

55.7 Service Provider Must Update Contract Administrator

- (a) The Service Provider must keep the Contract Administrator informed at reasonable intervals during any suspension and upon the request of the Contract Administrator, provide written advice to the Contract Administrator of:
 - (i) the estimate of the likely duration of the Force Majeure;
 - (ii) the action taken and the action proposed by the Service Provider to mitigate or minimise the effects of that Force Majeure Event including any temporary measures; and
 - (iii) any other matter relevant to the Force Majeure Event or the Service Provider's obligations.
- (b) The Service Provider must give immediate notice to the Contract Administrator of the cessation of a Force Majeure Event and must as soon as reasonably possible after cessation of that Force Majeure Event, resume performance of any obligation suspended as a result of it.

55.8 Alternative Supply and Fee Reduction

During the suspension of any obligation, the Contract Administrator may:

- (a) make alternative arrangements for the performance whether by another person or otherwise of any obligation so suspended without incurring any liability to the Service Provider; and
- (b) reduce the Detention Services Fee to exclude any amount otherwise payable for the suspended obligation.

55.9 Payments, Unconditional Financial Undertaking and Performance Guarantee

This clause does not apply to any obligation by the Service Provider to pay money or provide an Unconditional Financial Undertaking or Performance Guarantee.

56. INCIDENTS

56.1 Incident Prevention

- (a) The Service Provider must use its reasonable endeavours to prevent Incidents from occurring.
- (b) The Service Provider must actively and continually assess its current and planned activities and areas of responsibility for potential Incidents and implement plans, practices and procedures to prevent potential Incidents from occurring and, if despite all efforts such Incidents should occur, to minimise the extent and duration of any Incident and related damage or other adverse consequence and respond to and deal with Incidents in which it is involved in a timely and professional manner and with appropriate discretion so as to protect the interests of the Department.

56.2 Notification of Incidents

Upon an Incident occurring or the Service Provider becoming aware that an Incident is likely to occur, the Service Provider must comply with the notification requirements set out in **Schedule 2** (Statement of Work) and:

- (a) immediately implement the provisions of the Incident Management Protocols insofar as they relate to the Incident; and
- (b) as far as possible, continue delivering the Services in accordance with this Contract.

56.3 Incident Response and Management

- (a) The Service Provider must ensure that all resources and expertise that may be necessary to rapidly respond to and effectively deal with an Incident will be rapidly marshalled and effectively deployed, coordinated and managed so as to protect the interests of the Department. The Service Provider must ensure that safety, environment protection and security are a priority concern in the Incident response.
- (b) In managing any Incident, the Service Provider must, in addition to any other obligations under this Contract:
 - (i) comply with the Incident Management Protocols;
 - (ii) ensure, as much as possible, the safety of all People in Detention and other people located in and around the Facility;
 - (iii) ensure, as much as possible, continued compliance with the Guiding Principles and Core Operating Principles;
 - (iv) minimise the disruption to the ordinary operation and management of the Facility; and
 - (v) minimise damage to the Facility.
- (c) During and after an Incident, the Department will continue to pay the Detention Services Fee to the extent the Services continue to be provided by the Service Provider in accordance with this Contract. Except as expressly provided in this Contract, the Service Provider is responsible for all costs of and incidental to the management and operation of the Facility including the provision of the Services during and after an Incident.

56.4 Joint Development of Incident Management and Response Policies

The Service Provider must actively contribute to the ongoing maintenance and development of the Department's Incident management and response policies and procedures both generally and specifically related to this document. In particular the Service Provider must:

- (a) be an active participant in any Incident management structure that covers the Department's operations including the Services provided under this Contract;

- (b) be seen as an Incident prevention and management champion and role model;
- (c) be an active participant in Incident analysis, debriefing, organisational learning, training and simulation exercises;
- (d) ensure Incident management and response policies and procedures, training and risk management have a high profile and are diligently pursued throughout the Service Provider's operations; and
- (e) promptly advise the Department of any matter, fact or circumstance that the Service Provider believes is or may not be adequately dealt with by Incident Management Protocols policies or procedures or their related training, awareness and compliance programmes.

57. STEP IN RIGHTS

57.1 Step-in

- (a) At any time if:
 - (i) the Department is entitled under **clause 67** to terminate this Contract; or
 - (ii) the Secretary considers that circumstances exist which require the Department's intervention,

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

- (b) The Department's Step-in Right will continue until the circumstance giving rise to the Step-in Right have been rectified or cease to exist.
- (c) The Service Provider must cooperate with the Department during a step-in period including without limitation by ensuring compliance by the Service Provider and Service Provider Personnel with all directions given by the Department.
- (d) Nothing in this **clause 57.1** obliges the Department to exercise the powers given under this **clause 57.1**.
- (e) The exercise of the powers under this clause is without prejudice to any other rights the Department may have to enforce or terminate this Contract.
- (f) If the exercise of the Step-in Right was not due to a breach of Contract by the Service Provider, the Service Provider will be entitled to payment of any costs necessarily incurred as a result of compliance with its obligations under this **clause 57.1** which are not recovered through the Detention Services Fee.

PART 15 – REPRESENTATIONS AND WARRANTIES

58. REPRESENTATIONS AND WARRANTIES

58.1 Service Provider Representations and Warranties

The Service Provider represents and warrants that:

- (a) **(status)** it is a company limited by shares under the *Corporations Act 2001* (Cth);
- (b) **(power)** it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into this Contract and to carry out the transactions that this Contract contemplates;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this Contract and its carrying out the transactions that this Contract contemplates;
- (d) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this Contract and to carry out the transactions that this Contract contemplates;
 - (ii) ensure that this Contract is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business,and it is complying with any conditions to which any of these Authorisations is subject;
- (e) **(documents effective)** this Contract constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and Laws affecting creditors' rights generally);
- (f) **(no contravention)** neither its execution of this Contract nor the carrying out by it of the transactions that this Contract contemplates, does or will:
 - (i) contravene any Law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
 - (ii) contravene any Authorisation;
 - (iii) contravene any undertaking or instrument binding on it or any of its property;
 - (iv) contravene its constitution; or

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- (v) require it to make any payment or delivery in respect of any Financial Indebtedness before it would otherwise be obliged to do so;
 - (g) **(no litigation)** no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of any of its officers after due inquiry, threatened which, if adversely decided, could have a material adverse effect on it;
 - (h) **(Accounts):**
 - (i) the accounts and any other financial statements and reports that it has given to the Department have been prepared in accordance with the Law and (unless inconsistent with the Law) generally accepted accounting principles consistently applied;
 - (ii) the accounts that it has given to the Department give a true and fair view of the financial condition of it and its subsidiaries as at the date to which they are made up and of the results of operations of it and its subsidiaries for the period that they cover; and
 - (iii) there has been no change since the date of the most recent accounts that it has given to the Department that could have an adverse effect on it;
 - (i) **(no unpaid employee entitlements)** the Service Provider and its Subcontractors do not have any unpaid claims in respect of judicial decisions made against the Service Provider or its Subcontractors relating to employee entitlements;
 - (j) **(other information):**
 - (i) the other information and reports (if any) that it has given to the Department in connection with this Contract are true and accurate in all material respects and not misleading in any material respect (including by omission); and
 - (ii) any forecasts and opinions in them are fair and reasonable (and were made or formed after due inquiry and consideration by appropriate officers of the Service Provider),as at the Commencement Date or, if given later, when given;
 - (k) **(disclosure of relevant information)** it has disclosed to the Department all the information that is material to an assessment by the Department of the risks that it assumes by entering into this Contract;
 - (l) **(no filings or Taxes)** it is not necessary or desirable, to ensure that this Contract is legal, valid, binding or admissible in evidence, that this Contract or any other document be filed or registered with any Government Authority, or that any Taxes be paid;

- (m) **(no default)** no breach of this Contract has occurred and is continuing, and it is not in breach of any other document or agreement in a manner that could have a material adverse effect on it or any of its subsidiaries;
- (n) **(no security interest)** it will not create or permit to exist, and will ensure that none of its subsidiaries creates or permits to exist, any Security Interest over any of its property, other than a Permitted Security Interest; and
- (o) **(no trust)** it is not entering into this Contract as trustee of any trust or settlement.

58.2 Repetition of Representations and Warranties

The representations and warranties in this clause are taken to be repeated every six months from the Commencement Date, on the basis of the facts and circumstances as at that date.

58.3 Reliance on Representations and Warranties

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

58.4 No Representations by the Department

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

PART 16 – INDEMNITY AND INSURANCE

59. INDEMNITY

59.1 Indemnity

The Service Provider indemnifies the Department from and against any Loss arising out of, or as a consequence of, any of the following:

- (a) death, or bodily injury, disease or illness (including mental illness) of any person, including People in Detention;
- (b) loss of or damage to property of the Department (including Facilities, Department Assets or Loose Assets); and
- (c) loss of or damage to property of a third party, including People in Detention;

arising from:

- (d) any negligent act or omission, Wilful Default, or breach of Legislation, on the part of the Service Provider, Service Provider Personnel or Subcontractors; or
- (e) any breach by the Service Provider of its obligations or warranties under this Contract,

including circumstances where the act, omission, neglect or breach results in a breach of the Department's non-delegable duty of care to a Person in Detention.

59.2 Non-exclusive Remedy

The right of the Department to be indemnified under **clause 59.1** is in addition to, and not exclusive of, any other right, power or remedy provided by Law, but the Department is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage, or expense.

59.3 Meaning of "the Department" in this Clause

The Service Provider acknowledges and agrees that:

- (a) in this **clause 59**, "the Department" includes officers, employees, agents and contractors (other than the Service Provider) of the Department; and
- (b) the Department may enforce the indemnity on behalf of those persons referred to in **clause 59.3(a)**.

59.4 Survival of this Clause

This **clause 59** will survive for the period of seven years following the expiration or termination of this Contract. The expiry of the seven year period will not affect any other right, power or remedy provided by Law to the Department.

60. LIMITATION OF LIABILITY

60.1 Limitation of Service Provider Liability

- (a) Subject to **clause 60.2**, but otherwise notwithstanding any other clause of this Contract, the total liability of the Service Provider to the Department arising under, or in relation to, this Contract (including in respect of liquidated damages) is limited to the sum of:

s. 47(1)(b), s. 47E(d)

- (b) If the Service Provider is liable to the Department for a Loss that is the subject of the limitation of liability in **clause 60.1(a)**, the Service Provider must:
 - (i) promptly make a claim on any applicable insurance policy effected in accordance with **clause 62** and diligently pursue indemnity for the liability from the insurer; and
 - (ii) compensate the Department for the Loss by using all amounts paid out by its insurer for the liability for the Loss and by paying the retention, excess or deductible amount.

- (c) If the Service Provider is liable to the Department for a Loss that is the subject of the limitation of liability in **clause 60.1(a)**, and the Service Provider is not entitled or unable to recover an amount equal to the Loss in accordance with **clause 60.1(b)**, the Service Provider must provide the Department with a written notice that:
- (i) sets out the amount that is available (if any) from insurers; and
 - (ii) confirms that none of the events referred to in **clauses 60.1(d)(i)** and **60.1(d)(ii)** have occurred.
- (d) Subject to **clause 60.1(e)**, the limitation of liability in **clause 60.1(a)** does not apply to the extent that the Service Provider is not indemnified under any insurance policy required to be effected in accordance with **clause 62** due to:
- (i) a failure by the Service Provider to take out or maintain the relevant insurance policy; or
 - (ii) a breach by the Service Provider of the terms and conditions of the relevant insurance policy;

(**Insurance Failures** is defined as and limited solely to **clauses 60.1(d)(i)** and **60.1(d)(ii)**).

- (e) Where an Insurance Failure arises, the liability of the Service Provider under **clause 60.1(a)** is limited to:

s. 47(1)(b), s. 47E(d)

- (f) The limitation of liability in **clause 60.1(a)** does not limit recourse by the Department against the Service Provider for any Loss suffered by the Department to the extent that in the absence of **clause 60.1(a)(i)** the Service Provider would be entitled to indemnity from an insurer under a policy of insurance required by this Contract.

s. 47(1)(b), s. 47E(d)

s. 47(1)(b), s. 47E(d)

61. PROPORTIONATE REDUCTION OF LIABILITY

61.1 Proportionate Reduction of Service Provider Liability

The Service Provider's liability under any indemnity in this Contract or for any common law or statutory cause of action arising out of the operation of this Contract will be reduced proportionately to the extent that any breach of this Contract by the Department or any act or omission on the part of the Department or Department Personnel (other than a breach of the Department's non-delegable duty of care arising from any act, omission or neglect on the part of the Service Provider or Service Provider Personnel, or any breach by the Service Provider of its obligations or warranties under this Contract) contributed to the relevant cost, liability, loss, damage, or expense.

61.2 Proportionate Reduction of Department Liability

The Department's liability for any common law or statutory cause of action arising out of the operation of this Contract will be reduced proportionately to the extent that any breach of this Contract by the Service Provider or any act or omission on the part of the Service Provider contributed to the relevant cost, liability, loss, damage, or expense.

61.3 Survival of this Clause

This **clause 61** will survive for the period of seven years following the expiration or termination of this Contract. The expiry of the seven year period will not affect any other right, power or remedy provided by Law to the Department.

62. INSURANCE

62.1 Service Provider Must Insure

The Service Provider must effect and maintain, or cause to be effected and maintained, the insurances as specified in **Schedule 13** (Insurance) on terms (including as to levels of excess or deductibles) approved by the Department, such approval not to be unreasonably withheld.

62.2 Duration of Insurance

The Service Provider must ensure that each of the insurances required by **clause 62.1** is maintained from the Commencement Date until the earlier of the performance of all Services or the termination of this Contract, except for professional indemnity insurance which must be maintained for at least seven years following the completion of all Services.

62.3 Reputable and Solvent Insurer

The Service Provider must ensure that each of the insurances required by **clause 62.1** (except statutory insurances) is taken out with reputable solvent insurers with a credit security rating of A- or better by Standard and Poors or an equivalent rating with another reputable rating agency acceptable to the Department.

62.4 Terms of Insurance

- (a) The Service Provider must ensure that the insurance required by **Section (g) of Schedule 13** (Insurance) is effected for the benefit of the Service Provider and another party, for their respective rights and interests and includes:
- (i) a non-imputation clause, whereby the insurer agrees that any failure by any insured to observe and fulfil the terms of the policy or to comply with the terms of the policy or to comply with the insured's duty of disclosure does not prejudice the interests of any other insured; and
 - (ii) a clause whereby notice of a claim given to the insurer by any insured will be accepted by the insurer as notice of a claim given by all the insureds.
- (b) The Service Provider must ensure that the insurance required by **Section (a) of Schedule 13** (Insurance) is effected in the name of the Service Provider and Service Provider Personnel, and the Department (but only for its vicarious liability and its liability as principal for breach of its non-delegable duty of care arising from the acts and omissions of the other insureds) and includes:
- (i) a cross liability clause, whereby the insurer agrees that the policy shall be construed as if a separate and distinct policy has been issued to each insured;
 - (ii) a waiver of subrogation clause, whereby the insurer agrees to waive all rights of subrogation, remedies or action to which it might become entitled by subrogation, contribution or assignment, against all or any of the persons comprising the insureds;
 - (iii) a non-imputation clause, whereby the insurer agrees that any failure by any insured to observe and fulfil the terms of the policy or to comply with the terms of the policy or to comply with the insured's duty of disclosure does not prejudice the interests of any other insured; and

- (iv) a clause whereby notice of a claim given to the insurer by any insured will be accepted by the insurer as notice of a claim given by all the insureds.

62.5 Copies of Insurances and Certificates of Currency

The Service Provider must provide to the Contract Administrator a copy of the policy (except for statutory insurances) and a certificate of currency in respect of the insurances referred to in **clause 62.1** evidencing compliance with the requirements of **clause 62** and **Schedule 13** (Insurance):

- (a) on the Commencement Date;
- (b) thereafter upon each policy renewal; and
- (c) on the Contract Administrator's reasonable written request.

62.6 Service Provider's Insurance Obligations

In relation to the insurance required by **clause 62.1**, the Service Provider must:

- (a) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance;
- (b) punctually pay or cause to be paid all premiums when due;
- (c) comply with and abide by all the terms and conditions of the policies;
- (d) not do anything that would entitle the insurers to void, cancel or reduce their liability in respect of any claim;
- (e) not cancel, vary or allow any insurance policy to expire without the prior written consent of the Department;
- (f) reinstate or cause to be reinstated a policy if it lapses; and
- (g) do everything reasonably required to claim and to collect or recover monies due under any policy.

62.7 Service Provider's Notification Obligations

The Service Provider must notify the Contract Administrator immediately when the Service Provider:

- (a) becomes aware of any actual, threatened or likely claim under any of the insurances which the Service Provider is obliged to effect and maintain under **clause 62.1**, which could materially reduce the available limits or involve the Department and must reinstate any reduced limit if required by the Contract Administrator; or

- (b) receives a notice of cancellation in respect of any of the insurances which the Service Provider is obliged to effect and maintain under **clause 62.1**.
- (c) becomes aware that an insurer's security rating has fallen below A- with Standard & Poors or the equivalent rating with another recognised rating agency, and if requested by the Department, seek alternative equivalent insurance to replace the insurance held with such an insurer without unreasonable delay.

62.8 Subcontractors' Insurance

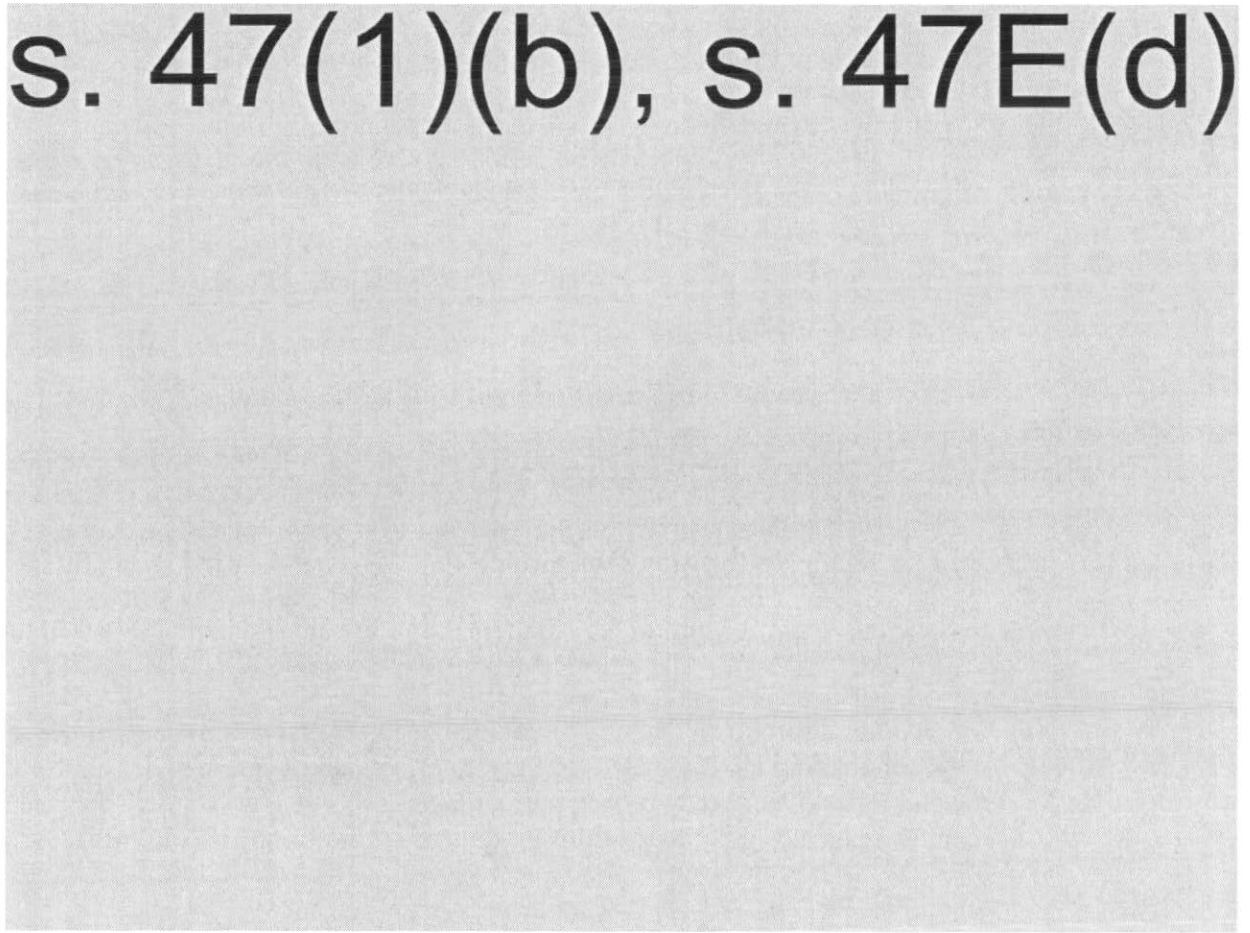
The Service Provider must ensure that all Subcontractors, agents and consultants retained by it to perform work in connection with this Contract are insured as required by **clause 62.1**, as is appropriate given the nature of the work to be performed by each such Subcontractor (including as to limits of indemnity).

62.9 Service Provider's Liability Not Limited

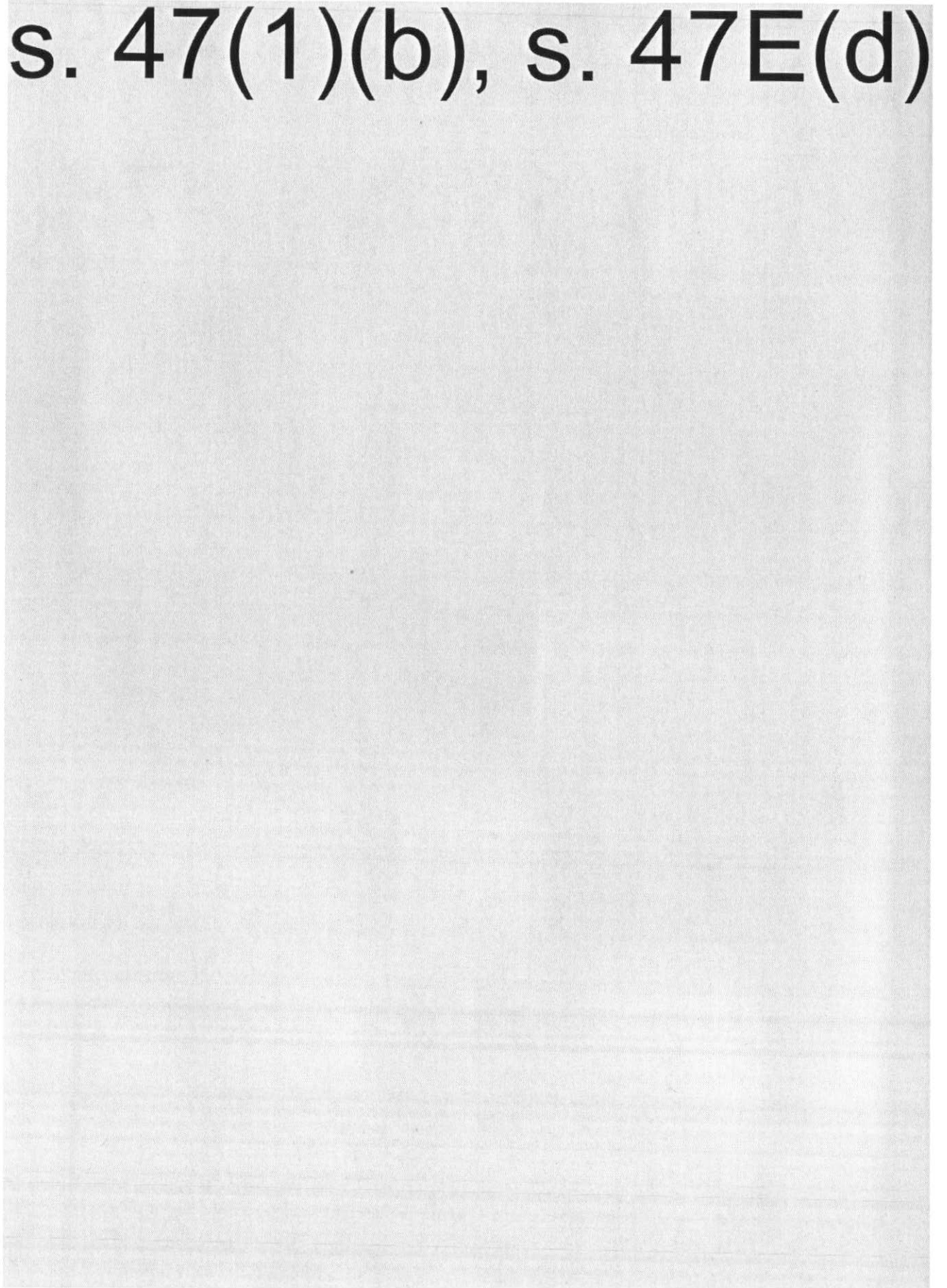
For the avoidance of doubt the provisions of this **clause 62** and **Schedule 13** (Insurance) are not to be read so as to reduce a Party's liability under any other provision of this Contract and compliance by the Service Provider with the provisions of this **clause 62** and **Schedule 13** (Insurance) does not limit the Service Provider's liability under any other provision of this Contract, at common law, or any other applicable statute.

62.10 Adjustments for Property Insurance

s. 47(1)(b), s. 47E(d)



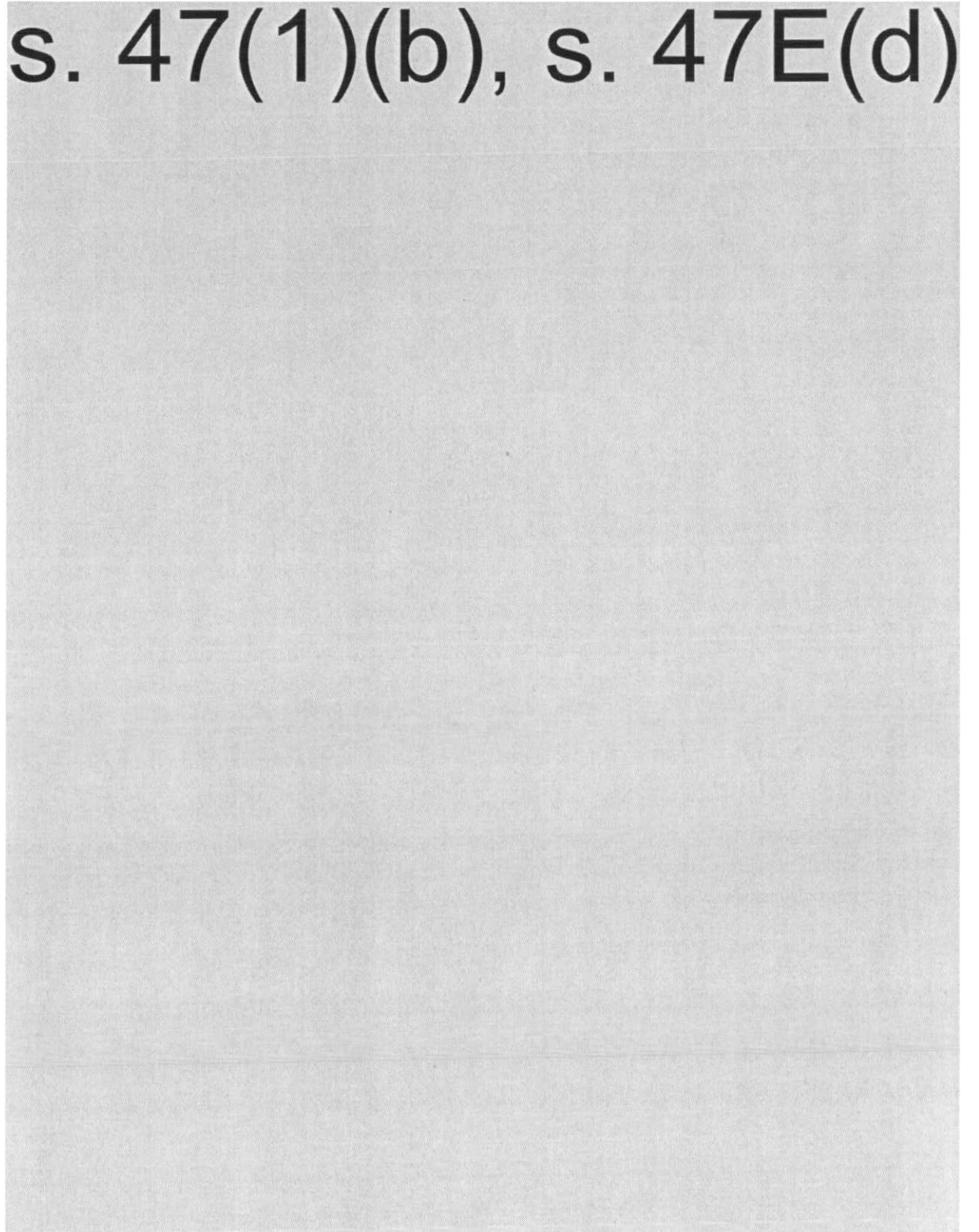
s. 47(1)(b), s. 47E(d)



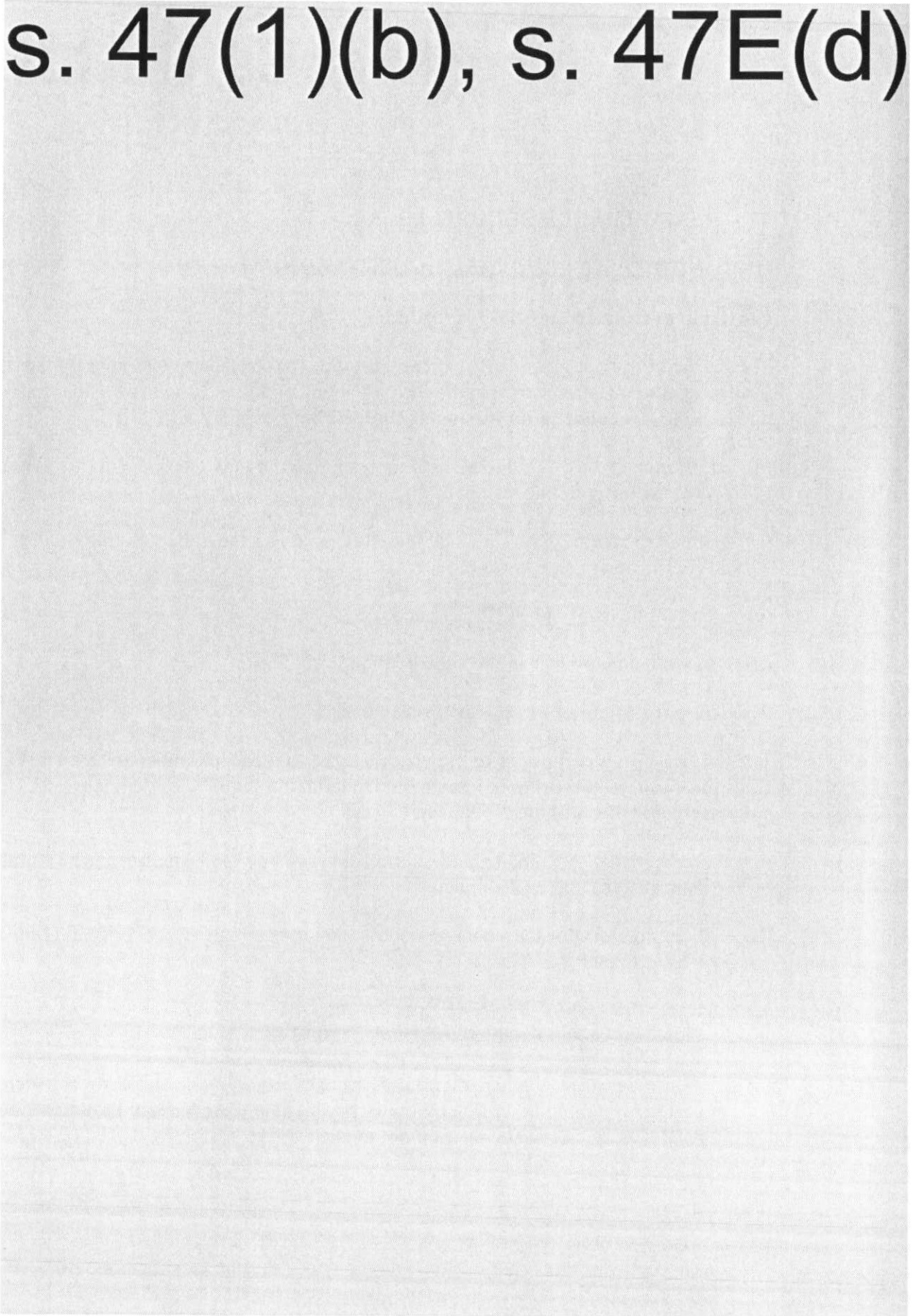
s. 47(1)(b), s. 47E(d)

62.11 Uninsurable risks

s. 47(1)(b), s. 47E(d)



s. 47(1)(b), s. 47E(d)



s. 47(1)(b), s. 47E(d)

PART 17 – PERFORMANCE SECURITIES

63. UNCONDITIONAL FINANCIAL UNDERTAKING

63.1 Provision of Initial Financial Undertaking

The Service Provider must, at its expense, provide to the Department on or by the Commencement Date security in the form of an unconditional and irrevocable financial undertaking (**Unconditional Financial Undertaking**) which must:

- (a) be executed by a financial institution approved by the Department (the **Financial Institution**) and be stamped;
- (b) be in the form of the financial undertaking appearing at **Part A of Schedule 9** (Performance Securities);
- (c) be for the sum of ^{s. 47(1)(b), s. 47E(d)}; and
- (d) expire no earlier than the expiry of the Initial Term.

63.2 Provision of Extended Financial Undertaking

The Service Provider must, at its expense, provide to the Department at least 10 Working Days prior to the Unconditional Financial Undertaking required under **clause 63.1** expiring, a replacement Unconditional Financial Undertaking which must:

- (a) be executed by a financial institution approved by the Department (the **Financial Institution**) and be stamped;
- (b) be in the form of the financial undertaking appearing at **Part A of Schedule 9** (Performance Securities);
- (c) be for the sum of ^{s. 47(1)(b), s. 47E(d)} less any drawings applied to the Unconditional Financial Undertaking required under **clause 63.1**; and
- (d) expire no earlier than six months after the expiry of the Initial Term (or such other period, as agreed in writing by the Department and the Service Provider to reflect an Extended Term, such period not to exceed five years).

63.3 Amounts Covered by Financial Undertaking

The Financial Undertaking is for the purpose of ensuring the due and proper performance of this Contract by the Service Provider and the Department may demand any sum under the Unconditional Financial Undertaking from the Financial Institution in respect of:

- (a) amounts owed to the Department by the Service Provider;
- (b) damages suffered by the Department, its officers, employees, contractors and agents (other than the Service Provider) as a result of a breach of this Contract by the Service Provider; and/or
- (c) any Loss suffered by the Department, its officers, employees, contractors and agents (other than the Service Provider) that is the subject of an indemnity under this Contract.

63.4 Replacement of Unconditional Financial Undertaking

In any of the following events:

- (a) the Unconditional Financial Undertaking expires (or is due to expire within 10 Business Days), except where the expiry is at the end of the Initial Term (in which case **clause 63.2** will apply);
- (b) the Unconditional Financial Undertaking is otherwise terminated;
- (c) the Financial Institution fails to meet a proper demand made by the Department in accordance with its terms; or
- (d) the Department exercises an option to extend the Term of this Contract in circumstances where the Department has previously made a demand under the Unconditional Financial Undertaking,

the following provisions apply:

- (e) the Department may give notice to the Service Provider that it requires a replacement Unconditional Financial Undertaking in which event the Service Provider will, within 10 Business Days of that notice, provide to the Department that replacement Unconditional Financial Undertaking in accordance with **clauses 63.1(a) to 63.1(c) and 63.3** that expires no earlier than six months after the expiry of the Extended Term; and
- (f) the Service Provider may (even if the Department has not given it notice to do so) provide a replacement Financial Undertaking in accordance with **clauses 63.1 and 63.3**.

63.5 Monies Paid but Not Demanded

If the Financial Institution pays to the Department any monies not demanded by the Department for the purposes of terminating the Unconditional Financial Undertaking:

- (a) the Department may retain those monies and any interest accrued as substitute security for the matters described in **clause 63.3** and appropriate those monies (and any interest accrued) for itself in execution of that security; and
- (b) within 30 days after this Contract is terminated and all obligations on the part of the Service Provider and claims made by the Department under it have been met and satisfied or (if earlier) within 14 days after receiving the replacement Unconditional Financial Undertaking under **clause 63.4**, the Department will account to the Service Provider for the balance of those monies and interest which has not been appropriated under **clause 63.5**. The repayment of any monies to the Service Provider under this clause will not be deemed to waive any rights on the part of the Department in respect of any outstanding obligations of, or claims against, the Service Provider.

63.6 Crystallisation of Performance Security

If the Department receives an amount under the Unconditional Financial Undertaking that is not the subject of a demand by the Department:

- (a) the Department must notify the Service Provider as soon as reasonably practicable after it receives such amount (the **Cash Security Amount**);
- (b) the Department is entitled to hold the Cash Security Amount as cash cover and security for any amount which is or becomes payable or owing by the Service Provider to the Department under or in connection with this Contract;
- (c) the Department may at any time apply all or any part of the Cash Security Amount in and towards satisfaction of any amount which is or becomes payable or owing by the Service Provider to the Department under or in connection with this Contract;
- (d) the Service provider must within five Business Days after the notice referred to in **clause 63.6(a)**, provide to the Department a replacement unconditional and irrevocable financial undertaking net of any drawings applied in **clause 63.6(c)** that conforms to the requirements set out in **clause 63.1**; and
- (e) if the Service Provider provides a Unconditional Financial Undertaking net of any drawings applied in **clause 63.6(c)** that conforms to the requirements set out in **clause 63.1** and the Department is otherwise satisfied that no event of the type referred to in **clause 63.3** has occurred, the Department must within 21 days repay to the Service provider the balance of the Cash Security Amount that has not been applied in accordance with **clause 63.6(c)**.

63.7 Meaning of Unconditional Financial Undertaking

For the purpose of this **clause 63**, where appropriate, " Unconditional Financial Undertaking" includes each or any Unconditional Financial Undertaking and any replacement Financial Undertaking provided under **clause 63**.

63.8 Consideration

For the avoidance of doubt, the amount of consideration described in **clause 63.1** is payable once only, and not on the occasion of providing any replacement Financial Undertaking.

64. PERFORMANCE GUARANTEE

The Service Provider must, at its expense, provide to the Department, within 10 Business Days of the Commencement Date, a performance guarantee executed by a guarantor acceptable to the Department, guaranteeing the performance by the Service Provider of its obligations under this Contract, which must be substantially in the form of the performance guarantee appearing at **Part B of Schedule 9** (Performance Securities) and remains in force for as long as the Service Provider has obligations under this Contract.

PART 18 – DISPUTE RESOLUTION

65. DISPUTE RESOLUTION

65.1 Application

Subject to the application of a relevant limitation period, a Party must not commence proceedings in any court or tribunal in relation to any Dispute unless:

- (a) that Party has complied with the requirements of this **clause 65** and the dispute remains unresolved in accordance with **clause 65.4**; or
- (b) the proceedings are brought in accordance with **clause 65.9**.

65.2 Conditions Precedent to a Dispute Being Dealt With Under This Clause

- (a) If a Dispute arises, a Party must give the other Party an Initial Notice in respect of the Dispute. From the giving of the Initial Notice, the Parties have 40 Business Days to resolve the Dispute by negotiation.
- (b) If a Dispute is resolved in accordance with **clause 65.2(a)**, the Parties must immediately detail the agreement in writing. The agreement must clearly state the Dispute and basis upon which it has been resolved. If only part of the Dispute is resolved, the agreement must state which part of the Dispute has been resolved and the basis upon which that part has been resolved.
- (c) If a written agreement is not produced pursuant to **clause 65.2(b)** in relation to all or part of the Dispute within 40 Business Days after the giving of the Initial Notice, the Dispute (or that part of the Dispute in respect of which there is no written agreement) is deemed to be unresolved.

- (d) Where an Initial Notice has been given under **clause 65.2(a)** by either Party, the Department may, at any time prior to the expiration of 40 Business Days, give to the Service Provider an expedition notice requiring a Dispute Notice to be issued in accordance with **clause 65.3(b)**.

65.3 Negotiation Between Service Authority and the Contract Authority

- (a) If a Dispute or part of a Dispute is unresolved in accordance with **clause 65.2(c)**, or if an expedition notice has been given under **clause 65.2(d)**, the Party who gave the Initial Notice must give to the other Party a Dispute Notice in accordance with **clause 65.3(b)**.
- (b) The Dispute Notice must:
- (i) be in writing;
 - (ii) state that it is given pursuant to this **clause 65.3**;
 - (iii) include or be accompanied by reasonable particulars of the Dispute including:
 - (A) a brief description of the circumstances in which the Dispute arose;
 - (B) references to any:
 - (I) provisions of the Contract;
 - (II) direction, instruction or document; or
 - (III) acts or omissions of any person, relevant to the Dispute;
 - (C) the amount in dispute (whether a monetary amount, or expressed by reference to some other commodity) and, if not known, the best estimate available; and
 - (D) if part of the Dispute has been resolved, a copy of the agreement pursuant to **clause 65.2(b)**; and
 - (iv) be given no later than 10 Business Days after the Dispute or part of the Dispute is deemed to be unresolved in accordance with **clause 65.2(c)** or the date on which an expedition notice has been given under **clause 65.2(d)**.
- (c) Within 20 Business Days of the giving of a Dispute Notice, the Service Authority and the Contract Authority must meet at places and times agreed by them to attempt to resolve the Dispute.
- (d) The Parties must ensure that their representatives at all meetings make genuine efforts to resolve the Dispute.

- (e) If the Dispute or part of the Dispute is resolved within 20 Business Days of the giving of the Dispute Notice, the Service Authority and the Contract Authority must immediately detail the agreement in writing. The agreement must clearly state the Dispute and the basis upon which it has been resolved. If only part of the Dispute is resolved, the agreement must state which part of the Dispute has been resolved and the basis upon which that part has been resolved.
- (f) If a written agreement is not produced pursuant to **clause 65.3(e)** in relation to all or part of the Dispute within 20 Business Days after the giving of the Dispute Notice, the Dispute or that part of the Dispute in respect of which there is no written agreement is deemed to be unresolved.

65.4 Negotiation by Service Provider's Chief Executive Officer and the Department's Deputy Secretary (Together, Senior Managers)

- (a) If a Dispute or part of a Dispute is unresolved as detailed in **clause 65.3(f)**, the Party who gave the Dispute Notice must give a Second Dispute Notice in accordance with **clause 65.4(b)**.
- (b) The Second Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is made pursuant to this **clause 65.4**;
 - (iii) annex a copy of the Dispute Notice (and any accompanying documents) given pursuant to **clause 65.3(b)** together with any documents which the Party giving the Second Dispute Notice considers would further assist the Senior Managers in resolving the Dispute;
 - (iv) if part of the Dispute has been resolved, annex a copy of the agreement prepared pursuant to **clause 65.2(b)** or **65.3(e)**; and
 - (v) be given no later than 10 Business Days after a Dispute or part of a Dispute is deemed to be unresolved in accordance with **clause 65.3(f)**.
- (c) Within 20 Business Days of the giving of a Second Dispute Notice, the Senior Managers must meet at places and times agreed by them to attempt to resolve the Dispute.
- (d) Each Party must ensure that their Senior Manager makes genuine efforts to resolve the Dispute.
- (e) If the Dispute or part of the Dispute is resolved within 20 Business Days of the giving of the Second Dispute Notice, the Senior Managers must immediately detail the agreement in writing. The agreement must clearly state the Dispute and the basis upon which it has been resolved. If only part of the Dispute is resolved, the agreement must state which part of the Dispute has been resolved and the basis upon which that part has been resolved.

- (f) If a written agreement is not produced pursuant to **clause 65.4(e)** in relation to all or part of the Dispute within 20 Business Days after the giving of the Second Dispute Notice, the Department's Deputy Secretary may, within 40 Business Days of the Second Dispute Notice, give notice to the Service Provider that the Dispute or any part of the Dispute is thereby:
- (i) referred for expert determination in accordance with **clause 65.5**;
 - (ii) referred for expedited arbitration in accordance with **clause 65.6**; or
 - (iii) referred for mediation in accordance with **clause 65.7**.
- (g) If:
- (i) there is no referral under **clause 65.4(f)** within 40 Business Days of the giving of the Second Dispute Notice;
 - (ii) the referral under **clause 65.4(f)** does not deal with part of the Dispute, or
 - (iii) the Parties have fully complied with **clause 65.5**, **65.6** and/or **65.7**;
- the Dispute, or that part of the Dispute that is not dealt with, is deemed to be unresolved.

65.5 Expert Determination

- (a) The expert determination must be conducted in accordance with the Institute of Arbitrators and Mediators Australia (IAMA) Expert Determination Rules as published from time to time.
- (b) The expert determination must be conducted:
- (i) by an expert agreed upon between the Parties, with that agreement to be reached within five Business Days of the referral pursuant to **clause 65.4(f)(i)** or such further period as the Department's Deputy Secretary may reasonably determine; or
 - (ii) if the Parties are unable to agree on the identity of the expert to be appointed within the time period detailed in **clause 65.5(b)(i)**, on the application of either Party, by an expert nominated by the President for the time being of IAMA, or such person authorised by the President to make the appointment, where that expert accepts appointment as an expert.
- (c) The Parties must promptly sign whatever reasonable terms of engagement the expert requires (including any indemnity), but if one of them does not so sign, the other may engage the expert by itself.

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- (d) In respect of any Dispute or part of a Dispute that is referred to expert determination:
- (i) the Parties must agree on the terms of reference and the matters to be determined by the expert within 10 Business Days of the referral pursuant to **clause 65.4(f)(i)**, failing which the terms of reference will be clarified in accordance with the IAMA Expert Determination Rules; and
 - (ii) each Party will be their own costs associated with the expert determination (and share the costs of the Expert equally), unless the Parties agree otherwise in the terms of reference.
- (e) Any information which either Party obtains from the other under this **clause 65.5** is taken to be Confidential Information for the purposes of **clause 46** and **clause 47**.
- (f) The expert determination will be final and binding on both Parties.
- (g) Nothing in this **clause 65.5** ousts the jurisdiction of a court to hear any proceeding brought by either Party in relation to a Dispute or part of a Dispute.
- (h) The Parties have not fully complied with this **clause 65.5** until the earlier of:
- (i) the conclusion, or termination by agreement, of the expert determination; or
 - (ii) the expiration of 40 Business Days from the date of appointment of an expert if the Dispute or part of the Dispute is not resolved by expert determination at this date.

65.6 Expedited Arbitration Procedure

- (a) Within 10 Business Days of the referral pursuant to **clause 65.4(f)(ii)** or within such further period as the Department's Deputy Secretary may reasonably determine, the Parties must arrange for the appointment of an arbitrator, to be appointed by IAMA.
- (b) The Parties must, within five Business Days of the appointment of the arbitrator, sign whatever reasonable terms of engagement the arbitrator requires (including any indemnity), but if one of them does not so sign, the other may engage the arbitrator by itself.
- (c) The Parties agree that:
- (i) the expedited arbitration must be conducted in accordance with the IAMA Rules for the Determination of Commercial Arbitration, specifically, Schedule 2, as published from time to time (**EA Rules**);
 - (ii) they must abide by the EA Rules and must procure the arbitrator's agreement to conduct the expedited arbitration according to the EA Rules;

- (iii) they may be represented by legal counsel at the expedited arbitration; and
 - (iv) for the purposes of interpreting the EA Rules, a reference to the Notice of Dispute in the EA Rules shall be a reference to the notice in **clause 65.4(f)**.
- (d) Costs of the expedited arbitration will be determined by the arbitrator in accordance with subrule 15(2) of the EA Rules.
- (e) Any information which either Party obtains from the other under this **clause 65.6** is taken to be Confidential Information for the purposes of **clause 46** and **clause 47**.
- (f) The Parties have not fully complied with this **clause 65.6** until the earlier of:
 - (i) the conclusion, or termination by agreement, of the expedited arbitration; or
 - (ii) the expiration of 40 Business Days from the date of appointment of an arbitrator if the Dispute or part of the Dispute is not resolved by expedited arbitration at this date.

65.7 Mediation Procedure

- (a) Within 10 Business Days of the referral pursuant to **clause 65.4(f)(iii)**, the Parties must arrange for the appointment of a mediator, to be mutually agreed between the Parties.
- (b) If the Parties are unable to agree on the identity of the mediator to be appointed within the time period detailed in **clause 65.7(a)**, a mediator must be nominated by the President for the time being of the Institute of Arbitrators and Mediators Australia (**IAMA**), or such person authorised by the President to make the appointment, on the application of the Department and provided the person nominated agrees to act as mediator.
- (c) The Parties must, within five Business Days of the appointment of the mediator, sign whatever reasonable terms of engagement the mediator requires (including any indemnity), but if one Party does not so sign, the other Party may engage the mediator by itself.
- (d) Within 20 Business Days of the referral pursuant to **clause 65.4(f)(iii)** the Parties must hold a preliminary conference in that mediation, in the presence of the mediator.
- (e) The Parties agree that:
 - (i) the mediation must be conducted in accordance with the IAMA Mediation Rules as in force from time to time (**Mediation Rules**);
 - (ii) they must abide by the Mediation Rules and must procure the mediator's agreement to conduct the mediation according to the Mediation Rules;

- (iii) they may be represented by legal counsel at the mediation;
 - (iv) they must act in good faith and use their best endeavours to achieve the resolution of the Dispute, or the part or parts of the Dispute, at the mediation; and
 - (v) for the purposes of interpreting the Mediation Rules, a reference to the Notice of Dispute in the Mediation Rules shall be a reference to the notice referred to in **clause 65.4(f)**.
- (f) Each Party will bear its own costs of the mediation, unless otherwise agreed between the Parties.
- (g) The Parties have not fully complied with this **clause 65.7** until the earlier of:
- (i) the conclusion, or termination by agreement, of the mediation; or
 - (ii) the expiration of 40 Business Days from the date of appointment of a mediator if the Dispute or part of the Dispute is not resolved by mediation at this date.

65.8 Continuance of Performance

Despite the existence of a Dispute, the Parties must continue to perform their respective obligations under the Contract and any related agreements.

65.9 Summary or Urgent Relief

Nothing in this **clause 65** will prevent either Party from instituting proceedings to seek enforcement of any payment due under the Contract or to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

65.10 Continuance of Obligations

The whole of the Parties' obligations under this **clause 65** continue notwithstanding that the Dispute relates to proceedings that have been commenced by:

- (a) a third party against the Service Provider and/or the Department; or
- (b) the Service Provider and/or the Department against a third party.

65.11 Termination

This **clause 65** does not apply to an action by the Department to terminate this Contract under **clause 68** or **clause 69**.

PART 19 – DEFAULT AND TERMINATION

66. DEFAULT

66.1 Notification

The Service Provider must notify the Contract Administrator of the occurrence of a Default as soon as it becomes aware of the occurrence of the Default.

66.2 Department Rights

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

- (a) give the Service Provider a Default Notice; and
- (b) issue a certificate and reduce the Detention Services Fee in accordance with **clause 37.3**.

66.3 Cure

- (a) The Department may, in its absolute discretion, specify in the Default Notice that it requires the Service Provider to remedy the Default, in which case, upon receipt of a Default Notice, the Service Provider:
 - (i) will have the time specified in the Default Notice (**Cure Period**) from the date of the Default Notice to remedy the Default; and
 - (ii) must submit a Cure Plan within five Business Days of the Default Notice, or such other period agreed between the Parties, setting out how the Service Provider will cure the Default within the Cure Period.
- (b) Where the Department specifies in a Default Notice that it requires the Service Provider to remedy a Default, the Service Provider must remedy the Default, including the identification, assessment and rectification of any systemic issues contributing to the Default, within the Cure Period or such extended period as is agreed by the Department following submission of a Cure Plan.
- (c) In determining the Cure Period, the Department will act reasonably and have regard to the nature of the Default required to be remedied.

66.4 Remedies

- (a) If a Default has occurred and the Service Provider fails to remedy the Default within the Cure Period or such extended period as is agreed by the Department following submission of a Cure Plan, the Department may exercise all or any of the following remedies:
 - (i) deduct money from amounts payable under **clause 37** or call on the Unconditional Financial Undertaking to cover the costs arising directly or indirectly from the Default, including but not limited to any costs

incurred in remedying the Default and any costs associated with the exercise of Step-in Rights as a result of the Default, taking into account any moneys to be deducted under **clause 28.2** or **37.3**;

- (ii) sue the Service Provider for compensation arising directly or indirectly out of that Default; or
 - (iii) any other remedies available to the Contract Administrator under this Contract or in law or equity.
- (b) The use of any of the above remedies will be without prejudice and are in addition to any other rights provided for and conferred by this Contract with respect to that Default, including without limitation any action under **clauses 28.2**, **clause 37.3** and **clause 67**.

67. TERMINATION FOR DEFAULT

67.1 Termination by the Department

Where the Department seeks to terminate this Contract in accordance with this **clause 67**, it must give written notice (**Termination Notice**) to the Service Provider specifying at least:

- (a) the reasons for termination; and
- (b) the date of termination.

67.2 Termination Events

Without prejudice to its rights at common law or any other right which has accrued or may accrue to the Department (including any right of the Department to damages), the Department may, by giving a Termination Notice to the Service Provider, immediately terminate this Contract if:

- (a) the Service Provider commits a breach of this Contract (which breach is capable of remedy) and the Service Provider fails to remedy the breach within the Cure Period specified in a Default Notice;
- (b) the Service Provider commits a material breach of this Contract (which breach is not capable of remedy);
- (c) a termination event specified in **clause 67.3** occurs;
- (d) notwithstanding **clauses 67.2(a)** and **67.2(b)**, the Service Provider commits a breach or breaches of this Contract that at common law entitles the Department to terminate this Contract;
- (e) the Service Provider fails to replace any Key Personnel, in accordance with **clause 20**, with replacements acceptable to the Department;

- (f) the Service Provider commits a breach of **clause 48**, or fails to comply with any of the Department's security requirements in **clause 50** and **Schedule 2** (Statement of Work);
- (g) any of the representations or warranties in **clause 58** ceases to be true;
- (h) the Service Provider breaches **clause 71** and where the breach has a material adverse affect on the Department as determined by the Department acting reasonably, but only to the extent that that breach does not fall within **clause 67.2(a)**; or
- (i) a Continuous Failure occurs for 6 or more successive months.

67.3 Insolvency and Other Events

Without prejudice to its rights at common law or any other right which has accrued or may accrue to the Department under **clauses 67.2(a), 67.2(c)** or otherwise, the following events are termination events for the purposes of **clause 67.2(c)**:

- (a) the Service Provider suspends payment of its debts or becomes insolvent;
- (b) a receiver, receiver and manager, administrator (including a voluntary administrator), trustee or similar official is appointed over the whole or a substantial part of the assets or undertaking of the Service Provider;
- (c) the Service Provider makes an assignment of its estate for the benefit of creditors (or any class of them) or enters into any arrangement, compromise or composition with its creditors (or any class of them);
- (d) an application (other than a vexatious or frivolous application) or order is made for the winding up or dissolution of, or the appointment of a provisional liquidator to, the Service Provider, or the Service Provider goes into liquidation or passes a resolution to go into liquidation, otherwise than for the purpose of reconstruction, or becomes subject to any petition or proceedings in a court for its compulsory winding-up or becomes subject to supervision of a court either voluntarily or otherwise;
- (e) the Service Provider suffers any execution against its assets having adverse effect on its ability to perform this Contract;
- (f) the Service Provider ceases, or threatens to cease, to carry on its business;
- (g) the Service Provider assigns its rights otherwise than in accordance with the requirements of this Contract;
- (h) any matter relating to the Service Provider or any of its subsidiaries becomes subject to a direction under, or having effect as if it were a direction under, section 14 of the *Australian Securities and Investments Commission Act 2001* (Cth), or to an investigation under, or taken to be under, that Act;

- (i) the Service Provider is prevented by a Force Majeure Event (or a series of Force Majeure Events) from performing obligations under this Contract that is continuing for a period of 60 days or more; or
- (j) the Service Provider suffers a change in control or ownership which in the reasonable opinion of the Department, adversely affects the Service Provider's ability to perform the Services.

67.4 Materiality

The materiality of any breach, and whether a breach has a material adverse affect, for the purposes of **clauses 67.2 and 67.3** will be determined in light of the absolute importance to the Department that the Australian public have, and continue to have, confidence in the efficient, effective and competent administration of the Facilities.

67.5 Repayment on Termination

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

67.6 Consequences of Termination for Default

If this Contract is terminated under this **clause 67**:

- (a) subject to this Contract and **clause 70** in particular, the Parties are relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
- (b) subject to the requirements of the Service Provider to perform Services in accordance with **clause 70**, all licences and Authorisations granted to the Service Provider by the Department, terminate immediately despite anything to the contrary contained in the relevant licence or Authorisation;
- (c) the Service Provider must comply with **clause 70**; and
- (d) the Department must pay the Service Provider for any Services that were performed in accordance with this Contract prior to the date of termination.

67.7 Service Provider's Acknowledgement

The Service Provider acknowledges that the performance of the Services is critical to the performance of the functions of the Department and that the Department will incur expenses in seeking a Successor and transferring the Services to a Successor.

68. TERMINATION FOR CONVENIENCE

68.1 The Department May Terminate for Convenience

In addition to any other rights it has under this Contract, the Department may terminate the Contract, by notifying the Service Provider in writing that the Contract is terminated from the date specified in the notice (**date of termination**) and, in that event, the Department may give to the Service Provider such directions as it thinks fit in relation to subsequent performance of this Contract.

68.2 Transition Out Obligations

Notwithstanding that the Service Provider may have received a notice under **clause 68.1**, the Service Provider must comply with its obligations under **clause 70** and with any directions given by the Contract Administrator.

68.3 Payment for Services Rendered Prior to Termination

The Department must pay the Service Provider for any Services that were performed in accordance with this Contract prior to the date of termination.

68.4 Compensation for Unavoidable Losses

- (a) The Department is liable to the Service Provider for any substantiated unavoidable losses necessarily incurred by the Service Provider in connection with this Contract to the extent that the unavoidable loss was necessarily incurred as a consequence of termination of this Contract in accordance with this **clause 68** or removal of any Services from scope in accordance with **clause 34**.
- (b) For the purposes of this **clause 68.4** and **clause 34.1**, "unavoidable loss":
 - (i) is limited to reasonable wind-down expenses (for example, redundancy expenses);
 - (ii) must not include any amount on account of loss of profits;
 - (iii) subject to clause 68.5, includes costs incurred in respect of terminated subcontracts or supply agreements and other costs reasonably and necessarily incurred in anticipation of completing the Contract; and
 - (iv) must not exceed the amount that would have been payable if the Department had not terminated the Contract pursuant to **clause 68.1**, or, in the case of **clause 34.1(d)**, had not removed the Services from scope).

68.5 Termination of Subcontracts for Convenience

The Service Provider must, in each Subcontract or order to the value of \$20,000 or more placed with any subcontractor for the purpose of this Contract, reserve a right of termination to take account of the Department's right of termination under this **clause 68** and the Service Provider must, where appropriate, make use of such rights to mitigate losses in the event of termination by the Department under the provisions of this **clause 68**.

68.6 Unfettered Discretion

For the avoidance of doubt, the Department has an unfettered discretion to terminate this Contract in accordance with this **clause 68**.

69. DEEMED TERMINATION FOR CONVENIENCE

If a purported termination for default by the Department under **clause 67** is determined by a competent authority not to be properly a termination for default, then that termination by the Department will be deemed to be a termination for convenience under **clause 68** which termination has effect from the date of the notice of termination.

70. TRANSITION OUT

70.1 Development of Transition Out Plan

- (a) Within six months after the Commencement Date, the Service Provider must develop, in consultation with and for approval by the Department, a Transition Out Plan that will provide for the Transition Out of Services from the Service Provider to the Department or its nominee as a result of:
 - (i) any Services being removed from the scope of this Contract;
 - (ii) termination of this Contract; or
 - (iii) the expiration of this Contract.
- (b) The Transition Out Plan must, without limitation, provide for the matters referred to in this **clause 70** and must not be inconsistent with this **clause 70**.
- (c) The Transition Out Plan must set out the obligations to be performed by each Party in connection with the orderly transition of service delivery from the Service Provider to the Department or its nominee, including obligations in relation to:
 - (i) the transfer of Department Material and the Contract Material to the Department or its nominee; and
 - (ii) the transfer of employees who wish to transfer to the Successor, and if applicable the provision of relevant information to enable the Successor to ascertain the accrued rights and benefits of those employees.

70.2 Compliance with Transition Out Plan

- (a) The Service Provider must comply with the Transition Out Plan and provide all reasonable assistance and cooperation necessary:
 - (i) during any notice period prior to removal of Services from scope or termination, or upon the expiration of any date for the exercise of an option to extend the Term of this Contract; and

- (ii) on and from the removal of Services from scope, expiration or termination of this Contract for any reason,

to transfer the Services to the Department or an alternative service provider in a manner which ensures continued provision of the Services or services similar to the Services (as the case may be) in accordance with the requirements of this Contract.

- (b) In particular the Service Provider must in accordance with the Transition Out Plan:
 - (i) deliver to the Department (or an alternative service provider) in an orderly manner:
 - (A) complete Commonwealth Records and any other Department property including Department Materials;
 - (B) all Department Confidential Information;
 - (C) all information about People in Detention contained in any database or file;
 - (D) training at fees to be agreed on the Department's request;
 - (E) any statistical data or information contained in any table or schedule prepared in the performance of the Services;
 - (F) a detailed statement of resources setting out information on equipment, technology, Service Provider Personnel, facilities and Subcontractors used by the Service Provider to perform the Services; and
 - (G) business process flow charts, procedures manuals, plans, reports, pro-forma documentation, activity schedules, work product examples, organisational charts, skills details for Service Provider Personnel and any other documents of a similar nature necessary for an alternative service provider to assume responsibility for providing the Services;
 - (ii) except with the consent of the Department or as required to comply with this **clause 70**, cease accessing any of the Department's systems;
 - (iii) continue the provision of the Services, for up to 180 Business Days after the removal of services from scope, or termination or expiry of this Contract (as the case may be) or such other date as is agreed by the Parties, so as to ensure an orderly transition of services as requested by the Department;
 - (iv) at the Department's request, and to the extent it is permitted to do so, novate any contracts relating to the Services to the Department or its nominee at no additional charge to the Department;
 - (v) perform its other obligations under the Transition Out Plan;

- (vi) allow the Department to audit compliance with this **clause 70**; and
- (vii) allow Successors to access the Facilities where relevant to assist in the orderly transition of the Services.

70.3 Transition of Services Removed from Scope

If any Services are removed from scope, the obligations of the Service Provider under **clause 70.2** in respect of that termination, apply only to the extent necessary to ensure the orderly transition to the Department or other service provider of services similar to the Services which have been removed from scope. In that event, the Service Provider will be entitled to payment for those Transition services on a cost plus basis in accordance with **Schedule 5** (Detention Services Fee).

70.4 Return of Department Assets

- (a) Upon the expiration or earlier termination of this Contract, the Service Provider must return to the Department (or as the Department may direct to a Successor), the Department Assets licensed to the Service Provider by the Department pursuant to **clause 24.1**, or any replacement Department Asset, which is functional and fit for purpose.
- (b) Immediately prior to the expiration or immediately following the earlier termination of this Contract, a stocktake and inspection shall be conducted of the equipment to be returned pursuant to **clause 70.4(a)**. The Contract Administrator will conduct this inspection in conjunction with the Service Provider and the Parties will jointly prepare and agree a report of the outcome of the inspection.
- (c) In the event of any deficiency in the value of the equipment to be returned by the Service Provider pursuant to **clause 70.4(a)** from the value of the Department Assets licensed by the Department to the Service Provider pursuant to **clause 24.1** (allowing for Consumer Price Index adjustment), the Service Provider will immediately pay that difference to the Department or to a Successor as the Department may direct.

70.5 Return of Loose Assets

- (a) Upon the expiration or earlier termination of this Contract, the Service Provider must return to the Department (or as the Department may direct to a Successor), the Loose Assets licensed to the Service Provider by the Department pursuant to **clause 24.1**, or equivalent items to the same value as the Loose Assets as verified by the Service Provider under **clause 7**, which are functional and fit for purpose.
- (b) Immediately prior to the expiration or immediately following the earlier termination of this Contract, a stocktake and inspection shall be conducted of the equipment to be returned pursuant to **clause 70.5(a)**. The Contract Administrator will conduct this inspection in conjunction with the Service Provider and the Parties will jointly prepare and agree a report of the outcome of the inspection.
- (c) In the event of any deficiency in the value of the equipment to be returned by the Service Provider pursuant to **clause 70.5(a)** from the value of the Loose Assets

licensed by the Department to the Service Provider pursuant to **clause 24.1** (allowing for Consumer Price Index adjustment and fair use and reasonable wear and tear), the Service Provider will immediately pay that difference to the Department or to a Successor as the Department may direct.

70.6 Update and Review of Transition Out Plan

- (a) The Service Provider must regularly update the Transition Out Plan to ensure it is at all times consistent with the Services and **Schedule 2** (Statement of Work) and facilitates the most efficient succession to an alternative service provider.
- (b) The Parties will review the Transition Out Plan annually and not less than six months prior to the scheduled expiration of this Contract to ensure that the Transition Out Plan remains appropriate to the circumstances of the Department.

70.7 Fees for Transition Out Services

- (a) Upon the expiry of the Term by the effluxion of time or termination under **clause 68**, the Department will pay the Service Provider the Transition Out Fee specified in **Schedule 5** (Detention Services Fee).
- (b) Where this Contract is terminated under **clause 67** but without limiting any damages that the Department may be entitled to, the Department will pay the Service Provider the Detention Services Fee for the Services that the Service Provider provides in complying with its obligations under this **clause 70**, and the Service Provider will not be entitled to payment of the Transition Out Fee.
- (c) The Parties agree that the terms and conditions of this Contract, including the Detention Services Fee, apply to any Services performed by the Service Provider during any Transition Out Period required in respect of a termination under **clause 67**.

70.8 Service Provider Must Not Hinder Transition

The Service Provider agrees that it will not hinder in any way, the transition of the provision of services similar to the Services to a Successor upon termination or expiration of the Contract or removal of Services from scope under **clause 34**.

70.9 Survival

This **clause 70** survives the expiration or termination of this Contract.

PART 20 – GENERAL

71. CONFLICT OF INTEREST

- (a) The Service Provider warrants that to the best of its knowledge after making diligent inquiry, at the date of signing this Contract and at all times during the Term, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract by itself or by Service Provider Personnel and that based upon

reasonable inquiry it has no reason to believe that any Subcontractor has such a conflict.

- (b) If during the Term a conflict or risk of conflict of interest arises, the Service Provider undertakes to notify the Department immediately after the conflict or risk of conflict becomes known.
- (c) The Service Provider must not, and must use its best efforts to ensure that any Personnel, agent or Subcontractor does not, during the Term, engage in any activity or obtain any interest likely to conflict with, or restrict the fair and independent performance of obligations under this Contract and must immediately disclose to the Department such activity or interest.
- (d) If the Service Provider fails to notify the Department or is unable or unwilling to resolve or deal with the conflict as required, the Department may terminate this Contract in accordance with the provisions of **clause 67**.

72. GENERAL PROVISIONS

72.1 Compliance with National Construction Code

- (a) The Service Provider must comply with the National Construction Code and the National Construction Guidelines. Copies of the National Construction Code and the National Construction Guidelines are available at www.workplace.gov.au/building.
- (b) Compliance with the National Construction Code or the National Construction Guidelines shall not relieve the Service Provider from responsibility to perform this Contract, or from liability for any defect in the works arising from compliance with the National Construction Code or the National Construction Guidelines.
- (c) Where a change in this Contract is proposed and that change would affect compliance with the National Construction Code or the National Construction Guidelines, the Service Provider must submit a report to the Department specifying the extent to which the Service Provider's compliance with the National Construction Code or the National Construction Guidelines will be affected.
- (d) The Service Provider must maintain adequate records of the compliance with the National Construction Code and National Construction Guidelines by:
 - (i) the Service Provider;
 - (ii) its Subcontractors; and
 - (iii) its Related Entities.

-
- (e) The Service Provider must permit the Department, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, full access to construction sites or places covered by the National Construction Code and National Construction Guidelines to:
- (i) inspect any work, material, machinery, appliance, article or facility;
 - (ii) inspect and copy any record relevant to the Services;
 - (iii) interview any person; and
 - (iv) request a Party to this Contract to produce a specified document within a specified period, being not less than 14 days in person, by fax or by post as is necessary to allow validation of its progress in complying with the National Construction Code and National Construction Guidelines.
- (f) For the avoidance of doubt, **clause 72.1(e)** applies in relation to the Service Provider's privately funded construction sites.
- (g) The Service Provider agrees to require that its Subcontractors and its related entities provide the Department or any person authorised by the Department, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, with access to any Facility in order to:
- (i) inspect any work, material, machinery, appliance, article or facility;
 - (ii) inspect and copy any record relevant to the Services;
 - (iii) interview any person; and
 - (iv) request a Party to this Contract to produce a specified document within a specified period, being not less than 14 days, in person, by fax or by post as is necessary to allow validation of its progress in complying with the National Construction and National Construction Guidelines.
- (h) The Service Provider must not appoint a Subcontractor, consultant or supplier to provide any Services where the appointment would breach a sanction imposed by the Code Monitoring Group, as defined in the National Construction Code.
- (i) The Service Provider must ensure that all subcontracts impose obligations on the Subcontractor equivalent to the obligations under this **clause 72.1**.

72.2 Negation of Employment, Partnership and Agency

- (a) The Service Provider must not represent itself, and must use reasonable endeavours to ensure that the Service Provider Personnel and Subcontractors do not represent themselves, as being an officer, employee, partner or agent of the Department, or as otherwise able to bind or represent the Department.
- (b) Except as specifically provided for in this Contract, the Service Provider is not by virtue of this Contract an officer, employee, partner or agent of the Department, nor

does the Service Provider have any power or authority to bind or represent the Department.

72.3 Waiver

- (a) If a Party does not exercise (or delays in exercising) any of its rights, that failure (or delay) does not operate as a waiver of those rights.
- (b) A single or partial exercise by a Party of any of its rights does not prevent the further exercise of any right.

72.4 Assignment and Novation

- (a) The Service Provider must not novate its obligations, and agrees not to assign its rights, under this Contract without, in either case, prior approval in writing from the Contract Authority, which approval must not be unreasonably withheld.
- (b) The Service Provider must not consult with any other person for the purposes of entering into an arrangement that will require novation of this Contract without first consulting the Contract Authority.

72.5 Applicable Law

This Agreement will be governed by the Laws for the time being in force in the Australian Capital Territory, and the Parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory. For the avoidance of doubt, the *Commonwealth Places (Application of Laws) Act 1970* (Cth) applies to this Contract.

72.6 Entire Agreement

This Agreement constitutes the entire agreement between the Parties in relation to the provision of the Services, and supersedes all communications, negotiations, arrangements and agreements, either oral or written, between the Parties with respect to the subject matter of this Contract.

72.7 Department Representatives

- (a) The Contract Authority, Contract Administrator and Department Regional Manager are each Department Representatives in discharging their respective functions as set out in this Contract. The Service Provider acknowledges that Department Representatives do not:
 - (i) owe any direct duty to the Service Provider under this Contract (whether to review, accept or reject any Services or any Material submitted by the Service Provider under this Contract or otherwise); or
 - (ii) provide any form of certification, declaration or other representation that the Services or any Service Provider Materials comply with any Law, industry standards or are otherwise fit for purpose.

- (b) Unless expressly provided in this Contract, any directions, reviews, rejections, consents or other comments made by Department Representatives in relation to any Services or the use of any Service Provider Material under this Contract do not relieve the Service Provider from, or alter or affect the Service Provider's liabilities or responsibilities under this Contract or otherwise.
- (c) The Contract Authority, Contract Administrator or Department Regional Manager may at any time by written notice to the Service Provider nominate additional persons to fulfil their respective functions set out in this Contract, other than the functions of the Contract Authority and the Contract Administrator in relation to:
 - (i) dispute resolution in accordance with **clause 65**; or
 - (ii) issuing a notice of termination under **clause 67**.

72.8 Counterparts

This Agreement may be executed in any number of counterparts and all counterparts taken together will constitute one and the same instrument.

72.9 Severability

- (a) Each provision of, or any Schedule or Annexure of or to this Contract and each part of such provision, will, unless the context otherwise necessarily requires it, be read and construed as a separate and severable provision or part. If any provision or part of a provision is void or otherwise unenforceable for any reason, then that provision or part (as the case may be) will be severed and the remainder will be read and construed as if the severable provision or part had never existed.
- (b) For the avoidance of doubt, **clause 72.9(a)** applies to each Schedule and Annexure of or to this Contract.

72.10 Further Assurance

Each Party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Contract.

72.11 Consent

Whenever the consent or approval of a Party is required under this Contract to be effective, it must be in writing and signed by a representative of the Party who is authorised to give that consent or approval.

72.12 Equal Employment Opportunity

- (a) The Service Provider must comply with its obligations, if any, under the *Equal Employment Opportunity for Women in the Workplace Act 1999* (Cth) (**EEOWW Act**).

- (b) The Service Provider must not enter into a subcontract under this Contract with a Subcontractor named by the Director of Equal Opportunity for Women in the Workplace as an employer currently not complying with the EEOWW Act.
- (c) To the extent required by Law, any subcontract must include a provision which requires the Subcontractor to notify the Equal Opportunity for Women in the Workplace Agency of any failure to comply with the EEOWW Act.

73. NOTICES

73.1 Address for Notices

Unless otherwise provided, any notice, request or other communication to be given under this Contract is to be in writing and dealt with as follows:

- (a) if given by the Service Provider to the Department, signed by the Service Authority or the Service Administrator and marked for the attention of the Contract Authority or the Contract Administrator at the address set out in **clause 73.2** or as otherwise notified from time to time by the Department; or
- (b) if given by the Department to the Service Provider, signed by the Contract Authority or the Contract Administrator and marked for the attention of the Service Authority or the Service Administrator at the address set out in **clause 73.2** or as otherwise notified from time to time by the Service Provider.

73.2 Addresses

- (a) The address for the Department:

Contract Authority – Detention Services Contract

First Assistant Secretary, Community and Detention Services Division
PO Box 25
Belconnen ACT 2616
Email: Detention.Management@immi.gov.au

Facsimile: 61 2 6264 1100

Contract Administrator – Detention Services Contract

Assistant Secretary, Services Management Branch
PO Box 25
Belconnen ACT 2616
Email: Detention.Management@immi.gov.au

Facsimile: 61 2 6264 1100

- (b) The address for the Service Provider:

Service Authority – Detention Services Contract

Contract Director
C/O Company Secretary
Serco Asia Pacific
Level 10
90 Arthur Street
Sydney
2060

Facsimile: 61 2 9964 9924]

Service Administrator – Detention Services Contract

Contract Director
C/O Company Secretary
Serco Asia Pacific
Level 10
90 Arthur Street
Sydney
2060

Facsimile: 02 9964 9924]

73.3 Delivery of Notices

Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically, and if it is sent or transmitted electronically a copy is to be sent to the addressee by pre-paid post.

73.4 Receipt of Notices

A notice, request or other communication will be deemed to be received:

- (a) if delivered by hand, upon delivery;
- (b) if sent by prepaid ordinary post within Australia, upon the expiration of two Business Days after the date on which it was sent;
- (c) if sent by prepaid ordinary post outside Australia, upon the expiration of five Business Days after the date on which it was sent; and
- (d) if transmitted by facsimile, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

74. INTERPRETATION

74.1 Interpretation

In this Contract, unless the context indicates a contrary intention:

- (a) capitalised terms have the meaning ascribed to them in **Schedule 18** (Glossary);
- (b) a word suggesting a gender includes all genders;
- (c) a singular word includes the plural, and vice versa;
- (d) headings are for convenience only, and do not affect interpretation;
- (e) the word **person** includes any type of entity or body of persons (including a body politic), whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
- (f) a reference to an amount in dollars, \$AUD or \$AU is to that amount in Australian dollars;
- (g) a reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as, from time to time, amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) subject to **clause 35** and **clause 36**, a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as, from time to time, amended, supplemented, replaced or novated;
 - (iii) a **section** is to a section in a Schedule or an Annexure of or to this Contract as varied from time to time;
 - (iv) any body is:
 - (A) if that body is replaced by another organisation, deemed to refer to that organisation; and
 - (B) if that body ceases to exist, deemed to refer to the organisation which most nearly or substantially serves the same purposes or objects of that body;
 - (v) a **recital, clause, sub-clause, Part, Schedule** or **Annexure** is to the respective recital, clause, sub-clause, Part, Schedule or Annexure of or to this Contract as Varied from time to time;
 - (vi) a person holding a Department or the Service Provider office includes any person from time to time holding, occupying or performing the duties of that office; and

- (vii) a Department or the Service Provider office includes, if that office is abolished, the holder of any other office at the same or equivalent level which has the same or similar responsibilities;
- (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (i) a Party to this Contract or any other document or arrangement includes that Party's permitted substitute or a permitted assign of that Party;
- (j) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing; and
- (k) the word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.

74.2 Precedence of documents

If there is any inconsistency between provisions of this agreement and other documents, a descending order of precedence is to be accorded to:

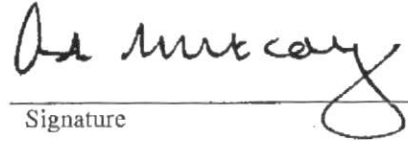
- (a) the Main Terms and Conditions;
- (b) **Schedule 2** (Statement of Work);
- (c) the other Schedules and Annexures;
- (d) provisions of documents incorporated by express reference in this agreement (including the policy documents referred to in **Schedule 16** (Legislation and Commonwealth Policies)),


so that the higher ranked provision prevails to the extent of the inconsistency.

Executed by the Parties as an agreement.

Signed for and on behalf of Commonwealth of Australia

By:


Signature


Signature of Witness

DEBORAH JAKKA
Name of Witness in full

Date: 29 June 2009

EXECUTED by Serco Australia Pty Limited (ABN 44 003 677 352)


Signature of director

DAVID CAMPBELL
Name


Signature of director/secretary

PAUL MAHONEY
Name

Date: 29 JUNE 2009



Australian Government

Department of Immigration and Citizenship

**Detention Services Contract
Immigration Detention Centres**

**SCHEDULE 1
FACILITY DESCRIPTIONS AND PLANS**

INTRODUCTION

This **Schedule 1** (Facility Descriptions and Plans) provides an overview of each of the Facilities subject to this Contract.

Facilities for the purposes of this Contract are:

- Maribyrnong Immigration Detention Centre – Melbourne, Victoria;
- Northern Immigration Detention Centre – Darwin, Northern Territory
- Villawood Immigration Detention Centre – Sydney, New South Wales;
- Perth Immigration Detention Centre – Perth, Western Australia;
- Northwest Point Immigration Detention Centre - Christmas Island;
- Phosphate Hill APOD – Christmas Island; and
- Construction Camp APOD – Christmas Island.

Annexure A to this **Schedule 1** (Facility Descriptions and Plans) sets out the terms and conditions under which certain Service Provider Personnel may use Residential Accommodation on Christmas Island.

Maribyrnong Immigration Detention Centre

Site Location

The Maribyrnong Immigration Detention Centre (**MIDC**) is in Maidstone, which is part of the Municipality of Maribyrnong. It is some 10 kilometres north-west of the Melbourne CBD and 10 kilometres south-east of the Melbourne Airport.

History

The MIDC is a single level purpose built secure detention facility that was constructed in the early 1980s.

Site Description

The MIDC property is 10,948 m² in area. The property is a battleaxe shape with a narrow entry driveway extending off the western side of Hampstead Road, Maidstone.

Buildings

The building provides accommodation for administration and reception, a service core, and People in Detention facilities.

The administration wing provides office accommodation for Department and Services Provider staff. Secure garages used for the escort and transport of People in Detention are located at the western end.

The central area provides staff offices and facilities, together with a visitor area, the kitchen and stores and delivery area, and the People in Detention dining room.

The People in Detention accommodation is divided into male, female and family group areas, providing bedrooms, recreational and educational facilities, ablution and laundry areas, and outdoor exercise areas.

Capacity

MIDC has an operational capacity of 70 and a surge capacity of 100 People in Detentions.

Major works past 3 years

The 2004/2005 Budget approved \$7.0M for the extension and upgrading of accommodation and related facilities.

In the 2006/2007 Budget a further \$1.75M was approved for works including the removal of razor wire and improved entry.

Substantial refurbishment of existing accommodation and bathrooms was undertaken in 2006/2007 using \$1.3M of DIAC corporate funds.

These works have included many infrastructure policy innovations and have significantly enhanced the arrival, visits area, bedrooms with ensuites, self catering, use of computer based education and availability of internet.

These works have now been largely completed with a favourable response from significant Stakeholders including Australian Human Rights Commission, UNHCR, Australian Red Cross and Commonwealth Ombudsmen's Office.

Major works planned

There are no projects currently funded however the Department is currently reviewing recommendations from Australian Human Rights Commission regarding further enhancements to active recreation areas and other minor enhancements.

Site Plans

Annexure B to this **Schedule 1** (Facility Descriptions and Plans) sets out site plans for Maribyrnong Immigration Detention Centre.

Northern Immigration Detention Centre

Site Location

Northern Immigration Detention Centre (NIDC) is located on the site of Defence Establishment Berrimah some 12 kilometres from the Darwin CBD.

History

On 23 August 2001 the then Minister, the Honourable Phillip Ruddock MP, announced plans to increase the contingency capacity for detaining unauthorised boat arrivals by preparing temporary facilities at Defence sites including HMAS Coonawarra (now Defence Establishment Berrimah)

The site comprised a number of existing portable buildings.

Early works involved the provision of additional accommodation buildings and some support buildings as well as lighting and security fence. Key infrastructure such as a kitchen, mess, medical and recreation facilities were not provided for at the time.

This work resulted in a development comprising two separate compounds.

In January 2005 the Government announced its decision to establish a joint fisheries /immigration detention facility in Darwin at the existing contingency immigration detention site located within Defence Establishment Berrimah. Related works to upgrade the existing facility (primarily the North Compound) were presented to the Joint Standing Committee of Public Works for scrutiny. The estimated cost was \$8.125M.

Due to the continued increase in Illegal Foreign Fishers (IFF) apprehensions in Australia's northern waters the former government approved a further \$5.7M in the 2006-07 budget to upgrade the southern compound and medical quarantine area to the same standard as the previous upgrade.

Site Description

NIDC occupies a portion of the current Defence Establishment Berrimah site and is bounded by the Stuart Highway on one side and Amy Johnston Drive on another.

Buildings

There are three distinct parts of the NIDC: North Compound, South Compound and the Administration area (which is external to the compounds).

North compound (comprising a smaller North 2 compound)

This compound includes; accommodation buildings, a kitchen mess building, which is also a cyclone shelter, outdoor and indoor recreation facilities and cabanas, ablutions, laundry, medical and visits facilities.

South Compound (comprising a medical separation area)

Work is currently underway in this compound. When completed it will comprise accommodation buildings, ablutions, indoor and outdoor recreation area, cabanas, a multi-use purpose built cyclone shelter, laundries, shade structures, medical separation capacity and processing capability.

Administration for the Department and the Service Provider is located external to the compounds. This area is comprised of three former defence buildings which have been recently refurbished. The facilities main pedestrian entry is located at the ground floor of building 9.

Capacity

The operating capacity of the NIDC is 400 with a design capacity of 570. Due to upgrade works currently underway at the Facility, the current operating capacity is 250. Some interim arrangements have been developed which will allow additional capacity of approximately 90 beds without impacting on the current works program.

Major Works Past 3 Years

In early 2005 the former Government announced the operational upgrade of the Northern compound. Works comprised a kitchen mess which is also a cyclone shelter, outdoor and indoor recreation facilities and cabanas, ablutions, laundry, medical, visits area facilities amongst other facilities. Works were completed in September 2007. The final project cost was just over of \$8.0M.

Later in 2005 \$5.7M of further works were announced for the 2006 – 07 budget year. These works were to upgrade the South Compound. The works comprise 3 packages. Package 1 and a portion of package 2 were completed in January 2008 at a cost of approximately \$1.5M.

These works included additional buildings, modifications to existing demountable buildings, new ablutions facilities, removal of razor wire and installation of an energised detection and deterrent system to both internal and external fences, closed circuit TVs and associated equipment.

Works to finalise package 2 (security works) and package 3 (recreation area, a purpose built ablution, multi-use purpose built cyclone shelter with medical separation and kitchen and shade structures) are currently underway. The work was completed in mid 2008.

Major Works Planned

No major works are planned.

Site Plans

Annexure C to this **Schedule 1** (Facility Descriptions and Plans) sets out site plans for Northern Immigration Detention Centre.

Villawood Immigration Detention Centre

Site Location

Villawood Immigration Detention Centre (VIDC) is located at Villawood some 28 kilometres south west of the Sydney GPO.

History

The buildings on the site were mostly constructed between the early 1960s and the early 1970s for short-term migrant accommodation and have since been adapted to provide a secure detention facility.

Stage 1 was constructed as a purpose built detention facility around 1965.

Site Description

The Centre occupies an 18 hectare (approximately) site that is bounded by residential and industrial areas. The centre is entered from Birmingham Avenue, Villawood.

Buildings

There are three distinct parts of the Centre: Stage 1, Stage 2 and Stage 3.

Stage 1 provides higher security accommodation for High Risk males in 3 dormitories. Dormitories 1 and 2 have shared communal facilities, Dormitory 3 has individual ensuites. The capacity for Stage 1 is 104 single male People in Detention.

Stages 2 and 3 are comprised of 12 two-storey, brick residential buildings, grouped around central grassed courtyards.

The accommodation units have either two or three bedrooms and their own bathroom.

The buildings vary from four to eight accommodation units per floor, grouped in pairs around the shared staircases.

Stage 2 provides accommodation for mainly male People in Detention however there is separate accommodation within the perimeter of Stage 2 to accommodate female People in Detention. Male People in Detention do not have access to the female area.

Stage 3 provides higher security accommodation for single male People in Detention and includes a Management Support Unit for nine single male People in Detention.

The site also accommodates office facilities for Department Personnel in demountable accommodation, and for the Services Provider in an older brick building known as the Transport and Escort Building. There is a bulk store, three heritage listed Nissen Huts and a heritage listed brick ammunition hut on the site.

Capacity

VIDC has an operational capacity of 504 and a surge capacity of 800.

Major Works Past 3 Years

A number of major works has been undertaken at VIDC in the past 3 years including;

- new bathrooms and minor refurbishment of existing accommodation (Stages 2 and 3);
- enlarged and improved facilities for medical and mental health;
- new kitchen;
- new sports ground and facilities for outdoor activities (basketball and soccer);
- new gymnasium and recreation centre;
- new internet café; and
- Stage 1 Dorm 2 minor refurbishment.

Major Works Planned

Refurbishment of Stage 1 dormitories, central facilities and outdoor areas.

Management Support Unit in Stage 3 to be refurbished as higher care/separation accommodation, removing correctional type doors and hardware and incorporating improved bedroom and living accommodation.

There is currently funding of \$175.8M in Forward Estimates for the Redevelopment of VIDC including a new higher care, higher security facility to replace Stage 1, new central facilities (medical, kitchen, dining, recreation, education, management & staff accommodation, visits area, stores) and refurbishment of the existing Stage 2 and 3 buildings.

The Department is currently reviewing recommendations from the Australian Human Rights Commission reports and investigations how minor works may improve the amenity and operation of VIDC.

Site Plans

Annexure D to this **Schedule 1** (Facility Descriptions and Plans) sets out site plans for Villawood Immigration Detention Centre.

Perth Immigration Detention Centre

Site Location

The Perth Immigration Detention Centre (PIDC) is located on Baker Road, within the confines of the Perth Domestic Airport, some 10 kilometres north-east of the Perth CBD.

History

The building on the property is a single level secure detention facility that was constructed in the early 1980s for the Australian Federal Police. It was constructed mainly for administrative purposes and later adapted for use as an IDC. The site is leased from Westralia Airports Corporation by the Commonwealth of Australia until 2016.

Site Description

The PIDC site consists of a single building within the Perth Domestic Airport precinct bounded by Baker road to the south and McComb Road to the west. The extent of the site is formed by the perimeter of the building and courtyard walls to provide a level rectangular site measuring approximately 46m x 41m.

The building itself is a 'T' shape within the rectangular site of approximately 1,880m². There are two courtyards formed by the perimeter courtyard walls adjoining the 'T' extension.

Buildings

The building is a single storey masonry construction on slab with a flat roof concealed behind a continuous parapet. The external appearance is of a commercial development.

The gross floor area of the PIDC building is approximately 1,200 m².

The north east courtyard is enclosed by a high brick wall with a cyclone mesh fence above the wall, topped with a razor wire barrier. This courtyard is used for external exercise and recreation for male People in Detentions. The north west courtyard is similarly constructed and has been modified for female People in Detentions as well as providing service access to the building. This courtyard also contains a generator enclosure, storage and laundry facilities.

The building divides generally into three wings:

- The northern wing contains male People in Detention accommodation in five dormitories, ablution facilities, recreation room, kitchen and dining room;
- The western wing (west of the entry foyer) contains a female People in Detention dormitory, observation room, Department administration offices, control room, interview rooms, medical room People in Detention property store and foyer; and
- The east wing contains a visits/multi-purpose room, classroom, staff room, male and female staff toilets and offices currently occupied by the Incumbent Service Provider;

Capacity

PIDC currently has a capacity of 43 and a surge capacity of 60 People in Detentions.

Major Works Past 3 Years

New air-conditioning system.

Refurbishment of the Department and service provider office accommodation and personnel facilities.

Major Works Planned

Refurbishment of the dormitory areas.

Replanning of the courtyards to provide improved opportunities for recreation and passive activities including replacement of razor wire with improved anti-climb containment.

Site Plans

Annexure E to this **Schedule 1** (Facility Descriptions And Plans) sets out site plans for Perth Immigration Detention Centre.

Northwest Point Immigration Detention Centre

Site Location

The Northwest Point IDC is located at the North-West Point of Christmas Island, about 20 kilometres from the main population centre.

History

In March 2002 the then Government approved the construction of a purpose built detention centre and associated infrastructure on Christmas Island for 1200 people on a fast track basis. An exemption from the requirements of the Environmental Protection and Biodiversity Conservation (EPBC) Act was granted on 3 April 2002. The selected site consisted of old mining leases and was resumed from Christmas Island Phosphates on 1 July 2002.

On 30 May 2002 a resolution was passed in the House of Representatives to exempt the development from scrutiny by the Public Works Committee (PWC) and Walters Construction was awarded the construction contract on 17 June 2002. Associated infrastructure included a construction camp, site services and permanent staff accommodation for approximately 170 staff.

The then Government decided in early February 2003 to reduce the size of the facility to 400 permanent beds plus 400 contingency beds and transfer responsibility for the delivery of the facility to the Department of Finance and Administration (Finance) under a traditional delivery methodology.

Boulderstone Hornibrook were selected by Finance as the preferred tenderer for the construction of the respecified facility and awarded the contract on 6 January 2005. Mobilisation took place immediately and construction began in February 2005.

Site Description

The site was a former mine site, suffered from the degrading effects of an open-cut mining operation and covers approximately 30 hectares. The facility consists of permanent buildings, mainly of steel and concrete construction and the entire site within the Northwest Point IDC has been landscaped.

Buildings

In addition to the eight accommodation compounds, the Northwest Point IDC contains a number of support, administrative and recreational facilities; main reception, Induction hall, medical facilities, kitchen/stores/laundry, internal and external visits areas, interview/conference facilities, education services and facilities, active and passive recreational areas.

Capacity

Northwest Point IDC has an operational capacity of 400 and a surge capacity of 800.

Major Works Past 3 Years

Construction of Facility.

Major Works Planned

No major works are planned.

Site Plans

Annexure F to this **Schedule 1** (Facility Descriptions And Plans) sets out site plans for Northwest Point Immigration Detention Centre.

Phosphate Hill Alternative Place of Detention

Site Location

The Phosphate Hill APOD is located at Phosphate Hill, about 2 kilometres from Christmas Island's main population centre.

History

The Facility was established on Christmas Island prior to the onset of the 2001-2002 wet season to avoid the use of tents for People in Detention accommodation.

During the period December 2002 to March 2003 a rebuilding and upgrading program was undertaken which replaced the original dormitory style building with individual accommodation units following unrest and arson attacks on the facility by the resident population prior to their Removal from Australia. A 600 meal kitchen, additional ablutions and recreational facilities were also installed.

Site Description

The site is located on high ground on the island adjacent to a recreation facility, pool and oval. The site is grassed and landscaped with cabanas located in the accommodation compounds.

It is a mainly flat site with separate compounds for accommodation (3), recreation, administration, medical and kitchen.

Buildings

The buildings at the Facility are second-hand transportable buildings providing facilities for administration, accommodation, commercial kitchen, medical amenities, ablution/laundry facilities, educational/recreation rooms, and four large open air multi-purpose cabanas.

All buildings are fitted with air-conditioners.

Capacity

The Phosphate Hill APOD has an operational capacity of 104 and a surge capacity of 208.

Major Works Past 3 Years

No major works have taken place in the last three years.

Major Works Planned

No major works are planned.

Site Plans

Annexure G to this **Schedule 1** (Facility Descriptions and Plans) sets out site plans for Phosphate Hill Alternative Place of Detention.

Construction Camp Alternative Place of Detention

Site Location

The Construction Camp APOD is located at Exiles Place Phosphate Hill, about 2 kilometres from the Christmas Island main population centre.

History

The Construction Camp was originally established for the accommodation of the construction workers for the new centre at North West Point. It was built in 2002.

Construction Camp has been used as an APOD for the processing and accommodation of unauthorised boat arrivals.

Site Description

The Construction Camp APOD is located on high ground on the island adjacent to the community recreation facility, pool and oval.

The Construction Camp APOD is located on a mainly flat site, bordering dense vegetation on the western and southern sides of the Facility.

Buildings

The Construction Camp APOD is comprised of all transportable buildings that provide administration area, accommodation, commercial kitchen, medical amenities, ablution and laundry facilities, recreation rooms, and gymnasium plus there is a multi use all weather tennis court/basketball court.

All buildings are fitted with air conditioners.

Capacity

The current accommodation capacity of the Construction Camp is 332 based on one person per room, however this capacity may vary depending on how the Facility is used.

Major Works Past 3 Years

No major works have taken place in the last 3 years.

Major Works Planned

No major works planned.

Site Plans

Annexure H to this **Schedule 1** (Facility Descriptions and Plans) sets out site plans for Construction Camp Alternative Place of Detention.



Australian Government

Department of Immigration and Citizenship

**Detention Services Contract
Immigration Detention Centres**

Residential Accommodation Licence Agreement

**ANNEXURE A TO SCHEDULE 1
FACILITY DESCRIPTIONS AND PLANS**

DATE**PARTIES**

Commonwealth of Australia represented by the Department of Immigration and Citizenship ABN 33 380 054 835 (Department)

Serco Australia Pty Limited ABN 44 003 677 352 (Service Provider)

RECITALS

- A. The Department and the Service Provider have entered into the Contract.
- B. Under **clause 24.7** of the Contract, the Department has agreed to grant to the Service Provider, during the continuation of the Contract, a licence pursuant to which the Service Provider will be entitled to permit certain Service Provider Personnel to occupy certain Residential Accommodation on Christmas Island.
- C. The licence referred to in Recital B is contained in this Agreement.

OPERATIVE PROVISIONS**1. INTERPRETATION****1.1 Definitions**

Words which are capitalised in this Agreement have the meanings (if any) set out in **Schedule 18** (Glossary) to the Contract, and in addition the following definitions will apply.

Agreement means this Residential Accommodation Licence Agreement.

Contract means the Detention Services Contract between the Department and the Service Provider dated 29 June 2009 for the provision of services in relation to People in Detention at Immigration Detention Centres.

Eligible Personnel means Service Provider Personnel required by the Service Provider to provide Services on Christmas Island on a temporary basis and whose normal place of residence is not Christmas Island.

Permitted Use means for the purpose of a residence and not for any other purpose.

Residential Accommodation means the land and improvements on the land specified by block numbers, locations or street addresses in the Schedule 1 to this Agreement, as varied from time to time by notice in writing from the Department to the Service Provider.

Service Provider Property means all fittings, equipment, goods and other property of the Service Provider or Service Provider Personnel in any part of the Residential Accommodation.

Term has the meaning given in **clause 3.1**.

1.2 Rules for interpreting this Agreement

- (a) Headings are for convenience only, and do not affect interpretation.
- (b) The following rules also apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply.
- (c) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a Party to this Agreement or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that Party;
 - (iv) a schedule is a reference to a schedule to this Agreement;
 - (v) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (vi) anything (including a right, obligation or concept) includes each part of it.
 - (A) A singular word includes the plural, and vice versa.
 - (B) A word which suggests one gender includes the other genders.
 - (C) If a word is defined, another part of speech for that word has a corresponding meaning.
 - (D) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (E) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
 - (F) The expression **this Agreement** includes the agreement, arrangement, understanding or transaction recorded in this document.

- (G) The words **subsidiary, holding company** and **related body corporate** have the same meanings as in the Corporations Act.
- (H) A reference to **dollars** or **\$** is to an amount in Australian currency.

1.3 Non Business Days

If the day on or by which a person must do something under this Agreement is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

1.4 Multiple parties

If a Party to this Agreement is made up of more than one person, or a term is used in this Agreement to refer to more than one Party, then unless otherwise specified in this Agreement:

- (a) an obligation of those persons is joint and several; and
- (b) a right of those persons is held by each of them severally.

1.5 The rule about "contra proferentem"

This Agreement is not to be interpreted against the interests of a Party merely because that Party proposed this Agreement or some provision in it or because that Party relies on a provision of this Agreement to protect itself.

2. GRANT OF LICENCE

2.1 Licence

The Department grants, and the Service Provider accepts, a fee-free, non-exclusive licence to occupy and use, and sublicense to Service Provider Personnel for occupation and use, the Residential Accommodation on the terms and conditions of this Agreement.

2.2 Nature of Licence

- (a) The Service Provider acknowledges and agrees that the licence to occupy and use granted by this Agreement is personal to the Service Provider and any or all of the rights of the Service Provider rest in contract alone and may not be assigned, transferred or novated without the prior written consent of the Department, which may be withheld in its absolute discretion, and will not be given in respect of an assignment, transfer or novation to a person who is not at the time of the assignment, transfer or novation the "Service Provider" under the Contract.

- (b) The Service Provider acknowledges and agrees that it has no tenancy, estate or leasehold or other interest in the Residential Accommodation.

2.3 Service Provider not to prevent or hinder Department

The Service Provider must not prevent or hinder the Department or any person claiming through the Department from exercising the Department's rights as owner of the Residential Accommodation.

3. TERM

3.1 Term

- (a) The licence granted in this Agreement will commence on the date of execution of this Agreement, and subject to this Agreement, the Contract and relevant Laws, will continue in force for the Term of the Contract, unless the Agreement or the Contract is earlier terminated in accordance with their respective terms and conditions.
- (b) If the Department provides the Service Provider with written notice under **clause 2.2** or **clause 2.3** of the Contract that the Department has extended the Contract then if the Service Provider is not at that time in default under this Agreement the term of this Agreement is extended by the same period of time as the Contract is extended.

3.2 Holding over

- (a) If the Service Provider continues to occupy the Residential Accommodation after the expiry of the Term with the consent of the Department then the Service Provider does so on a weekly basis on the terms and conditions of this Agreement.
- (b) The weekly licence may be terminated by either the Department or the Service Provider by not less than one week's notice in writing to the other expiring at any time.

4. NO APPLICATION OF RESIDENTIAL TENANCIES ACT 1987 (WA)

4.1 Licence not a residential tenancy agreement

The Service Provider acknowledges and agrees that:

- (a) the licence given under this Agreement is not a "residential tenancy agreement" as defined in section 3 of the Residential Tenancies Act 1987 (WA); and
- (b) the Service Provider has no rights under the Residential Tenancies Act 1987 (WA) in respect of all or any part of the Residential Accommodation.

4.2 No sublicences for valuable consideration

The Service Provider:

- (a) covenants that it will not grant to any person a sublicense or other occupancy right in respect of all or any part of the Residential Accommodation for "valuable consideration" as contemplated in the definition of "residential tenancy agreement" in section 3 of the Residential Tenancies Act 1987 (WA); and
- (b) acknowledges and agrees that none of the Service Provider Personnel will obtain from a sublicense granted to it by the Service Provider any rights under the Residential Tenancies Act 1987 (WA) in respect of all or any part of the Residential Accommodation.

4.3 Indemnity

The Service Provider indemnifies the Department from and against any cost, liability, loss or expense incurred by the Department arising from a breach of **clauses 4.1 or 4.2**.

5. AVAILABILITY OF RESIDENTIAL ACCOMMODATION

5.1 Residential Accommodation

The Service Provider acknowledges and agrees that not all of the Residential Accommodation may be available for occupancy or use by the Service Provider at any particular time.

5.2 Residential Accommodation may vary

Subject to **clause 5.3**, the Department may, from time to time, vary the Residential Accommodation by withdrawing the availability of Residential Accommodation or adding to the Residential Accommodation other properties which may be used for residential purposes.

5.3 Occupied Residential Accommodation

- (a) The Department must make reasonable endeavours not to remove a property from the Residential Accommodation while it is occupied by Service Provider Personnel.

5.4 Service Provider to notify Department of changing accommodation needs

- (a) The Service Provider may request from the Department an increase or decrease in the number of properties made available as Residential Accommodation.
- (b) Notice given under **clause 5.4(a)** must be in writing, and must specify the properties that the Service Provider requests to be removed from or included as Residential Accommodation and must be given to the Department as far in advance as is reasonably possible.

5.5 Department may consider Service Provider's needs

If the Department varies the Residential Accommodation under **clause 5.2**, the Department may have regard to the accommodation needs of the Service Provider as notified to the Department by the Service Provider pursuant to **clause 5.4**.

6. CONDITION AND MAINTENANCE OF RESIDENTIAL ACCOMMODATION**6.1 Inspection of Residential Accommodation**

The Service Provider acknowledges having inspected the Residential Accommodation on or before the date of this Agreement and being satisfied as to its condition and state of repair.

6.2 No claim

The Service Provider may not make any claim concerning the condition or state of repair of the Residential Accommodation and the Residential Accommodation is licensed to the Service Provider in its condition and state of repair as at the date of this Agreement.

6.3 No warranty

To the extent permitted by Law:

- (a) the Department does not give any warranty or representation in respect of the condition or state of repair of the Residential Accommodation;
- (b) the Service Provider waives, releases and renounces any warranty, condition, representation and terms which might otherwise be implied by law in respect of the condition or state of repair of the Residential Accommodation; and
- (c) the Department has no liability to the Service Provider, Service Provider Personnel or their invitees 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 licence to the Service Provider or the occupation or use of the Residential Accommodation.

6.4 Department to maintain and repair

The Department will keep the Residential Accommodation in good condition and repair relative to its condition at the date of this Agreement.

6.5 Service Provider to notify Department

- (a) If urgent or non-routine repairs or maintenance are required to keep the Residential Accommodation in good condition and repair relative to its condition at the date of this Agreement, the Service Provider must notify the Department of the action or actions it considers are required to be taken.

- (b) If the Department agrees that the action or actions the Service Provider considers are required to be taken are reasonable in the circumstances, the Department will undertake that action or those actions within a reasonable time.
- (c) The Service Provider must notify the Department of any orders, directions and demands that the Service Provider is given from or on behalf of any Government Agency having jurisdiction over the Residential Accommodation.

7. RATES, TAXES AND CHARGES

7.1 Statutory charges

Subject to clauses 7.2 and 7.4, the Department must pay all rates, taxes and other statutory charges assessed on the Residential Accommodation.

7.2 Taxes

The Department shall not be liable to pay or reimburse to the Service Provider or to any Service Provider Personnel any income tax, fringe benefits tax, tax on living away from home allowances or any other tax, levied on or payable by the Service Provider or Service Provider Personnel on or in connection with the occupancy or use of the Residential Accommodation by the Service Provider or Service Provider Personnel.

7.3 Utilities

The Department will arrange the provision of, and make prompt payment to the relevant authority or service provider of all costs or charges associated with, the supply and consumption of:

- (a) water;
- (b) sewerage;
- (c) electricity;
- (d) gas (including LPG); and
- (e) subject to clause 7.4, any other utilities connected to the Residential Accommodation.

7.4 Telephone and telecommunications charges

The Service Provider must arrange for the provision of, and make prompt payment to the relevant service provider for all costs or charges associated with, telephone and all other telecommunications charges including internet access and usage fees.

8. SERVICE PROVIDER COVENANTS

8.1 Covenants

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

- (a) use the Residential Accommodation for the Permitted Use and no other use;
- (b) allow the Department or an authorised representative of the Department to enter and inspect the Residential Accommodation at all reasonable times on reasonable notice;
- (c) keep the Residential Accommodation at all times in a clean and tidy condition;
- (d) comply, to the extent relevant under this Agreement, at its own expense with all Laws, and orders, directions and demands given by or on behalf of any Government Agency having jurisdiction over the Residential Accommodation (including but not limited to those relating to the Building Code of Australia, disability discrimination, the environment, fire precautions, insurance and fire alarms);
- (e) ensure that the Service Provider, the Service Provider Personnel, and their respective invitees do not do or omit to do anything in relation to the Residential Accommodation which:
 - (i) annoys, offends, obstructs or interferes with the use of any part of the Residential Accommodation by the Department, its agents, employees, service providers or contractors or any other person; or
 - (ii) annoys or offends the Department or any occupier of any adjoining or neighbouring property.

8.2 Additional covenants

The Service Provider for itself, the Service Provider Personnel, and their respective invitees covenants and agrees with the Department not to:

- (a) make any modification, alterations, additions or other changes (structural or non-structural) or carry out any building or works whatsoever in or to the Residential Accommodation without the prior written consent of the Department;
- (b) damage the Residential Accommodation or any thing on or in the Residential Accommodation or injure any person in or around the Residential Accommodation;
- (c) cause any contamination, pollution or environmental damage;
- (d) keep any rubbish in or around the Residential Accommodation;

- (e) use the Residential Accommodation for any illegal purpose or do anything which does or could annoy or offend the Department or the occupants of any nearby Residential Accommodation or the Department or occupier of any adjacent our neighbouring property; or
- (f) store any thing in the Residential Accommodation which is dangerous, explosive or could increase the risk of fire in or near the Residential Accommodation.

9. ASSIGNMENT AND SUBLICENSING

9.1 No assignment

Subject to clause 9.2, the Service Provider must not assign, transfer possession or in any way dispose of any interest in the licence granted under this Agreement (including by way of lien, charge, mortgage or other Security Interest) or allow any person other than Eligible Personnel to use the Residential Accommodation without the prior written consent of the Department which may be granted conditionally or withheld at the Department's absolute discretion.

9.2 Consent not required for Eligible Personnel

- (a) The Service Provider does not require the consent of the Department to the grant of a fee-free non-exclusive licence to occupy Residential Accommodation if the grant is:
 - (i) to Eligible Personnel; and
 - (ii) on terms and conditions which are not inconsistent with the terms and conditions of this Agreement.
- (b) Notwithstanding any other provision of this Agreement, if an Eligible Personnel ceases to be Eligible Personnel while in occupation of Residential Accommodation, the Service Provider must terminate the sublicense and procure the Eligible Personnel to vacate the Residential Accommodation immediately.

9.3 Priority to certain Service Provider Personnel

The Service Provider must not sublicense the Residential Accommodation identified as [insert] to anyone other than [*insert title or position description of Manager*].

10. RELEASE AND INDEMNITY

10.1 Release of Department

- (a) The Service Provider occupies and uses the Residential Accommodation at its own risk and the Department accepts no responsibility for any loss or damage to any Service Provider Property.

- (b) To the extent permitted by law, the Service Provider releases the Department from any claim, action, damage, loss, liability, cost or expense which the Service Provider suffers or incurs or is liable for in respect of:
- (i) any loss or damage to the Service Provider Property;
 - (ii) any loss or damage resulting from the Service Provider's use of the Residential Accommodation; or
 - (iii) the death of, or injury to, any person in or around the Residential Accommodation.

10.2 Indemnity

The Service Provider indemnifies the Department against any claim, action, loss, damage, cost, liability, expense or payment suffered or incurred by the Department in respect of:

- (a) the use of the Residential Accommodation by the Service Provider or the Service Provider Personnel or invitees;
- (b) any default by the Service Provider under this Agreement; and
- (c) the Department's termination of this Agreement under **clause 12**,

including, without limitation, the loss to the Department of the benefit of the Service Provider performing its obligations under this Agreement from the date of termination until the end of the Term.

11. INSURANCE

11.1 Insurance

The Service Provider must ensure that the insurance that it is required to effect and maintain under **clause 61** of the Contract is sufficient to meet any liability that may arise under this Agreement.

11.2 Other requirements

If requested by the Department, the Service Provider must give the Department a certificate of currency for any policy effected and maintained pursuant to **clause 11.1**.

11.3 Maintain insurance

The Service Provider must not do anything which could have the following result in respect of any insurance policy taken out by the Department in respect of the Residential Accommodation:

- (a) increase the insurance premium payable; or
- (b) affect the Department's rights under the policy or make the policy invalid or able to be cancelled.

11.4 Cost and risk of Service Provider's obligations

If the Service Provider is obliged to do anything under this Agreement, it must do so at its own cost and at its risk.

12. DEFAULT AND TERMINATION

12.1 Default of licence

The Service Provider is in default of this Agreement if:

- (a) it does not perform any express or implied obligation of the Service Provider under this Agreement;
- (b) it repudiates its obligations under this Agreement; or
- (c) it is in Default of the Contract.

12.2 Notice of termination for breach by Service Provider

- (a) If the Service Provider is in default pursuant to **clause 12.1**, the Department may give a notice to the Service Provider (**First Notice**) requiring the default to be remedied.
- (b) If the Service Provider does not remedy the default within 14 days after the First Notice was given, the Department may give to the Service Provider another notice (**Second Notice**) ending the licence granted under this Agreement not less than 7 days after the Second Notice is given.

12.3 If Contract terminates

If the Contract is terminated or ends pursuant to its terms the licence granted under this Agreement terminates automatically on the day the Contract is terminated or ends.

12.4 Department may remedy breach

If the Service Provider does not comply with any term of this Agreement, then without affecting any other right of the Department the Department may, without notice, remedy the Service Provider's non-compliance at the Service Provider's cost.

12.5 Department's right on re entry

On re entry by the Department into the Residential Accommodation, the licence granted under this Agreement will immediately determine but without:

- (a) affecting any of the Department's rights contained or implied in this Agreement; or
- (b) releasing the Service Provider from liability in respect of the Service Provider's obligations under this Agreement.

13. SERVICE PROVIDER'S OBLIGATIONS ON TERMINATION

13.1 Service Provider to vacate

On termination of this Agreement the Service Provider must immediately vacate the Residential Accommodation, remove or procure the removal of all Service Provider Property, make good to the satisfaction of the Department any damage caused by that removal, and return all keys to the Department.

13.2 Removal and storage of Service Provider Property

- (a) If the Service Provider does not comply with **clause 13.1**, the Department may remove the Service Provider Property from the Residential Accommodation and store it, all at the cost of the Service Provider.
- (b) If the Service Provider has not removed or procured the removal of the Service Provider Property from storage within 7 days of being requested by the Department to do so, the Department may dispose of the Service Provider Property without notice to the Service Provider or any Service Provider Personnel.

13.3 Condition of Residential Accommodation

When the Service Provider vacates the Residential Accommodation, the Service Provider must leave the Residential Accommodation in the same condition as at the date of this Agreement, fair wear and tear excepted.

14. NOTICES

14.1 Address for notices

Unless otherwise provided, any notice, request or other communication given under this Agreement must be in writing and dealt with as follows:

- (a) if given by the Service Provider to the Department, signed by the Service Authority or the Service Administrator and marked for the attention of the Contract Authority or the Contract Administrator at the address set out in **clause 14.2** or as otherwise notified from time to time by the Department; or
- (b) if given by the Department to the Service Provider, signed by the Contract Authority or the Contract Administrator and marked for the attention of the Service Authority and the Service Administrator at the address set out in **clause 14.2** or as otherwise notified from time to time by the Service Provider.

14.2 Addresses

- (a) The address for the Department:

Contract Authority – Detention Services Contract

First Assistant Secretary, Community and Detention Services Division
PO Box 25
Belconnen ACT 2616
Email: Detention.Management@immi.gov.au

Facsimile: 61 2 6264 1100

- (b) The address for the Service Provider

Service Authority – Detention Services Contract

Company Secretary
Serco Asia Pacific
Level 10
90 Arthur Street
Sydney
2060

Facsimile: 61 2 9964 9924

14.3 Delivery of notices

Any notice, request or other communication is to be delivered by hand, sent by prepaid post or transmitted electronically, and if it is sent or transmitted electronically a copy is to be sent to the addressee by prepaid post.

14.4 Receipt of notices

A notice, request or other communication will be deemed to be received:

- (a) if delivered by hand upon delivery;
- (b) if sent by prepaid ordinary post within Australia, upon the expiration of 2 Business Days after the date on which it was sent;
- (c) if sent by prepaid ordinary post outside Australia, upon the expiration of 5 Business Days after the date on which it was sent; and
- (d) if transmitted by facsimile, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

15. AMENDMENT**15.1 Amendment**

This Agreement can only be amended or replaced by another document signed by the parties.

16. GENERAL**16.1 Governing law**

- (a) This Agreement is governed by the laws of the Australian Capital Territory.
- (b) Each Party submits to the jurisdiction of the courts of the Australian Capital Territory and of any court that may hear appeals from these courts for any proceedings in connection with this Agreement.

16.2 Liability for expenses

- (a) Each Party must pay its own expenses incurred in negotiating, executing, stamping and registering this Agreement.
- (b) The Service Provider must indemnify the Department against, and must pay to the Department on demand the amount of, any duty (including penalties and interest) that is payable on or in relation to this Agreement and the transactions that it contemplates.

16.3 Giving effect to Agreement

Each Party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other Party may reasonably require to give full effect to this Agreement.

16.4 Waiver of rights

- (a) A right may only be waived in writing, signed by the Party giving the waiver.
- (b) No other conduct of a Party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.
- (c) A waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again.
- (d) The exercise of a right does not prevent any further exercise of that right or of any other right.

16.5 Operation of this Agreement

- (a) Any right that a Party may have under this Agreement is in addition to, and does not replace or limit, any other right that the Party may have.
-

- (b) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

16.6 Operation of indemnities

- (a) Each indemnity in this Agreement survives the expiry or termination of this Agreement.
- (b) A Party may recover a payment under an indemnity in this Agreement before it makes the payment in respect of which the indemnity is given.

16.7 Consents

Where this Agreement contemplates that the Department may agree or consent to something (however it is described), the Department may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions,

unless this Agreement expressly states otherwise.

16.8 Exclusion of contrary legislation

Any legislation that adversely affects an obligation of a Party, or the exercise by a Party of a right or remedy, under or relating to this Agreement is excluded to the full extent permitted by law.

16.9 Inconsistency with other documents

- (a) Subject to **clause 16.9(b)**, if this Agreement is inconsistent with any other document or agreement between the parties, this Agreement prevails to the extent of the inconsistency.
- (b) If this Agreement is inconsistent with the Contract, the Contract prevails to the extent of any inconsistency,

16.10 Counterparts

This Agreement may be executed in counterparts.

16.11 Attorneys

Each person who executes this Agreement on behalf of a Party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

SCHEDULE 1**RESIDENTIAL ACCOMMODATION**

Block 564 - 11B San Chye Loh, Poon Saan, CI (8 units)

Block 565- 11A San Chye Loh, Poon Saan, CI (14 units)

Block 566 – 13 Poon Saan Rd, Poon Saan, CI (16 units)

Block 567 – 15 Poon Saan Rd, Poon Saan, CI (16 units)

Block 568 – 17 Poon Saan Rd, Poon Saan, CI (16 units)

Block 569 – 19 Poon Saan Rd, Poon Saan, CI (16 units)

Block 570 – 22 Poon Saan Rd, Poon Saan, CI (10 units)

Block 670 – 21A Jalan Perak, Silver City, CI (16 units)

Block 671 – 21B Jalan Perak, Silver City, CI (16 units)

Block 672 – 23B Jalan Perak, Silver City, CI (16 units)

Block 673 – 23A Jalan Perak, Silver City, CI (16 units)

Duplex 3 bedroom houses

14A & 14B Jalan Ketam Merah, Drumsite, CI

16A & 16B Jalan Ketam Merah, Drumsite, CI

18A & 18B Jalan Ketam Merah, Drumsite, CI

20A & 20B Jalan Ketam Merah, Drumsite, CI

22A & 22B Jalan Ketam Merah, Drumsite, CI

2 x 3 bedroom houses

24A Sin Sang Road, Drumsite, CI

24B Sin Sang Road, Drumsite, CI

EXECUTED by the parties as a deed

SIGNED for and on behalf of
Commonwealth of Australia by:

Signature

Signature of Witness

Date

Name of Witness in full

EXECUTED by Serco Australia Pty
Limited:

Signature of director/secretary

Signature of director

Name

Name

Date



Australian Government

Department of Immigration and Citizenship

Detention Services Contract

Immigration Detention Centres

SCHEDULE 1

FACILITY DESCRIPTIONS AND PLANS

ANNEXURE B – MARIBRYNONG IDC SITE PLANS

s. 22(1)(a)(ii) ¹⁵⁸



Australian Government

Department of Immigration and Citizenship

Detention Services Contract

Immigration Detention Centres

SCHEDULE 1

FACILITY DESCRIPTIONS AND PLANS

ANNEXURE C – NORTHERN IDC SITE PLANS

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