement for each Detailed Indicator Metric following the expiry of the Base Period.
- (b) Upon successful completion of an Acceptance Test, the Department will issue an Acceptance Certificate.
- (c) If any of the Acceptance Tests are not successfully completed, the Department may require that the Service Provider take corrective action and, if necessary, repeat those Acceptance Tests.
- (d) Without limiting the Service Provider's obligations in this Contract, the Department may, in its absolute discretion, give a Contract Change Notice in accordance with

**clause 36** in order to address any deficiencies in service delivery identified by the Acceptance Tests.

- (e) Acceptance testing will not affect the measurement of the Detailed Indicator Metrics and adjustment of the Detention Services Fee in accordance with **clause 28**, **Schedule 4.1** (Performance Management Manual) and **Schedule 5** (Detention Services Fee) following expiry of the Base Period.

## 7. VERIFICATION

- (a) The Service Provider must in conjunction with the Department, during the Transition In Period, verify the existence, condition, and determine the value of the Loose Assets listed in **Schedule 17** (Loose Assets Register) including by conducting reasonable audits and inspections of the Loose Assets and reviewing any Material related to the Loose Assets.
- (b) The Service Provider must, prior to the end of the Transition In Period, deliver to the Department a detailed Verification Report setting out the details and results of the Loose Assets Register verification.
- (c) The Department may seek clarification and verification of any information, valuations or results in the Verification Report, either from the Service Provider or from any other person (including the Department Personnel).
- (d) Where the Parties agree that verification reveals an error in the Loose Assets Register, the Parties will correct the Loose Assets Register.
- (e) Nothing in this **clause 7** prevents the Service Provider from being required to fulfil its other obligations under this Contract.
- (f) Each Party will bear its own costs for activities under this **clause 7** and the Service Provider will not be entitled to any adjustment in the Detention Services Fee.

## 8. AGREEMENTS

### 8.1 Existing and New Agreements

The Service Provider is responsible for organising and securing the novation of any existing agreements, and entry into any new agreements, required by it for the provision of the Services to the Department.

### 8.2 Authorisations

- (a) The Service Provider must obtain all Authorisations as may be necessary to assist the Service Provider to complete its obligations in the Transition In Period and perform the Services. Unless the Department agrees otherwise in writing, the Service Provider must, at its expense, pay any fees (eg transfer or upgrade fees that may be required to obtain an Authorisation) and any other costs and charges associated with the performance of its obligations under this **clause 8**.

- (b) The Department will co-operate in good faith with the Service Provider in respect of the obtaining and maintaining of Authorisations and provide such assistance as is reasonably requested by the Service Provider in this regard.

### **8.3 Problems in Novating Existing Agreements, Obtaining New Agreements or Authorisations**

The Service Provider must notify the Department immediately of any problems it has in complying with this **clause 8** and provide evidence to the Department of the satisfaction of the Service Provider's obligations under this **clause 8** at least seven days before a relevant Handover Date, or, if an Authorisation is not required prior to the Handover Date, within seven days of the problem coming to the attention of the Service Provider.

### **8.4 No Transfer of Department Personnel**

No Department Personnel are transferred to the Service Provider under or in relation to this Contract.

### **8.5 Indemnity**

The Service Provider indemnifies the Department against any liability the Department may incur as a result of the failure to obtain any Authorisations or agreements envisaged in this **clause 8**.

### **8.6 No Reduction in Standard of Service**

The Service Provider must ensure that its access to any third party agreements which also benefit the Department does not in any way reduce or affect the standard of services provided under those agreements to the Department.

## **9. LIQUIDATED DAMAGES**

### **9.1 General**

If the Service Provider has not received a Certificate of Attainment in respect of all Milestones relevant to a particular Facility by the relevant Handover Date set out in **Schedule 6** (Transition Requirements) for that Facility:

- (a) the Department will suffer loss and damage;
- (b) the Parties agree the following amounts are genuine pre-estimates of the damage that would be suffered by the Department in respect of failure to achieve Handover for each Facility:
- (i) **s. 47(1)(b), s. 47E(d)** for Maribyrnong Immigration Detention Centre – Melbourne, Victoria;
  - (ii) **s. 47(1)(b), s. 47E(d)** for Northern Immigration Detention Centre – Darwin, Northern Territory;



- (iii) s. 47(1)(b), s. 47E(d) for Villawood Immigration Detention Centre – Sydney, New South Wales;
- (iv) s. 47(1)(b), s. 47E(d) for Perth Immigration Detention Centre – Perth, Western Australia;
- (v) for Christmas Island:
  - (A) s. 47(1)(b), s. 47E(d) for Northwest Point Immigration Detention Centre;
  - (B) s. 47(1)(b), s. 47E(d) for Phosphate Hill APOD;
  - (C) s. 47(1)(b), s. 47E(d) for Construction Camp APOD.

## 9.2 Application of Liquidated Damages

- (a) For the purposes of this **clause 9**:
  - (i) **Christmas Island Handover Date** means the actual day on which Handover is achieved at the Christmas Island Sites; and
  - (ii) liquidated damages will apply from the dates set out below, if Handover is not achieved at the relevant Facility:
    - (A) Christmas Island Sites – liquidated damages will apply if Handover is not achieved by s. 47(1)(b), s. 47E(d) after the Handover Date (as set out in **Schedule 6** (Transition Requirements));
    - (B) Perth Immigration Detention Centre - liquidated damages will apply if Handover is not achieved by s. 47(1)(b), s. 47E(d) after the Christmas Island Handover Date;
    - (C) Maribyrnong Immigration Detention Centre – liquidated damages will apply if Handover is not achieved by s. 47(1)(b), s. 47E(d) after the Christmas Island Handover Date;
    - (D) Villawood Immigration Detention Centre liquidated damages will apply if Handover is not achieved by s. 47(1)(b), s. 47E(d) after the Christmas Island Handover Date; and
    - (E) Northern Immigration Detention Centre - liquidated damages will apply if Handover is not achieved by s. 47(1)(b), s. 47E(d) after the Christmas Island Handover Date.
- (b) The Department is entitled to recover from the Service Provider, or deduct from moneys due to the Service Provider, as liquidated damages and not as a penalty, the relevant amounts specified in **clause 9.1(b)** for each day of delay in provision of the Services for up to s. 47(1)(b), s. 47E(d) after the relevant Handover Date set out in **Schedule 6** (Transition Requirements) for that Facility.



- (c) The Department's right to claim liquidated damages under this clause is not an exclusive remedy and is without prejudice to its right to obtain other remedies with respect to the breaches which are the subject of the clause.
- (d) The Service Provider will not be liable for liquidated damages for failure to achieve Handover at a Facility if the Service Provider can demonstrate to the Department's satisfaction that the failure to achieve Handover was directly caused by the interference, action or inaction of the Department, Department Personnel, or the Incumbent Service Provider.

## **PART 4 - IMMIGRATION DETENTION VALUES**

### **10. OBJECTIVES**

#### **10.1 Primary Objectives**

- (a) The primary objectives of this Contract are to:
  - (i) enhance the well-being of People in Detention by implementing the Immigration Detention Values;
  - (ii) continuously improve the quality, effectiveness and efficiency of the Services and promote cultural alignment between the Department and the Service Provider through the implementation of the Immigration Detention Values;
  - (iii) enhance the management and operation of Facilities through cooperation between the Department, the Service Provider and other Stakeholders; and
  - (iv) enable the Department to receive best value for money for the provision of the Services (collectively **Objectives**).
- (b) This **clause 10** is intended to describe the intention of the Parties in entering into this Contract. It is not intended to alter the plain meaning of the provisions of this Contract. However, to the extent that the provisions of this Contract do not address a particular circumstance or are otherwise unclear or ambiguous, those provisions are to be interpreted and construed as far as is consistent with the Law, by reference to the Objectives described in **clause 10.1(a)**.

### **11. PARTNERING CHARTER**

- (a) The Department and the Service Provider both agree to carry out their obligations set out in this Contract in accordance with the principles set out in the Partnering Charter.
- (b) The Parties acknowledge and agree that the Partnering Charter:
  - (i) is a free-standing document couched in policy terms;

- (ii) does not change the legal relationship of the Service Provider and the Department;
  - (iii) is not intended to alter the plain meaning of the provisions of this Contract; and
  - (iv) subject to **clause 11(c)**, does not of itself establish any rights, obligations or liabilities between the Department and the Service Provider.
- (c) The Service Provider's adherence to the spirit of the Partnering Charter will be measured as part of the Incentive regime.

## **12. COOPERATION**

### **12.1 Cooperation and Good Faith**

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.

### **12.2 Cooperation with Other Service Providers**

The Service Provider must cooperate with any other service provider appointed by the Department (including the service provider at Immigration Residential Housing and Immigration Transit Accommodation, the Health Services Manager and the Department when it is providing services similar to or related to the Services) to ensure the integrated and efficient carrying on of the operations of each Facility and must provide such reasonable assistance to other service providers as the Department may reasonably request, within the Detention Services Fee.

## **13. IMMIGRATION DETENTION VALUES**

### **13.1 Compliance with the Immigration Detention Values**

In delivering the Services and in all its dealings with the Department, People in Detention, other service providers, Stakeholders or the public, the Service Provider will seek to give effect to the Immigration Detention Values.

### **13.2 Immigration Detention Values Maturity Table**

The extent to which the Service Provider has given effect to the Immigration Detention Values will be measured against the Immigration Detention Values Maturity Table, the results of which will be an input component into the Incentive regime.

## **14. DUTY OF CARE**

- (a) Each Party acknowledges and agrees that it has a duty of care to People in Detention.

- (b) The Service Provider must meet its duty of care to People in Detention and any duty of care it has to Visitors or other persons arising from the performance of its obligations under this Contract.
- (c) While children will not be placed in a Centre, the Service Provider may be required to manage children in places of Alternative Detention and the Service Provider must ensure, when providing any Services to children, that the best interests of the child are the Service Provider's primary consideration, taking into account any special needs arising from the child's particular age and gender.
- (d) The Service Provider acknowledges and agrees that the Department's duty of care does not in any way:
  - (i) detract from the Service Provider's obligations under this Contract; or
  - (ii) alter the allocation of rights, obligations and liabilities under this Contract.
- (e) The Parties acknowledge that the Service Provider's fulfilment of its duty of care will be measured as part of the "Duty of Care" Key Performance Indicator.

## **15. CASE MANAGEMENT FRAMEWORK**

### **15.1 Service Provider Must Cooperate with the Department Case Managers**

- (a) The Service Provider must cooperate with any Department Case Managers to ensure that People in Detention are managed in a holistic way in accordance with the National Case Management Framework, which endeavours to:
  - (i) ensure People in Detention are managed in a fair, lawful, reasonable and timely manner;
  - (ii) ensure a complete view of each Person in Detention is maintained across multiple service providers;
  - (iii) provide action and review timeframes for all services;
  - (iv) provide clear lines of accountability for managing the outcomes of People in Detention;
  - (v) fully involve People in Detention and/or service providers in the development of actions;
  - (vi) provide seamless service delivery for People in Detention; and
  - (vii) monitor the immigration and health and welfare outcomes for People in Detention.
- (b) The Service Provider and Service Provider Personnel will use their best endeavours to share information with the Department in order to facilitate the early

identification of the individual needs of People in Detention and the provision of individual and proactive services to People in Detention.

## **PART 5 – MANAGEMENT AND GOVERNANCE**

### **16. PROJECT MANAGEMENT**

The Service Provider must provide all administrative and project management services necessary for the provision of the Services. The following project management services must be provided at a minimum:

- (a) implementation of a planned, systematic, efficient and comprehensive approach to the Transition In and delivery of the Services;
- (b) identifying and mobilising resources;
- (c) identifying who will perform the work, when it is required, and how it will be executed and validated;
- (d) coordinating all activities and the functional outputs of all relevant persons including Subcontractors;
- (e) monitoring of progress;
- (f) efficient decision-making within the Service Provider's organisation and the advising of decisions required by the Department under this Contract;
- (g) controlling and rectifying faults or other deficiencies which may arise in, or during the performance of, the Services;
- (h) managing those risks which are the Service Provider's responsibility under this Contract;
- (i) managing and reporting of Incidents to the Department in accordance with **Schedule 2** (Statement of Work);
- (j) preparing all Reports required under this Contract; and
- (k) providing continuous, visible and adequate audit trails.

### **17. NATIONAL CONTRACT MANAGEMENT REPRESENTATIVES**

#### **17.1 The Department's Contract Management Representatives**

- (a) The Department must appoint one 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 Service Provider 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 Requirements).
- (d) The Department may, by providing written notice to the Service Provider, delegate the Contract Administrator's responsibilities under this Contract to any other Department Personnel.

### **17.2 Service Provider Contract Management Representatives**

- (a) The Service Provider must appoint one person to fulfil the role of the Service Authority and another person to fulfil the role of the Service Administrator, who must each be the duly authorised representatives of the Service Provider in accordance with this Contract.
- (b) The Service Provider must give written notice to the Department of the appointment of each person to the roles specified in **clause 17.2(a)** and any replacement of those appointees.
- (c) The roles and responsibilities of the Service Authority and the Service Administrator are set out in **Schedule 4.2** (Governance Requirements).

### **17.3 National Committee Meetings**

The Service Provider will participate in all national committee meetings in accordance with **Schedule 4.2** (Governance Requirements).

## **18. FACILITY MANAGEMENT PERSONNEL**

### **18.1 Department Personnel**

The Department will appoint a Department Regional Manager for each Facility.

### **18.2 Service Provider Personnel**

- (a) The Service Provider must appoint the following national positions:
  - (i) Contract Director;
  - (ii) National Operations Director;
  - (iii) Transition Director;
  - (iv) National HR/IR Manager; and
  - (v) National Commercial Manager.
- (b) The Service Provider must appoint, for each Facility, a manager who is located at that Facility.

- (c) The Service Provider must give written notice to the Department of the appointment of each person to the roles specified in **clause 18.2(a)**, and any replacement of those appointees.

## **19. REGIONAL MANAGEMENT MODEL**

### **19.1 Department Regional Manager Directions Power**

A Department Regional Manager may give an Executive Direction to the Service Provider for the benefit of People in Detention or detention operations with respect to the following:

- (a) the manner in which the Services are to be delivered;
- (b) requiring Additional Services in accordance with the procedure in **clause 33**; or
- (c) the scope and fulfilment of each Party's duty of care.

### **19.2 Limits on Directions Power**

The Department Regional Manager must not give a Regional Executive Direction that is inconsistent with the Main Terms and Conditions of the Contract.

### **19.3 Procedure for Giving and Recording Directions**

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

### **19.4 Compliance with Executive Directions**

The Service Provider must comply with and implement any Executive Direction within such period as may be specified by the Executive Direction within the Detention Services Fee.

### **19.5 Disputes**

Any disputes in relation to an Executive Direction pursuant to this **clause 19** will be resolved in accordance with the dispute resolution procedure in **clause 65**.

## **PART 6 - PERSONNEL**

### **20. KEY PERSONNEL**

#### **20.1 Key Personnel**

The Service Provider has retained the Key Personnel listed in **Schedule 7** (Key Personnel and Approved Subcontractors).

## 20.2 Retention of Key Personnel

Subject to **clause 20.3**, the Service Provider must ensure that each of the Key Personnel occupy the position and provide the Services specified for them in **Schedule 7** (Key Personnel and Approved Subcontractors).

## 20.3 Replacement of Key Personnel

- (a) 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. The Parties will promptly document the replacement of any Key Personnel in accordance with the Contract Change process in **clause 36**.
- (b) If the Service Provider is unable to provide replacement Key Personnel acceptable to the Department within three months of their ceasing work in respect of this Contract, the Department may, at its discretion, terminate this Contract in accordance with the provisions of **clause 67**, or remove Services from scope in accordance with **clause 34**.

## 20.4 Removal of Key Personnel

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.

## 21. GENERAL OBLIGATIONS IN RELATION TO SERVICE PROVIDER PERSONNEL

### 21.1 Personnel Levels

The Service Provider will ensure that the personnel levels at the Facilities are adequate to deliver the Services in accordance with this Contract.

### 21.2 Service Provider Personnel

Without limiting **clause 20**, 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 in accordance with the requirements of **Schedule 2** (Statement of Work);
- (c) undergo induction and orientation training in accordance with the requirements of **Schedule 2** (Statement of Work) when commencing employment with the Service Provider or starting work in relation to the Services;

- (d) are appropriately skilled, trained and qualified to provide the Services in accordance with the requirements of **Schedule 2** (Statement of Work);
- (e) are authorised, registered or licensed in accordance with any regulatory requirements (including any requirements specified in **Schedule 2** (Statement of Work)) for the purposes of or incidental to the performance of the Services;
- (f) possess all relevant industry body, supplier, manufacturer and accreditation or scheme memberships and professional association membership specified in **Schedule 2** (Statement of Work) or 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
- (g) will be subject to internal disciplinary processes.

### **21.3 Documents to be Signed by Service Provider Personnel**

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) a Confidentiality Deed Poll in the form of **Schedule 11** (Confidentiality Deed); and
- (b) a Deed of Non-disclosure of Personal Information in the form of **Schedule 12** (Deed of Non-disclosure of Personal Information),

prior to commencing work or performing duties under this Contract.

### **21.4 Behaviour of Service Provider Personnel at Facilities**

The Service Provider must ensure that all Service Provider Personnel at a Facility:

- (a) are aware of, and comply with, the Code of Conduct at all times;
- (b) carry out their duties and behave in such a way as to maximise the seamless interface between the delivery of the Services and:
  - (i) the Health Services by the Health Services Manager;
  - (ii) any other services provided by other service providers; and
  - (iii) 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; and

- (c) comply with the Department's policy on smoking and other occupational health and safety matters as declared from time to time by the Department.



## 21.5 Illegal Workers and Non-citizens

- (a) 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
- (b) For the purposes of **clause 21.5(a)**, an illegal worker is a person who:
  - (i) has unlawfully entered and remains in Australia;
  - (ii) has lawfully entered Australia but remains in Australia after his or her visa has expired; or
  - (iii) is working in breach of his or her visa conditions.

## 21.6 Removal of Service Provider Personnel

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.

## 22. DELEGATIONS AND AUTHORISATIONS

### 22.1 Authorisation and Accountability

- (a) The Parties acknowledge that certain Service Provider Personnel will be required to be authorised as "Officers" or "Authorised Officers" (as defined in the Migration Act) in order to carry out their roles and responsibilities.
- (b) The Service Provider must ensure that only Service Provider Personnel who are authorised as "Officers" or "Authorised Officers" perform the functions which are conferred on "Officers" and "Authorised Officers" under the Migration Act, and that those Service Provider Personnel meet any requirements contained in the Authorisation.
- (c) The Service Provider must, within a reasonable time, advise the Department of any:
  - (i) Service Provider Personnel requiring a relevant Authorisation or delegation pursuant to the Migration Act or any other Department policies and orders (**Authorisations** or **Delegations**) for the provision of Services;
  - (ii) Service Provider Personnel who have been granted powers under a relevant Authorisation or Delegation but no longer require the Authorisation or Delegation for any reason; or
  - (iii) changes to the Service Provider Personnel which will require amendments to be made by the Department to the Authorisations or Delegations granted.

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

## 22.2 Documentation Relating to Authorisations or Delegations

- (a) The Department undertakes to provide the Service Provider with copies of all Delegations or Authorisations relevant to the provision of the Services.
- (b) The Department undertakes to notify the Service Provider and provide copies of amendments to Delegations or Authorisations relevant to the provision of Services within 10 Business Days after the change has been approved by the relevant delegate.

## 22.3 Accountability of Service Provider Personnel

- (a) The Service Provider must ensure that any Service Provider Personnel, when exercising a power granted under an Authorisation or Delegation:
- (i) have regard to Departmental policy and Departmental policy guidance;
  - (ii) without limiting any other requirement of this **clause 22**, comply with all administrative law obligations;
  - (iii) be objective, impartial, fair, reasonable and consistent; and
  - (iv) make decisions promptly and provide reasons for their decisions as required by Law or Australian Government Policy.
- (b) The Service Provider acknowledges that the exercise of powers under the Migration Act by Service Provider Personnel will, as far as possible, attract the same accountability as if exercised by Department Personnel and will, without limitation, be subject to the *Ombudsman Act 1976 (Cth)*, the *Administrative Decisions (Judicial Review) Act 1977 (Cth)*, the *Archives Act 1983 (Cth)*, the *Privacy Act 1988 (Cth)*, the *Freedom of Information Act 1982 (Cth)* and the Acts administered by the Australian Human Rights Commission.

## PART 7 – SUBCONTRACTOR ARRANGEMENTS

### 23. SUBCONTRACTOR ARRANGEMENTS

#### 23.1 Term of Subcontracts

The Service Provider must not subcontract all of the Services and may only subcontract any part of the Services if the subcontract contains provisions that:

- (a) are substantially in accordance with the provisions of this Contract, including all relevant terms relating to:
- (i) subcontracting;

- (ii) compliance with Laws and Australian Government Policies;
  - (iii) intellectual property;
  - (iv) audit and access;
  - (v) privacy;
  - (vi) confidentiality;
  - (vii) indemnities;
  - (viii) insurance;
  - (ix) termination; and
  - (x) Transition Out; and
- (b) allow the Service Provider and the Department to publish details of the name of the Subcontractor and the nature of the work subcontracted to it.

### **23.2 Approval of Major Subcontracts**

The Service Provider must not enter into a Major Subcontract without the prior written approval of the Department.

### **23.3 Initial Approved Subcontractors**

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

### **23.4 Conditions of Subcontracts**

Prior to seeking the Department's approval of a Major Subcontract, the Service Provider must:

- (a) ensure that that the Major Subcontract:
  - (i) complies with the requirements in **clause 23.1**; and
  - (ii) reserves such rights to the Department as are secured to the Department under this Contract; and
- (b) provide a copy of the proposed Major Subcontract to the Department.

### **23.5 Copies of Subcontracts**

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.

### **23.6 Service Provider Liability and Obligations**

- (a) The Department's approval of any Subcontract does not relieve the Service Provider from any liability or obligation under this Contract.
- (b) 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.
- (c) The Service Provider 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.

### **23.7 Subcontractor Warranty**

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 Construction Code as defined in **clause 72.1**; 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.

### **23.8 Enforcement of Rights Against Subcontractors**

The Service Provider must take any action required by the Department in relation to the enforcement of, or recovery under, the terms of the subcontract that are identified in **clause 23.1**.

### **23.9 Service Provider to be the Department's Sole Point of Contact**

- (a) 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.
- (b) Except as provided in **clause 23.9(a)**, the Service Provider will be the Department's sole point of contact regarding the Services, including with respect to payment.

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## PART 8 - FACILITIES AND EQUIPMENT

### 24. LICENCE FOR USE OF FACILITIES, DEPARTMENT EQUIPMENT AND SYSTEMS

#### 24.1 Licence

- (a) The Department grants, and the Service Provider accepts, a fee-free, non-exclusive licence to occupy and use the Facilities and to access and use the Department Assets and Loose Assets for the sole purpose of complying with its obligations under this Contract during the Term on the terms and conditions contained in this **clause 24**.
- (b) The Service Provider acknowledges and agrees that the licence to occupy and use granted by this clause is personal to the Service Provider and any and all of the rights of the Service Provider rest in contract alone and may not be assigned. The Service Provider agrees that it has no tenancy, estate or leasehold interest in the Facilities, Department Assets or Loose Assets. The Service Provider acknowledges that the Facilities, Department Assets and Loose Assets remain the property of the Department.
- (c) The Service Provider shall not prevent or hinder the Department or any person claiming through the Department from exercising the Department's rights as owner of the Facilities, Department Assets or Loose Assets and shall not act in a manner inconsistent with the Department's property or rights.
- (d) The Department may on written notice to the Service Provider modify the Facilities, Department Assets or Loose Assets to take into account the Department's changing requirements.

#### 24.2 Condition of Facilities and Department Assets

- (a) The Service Provider acknowledges having received and understood the Department Asset Register.
- (b) The Facilities, Department Assets and Loose Assets are licensed to the Service Provider as is.
- (c) To the extent permitted by Law:
  - (i) the Department provides no warranty as to the actual condition of the Facilities, Department Assets and Loose Assets;
  - (ii) the Service Provider waives, releases and renounces any warranty, condition, representation and terms which would or might otherwise be implied by Law in respect of the condition of the Facilities, Department Assets and Loose Assets; and
  - (iii) the Department has no liability to the Service Provider in respect of any loss or damage (including consequential loss or damage) which may be

suffered or incurred or which may arise directly or indirectly from the Facilities, Department Assets or Loose Assets.

### 24.3 Utilities

The Service Provider is responsible for arranging the provision of and making prompt payment to the relevant authority or service provider of all costs or charges associated with:

- (a) water;
- (b) sewerage;
- (c) electricity;
- (d) gas (including LPG);
- (e) telephone and all other telecommunications charges including internet access fees;
- (f) council rates; and
- (g) rubbish removal,

incurred due to the use and occupation of the Facilities and/or the provision of the Services, including consumption costs, rental costs, connection fees and minimum charges, in accordance with **Schedule 5** (Detention Services Fee).

### 24.4 Service Provider Covenants in Relation to the Facilities

The Service Provider for itself, the Service Provider Personnel, and their invitees covenants and agrees with the Department to:

- (a) use the Facilities, Department Assets and Loose Assets for the permitted use in **clause 24.1** and for no other use;
- (b) maintain the security of the Facilities, Department Assets and Loose Assets and keep them in good order and condition in accordance with the requirements of **Schedule 2** (Statement of Work);
- (c) use the Facilities, Department Assets and Loose Assets skilfully and properly, complying with the requirements set out in the relevant operating manuals or other written instructions from the Department or, in the absence of such manuals or instructions, in accordance with industry best practice;
- (d) comply with the Department's reasonable instructions and directions relating to the safety of any part of the Facilities and of any person in or adjacent to the Facilities;
- (e) take all reasonable precautions to prevent any damage to any part of the Facilities, Department Assets or Loose Assets, or any nuisance, damage, obstruction, annoyance or inconveniences to the Department or any occupier of adjoining land;

- (f) comply at its own expense with all Laws, orders, directions and demands given by or on behalf of any authority having jurisdiction over the Facilities (including but not limited to those relating to the National Construction Code and National Construction Guidelines, disability discrimination, the environment, fire precautions, insurance and fire alarms);
- (g) not assign, transfer possession or in any way dispose of any interest in the licence granted under **clause 24.1** (including by way of any lien, charge, mortgage or other Security Interest) or allow any other person to use the Facilities or Department Assets without the prior consent in writing of the Department;
- (h) not make any modification, alterations, addition or other changes (structural or non-structural) to the Facilities or Department Assets, or to erect any partitions or carry out any building or works whatsoever in or to the Facilities without the prior consent of the Department obtained in accordance with **clause 24.5**; and
- (i) allow the Department to affix or cause to be affixed to the Facilities such signage or other markings as the Department may think fit indicating that the Facility is the property of the Department, and the Service Provider shall not remove or deliberately obliterate, deface or cover such signage or markings.

#### **24.5 Modifications to Facilities**

- (a) Where the Service Provider seeks any modification, alteration, addition or other change (whether structural or non-structural) to a Facility, the Service Provider must (at its cost) submit a proposal for the modification works to be included in the Minor Works Programme to the Department for its approval.
- (b) The Department may approve or not approve the inclusion of the proposal in the Minor Works Programme in its absolute discretion. The Department may grant its approval subject to conditions, including:
  - (i) that the modification works be undertaken by the Department or Subcontractors approved by the Department; and
  - (ii) that the modification works be undertaken at the cost of the Service Provider.
- (c) Where the Department approves a modification subject to a condition that the modification works be undertaken at the cost of the Service Provider, the Service Provider will not be obligated to carry out the modification.
- (d) Any modification works carried out pursuant to this **clause 24.5** will be owned by the Department unless otherwise agreed by the Parties in writing.
- (e) The removal of a modification will itself be deemed to be a modification and must be approved by the Department in accordance with this **clause 24.5**.
- (f) The Service Provider must repair, at its cost, any damage caused by the installation or removal of a modification by the Service Provider or its Subcontractors.

#### 24.6 Damage to Facilities, Department Assets and Loose Assets

- (a) The Service Provider must notify the Department in writing of any loss, destruction, damage to, or defect in, the Facilities, Department Assets (or any part thereof) in accordance with the reporting requirements for Incidents in **Schedule 2** (Statement of Work).
- (b) The Service Provider is responsible for and indemnifies the Department in respect of loss, destruction, damage to the Facilities, and Department Assets Loose Assets in accordance with **clause 59**.

#### 24.7 Residential Accommodation on Christmas Island

- (a) The Department grants to the Service Provider a licence under which the Service Provider is entitled to permit certain Service Provider Personnel to occupy residential accommodation on Christmas Island, when available, in accordance with **Annexure A to Schedule 1** (Facility Descriptions and Plans).
- (b) Where the Department provided residential accommodation is not available for the use of Eligible Personnel, the Department and the Service Provider will agree alternative arrangements, with the Service Provider entitled to recover costs incurred, in an open book manner, as a Cost Plus Pass Through Cost.

### 25. DEPARTMENT ASSETS AND LOOSE ASSETS

#### 25.1 Department Assets

- (a) The Service Provider is responsible for the Maintenance, management and disposal of Department Assets and Loose Assets in accordance with **Schedule 2** (Statement of Work).
- (b) The Service Provider must manage the scheduled replacement of Department Assets which have reached the end of their scheduled life in accordance with the Maintenance Management Plan. The Department will bear the cost of replacing such Department Assets as a Pass Through Cost.
- (c) Where any Department Asset breaks down and is irreparable prior to the date scheduled for disposal of that asset (as specified in the Maintenance Management Plan), 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 a Department Asset is critical to the delivery of the Services, the Department will approve the replacement of the Department Asset on any conditions it sees fit.
- (d) The Service Provider will not be liable for the costs of repair or replacement of Loose Assets where, in the reasonable opinion of the Department, the repair or replacement results from reasonable wear and tear of the Loose Asset. Where the Department determines the Loose Asset is to be replaced, it may direct the Service Provider to purchase the Loose Asset, which cost will be recoverable by the Service Provider as a Pass Through Cost.



- (e) The Service Provider acknowledges that any Department Asset or Loose Asset that is repaired or replaced in accordance with this **clause 25** will remain the property of the Department or will immediately become so upon its replacement, as the case may be.

## 26. SERVICE PROVIDER ASSETS

- (a) The Service Provider must provide all assets required by the Service Provider to perform its obligations under this Contract other than Department Assets and Loose Assets.
- (b) The Service provider must label its own assets to enable the Parties to distinguish between the Service Provider's assets and Department Assets and Loose Assets.

## 27. ACCESS TO FACILITIES

- (a) The Service Provider must at all times, with or without notice, provide access to any part of the Facilities to Department Personnel, the Commonwealth and Immigration Ombudsman, the Australian Human Rights Commission, the Auditor-General and the Privacy Commissioner and members of the Immigration Detention Advisory Group.
- (b) Subject to their compliance with any applicable security requirements contained in **Schedule 2** (Statement of Work), the Service Provider must facilitate access to the Facilities by representatives of those Government Agencies who have entered into Memoranda of Understanding with the Department, in order to enable them to provide the services referred to therein.
- (c) The Service Provider must not provide access to the Facilities for media visits except in accordance with the procedures and conditions specified in **Schedule 2** (Statement of Work).

## PART 9 - PERFORMANCE MANAGEMENT

### 28. INDICATOR METRICS

#### 28.1 Purpose of Indicator Metrics

The Service Provider acknowledges and agrees that:

- (a) the purpose of the Abatement Indicator Metrics in **Schedule 4.1** (Performance Management Manual) is to:
  - (i) provide the Service Provider with focus on the areas which are of importance to the Department in the provision of the Services; and
  - (ii) specify performance goals and minimum standards of performance required by the Department of the Service Provider in the provision of the Services, which, if not achieved, may result in an Abatement of the Detention Services Fee;

- (b) the purpose of the Incentive Indicator Metrics is to:
  - (i) highlight the areas of the detention environment which have the most significant impact on achievement of the Immigration Detention Values; and
  - (ii) to provide an incentive which recognises the extent to which the Service Provider has achieved the Immigration Detention Values;
- (c) the Indicator Metrics may be adjusted in accordance with **clauses 30 and 55.5**;
- (d) the Indicator Metrics do not modify any express obligation of the Parties under this Contract;
- (e) except as provided in **clause 55.5**, the Service Provider:
  - (i) bears the risk of all delays, disruptions, events or circumstances affecting the provision of the Services which could prevent it from meeting or achieving any Indicator Metrics other than a risk arising from an excusable performance failure identified in **Schedule 4.1** (Performance Management Manual); and
  - (ii) will remain obliged to meet or achieve the Indicator Metrics notwithstanding any such delay, disruption, event or circumstance; and
- (f) it must provide Reports on its performance against Indicator Metrics to the Department at the frequency and in the manner detailed in **Schedule 4.1** (Performance Management Manual).

## 28.2 Incentives and Abatements Regime

- (a) Subject to **clause 28.2(b)**, the Service Provider acknowledges that:
  - (i) superior performance against the Incentive Indicator Metrics will be an input into the Incentive regime in **Schedule 4.1** (Performance Management Manual) and may result in an increase to the Detention Service Fee payable to the Service Provider for the Services in accordance with **Schedule 4.1** (Performance Management Manual);
  - (ii) under-performance against the Abatement Indicator Metrics will be an input into the Abatements regime in **Schedule 4.1** (Performance Management Manual) and may result in a reduction of the Detention Services Fee payable to the Service Provider for the Services, subject to **clause 28.2(c)**, in accordance with **Schedule 4.1** (Performance Management Manual).
- (b) The Service Provider's performance against the Incentive Indicator Metrics and the Abatement Indicator Metrics will not result in any increase or decrease in the Detention Services Fee in accordance with **clause 28.2(a)** during the Base Period.

- (c) Where the Service Provider's performance against the Detailed Indicator Metrics forming part of the Abatement regime indicates Significant Failure, Continuous Failure or Continuous Metric Failure, the maximum Abatement may exceed 5% of the Detention Services Fee for any month.

### 28.3 Process for Measuring Performance Against Indicator Metrics

The Service Provider agrees to participate in Joint Facility Audit Team and provide any Data, Reports, logs or other data source required in order to measure performance against the Indicator Metrics in accordance with **Schedule 4.1** (Performance Management Manual).

## 29. IMMIGRATION DETENTION VALUES KEY PERFORMANCE INDICATORS

### 29.1 Purpose of Immigration Detention Values Key Performance Indicators

The Service Provider acknowledges and agrees that:

- (a) the purpose of the four Key Performance Indicators relating to the Immigration Detention Values in **Schedule 4.1** (Performance Management Manual) is to:
- (i) provide the Service Provider with strategic focus areas which consolidate the results of the Indicator Metrics; and
  - (ii) provide the Department with a snapshot view of performance against the strategic goals of the Immigration Detention Values; and
- (b) it must provide Reports on its performance against Key Performance Indicators to the Department at the frequency and in the manner detailed in **Schedule 4.1** (Performance Management Manual).

## 30. REVIEW OF PERFORMANCE

### 30.1 Annual Reviews

The Parties will conduct an annual review of this Contract and the scope of Services.

### 30.2 Scope of Annual Reviews

- (a) For the purposes of **clause 30.1**, the Department will determine the scope, objectives and criteria of the annual review.
- (b) The scope of the reviews under **clause 30.1** will include consideration of the appropriateness and effectiveness of the Indicator Metrics and the Key Performance Indicators. As a result of the review, the Indicator Metrics and Key Performance Indicators may be amended to reflect the Parties' commitment to continuous improvement and an analysis of any failures in the preceding 12 months.

### 30.3 Other Reviews

The Parties will conduct the reviews specified in **Schedule 4.1** (Performance Management Manual).

## 31. CONTINUOUS IMPROVEMENT

### 31.1 Continuous Improvement

The Service Provider must commit itself to continuous improvement of the Services through:

- (a) the identification and application of proven techniques and tools (from the Service Provider's other operations) that would benefit the Department either operationally or financially; and
- (b) the implementation of programmes, practices and measures designed (at a minimum) to ensure that the Services are performed in accordance with this Contract and to improve levels of performance, including any programmes, practices and measures specified in **Schedule 2** (Statement of Work) and **Schedule 4.1** (Performance Management Manual).

## PART 10 – CHANGE MANAGEMENT / CHANGE CONTROL

## 32. ACTIVATING, DEACTIVATING AND REACTIVATING A FACILITY

### 32.1 The Department May Activate, Deactivate and Reactivate Facilities

The Department may, at any time and in its absolute discretion, by written notice:

- (a) activate or re-activate a Facility, whereupon it will become Operational;
- (b) deactivate a Facility, whereupon it will become a Contingency Facility or a Hot Contingency Facility, as notified by the Department; or
- (c) close a specified Facility by removing it from the scope of the Services in accordance with **clause 34**.

### 32.2 Activation or Reactivation of a Facility

- (a) The Department may serve notice on the Service Provider requiring the Service Provider to make Operational an Hot Contingency Facility and ramp-up service delivery to provide:
  - (i) Basic Services at 24 hours' notice, except in relation to a Facility at Christmas Island in which case Basic Services at 72 hours' notice; and
  - (ii) the full range of Services at six weeks' notice.
- (b) The Department may serve notice on the Service Provider requiring the Service Provider to make Operational a Contingency Facility and ramp-up service delivery to provide:
  - (i) Basic Services at six weeks' notice; and
  - (ii) the full range of Services at 12 weeks' notice.

### 32.3 Deactivation of a Facility

Where a Facility is Operational and the Service Provider is providing the full scope of Services, the Department may serve notice on the Service Provider requiring the Service Provider to deactivate the Facility to:

- (a) be a Hot Contingency Facility and ramp-down service delivery to provide Care Taker Services at six weeks' notice; or
- (b) be a Contingency Facility and ramp-down service delivery to provide Care Taker Services at three months' notice.

### 32.4 Change of Status from "Hot Contingency" to "Contingency" and Vice Versa

Where a Facility is a Hot Contingency Facility, the Department may serve notice on the Service Provider requiring the Service Provider to change the Facility to a Contingency Facility (and vice versa) at three months' notice.

### 32.5 Delivery of Services and Entitlement to Payment

- (a) The Service Provider must progressively ramp-up or ramp-down its service delivery (as appropriate) so that it delivers the Care Taker, Basic or full scope of Services, as the case may be, at the relevant Facility in accordance with the periods specified in **clauses 32.2 and 32.3**.
- (b) When a Facility has been ramped-up to be Operational, the Service Provider will be entitled to payment of:
  - (i) the Detention Services Fee for those Service Tasks comprising the Basic Services based on the relevant capacity band in the pricing tables in **Schedule 5** (Detention Services Fee) until the Service Provider is able to provide the full scope of Services; and
  - (ii) thereafter, the Detention Services Fee for those Service Tasks comprising the full scope of Services based on the relevant capacity band in the pricing tables in **Schedule 5** (Detention Services Fee).
- (c) When a Facility has been ramped-up or ramped-down to a Hot Contingency Facility, the Service Provider will be entitled to payment of the Detention Services Fee for those Service Tasks comprising the Basic Services (and any other Service Tasks required by the Department) based on the capacity band for the relevant Hot Contingency Facility in the pricing tables in **Schedule 5** (Detention Services Fee).
- (d) When a Facility has been ramped-down to a Contingency Facility, the Service Provider will be entitled to payment of the Services Fee for those Facilities Management Services comprising the Care Taker Services (and any other Service Tasks required by the Department) based on the capacity band for the relevant Contingency Facility in the pricing tables in **Schedule 5** (Detention Services Fee).

### **32.6 Payments Relating to the Department's Decision to Activate, Reactivate or Deactivate a Facility**

If the Department gives the Service Provider a notice pursuant to **clause 32.1** which activates, re-activates or de-activates a Facility, the Department will, in respect of that Facility, be liable for ramp-up or ramp-down costs (as applicable) as Pass Through Costs in accordance with **Schedule 5** (Detention Services Fee).

## **33. ADDITIONAL SERVICES**

### **33.1 Temporary or Short Term Additional Services Required by a Department Regional Manager**

In accordance with **clause 19.1**, the Department Regional Manager may from time to time give an Executive Direction requiring that the Service Provider provide Additional Services for a period not exceeding seven days and the Service Provider must supply them to the Department from the date specified in the notice. Where possible, such Additional Services will be priced using any applicable pricing mechanism or metric (including any schedule of rates in **Schedule 5** (Detention Services Fee)) and, otherwise, will be priced as Pass Through Costs.

### **33.2 Additional Services Required by the Contract Administrator**

The Contract Administrator may from time to time give a written notice requiring that the Service Provider provide Additional Services and the Service Provider must supply them to the Department from the date specified in the notice. Additional Charges will be payable for such Additional Services calculated as follows:

- (a) where:
- (i) a pricing mechanism or metric already exists within this Contract for a resource required to perform the Additional Service, are calculated using that existing pricing mechanism or metric (including rates specified in a schedule of rates contained within **Schedule 5** (Detention Services Fee)); or
  - (ii) no such pricing mechanism or metric exists within this Contract, by pricing that is fair and reasonable, having regard to the then prevailing prices commercially available in the market for similar services to like customers; or
  - (iii) if the Additional Charges cannot be calculated under **clause 33.2(a)(i)** or **clause 33.2(a)(ii)** above, as Pass Through Costs; and
- (b) in any case, reflect all cost savings to the Service Provider resulting from any changes to the Service Provider's then current arrangements or operations for the provision of the Services. For example, where the Additional Services replace the whole or any part of an existing Service, the Service Provider must ensure that any cost savings resulting from reduced resource requirements for performing the Additional Services in lieu of the replaced Service are reflected in the Additional Charges.

### 33.3 Proof of Reasonable Charges

- (a) The Service Provider must provide the Department with documentary proof, to the Department's reasonable satisfaction, that the Additional Charges for Additional Services satisfy the criteria set out in **clause 33.2**.
- (b) In order to assist the Department to form a view regarding whether the Additional Charges satisfy the criteria set out in **clause 33.2**, the Department may require the Service Provider to provide a financial statement of the change in financial cost to the Service Provider as a result of the requirement to provide Additional Services, certified by an accountant independent of the Service Provider declaring:
  - (i) the Additional Services cannot be accommodated within the existing Detention Services Fee; and
  - (ii) the accuracy of the financial information provided to the Department.
- (c) If the Service Provider is required to provide a financial statement pursuant to **clause 33.3(b)**, it must do so within five Business Days.
- (d) The Department will bear the reasonable costs of any independent accountant certification required by the Department under this **clause 33**.

### 33.4 Service Provider May Suggest Additional Services

- (a) The Service Provider may at any time offer to provide Additional Services to the Department which, in the opinion of the Service Provider, will enhance the objectives of this Contract, including the Immigration Detention Values.
- (b) In response to the Service Provider's suggestion under **clause 33.4(a)**, the Contract Administrator may, in its absolute discretion, give a written notice under **clause 33.2** or **35.1**.

### 33.5 Additional Services Become Part of the Services

- (a) Unless agreed otherwise in writing, the Additional Services will become part of the Services, and the Additional Charges will become part of the Detention Services Fee.
- (b) The Contract Administrator will update the **Schedule 2** (Statement of Work) and, where appropriate, **Schedule 5** (Detention Services Fee) in order to incorporate the Additional Services and the Additional Charges (if any).

### 33.6 Original Service Obligations Unaffected

For avoidance of doubt, the Parties agree that the Additional Services:

- (a) do not include any Services specified in the **Schedule 2** (Statement of Work) as at the date of the request for Additional Services or which have been added to the **Schedule 2** (Statement of Work) pursuant to **clause 35**, nor anything required to remedy any failure by the Service Provider to perform those Services; and



- (b) unless otherwise agreed by the Parties under this **clause 33**, do not affect the Service Provider's obligations to provide the Services in accordance with this Contract.

## **34. REMOVAL OF SERVICES FROM SCOPE**

### **34.1 Notice Requiring Removal of Services from Scope**

The Contract Administrator may from time to time, by written notice to the Service Provider, remove any of the Services from the scope of this Contract (**Removed Services**), in which case:

- (a) the Removed Services will no longer be part of the Services from the date specified in the notice;
- (b) the Department must pay the Service Provider for any Removed Services that were performed in accordance with this Contract prior to the date on which the Department gave written notice to the Service Provider of the removal of the Removed Service from scope;
- (c) the Detention Services Fee will be equitably adjusted to reflect the reduced costs incurred by the Service Provider in supplying the remaining Services, and any unit charges for the remaining Services will not be increased;
- (d) the Department will be liable for compensation for any substantiated unavoidable loss incurred by the Service Provider calculated in accordance with **clause 68.4**; and
- (e) each Party will comply with its obligations in the Transition Out Plan in respect of the Removed Services.

### **34.2 Limits on Removal of Services from Scope**

The Department must not give a written notice pursuant to **clause 34.1** that would have the effect of terminating all of the Services, but may give a notice which has the effect of closing a Facility.

## **35. SCOPE CHANGE PROCEDURE**

### **35.1 Notification**

- (a) If at any time the Department wishes to change the scope or level of Services under this Contract (**Scope Change**), other than in accordance with **clauses 33, 34, 36** or **68**, the Contract Administrator may notify the Service Provider in writing (**Scope Change Notice**) not less than 20 Business Days prior to the effective date of the Scope Change Proposal.
- (b) A Scope Change may involve changes to any of the following Schedules (and any annexures to them):
  - (i) **Schedule 2** (Statement of Work);



- (ii) **Schedule 4.1** (Performance Management Manual);
  - (iii) **Schedule 4.2** (Governance Requirements);
  - (iv) **Schedule 4.3** (Reporting Requirements);
  - (v) **Schedule 5** (Detention Services Fee); and
  - (vi) **Schedule 6** (Transition Requirements).
- (c) The Department must not give a Scope Change Notice that would have the effect of terminating all of the Services.

### 35.2 Service Provider Obligations

As soon as practicable after receipt of the Scope Change Notice, but in any event within 10 Business Days, (or such other time period as agreed in writing by the Department) the Service Provider must provide the Contract Administrator with a written proposal signed by a director of the Service Provider (the **Scope Change Proposal**) setting out:

- (a) details of the change and its extent (nature, scope, scale and technology employed);
- (b) a statement of reasons for proposing the change;
- (c) revised wording of any of **Schedules 2, 4.1, 4.2, 4.3, 5 and 6** in the format of old clause and marked up new clause;
- (d) the steps required to implement the Scope Change Proposal;
- (e) the time within which the Service Provider proposes to implement the Scope Change;
- (f) the Plans and/or procedures that the Service Provider proposes to change (if any) to comply with the Scope Change Notice;
- (g) the changes to the Detention Services Fee which the Service Provider proposes to apply to the Scope Change supported by reasons for the price change and relevant measurements or documents which support or validate the change;
- (h) any reduction to the Detention Services Fee (if any) which the Service Provider proposes as a result of the Scope Change, in order to reflect all cost savings to the Service Provider resulting from changes to the Service Provider's then current arrangements for the provision of the Services;
- (i) the adjustments (if any) to the Indicator Metrics and Key Performance Indicators which the Service Provider proposes as a result of the Scope Change Notice, and reasons for the adjustments;
- (j) any risks associated with the Scope Change Proposal and any recommendations for minimising those risks; and

- (k) the Service Provider's reasonable costs of preparing the Scope Change Proposal.

### 35.3 Costs

The Service Provider may charge the Department reasonable costs for assessing a Scope Change Notice and preparing the Scope Change Proposal relating to that notice.

### 35.4 Acceptance

The Department may:

- (a) accept the Scope Change Proposal by having it signed by the Contract Administrator and sending a copy to the Service Provider;
- (b) reject the Scope Change Proposal by notice in writing to the Service Provider including reasons for its decision, in which case the Parties must negotiate in good faith to resolve agreement to the Scope Change Proposal;
- (c) if the Parties are unable to agree the Scope Change Proposal within five Business Days of the Department rejecting the Scope Change Proposal, refer the matter to dispute resolution under **clause 65**; or
- (d) withdraw the Scope Change Notice.

If the Department withdraws the Scope Change Notice, the Service Provider is not required to comply with the Scope Change Proposal.

### 35.5 Implementation

If:

- (a) the Department accepts the Scope Change Proposal; or
- (b) the Department and the Service Provider negotiate an agreed outcome (following rejection of the Scope Change Proposal by the Department); or
- (c) the Department refers the matter to dispute resolution and the dispute is resolved under **clause 65** and the Department does not, within five Business Days of resolution of the dispute, withdraw the Scope Change Notice,

then:

- (d) the Service Provider must implement the Scope Change Proposal or those proposals agreed or determined. Such implementation must be completed within six weeks, or such time as may be agreed, of the acceptance of the Scope Change Proposal or resolution of any dispute under **clause 65** unless, in the case of the latter, the Scope Change Notice is withdrawn; and
- (e) the Detention Services Fee is adjusted in accordance with the Scope Change Proposal or, if the Scope Change Proposal is amended by mutual agreement, the

amended Scope Change Proposal, or the amount determined as a result of the dispute resolution process.

### 35.6 Scope Change Register

- (a) The Contract Administrator will maintain a Scope Change Register containing all of the original signed Scope Change Proposals.
- (b) Following a Scope Change, the Contract Administrator will prepare a consolidated version of the Contract, and make it available to the Service Provider through the Department's nominated information technology system.
- (c) If the Service Provider is of the view that all Scope Change Proposals have not been incorporated into the consolidated version of this Contract, the Service Provider must promptly bring the matter to the attention of the Contract Administrator.
- (d) For the avoidance of doubt, this **clause 35.6** does not affect the Service Provider's obligation to give effect to a Scope Change within the time period referred to in **clause 35.2(e)**.

### 35.7 Liability for Scope Change

The Department will not be liable for any:

- (a) adjustment of the Detention Services Fee; or
- (b) other claim or action by the Service Provider (to the extent permitted by Law),

arising out of or in connection with a proposed Scope Change unless the provisions of this **clause 35** have been satisfied.

## 36. CONTRACT CHANGE PROCEDURE

### 36.1 Variations to this Contract

If the Department at any time wishes to vary this Contract (other than a change to the nature or level of the Services under **clause 35**), the Department must do so under the terms of this **clause 36**. The change when approved under this clause will be a Contract Change.

### 36.2 Notification.

If the Department at any time wishes to vary this Contract, the Contract Administrator will notify the Service Provider in writing (**Contract Change Notice**) not less than 20 Business Days prior to the effective date of the Contract Change.

### 36.3 Service Provider Obligations

- (a) As soon as practicable after receipt of the Contract Change Notice, but in any event within 10 Business Days, the Service Provider must provide the Contract Administrator with a written proposal signed by a director of the Service Provider (the **Contract Change Proposal**), setting out:

- 
- (i) details of the change and its extent (nature, scope, scale and technology employed);
  - (ii) a statement of reasons for proposing the change;
  - (iii) the steps required to implement the Contract Change Proposal;
  - (iv) the time within which the Service Provider proposes to implement the Contract Change;
  - (v) the impact of the Contract Change Proposal on the delivery of 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;
  - (vi) the changes to the Detention Services Fee which the Service Provider proposes to apply to the Contract Change supported by reasons for the price change and relevant measurements or documents which support or validate the change;
  - (vii) a financial statement of the change in financial cost to the Service Provider as a result of the Contract Change Proposal certified by an accountant independent of the Service Provider declaring:
    - (A) the Change Proposal cannot be accommodated within the existing Detention Services Fee; and
    - (B) the accuracy of the financial information provided to the Department;
  - (viii) details of the review the Service Provider has undertaken to allow the Contract Change Proposal to be accommodated within the existing requirements of this Contract, including the Detention Services Fee;
  - (ix) any reduction to the Detention Services Fee (if any) which the Service Provider proposes as a result of the Contract Change Notice, in order to reflect all cost savings to the Service Provider resulting from any changes to the Service Provider's then current arrangements or operations for the provision of the Services;
  - (x) the adjustments (if any) to the Indicator Metrics and Key Performance Indicators which the Service Provider proposes as a result of the Contract Change Notice, and reasons for the adjustments;
  - (xi) any risks associated with the Contract Change Proposal and any recommendations for minimising those risks; and
  - (xii) the Service Provider'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 Service Provider that all costs are reasonable and profit does not exceed

that used in the original Detention Services Fee and take account of any savings on other aspects of the Services affected by the Contract Change Proposal. The Service Provider must give the Department's financial representatives full access to the Service Provider's financial records to investigate the reasonableness of proposed changes to the Detention Services Fee. Such information will be treated as strictly confidential.

#### 36.4 Costs

The Service Provider may charge the Department reasonable costs for assessing a Contract Change Notice and preparing the Contract Change Proposal relating to that notice.

#### 36.5 Acceptance

The Department may:

- (a) accept the Contract Change Proposal by having it signed by the Contract Administrator and sending a copy to the Service Provider;
- (b) reject the Contract Change Proposal by notice in writing to the Service Provider including reasons for its decision, in which case the Parties must negotiate in good faith to resolve agreement to the Contract Change Proposal;
- (c) if the Parties are unable to agree to the Contract Change Proposal within five Business Days of the Department rejecting the Contract Change Proposal, refer the matter to dispute resolution under **clause 65**; or
- (d) withdraw the Contract Change Notice.

If the Department withdraws the Contract Change Notice, the Service Provider is not required to comply with the Contract Change Notice.

#### 36.6 Implementation

If:

- (a) the Department accepts the Contract Change Proposal; or
- (b) the Department and the Service Provider 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 65** and the Department does not, within five Business Days of resolution of the dispute, withdraw the Contract Change Notice,

then:

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

- (e) the Service Provider must implement the Contract Change Proposal or those proposals agreed or determined. Such implementation must be completed within six weeks, or such time as may be agreed, of the acceptance of the Contract Change Proposal or resolution of any dispute under **clause 65** unless, in the case of the latter, the Contract Change Notice is withdrawn; and
- (f) the Detention Services Fee 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.

### **36.7 Effect of Variations**

- (a) A Contract Change Proposal will only take effect and be a valid Contract Change if 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 a Contract Change.
- (c) Both Parties must perform each Contract Change in accordance with the formal deed of amendment to this Contract giving effect to the Contract Change Notice.

## **PART 11 – DETENTION SERVICES FEE**

### **37. DETENTION SERVICES FEE**

#### **37.1 Obligation to Pay the Detention Services Fee**

Subject to this Contract, and in consideration of the Service Provider performing its obligations under this Contract, the Department agrees to pay the Detention Services Fee to the Service Provider, which includes the following components:

- (a) the fees for delivery of the Service Tasks in accordance with **Schedule 2** (Statement of Work) and any other Services described in this Contract;
- (b) Pass Through Costs;
- (c) Transition costs in accordance with the Milestone Payment Schedule upon the completion of the Milestones listed in **Schedule 6** (Transition Requirements); and
- (d) the fees for Additional Services provided, and as calculated, in accordance with **clause 33**.

#### **37.2 Annual Adjustment of the Detention Service Fee**

The Detention Services Fee will be adjusted annually on the anniversary of the Commencement Date in accordance with **Schedule 5** (Detention Services Fee).

### **37.3 Month to Month Adjustment of Detention Services Fee**

When making payment of the Detention Services Fee, the Department may increase or decrease the amount payable to take account of:

- (a) the application of an Incentive or Abatement in accordance with **clause 28.2**;
- (b) the withholding by the Department of an invoiced amount which is in dispute, in accordance with **clause 39.3**;
- (c) the off-setting by the Department of an any underpayment or overpayment which resulted from the Service Provider providing an incorrect invoice, in accordance with **clause 39.4**;
- (d) the suspension of obligations following a Force Majeure Event in accordance with **clause 55.8**;
- (e) any Services which were not provided as a result of an Incident in accordance with **clause 56.3(c)**; and
- (f) any other right allowed to the Department under the terms of this Contract.

## **38. PAYMENTS TO THE SERVICE PROVIDER**

### **38.1 Timing of Payments**

The Detention Services Fee will be paid by the Department monthly in arrears within 30 days of receipt by the Department of an invoice correctly rendered in accordance with **clause 39**.

### **38.2 How Payments Must be Made**

Unless otherwise agreed, any payments under this Contract will be made by electronic transfer directly to a nominated bank account. Unless otherwise agreed, payments will be made in Australia and in Australian dollars.

### **38.3 When Payment Deemed to be Made**

Payments under this Contract will be deemed to be made:

- (a) if the payment is made by cheque, on the date on which the cheque is drawn;
- (b) if the payment is made by electronic funds transfer, at the time the funds are dispatched electronically; or
- (c) if payment is made by credit card, on the date on which the credit card voucher was signed or authorised.

## 39. INVOICES

### 39.1 Timing of Invoices

The Service Provider must invoice the Department monthly in arrears for the Detention Services Fees, Pass Through Costs and any other amounts payable to the Service Provider under this Contract and deliver the invoices in the manner and at the frequency specified in this **clause 39**.

### 39.2 Form of Invoice

An invoice must:

- (a) include all of the details referred to in **Attachment B** (Invoice Details) to **Schedule 5** (Detention Services Fee) and be provided to the Department in accordance with **Schedule 5** (Detention Services Fee) (including **Attachment B** (Invoice Details)); and
- (b) be provided to the Department within 10 Business Days of the last day of the month to which the invoice relates.

### 39.3 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 Detention 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.

### 39.4 Incorrect Invoices

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.

## 40. RIGHT OF THE DEPARTMENT TO RECOVER MONEY

### 40.1 Deductions

Without limiting the Department's rights under any provision of this Contract, any payment or debt owed by the Service Provider to the Department under this Contract may be deducted by the Department from the amount of payment of any claim for the cost of Services or any other moneys payable or due to the Service Provider. Where the payment or debt owed to the Department exceeds the amount of any claim for the cost of Services, the Department may draw upon or from:



- (a) any other moneys payable or due to the Service Provider; or, if the amount of the claim is insufficient
- (b) any security under **clause 63** or a guarantor under a performance guarantee issued under **clause 64**.

For the purposes of **clause 40.1** the Department may only draw upon any security under **clause 63** or a guarantor under a performance guarantee issued under **clause 64** where the amount owing from any claim for the cost of the Services is insufficient to meet the Department's demand.

#### **40.2 Notice of Deductions**

Where the Department deducts the amount of a debt or payment, it must advise the Service Provider in writing that it has done so.

### **41. TAXES AND DUTIES**

#### **41.1 Taxes and Duties Generally**

Subject to **clause 41.2**, 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 Service Provider and are included within the Detention Services Fee and other rates and fees specified in **Schedule 5** (Detention Services Fee).

#### **41.2 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 Detention Services Fee, Pass Through Costs, Transition Costs, Additional Fees and all other payments and fees specified in **Schedule 5** (Detention Service Fees) are inclusive of GST.
- (c) Notwithstanding **clause 41.2(b)**, 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 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 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 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.

## PART 12 - FINANCIAL MANAGEMENT

### 42. ACCOUNTS AND RECORDS

#### 42.1 Accounting

- (a) The Service Provider 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 Service Provider must at all times maintain full, true, separate and up to date accounts and Records in relation to the performance of this Contract, including the Detention Services Fee, Pass Through Costs and the Services. Such accounts and Records must:
  - (i) include the matters specified in **Schedule 2** (Statement of Work);

- (ii) include appropriate audit trails for transactions performed;
  - (iii) separately record all receipts and expenses in relation to the 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 *A New Tax System (Goods and Services Tax) Act 1999* (Cth), except to the extent otherwise stipulated by **clause 42.1(c)**;
  - (vii) in the case of any Services performed on a time and materials or cost plus basis, identify the time spent by Service Provider's Personnel in performing those Services; and
  - (viii) enable the extraction of all information relevant to the performance of this Contract for the Department.
- (c) The accounts and Records to be held in accordance with this **clause 42** must be held for the Term of this Contract and for a period of seven (7) years from the date of expiry or termination of this Contract.

## 42.2 Open Book Accounting

The Service Provider must:

- (a) maintain accounts, transaction information and source documents, financial systems and Records, business records and other information and material of the Service Provider that is held in respect of the 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 months of the end of the Financial Year (or, where the Service Provider's audit year does not coincide with the Financial Year, within three months of the end of the audit year);
- (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 other Party or its agents may reasonably require in respect of access in accordance with this **clause 42.2**, including explanation of systems, policies, procedures or record keeping; 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 Service Provider must provide to the Department a copy of the audited financial statement of the Service Provider in respect of the previous audit year:
  - (i) where the Service Provider's audit year coincides with the Financial Year, by 1 October in each year during the Term; or
  - (ii) where the Service Provider's audit year does not coincide with the Financial Year, within four months of the end of the audit year.
- (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 Service Provider or paid to the Service Provider 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 Service Provider must within 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 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 Service Provider must keep full and accurate Records of the location of all Department Assets and Department Material.

## 43. AUDIT REQUIREMENTS

### 43.1 Subject of Audits

An audit of part or all of this Contract under **clause 43.2** may be conducted at any time by the Department or its nominee. These audits may include:

- (a) the Service Provider's operational practices and procedures as they relate to this Contract, including security procedures;
- (b) the efficiency of the Service Provider's operations in relation to the provision of the Services under this Contract;
- (c) the accuracy of the Service Provider's invoices and Reports in relation to the provision of the Services and the calculation and payment of the Detention Services Fee and Pass Through Costs under this Contract;

- (d) the Service Provider's costs during any ramp-up or ramp-down period following the activation or deactivation of a Facility;
- (e) the Service Provider's compliance with the applicable Laws, Australian Government Policies and Detention-specific policies;
- (f) the Service Provider's compliance with its confidentiality, privacy and security obligations; and
- (g) any other matters determined by the Department to be relevant to the performance of the Services, including ongoing financial viability.

#### **43.2 Conduct of Audits**

- (a) Except for those circumstances in which notice is not practicable (eg. caused by a regulatory request with shorter notice or investigation of theft or breach of Contract), the Department must give the Service Provider not less than 10 Business Days' notice of an audit and a list of the documents which the auditor will reasonably require.
- (b) The Service Provider 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) Subject to **clause 44.1(b)**, the requirement for, and participation in, audits does not in any way reduce the Service Provider's responsibility to perform its obligations in accordance with this Contract.
- (d) The Department may appoint an independent person to assist in the audits. 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 Service Provider 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 SERVICE PROVIDER'S PREMISES AND RECORDS**

#### **44.1 Grant of Access**

- (a) For the purposes of **clauses 43.2 and 44**, the Service Provider must, and must ensure that its Subcontractors, grant the Department and its nominees access as required by the Department, to:
  - (i) the Service 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 Service Provider's or its Subcontractors' custody, possession or control for inspection and/or copying.

- (b) In the exercise of the general rights granted by **clause 44.1(a)**, the Department must use reasonable endeavours not to interfere with the Service Provider's performance under this Contract in any material respect.

#### **44.2 Facilities to be Made Available**

In the case of documents or Records stored on a medium other than in writing, the Service Provider must make available on request at no additional cost to the Department such reasonable facilities as may be necessary to enable a legible reproduction to be created.

#### **44.3 Commonwealth and Immigration Ombudsman, Auditor-General, Privacy Commissioner and Australian Human Rights Commission**

- (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 Commonwealth Auditor-General, the Privacy Commissioner or a delegate of the Privacy Commissioner, or the Australian Human Rights Commission or a delegate of the Australian Human Rights Commission for the purpose of performing the Commonwealth and Immigration Ombudsman's, Auditor-General's, Privacy Commissioner's or the Australian Human Rights Commission's statutory functions and/or powers respectively, may, at reasonable times:
- (i) access the premises of the Service Provider;
  - (ii) contact and engage with the Service Provider, its employees, agents or subcontractors;
  - (iii) require the provision by the Service Provider, its employees, agents or subcontractors, of Records and other information which are related to this Contract; and
  - (iv) access, inspect and copy documentation and Records or any other matter relevant to the Service Provider's obligations or performance of this Contract, however stored, in the custody or under the control of the Service Provider, its employees, agents or subcontractors.
- (b) The Service Provider must, and must ensure that Service Provider Personnel and Subcontractors, cooperate with any enquiries or investigations by 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 Human Rights Commission or a delegate of the Australian Human Rights Commission.
- (c) 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, the Commonwealth Auditor-General or a delegate of the Commonwealth Auditor-General, the Privacy Commissioner or a delegate of the Privacy Commissioner, or the Australian Human Rights Commission or a delegate of the Australian Human Rights Commission.

#### 44.4 Survival of Clause

This **clause 44** applies for the Term and for a period of seven 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 over any Contract Material vest immediately upon its creation in the Department.
- (b) The Parties acknowledge that:
  - (i) the provision of Department Material to the Service Provider does not in any way affect the ownership of any Intellectual Property rights in the Department Material; and
  - (ii) except as specified in this Contract, the provision of Service Provider Material does not in any way affect the ownership of any Intellectual Property rights in the Service Provider Material.

##### 45.2 Grant of Licences

- (a) The Service Provider 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 Service Provider Material in conjunction with any Contract Material.
- (b) The Service Provider shall obtain from any relevant person, permission to use any and all Intellectual Property which may be required in order for the Service Provider to perform the Services. Such permission to use Intellectual Property shall include all necessary licences and other government approvals.
- (c) The Service Provider must ensure that the Department is granted a licence from any Subcontractor on the same terms as **clause 45.2(a)**.
- (d) The Department grants the Service Provider 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 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 Service Provider 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 Service Provider 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 Service Provider must indemnify, keep indemnified, and hold harmless 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 Service Provider of the warranty in **clause 45.4**.
- (b) For the purposes of **clause 45.5(a)** "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 Survival of Clause

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

## 46. SERVICE PROVIDER'S CONFIDENTIAL INFORMATION

### 46.1 Protection of Service Provider's Confidential Information

- (a) The Department will take all reasonable steps to ensure that it does not make public or disclose the Service Provider's Confidential Information listed in **Schedule 10** (Confidential Information).



- (b) This clause does not prevent the Department from disclosing any information provided by the Service Provider:
- (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 any Government Agency;
  - (iii) to any Commonwealth Minister;
  - (iv) to any House or Committee of the Parliament of the Commonwealth of Australia; or
  - (v) in accordance with any relevant Australian Government Policy.
- (c) If any Service Provider's Confidential Information is disclosed pursuant to **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 Service Provider's Confidential Information.

## **47. DEPARTMENT INFORMATION**

### **47.1 Protection of Department Information**

The Service Provider must not, and must ensure that a Subcontractor does not, release any information relating to any aspect of:

- (a) Services provided under this Contract;
- (b) service delivery and/or performance in relation to matters contained in the Immigration Detention and Removal function;
- (c) operational matters relating to Removal;
- (d) this Contract, including the Schedules and Attachments;
- (e) surveillance tapes; or
- (f) any Department Confidential Information,

without the prior written approval of the Contract Administrator.

### **47.2 Provision of Department Information to Service Provider Personnel and Subcontractors**

- (a) The Service Provider must not permit any director, officer, employee, agent or Subcontractor of the Service Provider to have access to the Department's

Confidential Information until such time as that director, officer, employee, agent or sub-contractor has entered into a Confidentiality Deed Poll and a Deed of Non-disclosure of Personal Information in accordance with **clause 21.3**.

- (b) The Contract Administrator may at any time require the Service Provider to provide the original version of any undertaking signed by Service Provider Personnel in accordance with **clause 21.3**.
- (c) The Service Provider:
  - (i) must, at its cost, take all reasonable steps to ensure that the Confidential Information of the Department and all records of it are kept under the Service Provider'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 Service Provider becomes aware of:
    - (A) any actual, suspected or likely breach by the Service Provider 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 Service Provider Personnel, they have signed the undertakings specified in **clause 21.3**;
  - (ii) is in the public domain otherwise than as a result of a breach of an obligation of confidentiality; or
  - (iii) is authorised or 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 47.3(a)(i)**, 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 47.3(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** continue, notwithstanding the expiry or termination of this Contract.
- (e) For the avoidance of doubt, nothing in **clauses 46 and 47** derogates from any obligation which the Service Provider may have either under the *Privacy Act 1988* (Cth) or 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 Service Provider may collect, use, disclose or handle Personal Information as specified or contemplated in this Contract;
- (b) **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;
- (c) **Personal Information of the Department** means Personal Information held by the Department and provided to the Service Provider by the Department in connection with this Contract or otherwise accessed by or disclosed to the Service Provider in the course of providing the Services, including Personal Information about People in Detention;
- (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 Service Provider.

## 48.2 Privacy Obligations

The Service Provider must:

- (a) 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 Service Provider for the purposes of this Contract, in the same way and to the same extent as if it were a Government Agency;
- (b) comply with its obligations arising under or in connection with the Privacy Legislation in respect of any information that comprises Personal Information about People in Detention (and people who have been in detention) or Department Personnel or the Service Provider Personnel; and
- (c) comply with any policy guidelines laid down by the Department or issued by the Privacy Commissioner from time-to-time relating to the handling, collection, storage, access, alteration, use or disclosure of Personal Information.

## 48.3 Permitted Disclosures

- (a) The Service Provider 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 Service Provider's obligations of confidence do not apply to any Personal Information that the Service Provider 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 Service Provider 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 confidential; and
  - (C) follow any reasonable directions of the Department concerning the disclosure.

#### **48.4 Permitted Uses**

The Service Provider 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 Service Provider 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 Service Provider 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 Service Provider'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 Service Provider becomes aware of:
  - (i) any actual, suspected or likely breach by the Service Provider 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**

- (a) The Service Provider is to advise the Contract Administrator within two Business Days of it becoming aware of the Privacy Commissioner initiating any action under the Privacy Act relevant to the Service Provider and its performance under this Contract including:

- (i) advice from the Privacy Commissioner's office that it is investigating a complaint against the Service Provider;
  - (ii) an audit by the Privacy Commissioner;
  - (iii) a request by the Privacy Commissioner to be provided access to the Service Provider's premises; and
  - (iv) an injunction against the Service Provider being sought by the Privacy Commissioner.
- (b) The Service Provider must cooperate with any reasonable demands or inquiries made by the Privacy Commissioner.
- (c) The Service Provider 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.
- (d) The Service Provider agrees to comply with any direction from the Contract Administrator to comply with a determination made by the Privacy Commissioner.
- (e) If the Service Provider has not complied with the determination made by the Privacy Commissioner within 10 Business Days, the Department may, to the extent possible and at the Service Provider's cost, comply with the determination on the Service Provider's behalf.

#### **48.8 Return or Destruction of Records**

On the earlier of:

- (a) the Department's request;
- (b) when no longer required for a Permitted Purpose; and
- (c) the expiry or termination of this Contract,

the Service Provider must as soon as practicable, at its cost:

- (d) stop using and disclosing any Personal Information of the Department or People in Detention; and
- (e) deliver to the Department, or, at the Department's request and direction, destroy, erase or de-identify, all tangible and intangible Records of the Personal Information of the Department or People in Detention (whether prepared by or for the Service Provider or the Department or any other person) in the possession, custody or control of the Service Provider or any person to whom it has given access to these Records, whether or not in accordance with this Contract.

#### 48.9 No Release

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

#### 48.10 Indemnity

The Service Provider 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 Obligations

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

### 49. RECORDS MANAGEMENT

#### 49.1 Commonwealth Records

- (a) The Service Provider will create, maintain, store and archive all Records required by this Contract in an orderly and efficient manner and in accordance with the requirements of this Contract and relevant Australian Government Policies.
- (b) Unless otherwise agreed between the Contract Administrator and the Service Provider 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 Commonwealth Records.
- (c) The Contract Administrator may at any time inspect Commonwealth Records or require that they be transferred to the custody of the Contract Administrator.
- (d) The Service Provider must not arrange for, nor effect, a transfer of custody or ownership of any Commonwealth Record without the prior written approval of the Contract Administrator, nor shall the Service Provider remove any such record, without the prior written approval of the Contract Administrator.
- (e) Where the Contract Administrator authorises the transfer of custody of Commonwealth Records to the Service Provider, the Service Provider 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 Service Provider must comply with any direction given by the Department for the purpose of transferring Commonwealth Records to the Department.

### 50. DATA SECURITY

#### 50.1 Acknowledgement

The Service Provider 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.

## 50.2 Use of Department Data

The Service Provider must:

- (a) use Department Data only for purposes directly in relation to the supply of the Services and the performance of its obligations under this Contract;
- (b) not make any Department Data available to any third party other than a Subcontractor and then only to the extent necessary to enable the Subcontractor to perform its part of the Services;
- (c) keep Department Data in its possession, or under its control, safe and secure; and
- (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 Service Provider in respect of Service Provider's Confidential Information; and
    - (B) the Department; and
  - (ii) comply with all procedures specified in this Contract, including:
    - (A) all data management and security requirements in **Schedule 2** (Statement of Work); and
    - (B) all Laws.

## 50.3 Compliance with Security Requirements

The Service Provider must:

- (a) comply with all Commonwealth and Departmental data security requirements 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 Service Provider becomes aware of any contravention of Commonwealth or Departmental data security requirements.

## 50.4 Records

- (a) The Service Provider must keep full and accurate Records of the location of all Department Data and must include in the reports referred to in **clause 42** sufficient



information to ensure the Department is kept fully informed about the nature and location of any database containing Department Data.

- (b) The Service Provider must, on request by the Department at any time, provide to the Department any Department Data which relates to People in Detention, which Data may be used, copied, modified or disclosed for Department purposes.

## 51. PROVISION OF INFORMATION

### 51.1 Sharing of Information

The Parties are seeking to foster an open environment where, subject to the requirements of **clauses 48 to 50**, information regarding People in Detention is shared between the Department and the Service Provider in a pro-active manner, in order to enhance the well-being of People in Detention.

### 51.2 Department's Nominated Information Technology System

- (a) The Department will provide certain Service Provider Personnel with access to parts of the Department's nominated information technology system relevant to their role, as determined by the Department in its absolute discretion.
- (b) The Department may require that Service Provider Personnel obtain a higher level of security clearance than that required under **Schedule 2** (Statement of Work) prior to providing access to a part of the Department's nominated information technology system. The Service Provider must ensure that Service Provider Personnel 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 Service Provider must provide any computers, hardware, software peripherals and other devices which are not provided by the Department which are required in order to access and use the Department's nominated information technology system.
- (d) The Department does not warrant the efficacy of the Department's nominated information technology system, or the currency of the information contained in it, and the Service Provider will not be relieved of any obligation under this Contract as a result of its reliance on information obtained from the Department's nominated information technology system.

## 52. REPORTS

- (a) The Service Provider must submit electronic Reports:
  - (i) at the intervals identified in **Schedule 4.3** (Reporting Requirements); and
  - (ii) in a form and covering the subject matter identified in **Schedule 4.3** (Reporting Requirements).

- (b) The Department may require the Service Provider to prepare and submit additional reports to those identified in **Schedule 4.3** (Reporting Requirements). In that event, the Parties will agree on the scope, timing and cost of the report.
- (c) The Service Provider must regularly liaise with, and promptly and fully respond to any questions of, the Contract Administrator in relation to any Reports submitted in accordance with this **clause 52**.
- (d) The Department may, at its own cost, seek to independently verify any Reports provided by the Service Provider under this **clause 52** and, in which case, the Service Provider must provide reasonable cooperation to the Department (or its officers or agents).

### **53. ARCHIVES ACT**

- (a) The Service Provider must at all times comply with the requirements of the *Archives Act 1983* (Cth) relating to the Service Provider's dealing with Commonwealth Records (as that phrase is defined in the *Archives Act 1983* (Cth)).
- (b) Without limiting the obligation in **clause 53(a)**, the Service Provider must, in particular, comply with the requirements of section 24 of the *Archives Act 1983* (Cth) dealing with the disposal, destruction or transfer of Commonwealth Records and such dealings must accord with the requirements of the National Archives of Australia.

### **54. PUBLICITY, MEDIA AND EXTERNAL RELATIONSHIP MANAGEMENT**

#### **54.1 Publicity and Media to be Managed by the Department**

- (a) The Service Provider 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 Services, any People in Detention, or the relationship or issues between the Service Provider and the Department; and
  - (ii) 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.
- (b) 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.

## 54.2 Service Provider Not to Make Public Statements

The Service Provider must not, and will ensure that its officers, employees, directors, contractors and agents 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, officers, agents or contractors (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 document,

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.

## PART 14 - INTERRUPTIONS TO SERVICE DELIVERY

### 55. FORCE MAJEURE

#### 55.1 Force Majeure Notice

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

#### 55.2 Suspension Notice

In addition to any notice given under **clause 55.1**, the Service Provider must give the Contract Administrator a suspension notice as soon as possible, but not later than two 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.

### 55.3 Management of Force Majeure Event

- (a) The Service Provider must comply with all directions of the Contract Administrator or Department Regional Manager in relation to the Force Majeure Event, or the effects of the Force Majeure Event.
- (b) Subject to **clause 55.3(a)**, the Service Provider must take all reasonable steps to avoid being, or to mitigate the extent to which it is, prevented from meeting its obligations or achieving the relevant Indicator Metrics and Key Performance Indicators as a result of the Force Majeure Event.

### 55.4 Meeting Between the Parties

The Parties will meet within two Business 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 provision of Services.

### 55.5 Suspension of Obligations

- (a) Subject to **clause 55.9**, if the Service Provider 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 Service Provider 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 55.5(a)** the Service Provider 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 Service Provider's performance against any relevant Key Performance Indicator,

providing that the Service Provider has complied fully with the requirements of this **clause 55** 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.

- (c) Where the Force Majeure Event is the exercise of a step in right by the Department under **clause 57** then **clause 55.5(a)** shall only apply to the extent that the Service Provider is prevented from performing an obligation other than an obligation in which has been suspended under **clause 57.1(a)**.

### 55.6 Termination

The Department may terminate this Contract in accordance with **clause 67.3(i)**.