



Australian Government
Department of Immigration and Citizenship

REGIONAL PROCESSING COUNTRIES
HEALTH SERVICES CONTRACT

Commonwealth of Australia
represented by
Department of Immigration and Citizenship

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

CONTENTS

PART 1 - INTERPRETATION AND SCOPE	15
1. DEFINITIONS AND RULES OF INTERPRETATION	15
1.1 DEFINITIONS	15
1.2 RULES FOR INTERPRETING THIS DOCUMENT.....	15
2. SCOPE	15
2.1 VARIATION TO HEADS OF AGREEMENT	15
PART 2 - IMPLEMENTATION	15
3. IMPLEMENTATION	15
3.1 CONTINUATION OF IMPLEMENTATION.....	15
3.2 IMPLEMENTATION OF HEALTH SERVICES	16
4. SALE OF LOOSE ASSETS	16
4.1 LOOSE ASSETS	16
4.2 TERMS OF SALE	16
4.3 THE DEPARTMENT'S WARRANTY.....	17
4.4 RIGHT TO RE-PURCHASE ESSENTIAL LOOSE ASSETS	17
PART 3 - TERM	17
5. TERM	17
5.1 COMMENCEMENT	17
5.2 EXTENSIONS	ERROR! BOOKMARK NOT DEFINED.
PART 4 – LEGAL AND POLICY FRAMEWORK	17
6. CONTRACT OBJECTIVES	18
6.1 OBJECTIVES	18
7. DUTY OF CARE	19
7.1 EXISTENCE OF DUTIES	19
8. SERVICE DELIVERY MODEL	20
8.1 COMPLIANCE WITH SERVICE DELIVERY MODEL.....	20
9. CONSULTATION, COLLABORATION AND COOPERATION	20

9.1	COOPERATION AND GOOD FAITH.....	20
9.2	CONSULTATION AND COOPERATION WITH THE DEPARTMENT	21
9.3	COOPERATION WITH OTHER PROVIDERS	21
10.	COMMONWEALTH AND IMMIGRATION OMBUDSMAN.....	21
10.1	JURISDICTION OF COMMONWEALTH AND IMMIGRATION OMBUDSMAN.....	21
PART 5 – HEALTH SERVICES MANAGER ROLE AND RESPONSIBILITIES.....		22
11.	SERVICE OBLIGATIONS	22
11.1	GENERAL.....	22
11.2	SERVICE WARRANTIES.....	23
11.3	COMPLIANCE WITH LAWS AND POLICY REQUIREMENTS	23
11.4	CHANGES TO DEPARTMENT HEALTH POLICY	23
11.5	ACCESS AND REFERRAL ARRANGEMENTS	26
11.6	HEALTH SERVICES MANAGER RESOURCES.....	26
11.7	INCIDENTAL SERVICES OR FUNCTIONS	26
12.	OTHER SERVICES PROVIDERS.....	26
13.	HEALTH CARE RECORDS.....	27
13.1	EXISTING HEALTH CARE RECORDS	27
13.2	CREATION OF HEALTH CARE RECORDS	27
13.3	SUPPLY OF HEALTH CARE RECORDS	27
13.4	AMENDING OR DESTROYING HEALTH CARE RECORDS.....	28
14.	CONFLICTING REQUIREMENTS.....	28
PART 6 – NETWORK PROVIDERS, HEALTH SERVICE MANAGER PERSONNEL AND		
SUBCONTRACTORS		28
15.	NETWORK PROVIDERS	28
16.	KEY PERSONNEL	29
16.1	KEY PERSONNEL.....	29
16.2	RETENTION OF KEY POSITIONS AND KEY PERSONNEL.....	29
16.3	REPLACEMENT OF KEY PERSONNEL	29
16.4	REMOVAL OF KEY PERSONNEL	30
17.	ILLEGAL WORKERS	30
18.	SUBCONTRACTOR ARRANGEMENTS	30

18.1	TERM OF SUBCONTRACTS	30
18.2	APPROVAL OF MAJOR SUBCONTRACTS	31
18.3	INITIAL APPROVED MAJOR SUBCONTRACTORS	31
18.4	CONDITIONS OF MAJOR SUBCONTRACTS	31
18.5	DEED OF SUBSTITUTION	31
18.6	COPIES OF SUBCONTRACTS AND NETWORK PROVIDER AGREEMENTS	32
18.7	DEPARTMENT MAY CONTACT SUBCONTRACTORS OR NETWORK PROVIDERS	32
18.8	HEALTH SERVICES MANAGER LIABILITY AND OBLIGATIONS	32
18.9	SUBCONTRACTOR WARRANTY	33
18.10	ENFORCEMENT OF RIGHTS AGAINST SUBCONTRACTORS	33
18.11	SUBCONTRACTOR TO PAY ALL TAXES	33
18.12	PAYROLL TAX AND WORKERS' COMPENSATION NOTICES	33
PART 7 – MANAGEMENT AND GOVERNANCE		34
19.	PROJECT MANAGEMENT	34
20.	NATIONAL CONTRACT MANAGEMENT REPRESENTATIVES	35
20.1	THE DEPARTMENT CONTRACT MANAGEMENT REPRESENTATIVES	35
20.2	HEALTH SERVICES MANAGER CONTRACT MANAGEMENT REPRESENTATIVES	35
20.3	GOVERNANCE COMMITTEE MEETINGS	35
21.	FACILITY MANAGEMENT MODEL	36
21.1	GUIDELINES	36
21.2	DIRECTIONS POWER	36
21.3	LIMITS ON DIRECTIONS POWER	37
21.4	PROCEDURE FOR GIVING AND RECORDING DIRECTIONS	37
21.5	COMPLIANCE WITH DIRECTIONS	37
PART 8 – FACILITY ACCESS AND DEPARTMENT EQUIPMENT		37
22.	ACCESS TO FACILITIES	37
22.1	ACCESS	37
22.2	CONDITION OF FACILITIES	38
23.	DEPARTMENT ASSETS AND SYSTEMS	39
23.1	USE OF DEPARTMENT ASSETS AND DEPARTMENT SYSTEMS	39
23.2	MAINTENANCE AND REPLACEMENT OF DEPARTMENT ASSETS AND SYSTEMS	39
23.3	CONDITION OF FACILITIES AND DEPARTMENT ASSETS	40

24. HEALTH SERVICES MANAGER ASSETS	41
25. ASSET REGISTER	41
25.1 ASSET REGISTER.....	41
25.2 ERRORS IN THE ASSET REGISTER.....	42
25.3 SURVIVAL.....	42
25.4 RECORD KEEPING OBLIGATIONS	42
PART 9 – PERFORMANCE MANAGEMENT.....	42
26. PERFORMANCE MEASURES.....	ERROR! BOOKMARK NOT DEFINED.
27. PERFORMANCE MONITORING	44
27.1 MEASURING AND MONITORING OF PERFORMANCE.....	44
27.2 REPORTING ON PERFORMANCE	44
28. ABATEMENTS.....	44
28.1 NON-FINANCIAL ABATEMENTS.....	44
29. REVIEWS AND MEETINGS.....	44
29.1 MEETINGS.....	44
PART 10 – CHANGE MANAGEMENT AND CHANGE CONTROL.....	44
30. CHANGE MANAGEMENT	44
30.1 CHANGE MANAGEMENT CLAUSES.....	44
31. DEACTIVATING AND REACTIVATING A FACILITY.....	45
31.1 DEPARTMENT'S RIGHTS	45
31.2 REACTIVATION OF A FACILITY	46
31.3 DEACTIVATION OF A FACILITY	46
31.4 PAYMENTS RELATING TO THE DEPARTMENT'S DECISION TO REACTIVATE OR DEACTIVATE A FACILITY.....	46
31.5 DEFINITIONS	47
31.6 CHANGE CONTROL.....	47
32. REMOVAL OF HEALTH SERVICES FROM SCOPE.....	49
32.1 NOTICE REQUIRING REMOVAL OF HEALTH SERVICES.....	49
32.2 LIMITS ON REMOVAL OF HEALTH SERVICES FROM SCOPE	49
33. ADDITIONAL OR EXPANDED SERVICES	50

33.1	NOTIFICATION	50
33.2	COMPLIANCE WITH NOTICE	50
33.3	HEALTH SERVICES FEE ADJUSTMENT	50
33.4	PROOF OF REASONABLE CHARGES	50
33.5	HEALTH SERVICE MANAGER MAY SUGGEST EXPANDED OR ADDITIONAL SERVICES	50
33.6	ADDITIONAL SERVICES BECOME PART OF THE HEALTH SERVICES	51
33.7	ORIGINAL SERVICE OBLIGATIONS UNAFFECTED	51
34.	CONTRACT CHANGE PROCEDURE.....	52
34.1	VARIATIONS TO THIS CONTRACT	52
34.2	NOTIFICATION	52
34.3	HEALTH SERVICES MANAGER OBLIGATIONS.....	52
34.4	COSTS	54
34.5	ACCEPTANCE	54
34.6	IMPLEMENTATION	55
34.7	EFFECT OF VARIATIONS.....	55
PART 11 – PAYMENTS.....		56
35.	HEALTH SERVICES FEE AND OTHER PAYMENTS	56
36.	ADJUSTMENT OF ONSITE HEALTH CLINIC FEE	56
36.1	ANNUAL ADJUSTMENT	56
36.2	MONTHLY ADJUSTMENT	56
37.	TIMING AND MANNER OF PAYMENT.....	57
38.	INVOICES	57
38.1	TIMING OF INVOICES	57
38.2	FORM AND TIMING OF INVOICE.....	58
38.3	DISPUTES RELATING TO INVOICES	58
38.4	INCORRECT INVOICES	58
39.	RIGHT OF THE DEPARTMENT TO RECOVER MONEY	59
39.1	DEDUCTIONS	59
39.2	NOTICE OF DEDUCTIONS.....	59
40.	GOODS AND SERVICES TAX.....	59
40.1	TAXES AND DUTIES GENERALLY	59

40.2	GST	59
PART 12 – CONTRACT AND SERVICE MANAGEMENT		61
41.	REPORTING REQUIREMENTS	61
42.	FINANCIAL MANAGEMENT.....	62
42.1	ACCOUNTS AND OTHER RECORDS.....	62
42.2	OPEN BOOK ACCOUNTING	63
42.3	AUDITED FINANCIAL STATEMENTS	63
42.4	PROVISION OF INFORMATION RELEVANT TO FUTURE MARKET TESTING	63
42.5	RECORDS REGARDING LOCATION OF DEPARTMENT ASSETS.....	64
43.	AUDIT	64
43.1	SUBJECT OF AUDITS.....	64
43.2	CONDUCT OF AUDITS.....	65
44.	ACCESS TO THE HEALTH SERVICES MANAGER'S PREMISES AND RECORDS	66
44.1	GRANT OF ACCESS.....	66
44.2	ASSISTANCE TO BE MADE AVAILABLE	67
44.3	COMMONWEALTH AND IMMIGRATION OMBUDSMAN, AUDITOR-GENERAL, PRIVACY COMMISSIONER AND AUSTRALIAN INFORMATION COMMISSIONER.....	67
44.4	SURVIVAL OF CLAUSE	69
PART 13 - INFORMATION MANAGEMENT.....		69
45.	INTELLECTUAL PROPERTY.....	69
45.1	INTELLECTUAL PROPERTY RIGHTS	69
45.2	GRANT OF LICENCES	69
45.3	MORAL RIGHTS	70
45.4	INTELLECTUAL PROPERTY WARRANTY	70
45.5	INTELLECTUAL PROPERTY INDEMNITY	70
45.6	INTELLECTUAL PROPERTY RIGHTS FOR CHIRON	71
45.7	SURVIVAL OF CLAUSE	71
46.	HEALTH SERVICES MANAGER'S CONFIDENTIAL INFORMATION.....	71
46.1	PROTECTION OF HEALTH SERVICES MANAGER CONFIDENTIAL INFORMATION	79
47.	DEPARTMENT INFORMATION	80
47.1	PROTECTION OF THE DEPARTMENT INFORMATION	80

47.2	PROVISION OF THE DEPARTMENT INFORMATION TO HEALTH SERVICES MANAGER PERSONNEL	80
47.3	SCOPE AND SURVIVAL OF CONFIDENTIALITY OBLIGATIONS	81
48.	PRIVACY	82
48.1	DEFINITIONS	82
48.2	PRIVACY OBLIGATIONS	83
48.3	PERMITTED DISCLOSURES	85
48.4	PERMITTED USES	86
48.5	COPIES AND OTHER RECORDS	86
48.6	SECURITY	87
48.7	PRIVACY COMMISSIONER AND AUSTRALIAN INFORMATION COMMISSIONER	87
48.8	RETURN OR DESTRUCTION OF RECORDS	88
48.9	NO RELEASE	89
48.10	INDEMNITY FOR BREACH OF PRIVACY OBLIGATIONS	89
48.11	SURVIVAL OF CLAUSE	89
49.	RECORDS MANAGEMENT	89
49.1	DEPARTMENT RECORDS	89
50.	ARCHIVES ACT	90
51.	DATA SECURITY	90
51.1	ACKNOWLEDGEMENT	90
51.2	USE OF THE DEPARTMENT DATA	91
51.3	COMPLIANCE WITH SECURITY REQUIREMENTS	91
51.4	RECORDS	92
52.	PROVISION OF INFORMATION	92
52.1	SHARING OF INFORMATION	92
52.2	DEPARTMENT SYSTEMS	93
53.	PUBLICITY, MEDIA AND EXTERNAL RELATIONSHIP MANAGEMENT	93
53.1	PUBLICITY AND MEDIA TO BE MANAGED BY THE DEPARTMENT	93
PART 14 - INTERRUPTIONS TO SERVICE DELIVERY		95
54.	FORCE MAJEURE	95
54.1	FORCE MAJEURE NOTICE	95
54.2	SUSPENSION NOTICE	95

54.3	MANAGEMENT OF FORCE MAJEURE EVENT	95
54.4	MEETING BETWEEN THE PARTIES	96
54.5	SUSPENSION OF OBLIGATIONS	96
54.6	TERMINATION FOR FORCE MAJEURE	96
54.7	HEALTH SERVICES MANAGER MUST UPDATE CONTRACT ADMINISTRATOR	97
54.8	ALTERNATIVE SUPPLY AND ONSITE HEALTH CLINIC FEE REDUCTION	97
54.9	PAYMENTS, FINANCIAL UNDERTAKING AND PERFORMANCE GUARANTEE	98
PART 15 REPRESENTATIONS AND WARRANTIES		98
55.	REPRESENTATIONS AND WARRANTIES	98
55.1	HEALTH SERVICES MANAGER REPRESENTATIONS AND WARRANTIES	98
55.2	REPETITION OF REPRESENTATIONS AND WARRANTIES	100
55.3	RELIANCE ON REPRESENTATIONS AND WARRANTIES	101
55.4	NO REPRESENTATIONS BY THE DEPARTMENT	101
PART 16 – INDEMNITY AND INSURANCE		101
56.	LIABILITY	101
56.1	INDEMNITY	101
56.2	HEALTH SERVICES MANAGER'S LIMIT ON LIABILITY FOR NETWORK PROVIDERS	102
56.3	EXCEPTIONS TO THE HEALTH SERVICES MANAGER'S LIMIT ON LIABILITY FOR NETWORK PROVIDERS	102
56.4	DEPARTMENT'S LIMITED RECOURSE	106
56.5	CONSEQUENTIAL LOSS	107
56.6	LIMIT ON DEPARTMENT'S LIABILITY	109
56.7	NO LIMITATION ON LIABILITY FOR UNLAWFUL ACTS	109
56.8	PROPORTIONATE REDUCTION OF LIABILITY TO INDEMNIFY	110
56.9	NON-EXCLUSIVE REMEDY	110
56.10	MEANING OF "THE DEPARTMENT" IN THIS CLAUSE	110
56.11	SURVIVAL OF CLAUSE	110
57.	INSURANCE	111
57.1	HEALTH SERVICES MANAGER MUST INSURE	111
57.2	DURATION OF INSURANCE	111
57.3	REPUTABLE AND SOLVENT INSURER	111
57.4	TERMS OF INSURANCE	111
57.5	COPIES OF INSURANCES AND CERTIFICATES OF CURRENCY	112
57.6	HEALTH SERVICES MANAGER'S INSURANCE OBLIGATIONS	113

57.7	HEALTH SERVICES MANAGER'S NOTIFICATION OBLIGATIONS	113
57.8	SUBCONTRACTORS' INSURANCE	114
57.9	NETWORK PROVIDER INSURANCE	114
57.10	HEALTH SERVICES MANAGER'S LIABILITY NOT LIMITED	114
PART 17 – PERFORMANCE SECURITIES		114
58.	FINANCIAL UNDERTAKING	114
58.1	PROVISION OF FINANCIAL UNDERTAKING	114
58.2	EXTENSION OF FINANCIAL UNDERTAKING	115
58.3	AMOUNTS COVERED BY FINANCIAL UNDERTAKING	115
58.4	REPLACEMENT OF FINANCIAL UNDERTAKING	115
58.5	MONIES PAID BUT NOT DEMANDED	116
58.6	MEANING OF FINANCIAL UNDERTAKING	117
58.7	CONSIDERATION	117
59.	PERFORMANCE GUARANTEE	117
PART 18 – DISPUTE RESOLUTION		117
60.	DISPUTE RESOLUTION	117
60.1	APPLICATION	117
60.2	CONDITIONS PRECEDENT TO A DISPUTE BEING DEALT WITH UNDER THIS CLAUSE	118
60.3	NEGOTIATION BETWEEN HEALTH SERVICE AUTHORITY AND THE CONTRACT AUTHORITY	118
60.4	NEGOTIATION BY HEALTH SERVICES MANAGER'S CHIEF EXECUTIVE OFFICER AND THE DEPARTMENT'S DEPUTY SECRETARY (TOGETHER, SENIOR MANAGERS)	120
60.5	EXPERT DETERMINATION	121
60.6	EXPEDITED ARBITRATION PROCEDURE	123
60.7	MEDIATION PROCEDURE	124
60.8	CONTINUANCE OF PERFORMANCE	125
60.9	SUMMARY OR URGENT RELIEF	125
60.10	CONTINUANCE OF OBLIGATIONS	125
60.11	TERMINATION	126
PART 19 – DEFAULT AND TERMINATION		126
61.	DEFAULT	126
61.1	NOTIFICATION	126
61.2	THE DEPARTMENT RIGHTS	126

61.3	CURE.....	126
61.4	REMEDIES.....	127
62.	TERMINATION FOR DEFAULT	127
62.1	TERMINATION BY THE DEPARTMENT.....	127
62.2	TERMINATION EVENTS.....	128
62.3	INSOLVENCY AND OTHER EVENTS	128
62.4	REPAYMENT ON TERMINATION	130
62.5	CONSEQUENCES OF TERMINATION FOR DEFAULT	130
62.6	HEALTH SERVICES MANAGER'S ACKNOWLEDGEMENT.....	130
63.	TERMINATION FOR CONVENIENCE.....	130
63.1	THE DEPARTMENT MAY TERMINATE FOR CONVENIENCE.....	130
63.2	TRANSITION OUT OBLIGATIONS.....	131
63.3	PAYMENT FOR HEALTH SERVICES RENDERED PRIOR TO TERMINATION.....	131
63.4	COMPENSATION FOR UNAVOIDABLE LOSSES	131
63.5	TERMINATION OF SUBCONTRACTS FOR CONVENIENCE	131
63.6	UNFETTERED DISCRETION	132
64.	DEEMED TERMINATION FOR CONVENIENCE	132
65.	TRANSITION OUT	132
65.1	DEVELOPMENT OF TRANSITION OUT PLAN.....	132
65.2	TRANSITION OUT PERIOD	133
65.3	COMPLIANCE WITH TRANSITION OUT PLAN	134
65.4	TRANSITION OF HEALTH SERVICES REMOVED FROM SCOPE.....	135
65.5	DEPARTMENT ASSETS	136
65.6	UPDATE AND REVIEW OF TRANSITION OUT PLAN	136
65.7	FEES FOR TRANSITION OUT SERVICES.....	137
65.8	HEALTH SERVICES MANAGER MUST NOT HINDER TRANSITION	137
65.9	SURVIVAL OF CLAUSE	137
66.	MISCELLANEOUS	138
66.1	INDUSTRY DEVELOPMENT.....	138
66.2	CONFLICT OF INTEREST	138
66.3	NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY	139
66.4	WAIVER	139
66.5	ASSIGNMENT AND NOVATION	139

66.6	APPLICABLE LAW	140
66.7	ENTIRE AGREEMENT	140
66.8	DEPARTMENT REPRESENTATIVES	140
66.9	COUNTERPARTS	141
66.10	SEVERABILITY	141
66.11	FURTHER ASSURANCE	141
66.12	CONSENT	141
66.13	EQUAL EMPLOYMENT OPPORTUNITY	141
66.14	FAIR WORK PRINCIPLES	142
66.15	WORK HEALTH AND SAFETY	143
66.16	ENVIRONMENTAL PROTECTION	145
67.	NOTICES	145
67.1	ADDRESS FOR NOTICES	145
67.2	ADDRESSES	146
67.3	DELIVERY OF NOTICES	147
67.4	RECEIPT OF NOTICES	147
68.	INTERPRETATION	147
68.1	INTERPRETATION	147
68.2	INCONSISTENCY	149
68.3	CONSENTS	150

SCHEDULES

1. Glossary
2. Statement of Work
 - Annexure A – Incidents
 - Annexure B – Onsite Health Services
3. Deed of Substitution
- 4.1 Performance Management Manual
- 4.2 Governance
 - Annexure A – Code of Conduct
- 4.3 Reporting
5. Fees and Payments
 - Annexure A – Pricing Tables
6. Personnel Arrangements and Conditions
7. Key Personnel and Approved Major Subcontractors
8. Department Assets
9. Performance Securities
10. Confidential Information
11. Confidentiality Deed
12. Deed of Non-Disclosure of Personal Information
13. Health Services Manager Insurance
- 13A. Network Provider Insurance
14. Change Control
15. Australian Government and Department Policies
16. Intellectual Property Rights (IP Register)

Health Services Contract

DATE

PARTIES

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

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

RECITALS

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

OPERATIVE PROVISIONS

PART 1 - INTERPRETATION AND SCOPE

1. DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions

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

1.2 Rules for Interpreting This Document

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

2. SCOPE

2.1 Variation to Heads of Agreement

The Parties agree that:

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

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

PART 2 - IMPLEMENTATION

3. IMPLEMENTATION

3.1 Continuation of Implementation

- (a) The Parties acknowledge and agree that the Health Services Manager commenced implementing health services to Transferees and Recipients at the Facilities in accordance with a draft implantation plan and the approved Implementation Plan.

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

3.2 Implementation of Health Services

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

4. SALE OF LOOSE ASSETS

4.1 Loose Assets

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

4.2 Terms of Sale

If at any time during the Term, the Department agrees to sell, and the Health Services Manager agrees to purchase Loose Assets, the following terms will apply to the sale:

- (a) full title to, and all risks relating to, the relevant Loose Assets will pass to the Health Services Manager on and from the payment of the sale price;
 - (b) the Loose Assets will be deemed to have been delivered by the Department to the
-

Health Services Manager on the date of payment of the sale price;

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

4.3 **The Department's Warranty**

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

4.4 **Right to Re-purchase Essential Loose Assets**

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

PART 3 - TERM

5. **TERM**

5.1 Commencement

This Contract commences on the Commencement Date and expires on 31 October 2015 ('Initial Term'), unless terminated earlier in accordance with this Contract.

PART 4 – LEGAL AND POLICY FRAMEWORK

6. CONTRACT OBJECTIVES

6.1 Objectives

- (a) The primary objectives of this Contract are to:
- (i) provide an open, accountable and transparent health care service to Transferees and Recipients on Nauru and Manus Island that offers the Department value for money;
 - (ii) provide Transferees and Recipients with a range and standard of Health Care that is the best available in the circumstances, and utilising facilities and personnel on Nauru and Manus Island, and that as far as possible (but recognising any unavoidable limitations deriving from circumstances of Manus Island and Nauru):
 - (A) ensures Transferees and Recipients have access to Health Care, to a level, standard and timeliness broadly comparable with that available within the Australian community, taking into account the particular health needs of Transferees and Recipients;
 - (B) ensures coordinated, high quality, evidence-based Health Care is available to Transferees and Recipients on the basis of clinical need and without any form of discrimination, and with appropriate dignity, humanity, cultural and gender sensitivity and respect for privacy and confidentiality; and
 - (C) empowers Transferees and Recipients with the means to manage and respond to their own health needs (as appropriate for the circumstances of each individual), including by articulating for each Transferee and Recipient (in a manner they are able to easily understand) the range and standard of Health Care that is available to that person under this Contract; and

- (iii) continuously improve the quality, effectiveness and efficiency of performance of the Health Services including by implementing the Service Delivery Model.
- (b) The Health Services Manager must perform (and take all reasonable steps to ensure all Health Services Manager Personnel and Network Providers perform, as applicable) the Health Services with the aim at all times of satisfying the Contract Objectives.
- (c) This **clause 6** describes the intention of the Parties in entering into this Contract. It is not intended to alter the plain meaning of any other provision of this Contract. However, if any provision of this Contract does not address a particular circumstance or is otherwise unclear or ambiguous, that provision is to be interpreted and construed by reference to the objectives described in this **clause 6.1**.

7. DUTY OF CARE

7.1 Existence of Duties

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

from the performance of this Contract.

8. **SERVICE DELIVERY MODEL**

8.1 **Compliance with Service Delivery Model**

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

9. **CONSULTATION, COLLABORATION AND COOPERATION**

9.1 **Cooperation and Good Faith**

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

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

9.2 Consultation and Cooperation with the Department

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

9.3 Cooperation with Other Providers

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

10. COMMONWEALTH AND IMMIGRATION OMBUDSMAN

10.1 Jurisdiction of Commonwealth and Immigration Ombudsman

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

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

PART 5 – HEALTH SERVICES MANAGER ROLE AND RESPONSIBILITIES

11. SERVICE OBLIGATIONS

11.1 General

The Health Services Manager must:

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

committees, workshops and other meetings, as reasonably requested by the Department from time to time; and

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

11.2 Service Warranties

The Health Services Manager warrants that:

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

11.3 Compliance with Laws and Policy Requirements

- (a) The Health Services Manager must comply with, and ensure that all Health Services Manager Personnel and Network Providers comply with:
 - (i) all relevant Laws, including those applicable to Nauru and Manus Island;
 - (ii) all relevant international treaties, charters, covenants and agreements, including those set out in **Schedule 15** (Australian Government and Department Health Policies); and

- (iii) all relevant Australian Government Policy, Department Policy, Department Health Policy and any Guideline issued under **clause 21.1**, including the policies set out in **Schedule 15** (Australian Government and Department Health Policies), made available to the Health Services Manager via the Department's instruction system (Legend) or as notified by the Department from time to time.
- (b) If there is any inconsistency between any Guidelines issued under **clause 21.1** or Australian Government Policy, Department Policy, Department Health Policy set out in **Schedule 15** or as notified from time to time and the laws of Nauru or Manus Island (as applicable), the Health Services Manager must:
 - (i) comply with the law of Nauru or Manus Island (to the extent of the inconsistency); and
 - (ii) work with the Department in good faith to understand the nature of the conflict between the law and policy and any way the Australian Government or Department Policy or Guideline can be accommodated or adapted.
- (c) The Health Services Manager acknowledges that Hon. David Adeang M.P. (as Minister of Justice and Border Control) has, in accordance with Part 3, Section 15(5) of the *Asylum Seekers (Regional Processing Act) 2012* (the Act), delegated all powers and functions as guardian of all unaccompanied children who arrive in Nauru to the person or persons holding the position (from time to time) of Nauru Operations Manager of Save the Children Australia except in so far as they relate to:
 - (i) the transfer or return or resettlement of an unaccompanied child to another country;
 - (ii) the giving of consent for the marriage or adoption of a child;
 - (iii) the withholding or withdrawing of medical life support.

11.4 **Changes to Department Health Policy**

- (a) At any time during the Term, the Contract Administrator may give notice to the Health Services Manager of any change in a Department Health Policy and the

Health Services Manager must comply with that change (and ensure all Health Services Manager Personnel and Network Providers do the same) on and from the date of the Department's notice (or any later date as may be agreed with the Department).

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

11.5 Access and Referral Arrangements

The Health Services Manager must ensure:

- (a) Transferees and Recipients have access to and are able to receive Health Care in accordance with this Contract at all times during the Term;
- (b) all referrals of Transferees and Recipients to any hospital, specialist or allied Health Care Provider are made or arranged in accordance with **Schedule 2** (Statement of Work) (including all relevant Department Health Policy); and
- (c) no Transferee or Recipient presenting for Health Care within the scope of this Contract is denied or refused that care if clinically appropriate in the circumstances.

11.6 Health Services Manager Resources

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

11.7 Incidental Services or Functions

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

12. OTHER SERVICES PROVIDERS

The Health Services Manager acknowledges and agrees that:

- (a) it is not the exclusive provider of health services to the Department and the Department may engage other service providers to provide services the same or similar to the Health Services; and

- (b) the Department may independently and directly engage, or arrange for, a provider to directly provide Health Care to a Transferee or Recipient.

13. HEALTH CARE RECORDS

13.1 Existing Health Care Records

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

13.2 Creation of Health Care Records

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

13.3 Supply of Health Care Records

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

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

requested by the Department.

13.4 **Amending or Destroying Health Care Records**

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

14. **CONFLICTING REQUIREMENTS**

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

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

15. **NETWORK PROVIDERS**

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

other things) the range or type of Health Care to be delivered or performed by the Department's nominated provider, and suggest any other terms for the Health Services Manager's employment or engagement of that provider. If the Department issues a notice under **clause 15(b)(i)**, the Health Services Manager agrees to give due and proper consideration to the Department's proposal.

- (d) If the Department issues a notice under **clause 15(b)(ii)**, the Health Services Manager must comply with the notice, within twenty (20) Business Days of the date of the notice, or such further period as the Parties may agree.
- (e) The Health Services Manager will not be liable for the acts or omissions of the Network Provider or its Network Provider Personnel, except and only to the extent provided in **clause 56**.

16. KEY PERSONNEL

16.1 Key Personnel

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

16.2 Retention of Key Positions and Key Personnel

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

16.3 Replacement of Key Personnel

- (a) If any Key Personnel ceases to work in respect of this Contract, the Health Services Manager must immediately notify the Department and provide a replacement Key Personnel acceptable to the Department at no additional charge and at the earliest opportunity.
- (b) If the Health Services Manager is unable to provide a replacement Key Personnel acceptable to the Department within one (1) Month of their ceasing work in respect of this Contract, the Department may terminate this Contract in accordance with **clause 62**, or remove certain Health Services from scope in

accordance with **clause 32**.

16.4 **Removal of Key Personnel**

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

17. **ILLEGAL WORKERS**

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

18. **SUBCONTRACTOR ARRANGEMENTS**

18.1 **Term of Subcontracts**

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

18.2 Approval of Major Subcontracts

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

18.3 Initial Approved Major Subcontractors

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

18.4 Conditions of Major Subcontracts

The Health Services Manager must:

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

18.5 Deed of Substitution

- (a) Each Deed of Substitution executed pursuant to **clause 18.4(b)** must be executed by the Health Services Manager and the Major Subcontractor and provided to the Department by the Health Services Manager within ten 10 Business Days of the commencement of the performance of Services by the approved Major Subcontractor.
- (b) The Department may issue a Notice of Substitution at any time during the Term

for one or more of the Major Subcontractors. The Deed of Substitution will take effect on and from the date specified in that Notice.

18.6 **Copies of Subcontracts and Network Provider Agreements**

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

18.7 **Department may contact Subcontractors or Network Providers**

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

18.8 **Health Services Manager Liability and Obligations**

- (a) The Department's approval of any Subcontractor does not relieve the Health Services Manager from any liability or obligation under this Contract.
- (b) The Health Services Manager will be liable to the Department for the acts, defaults and neglect of any Subcontractor or any representative of the Subcontractor engaged in connection with the performance of the Contract (including the delivery of Health Care to Transferees and Recipients) as fully as if they were the acts, defaults or neglect of the Health Services Manager.
- (c) The Health Services Manager remains responsible for ensuring that:
 - (i) the work performed by each Subcontractor meets the requirements of this Contract; and
 - (ii) no Major Subcontractor further subcontracts any work without the prior written approval of the Department.

18.9 **Subcontractor Warranty**

The Health Services Manager warrants that each Subcontractor:

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

18.10 **Enforcement of Rights Against Subcontractors**

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

18.11 **Subcontractor to pay all Taxes**

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

18.12 **Payroll Tax and Workers' Compensation Notices**

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

PART 7 – MANAGEMENT AND GOVERNANCE

19. PROJECT MANAGEMENT

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

- (a) implementation of a planned, systematic, efficient and comprehensive approach to the delivery of the Health Services;
- (b) maintenance of a due diligence process to demonstrate compliance with all applicable health, safety, environmental, corporate governance, professional and other relevant legislative requirements;
- (c) identifying and mobilising resources;
- (d) identifying who will perform the work and services, when it is required, and how it will be executed and validated;
- (e) coordinating the activities, outputs and efforts of all relevant persons, including those of the Health Services Manager Personnel and Network Providers;
- (f) monitoring and measuring progress and performance (including that of any Network Provider) in accordance with this Contract;
- (g) efficient decision-making within the Health Services Manager's organisation and advising of decisions required by the Department under this Contract;
- (h) controlling and rectifying faults or other deficiencies or issues that may arise in, or during the performance of, the Health Services (including delivery of Health Care to Transferees and Recipients);
- (i) managing those risks which are the Health Services Manager's responsibility under this Contract;
- (j) coordinating the preparation and approval of all reports, plans, policies and procedures required under this Contract; and
- (k) providing continuous, visible and adequate audit trails.

20. NATIONAL CONTRACT MANAGEMENT REPRESENTATIVES

20.1 The Department Contract Management Representatives

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

20.2 Health Services Manager Contract Management Representatives

- (a) The Health Services Manager must appoint persons to fulfil the following roles:
 - (i) Health Services Authority;
 - (ii) Health Services Administrator; and
 - (iii) a Health Services Manager for each Facility,to perform the roles and responsibilities (as applicable) set out in **Schedule 4.2** (Governance).
- (b) The Health Services Manager must give written notice to the Department of the appointment of each person to the roles specified in **clause 20.2(a)**, and any replacement of those appointees.

20.3 Governance Committee Meetings

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

Schedule 4.2 (Governance).

21. **FACILITY MANAGEMENT MODEL**

21.1 **Guidelines**

- (a) In addition to **Schedule 2** (Statement of Work), the Health Services must be delivered in compliance with any Guidelines issued by the Department to the Health Services Manager from time to time. The Department will not issue Guidelines that relate to the provision of Health Care by the Health Services Manager but may issue Guidelines relating to any other aspect of the delivery of the Health Services.
- (b) Without limiting **clause 11.7**, but in addition to its rights under **clause 11.4**, the Health Services Manager may request an increase in the amount of the payments set out in **Schedule 5** (Fees and Payments), where the Health Services Manager incurs additional costs exceeding \$100,000 in delivering the Health Services in accordance with any Guidelines issued by the Department under this **clause 21.1**. The Department will consider any such request to increase the amount of the payments under this **clause 21.1** in good faith.

21.2 **Directions Power**

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

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

21.3 **Limits on Directions Power**

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

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

21.4 **Procedure for Giving and Recording Directions**

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

21.5 **Compliance with Directions**

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

PART 8 – FACILITY ACCESS AND DEPARTMENT EQUIPMENT

22. **ACCESS TO FACILITIES**

22.1 **Access**

- (a) The Department grants the Health Services Manager:
 - (i) access to the Facilities for the purposes of performing this Contract; and
 - (ii) a right to provide any Health Services Manager Personnel and Network Providers access to a Facility for the purpose referred to in **clause 22.1(a)(i)**.
- (b) The Health Services Manager must ensure that a Facility is only accessed and

used for performance of the Contract in accordance with this **clause 22**.

- (c) The Health Services Manager must ensure that all Health Services Manager Personnel and Network Providers accessing and using any Facility:
 - (i) comply with all safety and security requirements notified by the Department or the relevant Facility Services Provider when accessing or using a Facility;
 - (ii) carry at all times suitable identification, as reasonably determined by the Department from time to time;
 - (iii) do not examine, disturb, remove or engage with any person or thing on or in a Facility, except for a purpose specified in **clause 22.1(a)(i)**; and
 - (iv) comply with any direction given by the Department in relation to access or use of a Facility.
- (d) The Health Services Manager acknowledges and agrees that any rights granted under this **clause 22**:
 - (i) are personal to the Health Services Manager and rest in contract only and may not be assigned; and
 - (ii) do not confer any exclusive right to occupy a Facility, or any part of a Facility.

22.2 Condition of Facilities

- (a) The Health Services Manager must promptly notify the Department:
 - (i) of any destruction or damage to a Facility (or any part of a Facility) of which it is aware; and
 - (ii) if it reasonably considers that the condition or state of repair of any building or part of a building at a Facility that is used for the delivery of Health Care is not fit to be used for that purpose.
- (b) The Health Services Manager is:

- (i) responsible for any damage to or destruction of a Facility that is caused by the Health Services Manager or any Network Provider, except for fair wear and tear; and
- (ii) indemnifies the Department in respect of any such damage or destruction to a Facility in accordance with **clause 56**.

23. DEPARTMENT ASSETS AND SYSTEMS

23.1 Use of Department Assets and Department Systems

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

23.2 Maintenance and Replacement of Department Assets and Systems

- (a) The Health Services Manager must:
 - (i) maintain the Department Assets and Department Systems and keep them in good working order and condition at all times during the Term in accordance with **Schedule 2** (Statement of Work) and this **clause 23**;
 - (ii) take all reasonable precautions and measures to prevent any damage, interference, unauthorised use or loss to any Department Assets and Systems;
 - (iii) not modify, alter, change or remove from a Facility any Department Assets and Systems, except for a purpose related to this **clause 23**;

- (iv) promptly notify the Department of any damage or loss to any Department Assets and Department Systems; and
 - (v) at the request of the Department, replace any Department Asset (as a Pass Through Cost) which is irreparably damaged or has reached the end of its useful life. Unless otherwise agreed in writing with the Department, the Department will own any replacement asset purchased by the Health Services Manager, and funded by the Department, under this **clause 23**.
- (b) The Health Services Manager is
- (i) responsible for any damage to, loss of or destruction of any Department Asset or System that is caused by the Health Services Manager or any Health Services Manager Personnel; and
 - (ii) indemnifies the Department in respect of any such damage or destruction to a Department asset or System in accordance with **clause 56**.

23.3 Condition of Facilities and Department Assets

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

23.4 **Department Approval to Procure Assets**

- (a) The Health Services Manager must:
 - (i) ensure Departmental approval is obtained prior to the procurement of an asset over \$2,000; and
 - (ii) follow the Guidelines issued by the Department for the procurement of any asset over \$2,000.

24. **HEALTH SERVICES MANAGER ASSETS**

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

25. **ASSET REGISTER**

25.1 **Asset Register**

- (a) The Health Services Manager must:
 - (i) maintain a full and accurate register setting out all Assets (**Asset Register**); the owner or custodian of the Assets; location of the Assets; condition of the Assets; details of any encumbrances or relevant limitations on the Assets; any information relevant to the Assets; and any information in relation to the Assets that is requested by the Department from time to time;

- (ii) review and update the Asset Register as necessary to reflect all changes to the Assets, e.g. if Assets are created, acquired, written-off or disposed of during the Term, this information must be included in the Asset Register;
 - (iii) provide the Department with access to the Asset Register upon request.
- (b) The Asset Register must separate the Assets in two categories:
- (i) Assets with a cost of \$2,000.00 (GST exclusive) or more; and
 - (ii) Assets with a cost less than \$2,000.00 (GST exclusive).
- (c) The Department may, at its sole discretion:
- (i) distribute the Health Services Manager's Asset Register to Third Parties (including providers engaged by the Department); or
 - (ii) incorporate information in the Health Services Manager's Asset Register in a master Asset Register, and, if required by the Department, provide Third Parties with access to this master Asset Register.

25.2 Errors in the Asset Register

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

25.3 Survival

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

25.4 Record keeping obligations

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

PART 9 – PERFORMANCE MANAGEMENT

26. CONTRACT RESPONSIBILITIES

The Health Services Manager acknowledges and agrees that:

- (a) the purpose of the Contract Responsibilities and associated Performance Measure thresholds is to:
 - (i) provide the Health Services Manager with focus and direction on certain key performance areas;
 - (ii) specify performance goals and minimum standards or levels of performance which, if not achieved, may result in a financial abatement;
 - (iii) assist the Health Services Manager to foster and promote integrated service delivery and optimal Health Care for Transferees, by identifying any lapses in the Health Services and areas for improvement;
 - (iv) highlight the areas of service delivery which potentially have the most significant impact on achievement of the Contract Objectives; and
 - (v) assist Health Services Manager to propose an action plan in direct response to failure to achieve the minimum threshold performance level set out for ~~each~~ Contract Responsibilities that is relevant to the failed performance level(s).
- (b) the Contract Responsibilities do not modify or reduce any express obligation of the Parties under this Contract;
- (c) the Contract Responsibilities and associated Performance Measure thresholds may be progressively developed, assessed, refined, adjusted or otherwise varied by the Parties over the Term in accordance with **Schedule 4.1** (Performance Management Framework); and
- (d) except as expressly provided in this Contract (including **clause 56**), the Health Services Manager:
 - (i) bears the risk of all delays, disruptions, events or circumstances affecting the provision of the Health Services and the Health Services Manager's ability to meet or achieve any Contract Responsibility; and
 - (ii) is not relieved of any obligation to meet or achieve a Contract Responsibility notwithstanding any such delay, disruption, event or circumstance unless it constitutes an excusable performance failure in accordance with Clause 8.5 in **Schedule 4.1** (Performance Management Framework).

27. **PERFORMANCE MONITORING**

27.1 **Measuring and Monitoring of Performance**

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

27.2 **Reporting on Performance**

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

28. **ABATEMENTS**

28.1 **~~Non-Financial~~ Abatements**

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

29. **REVIEWS AND MEETINGS**

29.1 **Meetings**

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

PART 10 – CHANGE MANAGEMENT AND CHANGE CONTROL

30. **CHANGE MANAGEMENT**

30.1 **Change Management Clauses**

This Contract contains the following clauses dealing with change management:

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

31. DEACTIVATING AND REACTIVATING A FACILITY

31.1 Department's Rights

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

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

- (c) close a Facility by removing it from scope in accordance with **clause 32**.

31.2 **Reactivation of a Facility**

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

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

31.3 **Deactivation of a Facility**

Within two (2) Months of receiving notice from the Department that any Operational Facility is to become a Contingency or Hot Contingency Facility, the Health Services Manager is to ramp down its service delivery at the Facility in accordance with the terms of the Department's notice and **clause 32** will otherwise apply.

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

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

- (a) where a Facility is reactivated:
 - (i) payment of the Onsite Health Clinic Fee for services (whether Basic Health Services or the full scope Health Services) rendered from the date of the notice referred to in **clause 31.1**; and
 - (ii) actual direct ramp-up costs incurred by the Health Services Manager as a

Pass Through Cost in accordance with **Schedule 5** (Fees and Payments);

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

31.5 **Definitions**

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

- (a) "Basic Health Services" comprise:
 - (i) the set up and operation of an on site nurse clinic and general practice clinic sufficient to provide triage services to Transferees and Recipients;
 - (ii) the preparation and delivery of a contingency plan outlining how the Health Services Manager will ramp up to the delivery of full scope Health Services at the Facility in accordance with this **clause 31**;
 - (iii) establishment of clinical pathways with local hospitals to ensure Transferees and Recipients have access to acute or emergency Health Care;
 - (iv) establishment of basic protocols for liaising with the Department and the Facility Services Provider; and
 - (v) the completion of induction training in accordance with **Schedule 2** (Statement of Work) for all Health Services Manager Personnel and Network Providers involved with the delivery of any of the services described in this **clause 31.5(a)**; and
- (b) "full scope" Health Services means the performance of all of the Health Services Manager's obligations under the Contract with respect to the relevant Facility.

31.6 **Change Control**

- (a) At any time during the Term, the Contract Administrator may give notice to the Health Services Manager of a change to specific provisions within the Contract and the Health Services Manager must comply with that change (and ensure all Health Services Manager Personnel and Network Providers do the same), as far as is practicable and reasonable, on and from the date of the Department's notice (or any later date as may be agreed with the Department).
- (b) Prior to notifying the Health Services Manager of any change to specific provisions within the Contract under **clause 31.6(a)**, the Department will endeavour to consult with the Health Services Manager and seek the Health Services Manager's views on the potential impact of the proposed change on the Health Services Manager's performance of this Contract. The Department will consider the Health Services Manager's view when finalising the terms of the change to the terms of this Contract.
- (c) If, on receiving notice of a change under **clause 31.6(a)**, the Health Services Manager reasonably considers that the change materially impacts on the cost to the Health Services Manager of providing the Health Services, the Health Services Manager may, within ten (10) Business Days of receiving notice of the change, inform the Department of that fact. On being so informed, and without limiting the Health Services Manager's obligation to comply with that change, the Department may direct the Health Services Manager to prepare a Contract Change Proposal in relation to the change for the Department's consideration in accordance with **clause 34**.
- (d) For the purposes of **clause 31.6(c)**:
 - (i) a "change" to specific provisions within the Contract includes the removal of an existing provision, or any variation to the content of an existing clause within this Contract; and
 - (ii) a material impact on the cost of the Health Services is a cumulative cost increase or decrease of one hundred thousand (\$100,000) dollars or more (when added to the costs of all previous changes made to the provisions of this Contract under this **clause 31.6**) during the Term) in any Financial Year.

32. REMOVAL OF HEALTH SERVICES FROM SCOPE

32.1 Notice Requiring Removal of Health Services

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

- (a) the Removed Services no longer form part of the Health Services from the date specified in the notice;
- (b) the Department must pay the Health Services Manager for any Removed Service that was performed in accordance with this Contract prior to the date specified in the notice;
- (c) on and from the date of the notice, the Onsite Health Clinic Fee will be equitably adjusted to reflect the reduced costs incurred by the Health Services Manager in supplying the remaining Health Services, and any unit charges (including relevant fees or rates) for the remaining Health Services will not be increased;
- (d) the Department will be liable to compensate the Health Services Manager for any substantiated unavoidable loss reasonably incurred by the Health Services Manager as a direct result of the Removed Services in accordance with **clause 63.4**; and
- (e) each Party will comply with its obligations in the Transition Out Plan (where applicable) in respect of the Removed Services.

32.2 Limits on Removal of Health Services from Scope

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

33. ADDITIONAL OR EXPANDED SERVICES

33.1 Notification

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

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

33.2 Compliance with Notice

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

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

33.3 Health Services Fee Adjustment

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

33.4 Proof of Reasonable Charges

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

33.5 Health Service Manager may Suggest Expanded or Additional Services

- (a) The Health Services Manager may at any time offer to expand the Health Services (by scope or volume) or provide an additional service which, in the opinion of the Health Service Manager would enhance the Contract objectives or achieve improved health outcomes for Transferees and Recipients.

- (b) In response to the Health Services Manager's proposal under **clause 33.5(a)** the Department may provide a notice to the Health Services Manager:
 - (i) under **clause 33.1** – requiring the Health Services Manager to provide the expanded or additional service in accordance with this **clause 33**; or
 - (ii) under **clause 34.2** – requiring the Health Services Manager to prepare a Contract Change Proposal.

33.6 **Additional Services Become Part of the Health Services**

- (a) Unless otherwise agreed by the Parties, all additional services provided under this **clause 33** form part of the Health Services:
 - (i) for the period specified in the Department's notice under **clause 33.1**; or
 - (ii) if no period is specified, from the date of the Department's notice until the Department notifies the Health Services Manager that it no longer requires the additional services to be delivered.
- (b) The Department will update **Schedule 2** (Statement of Work) and, as necessary, **Schedule 5** (Fees and Payments) in order to incorporate and reflect the additional services and additional charges and fees (if any) determined under this **clause 33**.

33.7 **Original Service Obligations Unaffected**

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

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

34. **CONTRACT CHANGE PROCEDURE**

34.1 **Variations to this Contract**

Other than:

- a) changes to the Health Services under **clauses 31, 32 or 33**;
- b) changes to **Schedule 1** (Glossary) which are agreed by the parties in writing; and
- c) changes to the Contract which:
 - (i) do not result in any additional financial cost to the Health Services Manager; and
 - (ii) have been agreed by the Parties in writing,

the Parties must not vary this Contract except in accordance with this **clause 34**.

34.2 **Notification**

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

34.3 **Health Services Manager Obligations**

- (a) Within twenty (20) Business Days of receiving a Contract Change Notice, the Health Services Manager must provide the Department with a Contract Change Proposal, setting out:
 - (i) details of the change and its extent (nature, scope, scale and technology employed);
 - (ii) a statement of reasons supporting the change;
 - (iii) the steps required to implement the Contract Change Proposal;
 - (iv) the timeframe within which the Health Services Manager proposes to implement the Contract Change Proposal;
 - (v) the impact of the Contract Change Proposal on the delivery of the Health Services, including any necessary amendments to this Contract or the Policy and Procedures Manual;

- (vi) the changes to the Onsite Health Clinic Fee (or any fees or rates specified in **Schedule 5** (Fees and Payments)) which the Health Services Manager proposes to apply to the change, supported by reasons for the price change and relevant measurements or documents which support or validate the Health Services Manager's claims;
- (vii) a financial statement outlining the financial cost impact to the Health Services Manager as a result of the Contract Change Proposal, certified by an accountant independent of the Health Services Manager declaring:
 - (A) the Contract Change Proposal cannot be accommodated within the existing **Schedule 5** (Fees and Payments); and
 - (B) the accuracy and currency of the financial information provided to the Department;
- (viii) details of the review the Health Services Manager has undertaken to allow the Contract Change Proposal to be accommodated within the existing requirements (including agreed fees and rates) of this Contract;
- (ix) any reduction to the Onsite Health Clinic Fee or other fees or rates specified in **Schedule 5** (Fees and Payments) which the Health Services Manager proposes as a result of the Contract Change Notice, in order to reflect all cost savings to the Health Services Manager resulting from any changes to the Health Services Manager's then current arrangements or operations for the provision of the Health Services;
- (x) the adjustments (if any) to the Performance Measures which the Health Services Manager proposes as a result of the Contract Change Notice, and reasons for the adjustments;
- (xi) any risks associated with the proposed change and the Health Services Manager's recommendations for minimising and managing those risks; and
- (xii) the Health Services Manager's reasonable costs of preparing the Contract Change Proposal.

- (b) The Contract Change Proposal must contain a full cost breakdown and a warranty from the Health Services Manager that all costs are reasonable and profit does not exceed that used in the determination of the original Onsite Health Clinic Fee (and other fees and rates) and take account of any savings on other aspects of the Health Services affected by the Contract Change Proposal. The Health Services Manager must give the Department's financial representatives full access to the Health Services Manager's financial records to investigate the reasonableness of any pricing claims under this **clause 34**. Such information will be treated as strictly confidential.

34.4 **Costs**

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

34.5 **Acceptance**

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

34.6 Implementation

If:

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

then:

- (d) the Parties must within thirty (30) days formalise their agreement to the Contract Change Proposal in a deed in the form of **Schedule 14** (Change Control);
- (e) the Health Services Manager must implement the changes in compliance with the proposals in the Contract Change Proposal or those proposals agreed or determined. Such implementation must be completed within six (6) weeks, or such further time as may be agreed, of the acceptance of the Contract Change Proposal or resolution of any dispute under **clause 60** unless, in the case of the latter, the Contract Change Notice is withdrawn; and
- (f) **Schedule 5** (Fees and Payments) is adjusted in accordance with the Contract Change Proposal or, if the Contract Change Proposal is amended by mutual agreement, the amended Contract Change Proposal, or the amount determined as a result of the dispute resolution process.

34.7 Effect of Variations

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

PART 11 – PAYMENTS

35. HEALTH SERVICES FEE AND OTHER PAYMENTS

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

- (a) Onsite Health Clinic Fees;
- (b) Pass Through Costs;
- (c) IT Transition-In Fees;
- (d) Establishment Costs;
- (e) Site Health Review Fee; and
- (f) Additional Fees.

36. ADJUSTMENT OF ONSITE HEALTH CLINIC FEE

36.1 Annual Adjustment

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

36.2 Monthly Adjustment

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

- (a) payment of the agreed sale price for any Loose Assets in accordance with **clause 4**;
- (b) the withholding by the Department of any disputed amount in accordance with **clause 38.3**;

- (c) the off-setting by the Department of any under or over payment from a previous invoicing period; and
- (d) any other right the Department may have under this Contract to withhold payment of any amount otherwise due to the Health Services Manager.

37. TIMING AND MANNER OF PAYMENT

- (a) All amounts payable to the Health Services Manager under this **Part 11** (Payments) will be paid by the Department Monthly in arrears, within thirty (30) days of the Department's receipt of an invoice correctly rendered in accordance with this **Part 11** (Payments).
- (b) Unless otherwise agreed, any payments under this Contract will be made by electronic transfer directly to the Health Services Manager's nominated bank account. All payments will be made in Australia and in Australian dollars.

38. INVOICES

38.1 Timing of Invoices

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

- (ii) less than what Health Service Manager would have been entitled to, the Department will make the additional payment at the time it pays the Onsite Health Clinic Fee for the following Month to the Health Services Manager.

38.2 **Form and Timing of Invoice**

An invoice must:

- (a) be in the form approved by the Department and comply with all relevant requirements specified in **Schedule 5** (Fees and Payments);
- (b) be provided to the Department on or by the date which is ten (10) Business Days after the end of the Month to which the invoice relates; and
- (c) to the extent that it relates to a taxable supply, be a tax invoice.

38.3 **Disputes Relating to Invoices**

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

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

38.4 **Incorrect Invoices**

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

39. **RIGHT OF THE DEPARTMENT TO RECOVER MONEY**

39.1 **Deductions**

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

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

39.2 **Notice of Deductions**

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

40. **GOODS AND SERVICES TAX**

40.1 **Taxes and Duties Generally**

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

40.2 **GST**

- (a) Words defined in the GST Law have the same meaning in clauses concerning GST, unless the context makes it clear that a different meaning is intended.
- (b) The Onsite Health Clinic Fee, Pass Through Costs, Additional Fees and all other payments and fees specified in **Schedule 5** (Fees and Payments) are inclusive of GST, where applicable, unless specified otherwise.
- (c) If GST is or will be imposed on a supply made under or in connection with this Contract, to the extent that the consideration otherwise provided for that supply under this Contract is not stated to include an amount in respect of GST on the supply:

- (i) the consideration otherwise provided for that supply under this Contract is increased by the amount of that GST; and
 - (ii) the recipient must make payment of the increase at the same time as the consideration is provided.
- (d) The recipient's obligation to pay the GST component of the price or consideration is subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment.
- (e) If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST already recovered by the supplier, either as part of or in addition to the other amounts payable, the supplier within fourteen (14) days of becoming aware of the adjustment event:
 - (i) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount already recovered by giving seven (7) days written notice; or
 - (ii) must refund to the recipient the amount by which the amount already recovered exceeds the amount of GST on the supply; and
 - (iii) must issue an adjustment note or tax invoice reflecting the adjustment event in relation to the supply to the recipient within twenty eight (28) days of the adjustment event.
- (f) If a Party provides a payment for or any satisfaction of a claim or a right to claim under or in connection with this Contract (for example, for misleading or deceptive conduct or for misrepresentation or for a breach of any warranty or for indemnity or for reimbursement of any expense) which gives rise to a liability for GST, the provider must pay, and indemnify the claimant against the amount of that GST.
- (g) If a Party has a claim under or in connection with this Contract for a cost on which that party must pay an amount for GST, the claim is for the cost plus the amount for GST (except any amount for GST for which that Party is entitled to an input tax credit).

- (h) If a Party has a claim under or in connection with this Contract whose amount depends on actual or estimated revenue or which is for loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).
- (i) If there is a change in the GST rate after the date of this Contract, the Parties will adjust any consideration that expressly includes GST to reflect the change in rate on a "no win no loss" basis.
- (j) If the GST payable in relation to a supply is less than the amount that the recipient has paid the supplier under **clause 40.2(b)** and **40.2(d)** (or is not payable), the supplier must refund to recipient the difference (or the amount of GST) within seven (7) days of becoming aware of the refund by any means. For the avoidance of doubt, this **clause 40.2(j)** does not apply in relation to adjustment events.
- (k) This clause will survive the termination of this agreement by any party.

PART 12 – CONTRACT AND SERVICE MANAGEMENT

41. REPORTING REQUIREMENTS

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

42. FINANCIAL MANAGEMENT

42.1 Accounts and Other Records

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

Contract for the Department (including as against the Department specified health data sets).

- (c) The accounts and records required to be held under this **clause 42.1** must be held for the Term and for a period of seven (7) years from the date of expiry or termination of this Contract, or any further period specified in advance by the Department.

42.2 **Open Book Accounting**

The Health Services Manager must:

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

42.3 **Audited Financial Statements**

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

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

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

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

42.5 **Records Regarding Location of Department Assets**

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

43. **AUDIT**

43.1 **Subject of Audits**

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

- (a) the Health Services Manager's operational or clinical practices and procedures as they relate to this Contract, including security procedures;

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

43.2 **Conduct of Audits**

- (a) Except for those circumstances in which notice is not practicable (for example, caused by a regulatory request with shorter notice or investigation of suspected theft or breach of Contract), the Department must give the Health Services Manager not less than ten (10) Business Days' notice of an audit and a list of the documents which the auditor will reasonably require.
- (b) The Health Services Manager must participate cooperatively in audits of this Contract at the frequency and in relation to the matters specified by the Department, including on an ad hoc basis if requested by the Department, for the purpose of ensuring that this Contract is being properly performed and administered.
- (c) The requirement for, and participation in, audits does not in any way reduce the Health Services Manager's responsibility to perform its obligations in accordance with this Contract.

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

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

44.1 Grant of Access

- (a) For the purposes of **clause 42.2** and **clause 42.4**, the Health Services Manager must, and must ensure that all Health Services Manager Personnel and Network Providers (as applicable), grant the Department and its nominees access as required by the Department, to:
 - (i) the Health Services Manager's or Health Services Manager Personnel's or Network Provider's premises; and
 - (ii) data, records, accounts and other financial material or material relevant to the performance of this Contract, however and wherever stored or located, under the Health Services Manager's or any Health Services Manager Personnel's or Network Provider's custody, possession or control for inspection and/or copying.
- (b) In the exercise of the rights granted by **clause 44.1**, the Department will use reasonable endeavours not to unreasonably delay or disrupt the Health Services Manager's performance of this Contract in any material respect.
- (c) The Health Services Manager must provide the Department access to the Health Services Manager's computer hardware and software to the extent necessary for the Department to exercise its rights under this clause, and provide the Department with any reasonable assistance requested by the Department to use that hardware and software.

44.2 Assistance to be Made Available

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

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

- (a) Subject to **clause 43.2(a)** and without limiting any other provision of this Contract, the Commonwealth and Immigration Ombudsman or a delegate of the Commonwealth and Immigration Ombudsman, the Commonwealth Auditor-General or a delegate of the Auditor-General, or the Privacy Commissioner or a delegate of the Privacy Commissioner or the Australian Information Commissioner or a delegate of the Australian Information Commissioner may, at all reasonable times and for the purpose of performing the Commonwealth and Immigration Ombudsman's, Commonwealth Auditor-General's or Privacy Commissioner's or Australian Information Commissioner's statutory functions and/or powers respectively:
 - (i) access the premises of the Health Services Manager;
 - (ii) contact and engage with the Health Services Manager, Health Services

Manager Personnel and Network Providers;

- (iii) require the provision by the Health Services Manager, any Health Services Manager Personnel and Network Provider, of records, assets and other information which are related to this Contract; and
 - (iv) access, inspect and copy documentation, records, assets or any other matter relevant to the Health Services Manager's obligations or performance of this Contract, however stored, in the custody or under the control of the Health Services Manager, Health Services Manager Personnel or Network Providers.
- (b) The Health Services Manager must, and must ensure that Health Services Manager Personnel, cooperate with any enquiries or investigations undertaken in accordance with this **clause 44.3**.
- (c) The Health Services Manager must do all things necessary to comply with any requirements of the Commonwealth and Immigration Ombudsman or a delegate of the Commonwealth and Immigration Ombudsman, the Commonwealth Auditor-General or a delegate of the Auditor-General, the Privacy Commissioner or a delegate of the Privacy Commissioner, or the Australian Information Commissioner or a delegate of the Australian Information Commissioner, provided such requirements are legally enforceable and within the power of the Commonwealth and Immigration Ombudsman, the Auditor-General, the Privacy Commissioner or the Australian Information Commissioner.
- (d) Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Commonwealth and Immigration Ombudsman or a delegate of the Commonwealth and Immigration Ombudsman, Commonwealth Auditor-General or a delegate of the Commonwealth Auditor-General, the Privacy Commissioner or a delegate of the Privacy Commissioner or the Australian Information Commissioner or a delegate of the Australian Information Commissioner. The rights of the Department under this Contract are in addition to any other power, right or entitlement of the Commonwealth and Immigration Ombudsman, the Commonwealth Auditor-General, the Privacy Commissioner, the Australian Information Commissioner, or the delegates of those persons.

44.4 **Survival of Clause**

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

PART 13 - INFORMATION MANAGEMENT

45. **INTELLECTUAL PROPERTY**

45.1 **Intellectual Property Rights**

- (a) Intellectual Property rights in any Contract Material, other than CHIRON, vest immediately upon its creation in the Department.
- (b) The Parties acknowledge that:
 - (i) the provision of Department Material to the Health Services Manager does not in any way affect the ownership of any Intellectual Property rights in Department Material; and
 - (ii) except as specified in this Contract, the provision of Health Services Manager Material (including CHIRON) does not in any way affect the ownership of any Intellectual Property rights in that Material.

45.2 **Grant of Licences**

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

clause 45.2(a).

- (d) The Department grants the Health Services Manager for the Term a royalty-free, world-wide, non-exclusive licence, including the right to sublicense, to use, reproduce, modify and adapt any Intellectual Property rights in the Contract Material and the Department Material to the extent necessary and for the sole purpose of performing its obligations under this Contract.

45.3 Moral Rights

Each Party:

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

45.4 Intellectual Property Warranty

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

45.5 Intellectual Property Indemnity

- (a) The Health Services Manager must indemnify the Department, and any other person acting on the Department's behalf (**Indemnified Persons**), against any and all liability, loss, damage, costs (including the costs of any settlement and legal costs and expenses on a solicitor/client basis), compensation or expense whatsoever incurred by any Indemnified Person, arising out of any action, claim, demand or proceeding brought or made against an Indemnified Person, by any person in respect of any infringement or alleged infringement of that person's Intellectual

Property rights, if and to the extent that the infringement or alleged infringement is caused by any breach by the Health Services Manager of the warranty in **clause 45.4**.

- (b) For the purposes of **clause 45.4** "infringement" includes authorised acts which would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 96 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth), and section 25 of the *Circuits Layout Act 1989* (Cth), constitute an infringement.

45.6 Intellectual Property rights for CHIRON

Components of CHIRON

- (a) The Parties acknowledge that CHIRON consists of:
 - (i) Material that existed prior to 26 April 2013, where the Intellectual Property Rights in that Material are owned by the Health Services Manager;
 - (ii) Material that existed prior to 26 April 2013, where the Intellectual Property Rights in that Material is owned by a Third party which is not a Related Body Corporate of the Health Services Manager (Other Third Party);
 - (iii) Material created after 26 April 2013, where the Intellectual Property Rights in that Material are owned by the Health Services Manager; and
 - (iv) Material created after 26 April 2013, where the Intellectual Property Rights in that Material are owned by an Other Third Party.
- (aa) The Parties acknowledge that there is other IHMS Third Party Software owned or licensed by a Related Body Corporate of the Health Services Manager (IHMS Third Party), which is not part or a component of CHIRON, but which is used by or with or in conjunction with CHIRON by the Health Services Manager to undertake its obligations under the Contract.

Ownership of Intellectual Property rights in CHIRON

- (b) All Intellectual Property rights in all components of CHIRON and IHMS Third Party Software (irrespective of the date on which those Intellectual Property rights were created) vest immediately upon their creation in either the Health Services

Manager, an IHMS Third Party or an Other Third Party, in accordance with relevant legislation and/or contractual arrangements between those parties. For the avoidance of doubt, nothing in this **clause 45.6** affects the ownership by any Third Party of any Intellectual Property rights in CHIRON or the IHMS Third Party Software.

Licence of CHIRON during Term of this Contract and HSC

- (c) (i) This paragraph (c) applies during:
- (A) the Term of this Contract and until the end of the Transition Out period; and
 - (B) the term of the Health Services Contract (HSC) until the end of its transition out period.

but shall only take effect in the event that the Health Services Contract has expired. Should the Health Services Contract remain active then this paragraph (c) shall not apply.

- (ii) The Health Services Manager grants to the Department a royalty-free, irrevocable world-wide, non-exclusive licence to access, use and reproduce all components of CHIRON (including any Intellectual Property rights in CHIRON and irrespective of when the component of CHIRON was created) in conjunction with any Data or other Contract Material. This licence includes the right for the Department to permit any person other than the Department to access, use or reproduce CHIRON (including any Intellectual Property rights in CHIRON). However, the Department may not permit a subcontractor who provides similar services to the Health Services to access, use or, reproduce CHIRON except under paragraph (d) below.
- (iii) If the Department Notifies the Health Services Manager that it requires CHIRON to be adapted or modified in order to:
 - (A) Allow the Department to obtain, read, interpret or interrogate Data or other Contract Material in or connected to CHIRON: or
 - (B) meet the other requirements of the Contract,

the Health Services Manager must promptly undertake that adaption or modification in accordance with the Notice. The Health Services Manager must undertake the adaption or modification at no additional cost to the Department, unless it cannot be undertaken within its current resources, in which case the parties agree to use the Contract Change Proposal mechanism and consider any Contract Change Proposal in good faith.

(iv) The Health Services Manager must obtain all necessary licences and approvals, including any from Other Third Parties, in order to grant the licences in this **clause 45.6**. This includes licences for any Software or other Material which is:

- (A) incorporated or embodied in, or attached to, CHIRON at any time after 26 April 2013 (but, for the avoidance of doubt, not including any function, operation or maintenance provided by any IHMS Third Party Software); or
- (B) becomes otherwise necessarily related to or required for the functioning, operation, maintenance or other use of CHIRON, at any time after 26 April 2013 (but, for the avoidance of doubt, not including any function, operation or maintenance provided by any IHMS Third Party Software).

The Health Services Manager must, in respect of any such licences from any Other Third Party:

- (C) ensure those licences are consistent with the licences in this **clause 45.6** so that they allow the Department to deal with CHIRON in a manner and for a period consistent with this clause; and
- (D) use its best endeavours to ensure those licences contain a right for the Department to novate or assign the licence to the Department upon the Department giving notice that both the Contract and the Health Services Contract have ended. Where the Health Services Manager is unable to obtain this right, the Health Services Manager must, upon request by the Department, obtain direct licences to the Department for that Software or other Material. The direct licences must:

- (aa) if requested by the Department, continue beyond the expiry or termination of this Contract;
 - (ab) be provided at no additional cost to the Department ;
 - (ac) be on the same commercial terms (including cost) as those granted to the Health Services Manager by the Other Third Party; and
 - (ad) be in a form approved by the Department and, unless approved by the Department in writing, contains rights for the Department in relation to the Software which are no less favourable than those in paragraph (c)(ii) above. Where the Department agrees to rights which are less favourable than those in paragraph (c)(ii) above, the Health Services Manager must record any limitation in the IP Register.
- (v) After 1 March 2013, the Health Services Manager must not transfer its ownership of any component of CHIRON to an IHMS Third Party without obtaining the prior written approval of the Department (which must not be unreasonably withheld).

Additional provisions applying during the Transition Out period

- (d) (i) This paragraph (d) applies during the Transition Out period, which for the purposes of this **clause 45.6** will commence on the earlier of:
- (A) one (1) Month prior to the expiry of the Term (or such earlier date as the Department may reasonably request); and
 - (B) the date on which a Termination Notice is given by the Department under **clause 62** or **63**,
- but shall only take effect in the event that the Health Services Contract has expired. Should the Health Services Contract remain active then this paragraph (d) shall not apply.
- (ii) During the Transition Out period, the Department may under the licence in paragraph (c)(ii) allow any person (excluding any subcontractor providing

services similar to the Health Services) to access, use and reproduce CHIRON (which, for the avoidance of doubt, does not include the IHMS Third Party Software) in conjunction with any Data or other Contract Material. However, during the Transition Out period, should a subcontractor which provides similar services to the Health Services require access to or use of any health-related information or data which is normally held in CHIRON, then the Department can request the Health Services Manager provide the data and information in the format required (which must not be unreasonable): the Health Services Manager and the Department will determine a delivery date which is mutually agreed and the Health Services Manager must provide the requested information by the agreed date.

After the end of the Transition Out Period

- (e) (i) This paragraph (e) applies from the end of the Transition Out period under this Contract:
- (ii) If the Health Services Contract has not expired or been terminated, the parties agree that the licences to the Department in respect of CHIRON under the Health Services Contract (which the parties intend will be consistent with those under this Contract) may be used by the Department in respect of Data or other Contract Material under this Contract.

After end of Transition Out periods for both this Contract and the Health Services Contract

- (f) (i) This paragraph (f) applies after the end of both:
 - (A) the Transition Out period for this contract; and
 - (B) the transition out period for the Health Services Contract.
- (ii) The Health Services Manager grants to the Department a royalty-free, irrevocable, world-wide, perpetual, non-exclusive licence to use, reproduce, modify and adapt any Intellectual Property rights in those components of CHIRON created before 26 April 2013 (known as CHIRON v2.0). This licence confers no right for the Department to sublicense or otherwise permit any person other than the Department, Department Personnel and

internal subcontractors (excluding any subcontractors providing services similar to the Health Services) to use, reproduce, modify and adapt any Intellectual Property rights in CHIRON v2.0. For the avoidance of doubt, nothing in this paragraph (f) in any way prohibits or affects the Health Services Manager using or dealing with CHIRON 2.0 after expiry or termination of the Contract and the Health Services Contract.

- (iii) In relation to those components of CHIRON which are developed after 26 April 2013 (the further developed version of CHIRON will be known as CHIRON v3.0):
- (A) The Health Services Manager automatically assigns all Intellectual Property rights it owns in all components of CHIRON v3.0 which were developed after 26 April 2013 to the Department;
 - (B) If the Department does not already hold direct licences to all components of CHIRON v3.0 owned or licensed from an Other Third Party which were developed after 26 April 2013 (either as a result of novation, assignment or a new direct licence), the Health Services Manager must promptly do all things reasonably necessary to:
 - (aa) enable the Department to exercise its rights of assignment or novation as contemplated by paragraph (c)(iv)(D); or
 - (ab) where the Department has no right of assignment or novation, obtain direct licences for the Department as contemplated by with paragraph (c)(iv)(D) as if the Department had issued a request under that clause.
 - (C) The Department will be responsible for paying any costs associated with ongoing licensing and support under its direct licence(s) with Other Third Parties.
 - (D) The Health Services Manager must cease using (or allowing any person other than the Department or a person permitted by the Department under this contract to access or use CHIRON) any component of CHIRON v3.0 which was developed after 26 April

2013 which is not owned by an IHMS Third Party. However, the Health Services Manager may continue using any software modifications or variations made to components of CHIRON v2.0 as a result of the introduction or implementation of CHIRON v3.0, where:

- (aa) those modifications or variations are required for the usual operation of CHIRON v2.0 (where 'usual operation' relates to the operation of CHIRON v2.0 immediately before the implementation of CHIRON v3.0); and
- (ab) the Health Services Manager has obtained the necessary Intellectual Property Rights required for it to use those software modifications or variations.

IHMS Third Party Software

- (g) (i) This paragraph (g) applies for the periods specified in paragraphs (c), (d), (e) and (f) above.
- (ii) The Health Services Manager must provide, and ensure that the Department is granted, all access and usage rights to IHMS Third Party Software (at no additional cost), but only to the extent that it is necessary for the Department to access or use the IHMS Third Party Software in order for the Department to:
 - (A) exercise its rights in relation to CHIRON under this Contract; and/or
 - (B) obtain and use information or data in or generated by IHMS Third Party Software for use by, with or in conjunction CHIRON in accordance with this Contract, where the Department has requested the Health Services Manager to provide that information within a reasonable period and in a reasonable format, and the Health Services Manager has not complied with that request,
- (iii) The Department must not allow a subcontractor providing services similar to the Health Services to use or access any IHMS Third Party Software.

45.7 Responsibility for CHIRON and the IHMS Third Party Software

Notwithstanding anything in **clause 45.6**, the Health Services Manager is responsible during the Term of this Contract for the development of CHIRON and the IHMS Third Party Software and assumes all risks in relation to their development, implementation, maintenance and performance (irrespective of any comment or approval by the Department, or any failure by the Department to comment or approve, any requirement, specification or description of any aspect of CHIRON). Nothing in this **clause 45** reduces or affects the Health Services Manager's responsibility to ensure that, until the end of the Transition Out period, CHIRON and the IHMS Third Party Software is fit for the purposes for which it is required for this Contract. For the avoidance of doubt, the Health Service Manager has no responsibility to ensure CHIRON and the IHMS Third Party Software remains fit for purpose after the end of the Transition Out period.

45.8 Intellectual Property Register

- (a) The Health Services Manager must:
- (i) within 30 days after 26 April 2013, produce a register in accordance with **Schedule 16** setting out all Intellectual Property rights (**IP Register**) which are used in providing the Health Services and performing the Health Service Manager's other obligations under this Contract, the owner of those rights and, where the Intellectual Property rights are licensed, details of that licence (including the licensee and licensor and any relevant limitations or conditions approved by the Department);
 - (ii) review and update the IP Register as necessary to reflect all changes to the Intellectual Property rights used in providing the Health Services and performing the Health Services Manager's other obligations under this Contract; and
 - (iii) make the IP Register available to the Department upon request.
- (b) The Department may at any time during the Term, either:
- (i) distribute the Health Services Manager's IP Register to Third Parties (including providers engaged by the Department) upon providing notice to the Health Services Manager that it intends to do so; or
 - (ii) incorporate information in the Health Services Manager's IP Register in a

master IP Register, and, if required by the Department, provide Third Parties with access to this master IP Register.

45.7 Survival of Clause

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

46. HEALTH SERVICES MANAGER'S CONFIDENTIAL INFORMATION

46.1 Protection of Health Services Manager Confidential Information

- (a) The Department will take all reasonable steps to ensure that it does not make public or disclose the Health Services Manager's Confidential Information listed in **Schedule 10** (Confidential Information).
- (b) This **clause 46** does not prevent the Department from disclosing any information provided by the Health Services Manager:
 - (i) to its auditors and professional advisers on terms consistent with the terms on which the receiving Party makes available its own confidential information to such persons and (to the extent they provide for a higher level of duty) the confidentiality terms of this Contract;
 - (ii) to the Department's internal management personnel, solely to enable effective management or auditing of Contract-related activities;
 - (iii) to any Government Agency;
 - (iv) to any Commonwealth Minister;
 - (v) to any House or Committee of the Parliament of the Commonwealth of Australia; or
 - (vi) in accordance with any relevant Australian Government Policy;
- (c) If any Health Services Manager Confidential Information is disclosed under **clause 46.1(b)**, the Department will take all reasonable steps to ensure that such information is treated as confidential by such Government Agencies and their personnel.

- (d) For the avoidance of doubt, the Parties acknowledge that the terms and conditions of this Contract are not the Health Services Manager's Confidential Information.

47. DEPARTMENT INFORMATION

47.1 Protection of the Department Information

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

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

without the prior written approval of the Contract Administrator.

47.2 Provision of the Department Information to Health Services Manager Personnel

- (a) The Health Services Manager must not permit any Health Services Manager Personnel or Network Provider to have access to Department Confidential Information until such time as the relevant Personnel or providers has entered into a Confidentiality Deed and a Deed of Non-Disclosure of Personal Information substantially in the form of **Schedule 11** (Confidentiality Deed) and **Schedule 12** (Deed of Non-Disclosure of Personal Information), respectively.
- (b) The Contract Administrator may at any time require the Health Services Manager to provide the original version of any undertaking signed by a Health Services Manager Personnel or Network Provider under this **clause 47.2**.
- (c) The Health Services Manager must:
 - (i) at its cost, take all reasonable steps to ensure that Department Confidential Information and all records of it are kept under the Health Services Manager's effective control and are secure from theft, loss, damage and unauthorised access, modification, use and disclosure; and
 - (ii) notify the Department in writing immediately if the Health Services

Manager becomes aware of:

- (A) any actual, suspected or likely breach by the Health Services Manager of this **clause 47**; or
- (B) any actual, suspected, likely or threatened theft, loss, damage or unauthorised access, modification, use or disclosure of any Department Confidential Information.

47.3 Scope and Survival of Confidentiality Obligations

- (a) The obligations of the Parties under **clauses 46** and **47** will not be taken to have been breached to the extent that the relevant Confidential Information:
 - (i) is disclosed by a Party to its Personnel solely in order to comply with obligations or to exercise rights under this Contract and, in the case of Health Services Manager Personnel, they have signed the undertakings specified in **clause 47.2(a)**;
 - (ii) is in the public domain otherwise than as a result of a breach of an obligation of confidentiality; or
 - (iii) is required by Law to be disclosed, or by an order of any court or tribunal of competent jurisdiction.
- (b) Where a Party discloses Confidential Information to another person pursuant to **clause 47(a)(i)** above, that Party must notify the receiving person of the confidential nature of the information being disclosed.
- (c) If a Party is required to disclose any Confidential Information in the circumstances outlined in **clause 47(a)(iii)**, each Party must:
 - (i) notify the other in writing with details of the Confidential Information required to be disclosed and the person to whom disclosure is to be made, so that other Party has sufficient notice, at its option, to oppose or restrict disclosure or seek a protective order or other means of preserving the confidentiality of the Confidential Information or agree on the form and content of disclosure; and

- (ii) if disclosure cannot be avoided:
 - (A) only disclose the Confidential Information to the extent legally required;
 - (B) use its best endeavours to ensure that any Confidential Information is kept confidential; and
 - (C) follow any reasonable directions of the other Party concerning the disclosure.
- (d) The obligations under **clauses 46** and **47** above continue, notwithstanding the expiry or termination of this Contract.
- (e) For the avoidance of doubt, nothing in **clauses 46** and **47** above derogates from any obligation which the Health Services Manager may have in relation to Personal Information (as defined in the *Privacy Act 1988* (Cth)) under this Contract in relation to the protection of Personal Information, as defined in that Act.

48. **PRIVACY**

48.1 **Definitions**

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

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

Health Services Manager in the course of providing the Health Services, including Personal Information about any Transferee;

- (d) **Privacy Act** means the *Privacy Act 1988* (Cth); ~~and~~
- (e) **Privacy Legislation** means the Privacy Act and any other privacy legislation applicable to the performance of this Contract by the Health Services Manager; and
- (f) The following terms have the same meaning as they have in the Privacy Act:
 - (i) An agency;
 - (ii) Overseas recipient;
 - (iii) APP code
 - (iv) CR code
 - (v) Contracted service provider; and
 - (vi) APPs (Australian Privacy Principles).

48.2 **Privacy Obligations**

The Health Services Manager acknowledges that it is a 'contracted service provider' ~~within the meaning of section 6 of the Privacy Act and must:~~ and agrees, in providing the Health Services under this Contract:

- (a) use or disclose Personal Information obtained during the course of providing the Health Services under this Contract only for the authorised purposes of this Contract;
 - (b) to carry out and discharge the obligations contained in the APPs as if it were an agency;
 - (c) not to do any act or engage in any practice which, if done or engaged in by an agency, would be a breach of an APP;
 - (d) to comply with the APPs, any registered APP code or registered CR code that is applicable to the Health Services Manager;
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- (e) to comply with APP 5 by notifying the individuals where Personal Information is being, or has been collected about the individuals. Unless otherwise provided by the Privacy Act, the Health Services Manager must notify or make the individual/s aware that important information about the collection, use and disclosure (to other agencies and third parties, including overseas entities) of Personal Information, including sensitive information, can be located in the Department's Privacy Notice Form (Form 1442i);
- (f) not to use or disclose Personal Information in breach of APP 7 (Direct marketing) of the Privacy Act (where applied to the Health Services Manager), unless the information was collected for the purpose of meeting, directly or indirectly, an obligation under this Contract; and the use or disclosure is necessary to meet, directly or indirectly, such an obligation under this Contract;
- (g) to comply with any request under section 95C of the Privacy Act (relating to disclosure of any provisions of this Contract that are inconsistent with a registered APP code binding a party to the Contract or with an APP);
- (h) to comply with the APPs in relation to the collection, use, disclosure, storage and destruction or de-identification of Personal Information, when disclosure is made to an overseas recipient;
- (i) to ensure that if disclosure is made to an overseas recipient, the overseas recipient implements a data breach response plan which includes a mechanism for notifying the Department where there are reasonable grounds to suspect a data breach and outlines appropriate remedial action;
- (j) to notify individuals whose Personal Information is held by Health Services Manager or Subcontractor, as the case may be, of the complaints mechanism outlined in the Privacy Act that may apply to the Health Services Manager;
- (k) to notify the Department immediately if the Health Services Manager:
 - (i) becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 28, whether by the Health Services Manager or Subcontractor;
 - (ii) becomes aware that a disclosure of Personal Information may be required

by law; or

- (iii) is approached by the Information Commissioner, or by any individual to whom any Personal Information held by the Health Services Manager or Subcontractor relates, in respect of Personal Information.
- (l) to cooperate with any reasonable request or direction of the Department in relation to an inquiry, audit or other exercise of powers and functions, by the Information Commissioner under the Privacy Act;
- (m) to comply with any directions, guidelines, determinations or recommendations relating to the use or disclosure of Personal Information publicly available or Notified to the Health Services Manager by the Department Project Officer; and
- (n) to ensure that all Personnel required to deal with Personal Information for the purposes of this Contract are made aware of the obligations of the Health Services Manager set out in this clause 48.

The Health Services Manager must ensure that any Subcontract entered into by the Health Services Manager for the purpose of fulfilling its obligations under this Contract imposes on the Subcontractor the same obligations that the Health Services Manager has under this clause 48 (including this requirement in relation to Subcontracts).

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

48.3 **Permitted Disclosures**

- (a) The Health Services Manager must not disclose any Personal Information of the Department to any person without first obtaining the Department's written consent, except:
 - (i) to the extent necessary for a Permitted Purpose; and
 - (ii) in accordance with its rights or obligations under this Contract.
- (b) Despite the restrictions otherwise set out in this Contract, the Health Services Manager's obligations of confidence do not apply to any Personal Information that the Health Services Manager is required to disclose:
 - (i) by Law or by an order of any court or tribunal of competent jurisdiction; or

- (ii) by any Government Agency, stock exchange or other regulatory body having the legal right to require the disclosure.
- (c) In relation to a disclosure or proposed disclosure referred to in **clause 48.3(b)**, the Health Services Manager must:
 - (i) immediately upon becoming aware that it may be required to disclose Personal Information, notify the Department in writing with details of the Personal Information required to be disclosed and the person to whom disclosure is to be made, so that the Department has sufficient notice, at its option, to oppose or restrict disclosure or seek a protective order or other means of preserving the confidentiality of the Personal Information or agree on the form and content of disclosure; and
 - (ii) if disclosure cannot be avoided:
 - (A) only disclose Personal Information of the Department to the extent legally required;
 - (B) use its best endeavours to ensure that any Personal Information of the Department is kept private and confidential; and
 - (C) follow any reasonable directions of the Department concerning the disclosure.

48.4 **Permitted Uses**

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

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

48.5 **Copies and Other Records**

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

48.6 Security

The Health Services Manager must, at its cost:

- (a) take all reasonable steps to ensure that the Personal Information of the Department and all records of it are kept under the Health Services Manager's effective control and are secure from theft, loss, damage and unauthorised access, modification, use and disclosure; and
- (b) notify the Department in writing immediately if the Health Services Manager becomes aware of:
 - (i) any actual, suspected or likely breach by the Health Services Manager of this **clause 48** or the National Privacy Principles; or
 - (ii) any actual, suspected, likely or threatened theft, loss, damage or unauthorised access, modification, use or disclosure of any Personal Information of the Department.

48.7 Privacy Commissioner and Australian Information Commissioner

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

Privacy Commissioner or Australian Information Commissioner.

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

48.8 Return or Destruction of Records

- (a) On the earlier of:
 - (i) the Department's request;
 - (ii) when no longer required for a Permitted Purpose; and
 - (iii) the expiry or termination of this Contract,the Health Services Manager must as soon as practicable, at its cost:
 - (iv) stop using and disclosing (and ensure all Health Services Manager Personnel and Network Providers do the same) any Personal Information of the Department; and
 - (v) deliver to the Department, or, at the Department's request and direction, destroy, erase or de-identify, all Records of the Personal Information of the Department (whether prepared by or for the Health Services Manager or
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the Department or any other person) in the possession, custody or control of the Health Services Manager or any person to whom it has given access to these Records, whether or not in accordance with this Contract.

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

48.9 **No Release**

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

48.10 **Indemnity for breach of Privacy Obligations**

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

48.11 **Survival of Clause**

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

49. **RECORDS MANAGEMENT**

49.1 **Department Records**

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

(b) Unless otherwise agreed between the Contract Administrator and the Health Services

Manager in relation to a particular Record or type of Record, all Records created pursuant to this Contract become upon their creation and remain the property of the Department. All such Records will be deemed to be Department Records.

- (c) The Contract Administrator may at any time inspect Department Records or require that they be transferred to the custody of the Contract Administrator.
- (d) The Health Services Manager must not arrange for, nor effect, a transfer of custody or the ownership of any Department Record without the prior written approval of the Contract Administrator, nor will the Health Services Manager remove any such Record, without the prior written approval of the Contract Administrator.
- (e) Where the Contract Administrator authorises the transfer of custody of Department Records to the Health Services Manager, the Health Services Manager must comply in every respect with the requirements of the *Archives Act 1983* (Cth) or guidelines issued by the National Archives of Australia and/or the Department.
- (f) The Health Services Manager must comply with any direction given by the Department for the purpose of transferring Department Records to the Department.

50. ARCHIVES ACT

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

51. DATA SECURITY

51.1 Acknowledgement

The Health Services Manager acknowledges and agrees that:

- (a) the Department holds and deals with highly sensitive information; and

- (b) the Department is concerned that such information is not improperly used or disclosed contrary to this Contract or any Laws.

51.2 Use of the Department Data

The Health Services Manager must:

- (a) use Department Data only for purposes directly in relation to the performance of the Health Services and the performance of its obligations under this Contract;
- (b) not make any Department Data available to any third party other than a Health Services Manager Personnel or Network Provider in accordance with this Contract, and then only to the extent necessary to enable the third party to perform its part of the Health Services;
- (c) keeping Department Data in its possession, or under its control, safe and secure;
- (d) prevent the theft, loss, damage, destruction, alteration and unauthorised access, use and disclosure of Department Data in its possession, including by the establishment and maintenance of safeguards, that:
 - (i) are no less rigorous than those maintained by:
 - (A) the Health Services Manager in respect of Health Services Manager's Confidential Information; and
 - (B) the Department; and
 - (ii) comply with all procedures specified in this Contract, including:
 - (A) all data management and any security requirements specified in **Schedule 2** (Statement of Work); and
 - (B) all applicable Laws, Australian Government Policy and Department Health Policy.

51.3 Compliance with Security Requirements

The Health Services Manager must:

- (a) comply with all Australian Government and Department Data security requirements,

as notified by the Department from time to time, in respect of access to, use or disclosure of Department Data;

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

51.4 **Records**

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

52. **PROVISION OF INFORMATION**

52.1 **Sharing of Information**

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

52.2 Department Systems

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

53. PUBLICITY, MEDIA AND EXTERNAL RELATIONSHIP MANAGEMENT

53.1 Publicity and Media to be Managed by the Department

- (a) The Health Services Manager acknowledges and agrees that the Department will have management and control of:
 - (i) all publicity, dealings with, inquiries from, comments to or other matters related to the media that are directly or indirectly related to this Contract including, without limitation, regarding the Department and any matter related to the Health Services, or any Transferee, Health Care Provider or the relationship or issues between the Health Services Manager, Health

Care Providers, Transferees and the Department; and

- (ii) the relationship and dealings with Department Services Providers and other external parties (including industry groups, special interest or lobby groups, and the community), except to the extent that such contact has been approved in advance by the Department in writing.
- (b) Any contact with or release to the media which specifically names the Health Services Manager is to be approved by the Department prior to any statement being made or material being released, which consent or approval must not be unreasonably withheld or delayed.

53.2 Health Services Manager Not to Make Public Statements

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

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

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

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

other than:

- (h) to direct any such inquiry to the Department;
- (i) as is specifically authorised by and to the minimum extent necessary to fulfil the

Health Services Manager's obligation under this Contract or comply with any Law; or

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

PART 14 - INTERRUPTIONS TO SERVICE DELIVERY

54. FORCE MAJEURE

54.1 Force Majeure Notice

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

54.2 Suspension Notice

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

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

54.3 Management of Force Majeure Event

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

54.4 Meeting Between the Parties

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

54.5 Suspension of Obligations

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

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

54.6 Termination for Force Majeure

- (a) If the Health Services Manager is prevented by a Force Majeure Event (or a series of Force Majeure Events) from performing obligations under this Contract that is continuing for a period of sixty (60) days or more:
 - (i) the Department may terminate this Contract by providing the Health Services Manager with five (5) Business Days written notice; and
 - (ii) neither Party has any right to damages from the other for any loss it suffers

because of the termination (but this does not affect rights in respect of breaches before termination) and each Party will bear its own costs incurred as a result of the termination under this **clause 54.6**.

- (b) The Health Services Manager's rights to payment of fees, as described in **clause 1.1** of **Schedule 5** (Fees and Payments), accrued up to the date of the termination are not affected by the termination under this **clause 54.6**.

54.7 Health Services Manager Must Update Contract Administrator

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

54.8 Alternative Supply and Onsite Health Clinic Fee Reduction

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

- (a) make alternative arrangements for the performance, whether by another person or otherwise, of any obligation so suspended without incurring any legal liability to the Health Services Manager; and
- (b) reduce the Onsite Health Clinic Fee to exclude any amount otherwise payable for the suspended obligation.

54.9 **Payments, Financial Undertaking and Performance Guarantee**

This **clause 54** does not apply to any obligation by the Health Services Manager to pay money or provide a Financial Undertaking or Performance Guarantee.

PART 15 - REPRESENTATIONS AND WARRANTIES

55. **REPRESENTATIONS AND WARRANTIES**

55.1 **Health Services Manager Representations and Warranties**

The Health Services Manager represents and warrants that:

- (a) **(Status)** it is a company limited by shares under the *Corporations Act 2001* (Cth);
- (b) **(Power)** it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into this Contract and to carry out the transactions that this Contract contemplates;
- (c) **(Corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this Contract and its carrying out the transactions that this Contract contemplates;
- (d) **(Authorisations)** it holds each authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this Contract and to carry out the transactions that this Contract contemplates;
 - (ii) ensure that this Contract is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business,and it is complying with any conditions to which any of these authorisations is subject;
- (e) **(Documents effective)** this Contract constitutes its legal, valid and binding

obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and Laws affecting creditors' rights generally);

- (f) **(No contravention)** neither its execution of this Contract nor the carrying out by it of the transactions that this Contract contemplates, does or will:
- (i) contravene any Law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
 - (ii) contravene any authorisation;
 - (iii) contravene any undertaking or instrument binding on it or any of its property;
 - (iv) contravene its constitution; or
 - (v) require it to make any payment or delivery in respect of any financial indebtedness before it would otherwise be obliged to do so;
- (g) **(No litigation)** no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of any of its officers after due inquiry, threatened which, if adversely decided, could have an adverse effect on it;
- (h) **(Accounts):**
- (i) the accounts and any other financial statements and reports that it has given to the Department have been prepared in accordance with the Laws of Australia and (unless inconsistent with those Laws) generally accepted accounting principles consistently applied;
 - (ii) the accounts that it has given to the Department give a true and fair view of the financial condition of it and its subsidiaries as at the date to which they are made up and of the results of operations of it and its subsidiaries for the period that they cover; and
 - (iii) there has been no change since the date of the most recent accounts that it

has given to the Department that could have an adverse effect on it;

(i) **(Other information):**

- (i) the other information and reports that it has given to the Department in connection with this Contract are true and accurate in all material respects and not misleading in any material respect (including by omission); and
- (ii) any forecasts and opinions in them are fair and reasonable (and were made or formed after due inquiry and consideration by appropriate officers of the Health Services Manager),

as at the Commencement Date or, if given later, when given;

- (j) **(Disclosure of relevant information)** it has disclosed to the Department all the information that is material to an assessment by the Department of the risks that it assumes by entering into this Contract;
- (k) **(No filings or Taxes)** it is not necessary or desirable, to ensure that this Contract is legal, valid, binding or admissible in evidence, that this Contract or any other document be filed or registered with any Government Authority, or that any Taxes be paid;
- (l) **(No default)** no breach of this Contract has occurred and is continuing, and it is not in breach of any other document or agreement in a manner that could have a material adverse effect on it or any of its subsidiaries;
- (m) **(No security interest)** it will not create or permit to exist, and will ensure that none of its subsidiaries creates or permits to exist, any Security Interest over any of its property, other than a Permitted Security Interest;
- (n) **(No trust)** it is not entering into this Contract as trustee of any trust or settlement; and
- (o) **(ABN and GST registration)** it has an Australian Business Number and is registered for GST.

55.2 Repetition of Representations and Warranties

The representations and warranties in this **clause 55** are taken to be repeated every six (6)

Months from the Commencement Date, on the basis of the facts and circumstances as at that date.

55.3 Reliance on Representations and Warranties

The Health Services Manager acknowledges that the Department has executed this Contract and agreed to take part in the transactions that this document contemplates in reliance on the representations and warranties that are made or repeated in this **clause 55**.

55.4 No Representations by the Department

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

PART 16 – INDEMNITY AND INSURANCE

56. LIABILITY

56.1 Indemnity

The Health Services Manager agrees to indemnify the Department from and against any:

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

arising from

- (d) any negligent, wilful, unlawful or reckless act or omission on the part of the Health Services Manager or any Health Services Manager Personnel;
- (e) any breach by the Health Services Manager of its obligations or warranties under this Contract; or
- (f) any negligent, wilful, unlawful or reckless act or omission on the part of a

Network Provider or a GP where the Health Services Manager has failed to comply with any of its obligations listed in **clause 56.3** in relation to that Network Provider or a GP,

including any circumstances where the act, omission, neglect or breach results in a breach by the Department of its non-delegable duty of care to a Transferee.

56.2 Health Services Manager's Limit on Liability for Network Providers

The Health Services Manager will not be liable to the Department under **clause 56.1** for any cost, liability, loss or expense incurred by the Department, or loss or damage to any property of the Department, where that cost, liability, loss, expense or damage arises from any act or omission on the part of a Network Provider, or its GP, or its Network Provider Personnel:

- (a) if that Network Provider is a public hospital or a public health care provider funded by a Government (which may or may not, in its circumstances, employ or engage GPs or Network Provider Personnel);
- (b) if the Department has directed the Health Services Manager to appoint that Network Provider, Network Provider Personnel or GP to the Network;
- (c) if that Network Provider, Network Provider Personnel or GP provided Health Care in a public hospital and then provides continuing care outside a public hospital; or
- (d) in all other cases, subject only to the exceptions set out in **clause 56.3**.

56.3 Exceptions to the Health Services Manager's Limit on Liability for Network Providers

The limit on liability referred to in **clause 56.2** does not apply to the extent that the cost, liability, loss, expense or damage arises directly from a failure of the Health Services Manager to do any of the following:

Enter into Network Provider Agreement

- (a) enter into a Network Provider Agreement with that Network Provider in accordance with **clause 5.4** of **Schedule 2** (Statement of Work), where required

to do so under that clause;

Review Network Provider's Qualifications, Skills, Registration and Insurance

- (b) on the following dates, sight and review documents that evidence that the Network Provider is licensed and registered with the relevant registration board, college or other relevant body to deliver the Health Care for which it has been referred:
 - (i) immediately prior to appointing that Network Provider to the HSM Network;
 - (ii) where that licence or registration has a recurring renewal date, on each such renewal date; and
 - (iii) at any other time where it would be reasonable for the Health Services Manager to suspect that there may be a problem with that Network Provider's licence or registration;
- (c) ensure that where a Network Provider, other than an Excepted Network Provider, employs or engages General Practitioners, that:
 - (i) the Network Provider's medical practice is accredited against the Royal Australian College of General Practitioners then current standards for general practices; or
 - (ii) if the practice is not accredited in accordance with **clause 56.3(c)(i)**, the Department has in writing approved that entity being appointed to the HSM Network as a Network Provider (and has not subsequently withdrawn that approval); or
 - (iii) in the case of services provided through the Republic of Nauru Hospital, Lorengau Hospital and other Department approved practice, the Department has in writing approved that entity being used for the provision of health services commensurate with the laws of the country in which the health care is being provided.
- (d) on the following dates, sight and review evidence that the Network Provider has the insurance coverage specified in **Schedule 13A** (Network Provider

Insurance):

- (i) immediately prior to appointing that Network Provider to the HSM Network; and
- (ii) where an insurance policy effected in accordance with **Schedule 13A** (Network Provider Insurance) has a renewal date, on each such renewal date throughout the Term;

Ensure Compliance with Delivery Conditions

- (e) ensure that where that Network Provider, other than an Excepted Network Provider, employs or engages General Practitioners, only a GP delivers Health Care to a Transferee or Recipient;
- (f) ensure that that the Network Provider, and where applicable the GP, to whom a Transferee or Recipient is referred is qualified, licensed, registered or insured to deliver the specific Health Care for which they are referred;
- (g) ensure that neither the Network Provider nor its Network Provider Personnel deliver Health Care on site at a Facility unless that Network Provider and the relevant Network Provider Personnel have successfully undergone an Australian Federal Police background check (or, where applicable, an equivalent check in the country where the Network Provider and Network Provider Personnel normally operate) within the twelve (12) Months immediately prior to delivering that Health Care on site at a Facility;
- (h) ensure that before the Network Provider or its, other than an Excepted Network Provider's, GP has or have contact with children in relation to the Contract, the Network Provider and those GPs, has or have undergone the appropriate "Working with Children" checks as required by any applicable Laws.

Deliver Induction, Training and Provision of Information

- (i) deliver the pre-service induction, support and ongoing training programs for the Network Provider and its, other than an Excepted Network Providers, GPs to the extent required under **clause 5.2** and **clause 6.1** of **Schedule 2** (Statement of Work);
- (j) ensure that that Network Provider and its, other than an Excepted Network Providers, GPs:
 - (i) are kept informed of all relevant changes to the Contract, Department Health Policy and the Policy and Procedures Manual; and
 - (ii) have access at all times (whether in hardcopy or electronic form) to the Policy and Procedures Manual and relevant Department Health Policy;
- (k) maintain a complete and up to date record of the training completed by that Network Provider, other than an Excepted Network Providers, showing details of training made available to and acknowledged by the Network Provider and the GPs (as applicable) as having been undertaken;

Investigate

- (l) at any time where it would be reasonable for the Health Services Manager to suspect that there may be a problem with that Network Provider or following a reasonable request by the Department to do so, promptly:
 - (i) investigate the suitability of that Network Provider; and
 - (ii) provide the results or findings of such investigations to the Department on concluding the investigation or within five (5) Business Days of any Department request, whichever is the earlier;

Removal from HSM Network

- (m) immediately remove that Network Provider from the HSM Network upon becoming aware that the Network Provider or any of its GPs is not qualified, licensed or registered with the relevant registration board, college or other relevant body;
- (n) immediately remove that Network Provider from the HSM Network upon becoming aware that the Network Provider GP does not have the insurances specified in **Schedule 13A** (Network Provider Insurance);

56.4 Department's Limited Recourse

- (a) The Health Services Manager is released from any cost, liability, loss, expense or damage arising under **clause 56.3** to the extent of any amount that exceeds the sum of the following:
 - (i) the amount for which the Health Service Manager is indemnified under the Professional Indemnity Policy of Insurance, net of any GST payable by the Health Service Manager on the insurance proceeds; and
 - (ii) the amount of any retention, excess or deductible that applies to each payment made by an insurer in accordance with **clause 56.4(a)(i)**.
- (b) **Clause 56.4(a)** does not limit recourse by the Department against the Health Service Manager if the Health Service Manager is not indemnified under the Professional Indemnity Policy of Insurance due to:
 - (i) a failure by the Health Service Manager to take out or maintain the Professional Indemnity Policy of Insurance;
 - (ii) a breach by the Health Service Manager of the terms and conditions of the Professional Indemnity Policy of Insurance;
 - (iii) the operation of an exclusion in the Professional Indemnity Policy of Insurance relating to an unlawful act by the Health Services Manager or Health Services Manager Personnel;

- (iv) a failure by the Health Services Manager to diligently pursue indemnity under the Professional Indemnity Policy of Insurance; or
 - (v) the Health Services Manager compromising its right to indemnity under the Professional Indemnity Policy of Insurance without the written consent of the Department, which consent will not be unreasonably withheld.
- (c) **Clause 56.4(a)** does not limit recourse by the Department against the Health Service Manager for any cost, liability, loss expense or damage suffered by Department to the extent that in the absence of **clause 56.4(a)** the Health Service Manager would be entitled to an indemnity from the insurer of its Professional Indemnity Policy of Insurance and, the Health Service Manager agrees not to raise **clause 56.4(a)** in such circumstances as a defence to any action by the Department against the Health Service Manager but the Health Service Manager shall be relieved of liability where the insurer cannot make good its obligation to indemnify the Health Service Manager due to reasons of insolvency of the Insurer.

56.5 **Consequential Loss**

- (a) The Health Services Manager is released from liability for any Consequential Loss arising under this Contract to the extent of any amount that exceeds the sum of the following:
 - (i) the amounts for which the Health Service Manager is indemnified under any policy effected in accordance with **Schedule 13** (Health Services Manager Insurance) for Consequential Loss, net of any GST payable by the Health Service Manager on the insurance proceeds;
 - (ii) the amount of any retention, excess or deductible that applies to each payment made by an insurer in accordance with **clause 56.5(a)(i)**; and
 - (iii) the amount available under the Financial Undertaking.

- (b) If the Health Services Manager is liable to the Department for Consequential Loss, the Health Services Manager must:
- (i) promptly make a claim on any applicable insurance policy effected in accordance with **Schedule 13** (Health Services Manager Insurance) and diligently pursue indemnity; and
 - (ii) compensate the Department for the Consequential Loss by using all amounts paid out by its insurer for the liability for Consequential Loss and by paying the retention, excess or deductible amount.
- (c) If the Health Services Manager is liable to the Department for a Consequential Loss and the Health Services Manager is not entitled or unable to recover an amount equal to the Consequential Loss in accordance with **clause 56.5(b)**, the Health Services Manager must provide the Department with a written notice that:
- (i) sets out the amount that is available (if any) to be recovered from insurers; and
 - (ii) confirms that none of the events referred to in **clauses 56.5(d)(i) to (v)** have occurred.
- (d) **Clause 56.5(a)(i)** does not limit recourse by the Department against the Health Service Manager if the Health Service Manager is not indemnified under any insurance policy required to be effected in accordance with **Schedule 13** (Health Services Manager Insurance) due to:
- (i) a failure by the Health Service Manager to take out or maintain the relevant insurance policy;
 - (ii) a breach by the Health Service Manager of the terms and conditions of the relevant insurance policy;
 - (iii) the operation of an exclusion in the relevant insurance policy relating to an unlawful act by the Health Services Manager or Health Services Manager Personnel;
 - (iv) a failure by the Health Services Manager to diligently pursue indemnity

under the relevant insurance policy; or

- (v) the Health Services Manager compromising its right to indemnity without the written consent of the Department, which consent will not be unreasonably withheld.
- (e) **Clause 56.5(a)** does not limit recourse by the Department against the Health Service Manager for any cost, liability, loss expense or damage suffered by Department to the extent that in the absence of **clause 56.5(a)** the Health Service Manager would be entitled to indemnity from the insurer of its Professional Indemnity Policy of Insurance and, the Health Service Manager agrees not to raise **clause 56.5(a)** in such circumstances as a defence to any action by the Department against the Health Service Manager but the Health Service Manager shall be relieved of liability where the insurer cannot make good its obligation to indemnify the Health Service Manager due to reasons of insolvency of the Insurer.

56.6 **Limit on Department's Liability**

The Department's liability to the Health Services Manager arising under or in relation to this Contract is limited to \$500,000 in the aggregate for the following losses:

- (f) loss, or anticipated loss, of opportunity by the Health Services Manager, whether or not flowing directly or indirectly from the act or omission in question;
- (g) loss or anticipated loss of revenue by the Health Services Manager, whether or not flowing directly or indirectly from the act or omission in question; and
- (h) legal costs incurred by the Health Services Manager in relation to a claim arising from, or in connection with, an act or omission of the Department or Department Personnel.

56.7 **No limitation on liability for unlawful acts**

For avoidance of doubt, any limitation on, or release from, liability do not apply to the liability of either Party for any breach of statute or any wilfully wrong act or omission of a Party or its Personnel, including an act or omission that constitutes a repudiation of the Contract.

56.8 **Proportionate Reduction of Liability to Indemnify**

The Health Services Manager's liability to indemnify the Department under **clause 56.1** will be reduced proportionately to the extent that:

- (a) other service providers engaged by the Department or the employees, agents or subcontractors of those service providers; or
- (b) any breach of this Contract by the Department or any act or omission on the part of the Department (other than a breach of the Department's non delegable duty of care caused, or contributed to, by the Health Services Manager),

contributed to the relevant cost, liability, loss, damage, or expense.

56.9 **Non-Exclusive Remedy**

The right of the Department to be indemnified under this **clause 56** is in addition to, and not exclusive of, any other right, power or remedy provided by Law, but the Department is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage, or expense.

56.10 **Meaning of "the Department" in this Clause**

The Health Services Manager acknowledges and agrees that:

- (c) in this **clause 56**, "the Department" includes Department Personnel; and
- (d) the Department may enforce the indemnity on behalf of Department Personnel.

56.11 **Survival of Clause**

Clause 56 will survive for the period of seven (7) years following the expiration or termination of this Contract. The expiry of the seven (7) year period will not affect any other right, power or remedy provided by Law to the Department.

57. INSURANCE

57.1 Health Services Manager Must Insure

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

57.2 Duration of Insurance

The Health Services Manager must ensure that each of the insurances required by **clause 57.1** is maintained from the Commencement Date until the earlier of the performance of all Health Services or the termination of this Contract, except for medical malpractice and professional indemnity insurance which must be maintained for at least fifteen years following the completion of all Health Services.

57.3 Reputable and Solvent Insurer

The Health Services Manager must ensure that each of the insurances required by **clause 57.1** (except statutory insurances and insurances effected through a medical defence union) is taken out with reputable solvent insurers with a credit security rating of A- or better by Standard and Poors or an equivalent rating with another reputable rating agency acceptable to the Department.

57.4 Terms of Insurance

- (a) The Health Services Manager must ensure that the insurance required by **clauses 1(e) and 2(e) of Schedule 13** (Health Services Manager Insurance) is effected for the benefit of the Health Services Manager and another party, for their respective rights and interests and includes:
 - (i) a non-imputation clause, whereby the insurer agrees that any failure by any insured to observe and fulfil the terms of the policy or to comply with the terms of the policy or to comply with the insured's duty of disclosure does not prejudice the interests of any other insured; and
 - (ii) a clause whereby notice of a claim given to the insurer by any insured will be accepted by the insurer as notice of a claim given by all the insureds.

- (b) The Health Services Manager must ensure that the insurance required by **clauses 1(a) and 2(a) of Schedule 13** (Health Services Manager Insurance) is effected in the name of the Health Services Manager, Health Services Manager Personnel, and the Department (but only for its vicarious liability and its liability for breach of its non delegable duty of care arising from the acts and omissions of other insureds) and includes:
- (i) a cross liability clause, whereby the insurer agrees that the policy shall be construed as if a separate and distinct policy has been issued to each insured;
 - (ii) a waiver of subrogation clause, whereby the insurer agrees to waive all rights of subrogation, remedies or action to which it might become entitled by subrogation, contribution or assignment, against all or any of the persons comprising the insureds to the extent they are insured under the policy;
 - (iii) a non-imputation clause, whereby the insurer agrees that any failure by any insured to observe and fulfil the terms of the policy or to comply with the terms of the policy or to comply with the insured's duty of disclosure does not prejudice the interests of any other insured; and
 - (iv) a clause whereby notice of a claim given to the insurer by any insured will be accepted by the insurer as notice of a claim given by all the insureds.
- (c) The Health Services Manager must ensure that the insurances required by **clauses 1(c) and 2(c)** (Professional Indemnity or Errors and Omissions Insurance) and **1(d) and 2(d)** (Medical Malpractice Insurance) of **Schedule 13** (Health Services Manager Insurance) is effected and maintained solely in relation to the provision of the Health Services.

57.5 Copies of Insurances and Certificates of Currency

By the Commencement Date, and thereafter upon each policy renewal, and on the Contract Administrator's reasonable written request, the Health Services Manager must provide to the Contract Administrator a copy of the policy (except for statutory insurances) and a certificate of currency in respect of the insurances referred to in **clause 57.5** evidencing compliance with the requirements of **clause 57** and **Schedule 13** (Health Services Manager

Insurance).

57.6 Health Services Manager's Insurance Obligations

In relation to the insurance required by **clause 57.1**, the Health Services Manager must:

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

57.7 Health Services Manager's Notification Obligations

The Health Services Manager must notify the Contract Administrator immediately when the Health Services Manager:

- (a) becomes aware of any actual, threatened or likely claim under any of the insurances which the Health Services Manager is obliged to effect and maintain under **clause 57.1**, which could materially reduce the available limits or involve the Department and must reinstate any reduced aggregate limit if required by the Contract Administrator;
- (b) receives a notice of cancellation in respect of any of the insurances which the Health Services Manager is obliged to effect and maintain under **clause 57.1**; or
- (c) becomes aware that an insurer's security rating has fallen below A- with

Standard and Poors or the equivalent rating with another recognised rating agency, and if requested by the Department, seek alternative equivalent insurance to replace the insurance held with such an insurer without unreasonable delay.

57.8 Subcontractors' Insurance

The Health Services Manager must ensure that each Subcontractor retained by it to perform work or deliver any Health Care in connection with this Contract is insured as required by **clause 57.1** as is appropriate given the nature of the work to be performed by each such Subcontractor (including as to limits of indemnity).

57.9 Network Provider Insurance

The Health Services Manager must ensure that each Network Provider and GP effects and maintains, or causes to be effected and maintained, the insurances as specified in **Schedule 13A** (Network Provider Insurance).

57.10 Health Services Manager's Liability Not Limited

For the avoidance of doubt the provisions of this **clause 57** and **Schedule 13** (Health Services Manager Insurance) are not to be read so as to reduce a Party's liability under any other provision of this Contract and compliance by the Health Services Manager with the provisions of this **clause 57** and **Schedule 13** (Health Services Manager Insurance) does not limit the Health Services Manager's liability under any other provision of this Contract, at common law, or other applicable statute.

PART 17 – PERFORMANCE SECURITIES

58. FINANCIAL UNDERTAKING

58.1 Provision of Financial Undertaking

- (a) The Health Services Manager must, at its expense, provide to the Department within five (5) Business Days of the Commencement Date security in the form of an unconditional and irrevocable financial undertaking (**the Financial Undertaking**) which must:
 - (i) have been executed by a financial institution approved by the Department

(the **Financial Institution**) and be stamped;

- (ii) be substantially in the form of the financial undertaking appearing at **Part A of Schedule 9** (Performance Securities);
- (iii) be for the sum of \$700,000; and
- (iv) expire no earlier than seven (7) years after the expiry of the Initial Term.

58.2 **Extension of Financial Undertaking**

For each extension of the Term, the Health Services Manager must, at its expense, provide a new or amended Financial Undertaking to the Department that meets the conditions referred to in **clause 58.1** and which expires no earlier than seven (7) years after the expiry of the extended Term.

58.3 **Amounts Covered by Financial Undertaking**

The Financial Undertaking is for the purpose of ensuring the due and proper performance of this Contract by the Health Services Manager and the Department may demand any sum under the Financial Undertaking (up to a maximum amount as contemplated at **clause 58.1(a)(iii)**) from the Financial Institution in respect of:

- (a) amounts owed to the Department by the Health Services Manager;
- (b) damages suffered by the Department, or Department Personnel as a result of a breach of this Contract by the Health Services Manager; and/or
- (c) any loss suffered by the Department or Department Personnel that is the subject of an indemnity under this Contract.

58.4 **Replacement of Financial Undertaking**

In any of the following events:

- (a) the Financial Undertaking expires (or is due to expire within ten (10) Business Days);
- (b) the Financial Undertaking is otherwise terminated;
- (c) the Financial Institution fails to meet a proper demand made by the Department

in accordance with its terms; or

- (d) the Department exercises an option to extend the Term of this Contract in circumstances where the Department has previously made a demand under the Financial Undertaking,

the following provisions apply:

- (e) the Department may give notice to the Health Services Manager that it requires a replacement Financial Undertaking in which event the Health Services Manager will, within ten (10) Business Days of that notice, provide to the Department that replacement Financial Undertaking in accordance with **clauses 58.1 and 58.3**; and
- (f) the Health Services Manager may (even if the Department has not given it notice to do so) provide a replacement Financial Undertaking in accordance with **clauses 58.1 and 58.3**.

58.5 Monies Paid but not Demanded

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

- (a) the Department may retain those monies and any interest accrued as substitute security for the matters described in **clause 58.3** and appropriate those monies (and any interest accrued) for itself in execution of that security; and
- (b) within thirty (30) days after this Contract is terminated and all obligations on the part of the Health Services Manager and claims made by the Department under it have been met and satisfied or (if earlier) within fourteen (14) days after receiving the replacement Financial Undertaking under **clause 58.4**, the Department will account to the Health Services Manager for the balance of those monies and interest which has not been appropriated under this **clause 58.5**. The repayment of any monies to the Health Services Manager under this **clause 58** will not be deemed to waive any rights on the part of the Department in respect of any outstanding obligations of, or claims against, the Health Services Manager.

58.6 **Meaning of Financial Undertaking**

For the purpose of this **clause 58**, where appropriate, "Financial Undertaking" includes each or any Financial Undertaking and any replacement Financial Undertaking provided under **clause 58**.

58.7 **Consideration**

For the avoidance of doubt, the amount of consideration described in **clause 58** is payable once only, and not on the occasion of providing any replacement Financial Undertaking.

59. **PERFORMANCE GUARANTEE**

- (a) The Health Services Manager must, at its expense, provide to the Department, within ten (10) Business Days of the Commencement Date, a performance guarantee executed by a guarantor acceptable to the Department, guaranteeing the performance by the Health Services Manager of its obligations under this Contract, which must be substantially in the form of the performance guarantee appearing at **Part B** (Performance Guarantee) of **Schedule 9** (Performance Securities).
- (b) The Health Services Manager must notify the Department within twenty (20) Business Days of any proposal that might result in either the Health Services Manager or the guarantor suffering a change in control or ownership.
- (c) If either the Health Services Manager or the guarantor suffers a change in control or ownership, the Department may require the Health Services Manager to obtain an alternative performance guarantee, executed by an alternative guarantor, on the same terms as set out in **clause 59(a)**.

PART 18 – DISPUTE RESOLUTION

60. **DISPUTE RESOLUTION**

60.1 **Application**

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

- (a) that Party has complied with the requirements of this **clause 60** and the Dispute
-

remains unresolved in accordance with **clause 60.4**; or

- (b) the proceedings are brought in accordance with **clause 60.9**.

60.2 **Conditions Precedent to a Dispute Being Dealt With Under This Clause**

- (a) If a Dispute arises, a Party must give the other Party an Initial Notice in respect of the Dispute. From the giving of the Initial Notice, the Parties have forty (40) Business Days to resolve the Dispute by negotiation.
- (b) If a Dispute is resolved in accordance with **clause 60.2(a)**, the Parties must immediately detail the agreement in writing. The agreement must clearly state the Dispute and basis upon which it has been resolved. If only part of the Dispute is resolved, the agreement must state which part of the Dispute has been resolved and the basis upon which that part has been resolved.
- (c) If a written agreement is not produced pursuant to **clause 60.2(b)** in relation to all or part of the Dispute within forty (40) Business Days after the giving of the Initial Notice, the Dispute (or that part of the Dispute in respect of which there is no written agreement) is deemed to be unresolved.
- (d) Where an Initial Notice has been given under **clause 60.2(a)** by either Party, the Department may, at any time prior to the expiration of forty (40) Business Days, give to the Health Services Manager an expedition notice requiring a Dispute Notice to be issued in accordance with **clause 60.3(b)**.

60.3 **Negotiation Between Health Service Authority and the Contract Authority**

- (a) If a Dispute or part of a Dispute is unresolved in accordance with **clause 60.2(c)**, or if an expedition notice has been given under **clause 60.2(d)**, the Party who gave the Initial Notice must give to the other Party a Dispute Notice in accordance with **clause 60.3(b)**.
- (b) The Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is given pursuant to this **clause 60.3**;
 - (iii) include or be accompanied by reasonable particulars of the Dispute

including:

- (A) a brief description of the circumstances in which the Dispute arose;
- (B) references to any:
 - (I) provisions of the Contract;
 - (II) direction, instruction or document; or
 - (III) acts or omissions of any person,relevant to the Dispute;
- (C) the amount in dispute (whether a monetary amount, or expressed by reference to some other commodity) and, if not known, the best estimate available; and
- (D) if part of the Dispute has been resolved, a copy of the agreement pursuant to **clause 60.2(b)**; and

(iv) be given no later than ten (10) Business Days after the Dispute or part of the Dispute is deemed to be unresolved in accordance with **clause 60.2(c)** or the date on which an expedition notice has been given under **clause 60.2(d)**.

- (c) Within twenty (20) Business Days of the giving of a Dispute Notice, the Health Services Authority and the Contract Authority must meet at places and times agreed by them to attempt to resolve the Dispute.
- (d) The Parties must ensure that their representatives at all meetings make genuine efforts to resolve the Dispute.
- (e) If the Dispute or part of the Dispute is resolved within twenty (20) Business Days of the giving of the Dispute Notice, the Health Services Authority and the Contract Authority must immediately detail the agreement in writing. The agreement must clearly state the Dispute and the basis upon which it has been resolved. If only part of the Dispute is resolved, the agreement must state which part of the Dispute has been resolved and the basis upon which that part has been resolved.

- (f) If a written agreement is not produced pursuant to **clause 60.3(e)** in relation to all or part of the Dispute within twenty (20) Business Days after the giving of the Dispute Notice, the Dispute or that part of the Dispute in respect of which there is no written agreement is deemed to be unresolved.

60.4 Negotiation by Health Services Manager's Chief Executive Officer and the Department's Deputy Secretary (together, Senior Managers)

- (a) If a Dispute or part of a Dispute is unresolved as detailed in **clause 60.3(f)**, the Party who gave the Dispute Notice must give a Second Dispute Notice in accordance with **clause 60.4(b)**.
- (b) The Second Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is made pursuant to this **clause 60.4**;
 - (iii) annex a copy of the Dispute Notice (and any accompanying documents) given pursuant to **clause 60.3(b)** together with any documents which the Party giving the Second Dispute Notice considers would further assist the Senior Managers in resolving the Dispute;
 - (iv) if part of the Dispute has been resolved, annex a copy of the agreement prepared pursuant to **clause 60.2(b)** or **clause 60.3(e)**; and
 - (v) be given no later than ten (10) Business Days after a Dispute or part of a Dispute is deemed to be unresolved in accordance with **clause 60.3(f)**.
- (c) Within twenty (20) Business Days of the giving of a Second Dispute Notice, the Senior Managers must meet at places and times agreed by them to attempt to resolve the Dispute.
- (d) Each Party must ensure that their Senior Manager makes genuine efforts to resolve the Dispute.
- (e) If the Dispute or part of the Dispute is resolved within twenty (20) Business Days of the giving of the Second Dispute Notice, the Senior Managers must immediately detail the agreement in writing. The agreement must clearly state

the Dispute and the basis upon which it has been resolved. If only part of the Dispute is resolved, the agreement must state which part of the Dispute has been resolved and the basis upon which that part has been resolved.

- (f) If a written agreement is not produced pursuant to **clause 60.4(e)** in relation to all or part of the Dispute within twenty (20) Business Days after the giving of the Second Dispute Notice, the Department's Deputy Secretary may, within forty (40) Business Days of the Second Dispute Notice, give notice to the Health Services Manager that the Dispute or any part of the Dispute is thereby:
 - (i) referred for expert determination in accordance with **clause 60.5**;
 - (ii) referred for expedited arbitration in accordance with **clause 60.6**; or
 - (iii) referred for mediation in accordance with **clause 60.7**.
- (g) If:
 - (i) there is no referral under **clause 60.4(f)** within forty (40) Business Days of the giving of the Second Dispute Notice;
 - (ii) the referral under **clause 60.4(f)** does not deal with part of the Dispute, or
 - (iii) the Parties have fully complied with **clause 60.5**, **clause 60.6** and/or **clause 60.7**;

the Dispute, or that part of the Dispute that is not dealt with, is deemed to be unresolved.

60.5 Expert Determination

- (a) The expert determination must be conducted in accordance with the Institute of Arbitrators and Mediators Australia (**IAMA**) Expert Determination Rules as published from time to time.
- (b) The expert determination must be conducted:
 - (i) by an expert agreed upon between the Parties, with that agreement to be reached within five (5) Business Days of the referral pursuant to **clause 60.4(f)(i)** or such further period as the Department's Deputy Secretary may

reasonably determine; or

- (ii) if the Parties are unable to agree on the identity of the expert to be appointed within the time period detailed in this **clause 60.5(b)** - on the application of either Party, by an expert nominated by the President for the time being of IAMA, or such person authorised by the President to make the appointment, where that expert accepts appointment as an expert.
- (c) The Parties must promptly sign whatever reasonable terms of engagement the expert requires (including any indemnity), but if one of them does not so sign, the other may engage the expert by itself.
- (d) In respect of any Dispute or part of a Dispute that is referred to Expert Determination:
 - (i) the Parties must agree on the terms of reference and the matters to be determined by the Expert within ten (10) Business Days of the referral pursuant to **clause 60.4(f)(i)**, failing which the terms of reference will be clarified in accordance with the IAMA Expert Determination Rules; and
 - (ii) each Party will bear their own costs associated with the Expert Determination (and share the costs of the Expert Determination equally), unless the Parties agree otherwise in the terms of reference.
- (e) Any information which either Party obtains from the other under this **clause 60.5** is taken to be Confidential Information for the purposes of **clause 46** and **47**.
- (f) The expert determination will be final and binding on both Parties.
- (g) Nothing in this **clause 60.5** ousts the jurisdiction of a court to hear any proceeding brought by either Party in relation to a Dispute or part of a Dispute.
- (h) The Parties have not fully complied with this **clause 60.5** until the earlier of:
 - (i) the conclusion, or termination by agreement, of the expert determination;
or

- (ii) the expiration of forty (40) Business Days from the date of appointment of an expert if the Dispute or part of the Dispute is not resolved by Expert Determination at this date.

60.6 Expedited Arbitration Procedure

- (a) Within ten (10) Business Days of the referral pursuant to **clause 60.4(f)(ii)** or within such further period as the Department's Deputy Secretary may reasonably determine, the Parties must arrange for the appointment of an arbitrator, to be appointed by IAMA.
- (b) The Parties must, within five (5) Business Days of the appointment of the arbitrator, sign whatever reasonable terms of engagement the arbitrator requires (including any indemnity), but if one of them does not so sign, the other may engage the arbitrator by itself.
- (c) The Parties agree that:
 - (i) the expedited arbitration must be conducted in accordance with the IAMA Rules for the Determination of Commercial Arbitration, specifically, **Schedule 2** (Statement of Work), as published from time to time (**EA Rules**);
 - (ii) they must abide by the EA Rules and must procure the arbitrator's agreement to conduct the expedited arbitration according to the EA Rules;
 - (iii) they may be represented by legal counsel at the expedited arbitration; and
 - (iv) for the purposes of interpreting the EA Rules, a reference to the Notice of Dispute in the EA Rules shall be a reference to the notice in **clause 60.4(f)**.
- (d) Costs of the expedited arbitration will be determined by the arbitrator in accordance with subrule 15(2) of the EA Rules.
- (e) Any information which either Party obtains from the other under this **clause 60.6** is taken to be Confidential Information for the purposes of **clause 46** and **47**.
- (f) The Parties have not fully complied with this **clause 60.6** until the earlier of:
 - (i) the conclusion, or termination by agreement, of the expedited arbitration;

or

- (ii) the expiration of forty (40) Business Days from the date of appointment of an arbitrator if the Dispute or part of the Dispute is not resolved by expedited arbitration at this date.

60.7 **Mediation Procedure**

- (a) Within ten (10) Business Days of the referral pursuant to **clause 60.4(f)(iii)**, the Parties must arrange for the appointment of a mediator, to be mutually agreed between the Parties.
- (b) If the Parties are unable to agree on the identity of the mediator to be appointed within the time period detailed in **clause 60.7(a)**, a mediator must be nominated by the President for the time being of the Institute of Arbitrators and Mediators Australia (**IAMA**), or such person authorised by the President to make the appointment, on the application of the Department and provided the person nominated agrees to act as mediator.
- (c) The Parties must, within five (5) Business Days of the appointment of the mediator, sign whatever reasonable terms of engagement the mediator requires (including any indemnity), but if one Party does not so sign, the other Party may engage the mediator by itself.
- (d) Within twenty (20) Business Days of the referral pursuant to **clause 60.4(f)(iii)** the Parties must hold a preliminary conference in that mediation, in the presence of the mediator.
- (e) The Parties agree that:
 - (i) the mediation must be conducted in accordance with the IAMA Mediation Rules as in force from time to time (**Mediation Rules**);
 - (ii) they must abide by the Mediation Rules and must procure the mediator's agreement to conduct the mediation according to the Mediation Rules;
 - (iii) they may be represented by legal counsel at the mediation;
 - (iv) they must act in good faith and use their best endeavours to achieve the

resolution of the Dispute, or the part or parts of the Dispute, at the mediation; and

- (v) for the purposes of interpreting the Mediation Rules, a reference to the Notice of Dispute in the Mediation Rules shall be a reference to the notice referred to in **clause 60.4(f)**.
- (f) Each Party will bear its own costs of the mediation procedure, unless otherwise agreed between the Parties.
- (g) The Parties have not fully complied with this **clause 60.7** until the earlier of:
 - (i) the conclusion, or termination by agreement, of the mediation; or
 - (ii) the expiration of forty (40) Business Days from the date of appointment of a mediator if the Dispute or part of the Dispute is not resolved by mediation at this date.

60.8 **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.

60.9 **Summary or Urgent Relief**

Nothing in this **clause 60** will prevent either Party from instituting proceedings to seek enforcement of any payment due under the Contract or to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

60.10 **Continuance of Obligations**

- (a) The whole of the Parties' obligations under this **clause 60** continue notwithstanding that the Dispute relates to proceedings that have been commenced by:
 - (i) a third party against the Health Services Manager and/or the Commonwealth; or
 - (ii) the Health Services Manager and/or the Commonwealth against a third party.

60.11 Termination

This **clause 60** does not apply to an action by either Party to terminate this Contract under **clauses 62** or **63**.

PART 19 – DEFAULT AND TERMINATION

61. DEFAULT

61.1 Notification

The Health Services Manager must notify the Contract Administrator of the occurrence of a Default as soon as it becomes aware of the occurrence of the Default.

61.2 The Department Rights

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

- (a) give the Health Services Manager a Default Notice; and
- (b) issue a certificate and reduce the Onsite Health Clinic Fee (or other payments due under the Contract) in accordance with **clause 36**.

61.3 Cure

- (a) The Department may, in its absolute discretion, specify in the Default Notice that it requires the Health Services Manager to remedy the Default, in which case, upon receipt of a Default Notice, the Health Services Manager:
 - (i) will have the time specified in the Default Notice (**Cure Period**) from the date of the Default Notice to remedy the Default; and
 - (ii) must submit a Cure Plan within five (5) Business Days of the Default Notice, or such other period agreed between the Parties, setting out how the Health Services Manager will cure the Default within the Cure Period.
- (b) Where the Department specifies in a Default Notice that it requires the Health Services Manager to remedy a Default, the Health Services Manager must remedy the Default, including the identification, assessment and rectification of

any systemic issues contributing to the Default, within the Cure Period or such extended period as is agreed by the Department following submission of a Cure Plan.

61.4 Remedies

- (a) If a Default has occurred and the Health Services Manager fails to remedy the Default within the Cure Period or such extended period as is agreed by the Department following submission of a Cure Plan, the Department may exercise all or any of the following remedies:
 - (i) deduct money from amounts payable under **clause 35** or call on the Financial Undertaking to cover the costs arising directly or indirectly from the Default, including but not limited to any costs incurred in remedying the Default;
 - (ii) sue the Health Services Manager for compensation arising directly or indirectly out of that Default; or
 - (iii) any other remedies available to the Contract Administrator under this Contract or in law or equity.
- (b) The use of any of the above remedies will be without prejudice and are in addition to any other rights provided for and conferred by this Contract with respect to that Default, including without limitation any action under **clauses 29** and **62**.

62. TERMINATION FOR DEFAULT

62.1 Termination by the Department

Where the Department seeks to terminate this Contract in accordance with this **clause 62**, it must give written notice (**Termination Notice**) to the Health Services Manager specifying at least:

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

62.2 Termination Events

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

- (a) the Health Services Manager fails to comply with this Contract (which failure is capable of remedy) and the Health Services Manager fails to remedy the failure within the Cure Period specified in a Default Notice;
- (b) the Health Services Manager fails to comply with this Contract (which failure is not capable of remedy);
- (c) a termination event specified in **clause 62.3** occurs;
- (d) the Health Services Manager commits a breach, or breaches, of this Contract that at common law entitles the Department to terminate this Contract;
- (e) the Health Services Manager fails to replace any Key Personnel, in accordance with **clause 16**, with replacements acceptable to the Department;
- (f) the Health Services Manager commits a breach of **clause 48** or fails to comply with the any of the Department's data security requirements in **clause 51**, and **Schedule 2** (Statement of Work);
- (g) any of the representations or warranties in **clause 55** ceases to be true;
- (h) the Health Services Manager breaches **clause 66.1** and where the breach has a material adverse affect on the Department as determined by the Department acting reasonably, but only to the extent that that breach does not fall within **clause 62.2(a)**; or
- (i) the Health Services Manager does not provide the Financial Undertaking in accordance with **clause 58.1**.

62.3 Insolvency and Other Events

Without prejudice to its rights at common law or any other right which has accrued or may accrue to the Department under **clauses 62.2(a), 62.2(c)** or otherwise, the following events

are termination events for the purposes of **clause 62.2(c)**:

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

62.4 **Repayment on Termination**

Where, before termination of this Contract, the Department has made any payment in advance to the Health Services Manager for which it has not received any Health Services, the amount of that payment must be repaid by the Health Services Manager to the Department immediately on termination and, if not repaid, is recoverable by the Department from the Health Services Manager as a debt.

62.5 **Consequences of Termination for Default**

If this Contract is terminated under this **clause 62**:

- (a) subject to this Contract and **clause 65** in particular, the Parties are relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
- (b) subject to the requirement for the Health Services Manager to perform the Health Services in accordance with **clause 65**, all licences and Authorisations granted to the Health Services Manager by the Department, terminate immediately despite anything to the contrary contained in the relevant licence or authorisation;
- (c) the Health Services Manager must comply with **clause 65**; and
- (d) the Department must pay the Health Services Manager for any Health Services that were performed in accordance with this Contract prior to the date of termination.

62.6 **Health Services Manager's Acknowledgement**

The Health Services Manager acknowledges that the performance of the Health Services is critical to the performance of the functions of the Department and that the Department will incur expenses in seeking a new service provider and transferring the Health Services to a new service provider.

63. **TERMINATION FOR CONVENIENCE**

63.1 **The Department may Terminate for Convenience**

In addition to any other rights it has under this Contract, the Department may terminate this

Contract, by notifying the Health Services Manager in writing that this Contract is terminated from the date specified in the notice (**date of termination**) and, in that event, the Department may give to the Health Services Manager such directions as it thinks fit in relation to subsequent performance of this Contract.

63.2 **Transition Out Obligations**

Notwithstanding that the Health Services Manager may have received a notice under **clause 63.1**, the Health Services Manager must comply with its obligations under **clause 65** and with any directions given by the Contract Administrator.

63.3 **Payment for Health Services Rendered Prior to Termination**

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

63.4 **Compensation for Unavoidable Losses**

- (a) The Department is liable to the Health Services Manager for any substantiated unavoidable loss incurred by the Health Services Manager in connection with this Contract to the extent that the unavoidable loss was incurred as a direct consequence of termination of this Contract in accordance with this **clause 63**, or removal of any Health Services from scope in accordance with **clause 32**.
- (b) For the purposes of this **clause 63.4** and **clause 32.1** "unavoidable loss":
 - (i) is limited to reasonable wind-down expenses (for example, redundancy expenses);
 - (ii) must not include any amount on account of loss of profits; and
 - (iii) must not exceed the amount that would have been payable if the Department had not terminated this Contract pursuant to **clause 63.1**, or in the case of **clause 32.1(d)**, had not removed the Health Services from scope.

63.5 **Termination of Subcontracts for Convenience**

The Health Services Manager must, in each subcontract or order to the value of \$20,000 or more placed with any Subcontractor for the purpose of this Contract, reserve a right of

termination to take account of the Department's right of termination under this **clause 63** and the Health Services Manager must, where appropriate, make use of such rights to mitigate losses in the event of termination by the Department under the provisions of this **clause 63**.

63.6 Unfettered Discretion

For the avoidance of doubt, the Department has an unfettered discretion to terminate this Contract in accordance with this **clause 63**.

64. DEEMED TERMINATION FOR CONVENIENCE

If a purported termination for Default by the Department under **clause 62** is determined by a competent authority not to be properly a termination for Default, then that termination by the Department will be deemed to be a termination for convenience under **clause 63** which termination has effect from the date of the notice of termination.

65. TRANSITION OUT

65.1 Development of Transition Out Plan

- (a) By 28th February 2013, the Health Services Manager must develop, in consultation with and for approval by the Department, a Transition Out Plan that will provide for the Transition Out of Health Services from the Health Services Manager to the Department or its nominee as a result of:
 - (i) any Health Services being removed from the scope of this Contract;
 - (ii) termination of this Contract; or
 - (iii) the expiration of this Contract.
- (b) The Transition Out Plan must, without limitation, provide for the matters referred to in this **clause 65** and must not be inconsistent with this **clause 65**.

- (c) The Transition Out Plan must set out the obligations to be performed by each Party in connection with the orderly transition of service delivery from the Health Services Manager to the Department or its nominee, including obligations in relation to:
 - (i) the transfer to the Department or its nominee, or management of:
 - (A) Health Care Records;
 - (B) Department Material;
 - (C) the Contract Material (other than CHIRON); and
 - (D) Essential Loose Assets; and
 - (ii) the transfer of employees who wish to transfer to the new service provider, and if applicable the provision of relevant information to enable the new service provider to ascertain the accrued rights and benefits of those employees.

65.2 Transition Out Period

- (a) The Transition Out period will commence on the earlier of:
 - (i) one (1) Months prior to the expiry of the Term (or such earlier date as the Department may reasonably request); and
 - (ii) the date on which:
 - (A) a Termination Notice is given by the Department under **clause 62**;
 - (B) the Department terminates the Contract in accordance with **clause 63**; or
 - (C) a notice of removal of Health Services from scope under **clause 32**,
 and will continue until:
- (b) in the case of expiry of the Term, expiry of the Term; and
- (c) in the case of a Termination Notice, termination for convenience under **clause**

63, or removal of Health Services from scope under **clause 32**, the earlier of:

- (i) one (1) Months after the date of the Termination notice, date of termination of convenience, or date of notice of removal of Health Services from scope; and
- (ii) the date on which the Department notifies the Health Services Manager that the Department no longer requires Transition Out assistance.

65.3 **Compliance with Transition Out Plan**

- (a) The Health Services Manager must comply with the Transition Out Plan and provide all reasonable assistance and cooperation necessary during the Transition Out period in order to transfer the Health Services to the Department or an alternative service provider in a manner which ensures continued provision of services similar to the Health Services (as the case may be) in accordance with the requirements of this Contract.
- (b) In particular the Health Services Manager must, in accordance with the Transition Out Plan:
 - (i) deliver to the Department (or an alternative service provider) in an orderly manner:
 - (A) complete Department Records (including all data that has been entered into CHIRON for the purposes of this Contract), in a format that is readable by the Department, and any other Department property including Department Material and Department Assets;
 - (B) all Department Confidential Information;
 - (C) all information about Transferees and Recipients contained in any database or file;
 - (D) training fees to be agreed on the Department's request;
 - (E) any statistical data or information contained in any table, schedule or database prepared in the performance of the Health Services;

- (F) a detailed statement of resources setting out information on equipment, technology, Health Services Manager Personnel, Network Providers and facilities and equipment used by the Health Services Manager to perform the Health Services; and
 - (G) to the extent the material is Contract Material, business process flow charts, procedures manuals, plans, reports, pro-forma documentation, activity schedules, work product examples, organisational charts, skills details for Health Services Manager Personnel and Network Providers and any other documents of a similar nature necessary for an alternative service provider to assume responsibility for providing the Health Services.
- (ii) except with the consent of the Department or as required to comply with this **clause 65**, cease accessing any of the Department's Assets and the Department System;
 - (iii) at the Department's request, and to the extent it is permitted to do so, novate any contracts relating to the Health Services to the Department or its nominee at no additional charge to the Department;
 - (iv) perform its other obligations under the Transition Out Plan;
 - (v) allow the Department to audit compliance with this **clause 65**; and
 - (vi) allow new service providers to access Facilities where relevant to assist in the orderly transition of the Health Services.

65.4 **Transition of Health Services Removed from Scope**

If any Health Services are removed from scope, the obligations of the Health Services Manager under **clause 65.2** in respect of that termination, apply only to the extent necessary to ensure the orderly transition to the Department or other service provider of services similar to the Health Services which have been removed from scope. In that event, the Health Services Manager will be entitled to payment for those Transition Services on a Pass Through Cost basis in accordance with **Schedule 5** (Fees and Payments).

65.5 Department Assets

- (a) Upon the expiration or earlier termination of this Contract, the Health Services Manager must return to the Department (or as the Department may direct to a successor), Department Assets licensed to the Health Services Manager by the Department pursuant to **clause 23**, or any replacement Department Assets, which are functional and fit for purpose.
- (b) Immediately prior to the expiration or immediately following the earlier termination of this Contract, a stocktake and inspection shall be conducted of the equipment to be returned pursuant to **clause 65.5(a)**. The Contract Administrator will conduct this inspection in conjunction with the Health Services Manager and the Parties will jointly prepare and agree a report of the outcome of the inspection.
- (c) In the event of any deficiency in the value of the equipment to be returned by the Health Services Manager pursuant to **clause 65.5(a)** from the value of the Department Assets licensed by the Department to the Health Services Manager pursuant to **clause 23** (allowing for Consumer Price Index adjustment), the Health Services Manager will immediately pay that difference to the Department or to a successor as the Department may direct.

65.6 Update and Review of Transition Out Plan

- (a) On or before 28 February each year of the Term, (and not less than six (6) Months before the scheduled expiration of this Contract,) the Health Services Manager must:
 - (i) review and, if necessary, update the Transition Out Plan to ensure it is consistent with the Health Services and **Schedule 2** (Statement of Work) and facilitates the most efficient succession to an alternative service provider; and
 - (ii) submit an updated Transition Out Plan to the Department for consideration and approval or advise the Department that it does not consider that any amendments to the existing Transition Out Plan are required. If the Department considers that amendments to the Transition Out Plan (as updated by the Health Services Manager if applicable) are reasonably

required to ensure it remains appropriate to the circumstances of the Department, it may require the Health Services Manager to make those amendments and resubmit an updated Transition Out Plan to the Department for consideration and approval in accordance with this clause.

- (b) Once approved by the Department, this Contract will apply in respect of any updated Transition Out Plan.

65.7 Fees for Transition Out Services

- (a) Upon the expiry of the Term by the effluxion of time or termination under **clause 63**, the Department will pay the Health Services Manager the Transition Out Fee specified in **Schedule 5** (Fees and Payments).
- (b) Where this Contract is terminated under **clause 62** but without limiting any damages that the Department may be entitled to, the Department will pay the Health Services Manager the Onsite Health Clinic Fee and other payments for the Health Services that the Health Services Manager provides in complying with its obligations under this **clause 65**, and the Health Services Manager will not be entitled to payment of the Transition Out Fee.
- (c) The Parties agree that the Terms and Conditions of this Contract, including the Onsite Health Clinic Fee, apply to any Health Services performed by the Health Services Manager during any Transition Out period under **clause 65**.

65.8 Health Services Manager Must not Hinder Transition

The Health Services Manager agrees that it will not hinder in any way, the transition of the provision of services similar to the Health Services to a new service provider upon termination or expiration of this Contract or removal of Health Services from scope under **clause 32**.

65.9 Survival of Clause

This **clause 65** survives the expiration or termination of this Contract.

66. MISCELLANEOUS**66.1 Industry Development**

The Health Services Manager:

- (a) acknowledges that the Department is committed to sourcing (directly or indirectly) at least ten (10) per cent of the total value of its purchases from Small to Medium Enterprises; and
- (b) must provide, upon request by the Department, a report to the Department that sets out the following:
 - (i) the level of direct or indirect participation of Small to Medium Enterprises (expressed as a percentage of the total annual value of this Contract) in the delivery of the Health Services for the current calendar year; and
 - (ii) any issues that, in the Health Services Manager's opinion, are relevant to the maintenance or improvement of the level of participation of Small to Medium Enterprises in delivery of the Health Services for the next calendar year.

66.2 Conflict of Interest

- (a) The Health Services Manager warrants that to the best of its knowledge after making diligent inquiry, at the Commencement Date and at all times during the Term, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract by itself, by Health Services Manager Personnel or by any Network Provider and that based upon reasonable inquiry it has no reason to believe that any Health Services Manager Personnel or Network Provider has such a conflict.
- (b) If during the Term a conflict or risk of conflict of interest arises, the Health Services Manager undertakes to notify the Department immediately after the conflict or risk of conflict becomes known.
- (c) The Health Services Manager must not, and must use its best efforts to ensure that any Health Services Manager Personnel and Network Provider does not, during the Term, engage in any activity or obtain any interest likely to conflict with, or restrict

the fair and independent performance of obligations under this Contract and must immediately disclose to the Department such activity or interest.

- (d) If the Health Services Manager fails to notify the Department or is unable or unwilling to resolve or deal with the conflict as required, the Department may terminate this Contract in accordance with the provisions of **clause 62**.

66.3 **Negation of Employment, Partnership and Agency**

- (a) The Health Services Manager must not represent itself, and must use reasonable endeavours to ensure that any Health Services Manager Personnel or Network Provider does not represent themselves, as being an officer, employee, partner or agent of the Department, or as otherwise able to bind or represent the Department.
- (b) Except as specifically provided for in this Contract, the Health Services Manager is not by virtue of this Contract an officer, employee, partner or agent of the Department, nor does the Health Services Manager have any power or authority to bind or represent the Department.

66.4 **Waiver**

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

66.5 **Assignment and Novation**

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

66.6 Applicable Law

This Contract will be governed by the Law for the time being in force in the Australian Capital Territory, and the Parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

66.7 Entire Agreement

This agreement constitutes the entire agreement between the Parties in relation to the provision of the Health Services, and (except as otherwise expressly provided for in this Contract) supersedes all communications, negotiations, arrangements and agreements, either oral or written, between the Parties with respect to the subject matter of this Contract.

66.8 Department Representatives

- (a) The Contract Authority, Contract Administrator and Department Executive are each Department Representatives in discharging their respective functions as set out in this Contract. The Health Services Manager acknowledges that Department Representatives do not:
 - (i) owe any direct duty to the Health Services Manager under this Contract (whether to review, accept or reject any Health Services or any Material submitted by the Health Services Manager under this Contract or otherwise); and
 - (ii) provide any form of certification, declaration or other representation that the Health Services or any Health Services Manager Materials comply with any Law, industry standards or are otherwise fit for purpose.
- (b) Unless expressly provided in this Contract, any directions, reviews, rejections, consents, approvals or other comments made by Department Representatives in relation to any thing done or provided under the Contract, or the use of any Health Services Manager Material under this Contract, do not relieve the Health Services Manager from, or alter or affect the Health Services Manager's, liabilities or responsibilities under this Contract or otherwise.
- (c) The Contract Authority, Contract Administrator and Department Executive may at any time by written notice to the Health Services Manager nominate additional persons to fulfil their respective functions set out in this Contract,

other than the functions of the Contract Authority and the Contract Administrator in relation to:

- (i) dispute resolution in accordance with **clause 60**; or
- (ii) issuing a notice of termination under **clauses 54.6, 62 or 63**.

66.9 Counterparts

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

66.10 Severability

- (a) Each provision of, or any Schedule or Annexure of or to this Contract and each part of such provision, will, unless the context otherwise necessarily requires it, be read and construed as a separate and severable provision or part. If any provision or part of a provision is void or otherwise unenforceable for any reason, then that provision or part (as the case may be) will be severed and the remainder will be read and construed as if the severable provision or part had never existed.
- (b) For the avoidance of doubt, **clause 66.10(a)** applies to each Schedule and Annexure of or to this Contract.

66.11 Further Assurance

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

66.12 Consent

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

66.13 Equal Employment Opportunity

- (a) The Health Services Manager must comply with its obligations, if any, under the *Equal Employment Opportunity for Women in the Workplace Act 1999* (Cth)

(EEOWW Act).

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

66.14 Fair Work Principles

- (a) The Health Services Manager must:
 - (i) in performing its obligations under this Contract, comply; and
 - (ii) as far as practicable ensure that its Subcontractors comply,with all relevant requirements of the Fair Work Principles (as set out in the Fair Work Principles User Guide - available at www.deewr.gov.au/fairworkprinciples), including by:
 - (iii) complying with all applicable workplace relations, work health and safety, and workers' compensation Laws;
 - (iv) informing the Department of any adverse court or tribunal decision for a breach of workplace relations Law, work health and safety Laws, or workers' compensation Laws made against it during the Term and any remedial action it has taken, or proposes to take, as a result of the decision;
 - (v) providing to the Department any information they reasonably require to confirm that the Health Services Manager (and any Subcontractor) is complying with the Fair Work Principles; and
 - (vi) participating in all compliance activities associated with its legal obligations, including those arising under the Fair Work Principles (such as requests for information and audits undertaken by the Commonwealth, its

nominees or relevant regulators).

- (b) The Health Services Manager's compliance with the Fair Work Principles will not relieve the Health Services Manager from its responsibility to comply with its other obligations pursuant to this Contract.
- (c) If the Health Services Manager does not comply with the Fair Work Principles, without prejudice to any rights of the Department, the Department will be entitled to publish details of the Health Services Manager's failure to comply (including the Health Services Manager's name) and to otherwise provide those details to other agencies.
- (d) The Health Services Manager must, as far as practicable:
 - (i) not use a Subcontractor if the Subcontractor would be precluded from contracting directly with the Department or another Commonwealth Agency under the requirements of the Fair Work Principles; and
 - (ii) ensure that all Subcontracts impose obligations on Subcontractors equivalent to the obligations under this **clause 66.14**.

66.15 Work Health and Safety

- (a) In this **clause 66.15**:
 - (i) **Act** means the *Work Health and Safety Act 2011* (Cth).
 - (ii) **Person Conducting a Business or Undertaking (PCBU)** as defined by the Act means a person conducting a business or undertaking:
 - (A) whether the person conducts the business or undertaking alone or with others; and
 - (B) whether or not the business or undertaking is conducted for profit or gain.
 - (b) The Health Services Manager must ensure, as far as is practicable and within the Health Services Manager's control under the terms of this Contract, that the Health Services are provided in a manner that does not pose any avoidable health or safety risk to the Health Services Manager 's Personnel, to the
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Department's Personnel or to any other person.

- (c) Without limiting in any way the work health and safety obligations that the Health Services Manager has under this Contract, including those that apply due to the operation of Commonwealth and State or Territory Laws, the Health Services Manager must:
- (i) ensure that a PCBU meets the primary duty of care requirements of section 19 of the Act;
 - (ii) comply with any reasonable safety directions given by the Department;
 - (iii) ensure the Department is notified immediately after a notifiable incident has occurred in accordance with section 38 of the Act; and
 - (iv) promptly notify the Department of:
 - (A) any work related injury that causes death or serious personal injury;
 - (B) any notifiable incident as defined at sections 35, 36 and 37 of the Act; and
 - (C) each occasion it reports to, or notifies, a regulatory authority of a notifiable incident authority under the Act, the *Occupational Health and Safety Act 2004* (Vic), the *Occupational Health and Safety Regulations 2007* (Vic), the *Occupational Health, Safety and Welfare Act 1986* (SA), the *Occupational Health, Safety and Welfare Regulations 2010* (SA)
- within one (1) Business Day after the incident has occurred or within two (2) hours if the injury causes death.
- (d) At the Department's request, the Health Services Manager must provide reasonable assistance to the Department or Comcare (including giving the Department, Comcare and their agents access to the Health Services Manager's premises, files, information technology systems and the Health Services Manager Personnel) in connection with any monitoring, inspection, investigation or audit of work health and safety matters arising in relation to the provision of the Health Services.

66.16 **Environmental Protection**

- (a) In providing the Health Services, the Health Services Manager must:
- (i) ensure that its activities and areas of responsibility under this Contract are undertaken in a manner which plans for, and implements, appropriate practices and procedures which minimise or prevent any actual or potential damage to the environment;
 - (ii) cooperate with Other Service Providers in relation to the planning, implementation and management of environmental hazards;
 - (iii) perform its obligations under this Contract in such a way as to ensure that the Department is not in breach of any environmental requirement described in the Contract or at Law; and
 - (iv) promptly advise the Department (and Other Service Providers if necessary) if it is aware of any actual, potential or suspected breach of the Department's environmental policy or procedures in connection with the Health Services, and generally advise the Department of any matter, fact or circumstance in connection with the Health Services that the Health Services Manager believes is or may not be adequately dealt with by the Department's environmental policies or procedures or their related training, awareness and compliance programmes.

67. **NOTICES**

67.1 **Address for Notices**

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

- (a) if given by the Health Services Manager to the Department, signed by the Health Services Authority or the Health Services Administrator and marked for the attention of the Contract Authority or the Contract Administrator at the address set out in **clause 67.2** or as otherwise notified from time to time by the Department; or
- (b) if given by the Department to the Health Services Manager, signed by the

Contract Authority or the Contract Administrator and marked for the attention of the Health Services Authority or the Health Services Administrator at the address set out in **clause 67.2** or as otherwise notified from time to time by the Health Services Manager.

67.2 Addresses

(a) The address for the Department:

Contract Authority – Health Services Contract

Ken Douglas

First Assistant Secretary, Offshore Detention and Returns Task group

PO Box 25

Belconnen ACT 2616

Facsimile: 61 2 6264 1100

Email: ken.douglas@immi.gov.au

Contract Administrator – Health Services Contract

Simon Schiwy

Assistant Secretary, Offshore Detention Services Branch

PO Box 25

Belconnen ACT 2616

Facsimile: 61 2 6264 1100

Email: simon.schiwy@immi.gov.au

(b) The address for the Health Services Manager:

Health Services Authority – Regional Processing Countries Health Services Contract

Michael Gardner

Level 3

45 Clarence Street

Sydney, NSW 2000

Facsimile: 612 9372 2576

Email: michael.gardner@internationalsos.com.au

Health Services Administrator –Regional Processing Countries Health Services Contract
Ian Gilbert
Level 3
45 Clarence Street
Sydney, NSW 2000
Facsimile: 612 9372 2576
Email: ian.gilbert@ihms.com.au

67.3 **Delivery of Notices**

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

67.4 **Receipt of Notices**

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

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

68. **INTERPRETATION**

68.1 **Interpretation**

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

- (a) a word suggesting a gender includes all genders;

- (b) a singular word includes the plural, and vice versa;
- (c) headings are for convenience only, and do not affect interpretation;
- (d) the word **person** includes any type of entity or body of persons (including a body politic), whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
- (e) an amount in dollars, \$AUD or \$AU is to that amount in Australian dollars;
- (f) a reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as, from time to time, amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) subject to **clause 34**, a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as, from time to time, amended, supplemented, replaced or novated;
 - (iii) any body is:
 - (A) if that body is replaced by another organisation, deemed to refer to that organisation; and
 - (B) if that body ceases to exist, deemed to refer to the organisation which most nearly or substantially serves the same purposes or objects of that body;
 - (iv) a **recital, clause, sub-clause, Part, Schedule** or **Annexure** is to the respective recital, clause, sub-clause, Part, Schedule or Annexure of or to this Contract as varied from time to time;
 - (v) to a **clause** includes a reference to a sub-clause of that clause;
 - (vi) to a **Schedule** includes the Annexures to that Schedule and any attachments;
 - (vii) a person holding the Department or the Health Services Manager office includes any person from time to time holding, occupying or performing

the duties of that office; and

- (viii) the Department or the Health Services Manager office includes, if that office is abolished, the holder of any other office at the same or equivalent level which has the same or similar responsibilities;
- (g) if a Party to this Contract is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST which the representative member of the GST group is liable and input tax credits to which the representative member is entitled;
- (h) references to GST extend to any notional liability of a person for GST and to any amount which is treated as GST under the GST Law, and references to an input tax credit extend to any notional input tax credit to which any person is entitled;
- (i) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a Party to this Contract or any other document or arrangement includes that Party's permitted substitute or a permitted assign of that Party;
- (k) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;
- (l) the word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing;
- (m) references to a General Practitioner being employed or engaged by a Network Provider include a General Practitioner that is self-employed and/or operates his or her own practice; and
- (n) references in these main terms and conditions to a "Part" or "clause" are to the Part or clause of these main terms and conditions, unless otherwise stated.

68.2 Inconsistency

If there is any inconsistency between any part of the Contract, a descending order of

precedence will be accorded to:

- (a) **clauses 1 to 68.3** of these main terms and conditions and **Schedule 1** (Glossary);
- (b) **Schedule 2** (Statement of Work), including any Annexure or attachment to that Schedule;
- (c) the Schedules other than **Schedule 1** (Glossary) or **Schedule 2** (Statement of Work), including any Annexure or attachment to those Schedules; and
- (d) any other document incorporated by express reference or otherwise referenced as part of the Contract,

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

68.3 **Consents**

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

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

unless this Contract expressly contemplates otherwise.

EXECUTED as an agreement

SIGNED for and on behalf of
Commonwealth of Australia

By:

Signature

Signature of Witness

Name of Witness in full

Date:

EXECUTED by [*Health Services Manager*]:

Signature of director

Signature of Witness

Name

Name

Date:



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 1

GLOSSARY

In the Contract, unless the contrary intention appears, the following definitions apply.

Term	Definition
AAP	means Australian Approved Professional
Accepted Industry Practice	means, at any time, the exercise of that degree of care and skill which would reasonably be expected at that time in Australia from a skilled, competent and experienced provider of services of the same kind or type being provided under the Contract.
Additional Fees	means fees for any additional or expanded services provided under clause 33 of the Contract, determined in accordance with clause 8 of Schedule 5 (Fee and Payments).
Additional Hours	means the time that an Onsite Health Clinic is required to remain open, in accordance with Schedule 2 (Statement of Work) once the Minimum Clinic Hours for that Contact Day have been exceeded.
Additional Hours Rates	means the rates specified in Table 10 (Additional Hours Rates) of Annexure A (Pricing Tables) to Schedule 5 (Health Services Fees and other Payments)
After Hours Service	<p>means the Services operated and managed by the Health Services Manager which:</p> <ul style="list-style-type: none"> (i) involve the provision of a health triage service and initial health advice to Transferees and Recipients in accordance with clause 28 of Schedule 2 (Statement of Work); and (ii) must be available for all Transferees on Nauru and Manus Island; and (iii) must be available at all times during which any General Practitioner clinics on Nauru and Manus Island are not open.
Approved Major Subcontract	a contract between the Health Services Manager and a Major Subcontractor entered into in accordance with clause 18 of the Contract.
Approved Major Subcontractor	means a party (other than the Health Services Manager) to an Approved Subcontract.

Term	Definition
Asset	means any item of tangible property, leased, created, or otherwise brought into existence either wholly or in part in providing the Health Services and performing the Health Services Manager's obligations under this Contract (including Department Assets, Health Services Manager Assets and Department Material), but does not include perishable items such as food or consumables (including medicines).
Australian Accounting Standards	are those adopted by the Australian Accounting Standards Board (AASB) and (where applicable) the Corporations Act 2001 of the Commonwealth of Australia
Australian Approved Professionals	means a person employed by the Health Services Manager who is registered to practise in Australia with AHPRA or another relevant body or, in the case of non-clinicians, who are engaged under an Australian or New Zealand employment contract.
Australian Federal Police Background Check	means the National Police Check provided by the Australian Federal Police to individuals who have a right to work in Australia, have applied for the National Police Check, and have met the relevant application requirements. More information on how to apply for a National Police Check is available at: http://www.protectivesecurity.gov.au .
Australian Government Policy	is any Australian Government policy listed in Schedule 15 (Australian Government and Department Health Policies) of the Contract, or as otherwise notified in writing by the Department to the Health Services Manager as applicable to the Contract, but excludes Department Health Policy and Guidelines.
Authorisation	means any approval, authorisation, consent, exemption, filing, licence, notarisation, registration or waiver however described and any renewal of or variation to any of them.
Average Overall Performance Rating	is the average monthly performance rating for all Contract Responsibilities across all Sites.
Base Period	means the base period outlined in Schedule 4.1 (Performance Management Manual Framework).

Bi-monthly	means every two months.
Business Day	any day that is not a Saturday, Sunday, bank holiday or public holiday in the place where an act is to be performed or a payment is to be made.
Change Control Procedure	means the change control procedure outlined in clause 34 of the Regional Processing Countries Health Services Contract.
CHIRON	<p>means the medical software package, including user guides, specification documents and source code, used by the Health Services Manager for the management of the Facilities and Health Services, and includes</p> <p>(a) all Material, including Third Party Software, that is:</p> <ul style="list-style-type: none"> (i) embodied in or attaches to CHIRON at any time during the Term but excluding all IHMS Third Party Software; or (ii) is otherwise necessarily related to or required for the functioning, operation, maintenance or other use of CHIRON, at any time during Term, <p>including Material that is incorporated in CHIRON after the Commencement Date; and</p> <p>(b) all changes, updates or enhancements made to CHIRON , at any time during the Term, including changes updates or enhancements made to:</p> <ul style="list-style-type: none"> (i) any Material embodied in or attached to CHIRON but excluding changes, updates or enhancements made to the IHMS Third Party Software; (ii) any Material that is otherwise necessarily related to or required for the functioning, operation, maintenance or other use of CHIRON; and (iii) any related software owned by the Health Services Manager.
Clinical Governance Team	means the nominated team of Health Services Manager Personnel who are responsible for overseeing the appropriate and professional delivery of the clinical component of the Health Services to Transferees and Recipients at a Facility.
Code of Conduct	the code attached as Annexure A of Schedule 4.2 (Governance).
Commencement Date	the date on which the Contract is signed by both Parties

Commonwealth	means the Commonwealth of Australia.
Confidential Information	means Department Confidential Information or Health Services Manager Confidential Information.

Consequential Loss	<p>means any cost, liability, loss, expense or damage , whether arising in contract, tort, statute or otherwise, and whether or not in the contemplation of the Parties at the date of this Contract relating to:</p> <ul style="list-style-type: none"> (a) loss, or anticipated loss, of opportunity by the Department or a Transferee or Recipient, whether or not flowing directly or indirectly from the act or omission in question; (b) all costs incurred by the Department in re-tendering or negotiating with an alternative providers, alternative health services providers and alternative contractors; (c) all costs incurred by the Department in establishing the HSM Network or similar networks; (d) all losses that are incurred as a consequence of the Department awarding the Contract or similar contracts to an alternative health services provider or contractor for part or the whole of the Health Services; (e) all losses that are incurred by the Department in engaging other services providers to provide health services the same or similar to the Health Services; (f) loss or anticipated loss of revenue by the Department, whether or not flowing directly or indirectly from the act or omission in question; (g) lost or anticipated loss of savings by the Department, whether or not flowing directly or indirectly from the act or omission in question; (h) loss of expectation by the Department of faster and more efficient systems and provision of Health Care Services, whether or not flowing directly or indirectly from the act or omission in question; (i) wages incurred by Departmental employees and fees incurred for Departmental contractors, should the Contract be terminated in part or whole by the Department and the Department engages other service providers to provide health services the
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	<p>same or similar to the Health Services;</p> <ul style="list-style-type: none"> (j) internal Departmental overheads; (k) Departmental legal costs in responding to claims by Transferee or Recipient; and (l) legal costs of a Transferee or Recipient or a third party in relation to a claim arising from, or in connection with, an act or omission of the Health Services Manager or Health Services Manager Personnel. <p>For the avoidance of doubt, Consequential Loss does not include any cost, liability, loss, expense or damage incurred by the Department relating to:</p> <ul style="list-style-type: none"> (m) a claim by a Transferee or Recipient arising from, or in connection with, an act or omission of the Health Services Manager or Health Services Manager Personnel, for: <ul style="list-style-type: none"> (i) medical expenses; (ii) loss of amenity; (iii) pain and suffering; or (n) a claim by a third party arising from, or in connection with an act or omission of the Health Services Manager or Health Services Manager Personnel, for: <ul style="list-style-type: none"> (i) medical expenses; (ii) loss of amenity; (iii) pain and suffering; or (iv) repair or replacement costs of third party property.
Contact Day	<p>in respect of each onsite health clinic required to be provided at a Facility, is any day that the clinic is required to be open for Health Care in accordance with Annexure B (Onsite Health Services) of Schedule 2 (Statement of Work).</p>

Contingency	a Facility that has been deactivated and contains no Transferees, but in relation to which the Health Services Manager may be required to "ramp-up" to provide services in accordance with clause 31 of the Contract main terms and conditions. For the avoidance of doubt, at the Commencement Date there are no Contingency Facilities under this Contract.
Contract	means the agreement between the Parties for the performance of the Regional Processing Countries Health Services, comprising the main terms and conditions, and all schedules annexure and attachments that are attached or referred to in the main terms and conditions.
Contract Administrator	the Contract Administrator appointed by the Secretary and any other persons nominated by the Contract Administrator from time to time to fulfil the role of Contract Administrator.
Contract Authority	the Contract Authority appointed by the Secretary, and any other persons nominated by the Contractor Authority from time to time to fulfil the role of Contract Authority.
Contract Change Notice	has the meaning given to it in clause 34.2 of the Contract main terms and conditions.
Contract Change Proposal	a written proposal to effect a variation of the Contract lodged in accordance with clause 34 of the Contract.
Contract Material	any material or information: (a)) created under the Contract or as a consequence of the Contract; or (b) which is copied or derived from that material.
Contract Responsibilities	means the health services set out in the ISPR for which the Health Service Manager's performance is assessed. These services may change from time to time as per clause 5.2 of Schedule 4.1 (Performance Management Framework).
Contract Variation One	means Contract Variation One which was executed between the parties on 16 April 2014.

Critical Health Services	are any of the services required to be provided on site at a Facility from a nurse clinic, general practice clinic or mental health clinic under Schedule 2 (Statement of Work), but excludes psychiatry and dental services.
Critical Incident	has the meaning given to that term in Annexure A (Incidents) of Schedule 2 (Statement of Work).
Data	includes all information stored on magnetic tapes, disks or in written form of any kind.
Data Collection and Reporting Manual	is the manual referred to in Schedule 15 (Australian Government and Department Health Policies).
Deemed Amount	is the amount of the Monthly Onsite Health Clinic Fee invoiced to the Department for the previous Month under the circumstances considered in Schedule 5 (Fees and Payments).
Default	a failure to perform the Health Services in accordance with, or other failure to comply with, requirements of the Contract.
Default Notice	a notice issued by the Contract Administrator under clause 61.2 of the Contract.
Department	the Commonwealth represented by the Department of Immigration and Citizenship.
Department Assets	includes assets owned by the Department and listed in Schedule 8 (Department Assets).

Department Confidential Information	any Department Material which is either: (a) listed as Department Confidential Information in Schedule 10 (Confidential Information) of the Contract, (b) is information that is by its nature confidential; or (c) a party knows or ought to know is confidential, but does not include: (d) information which is or becomes public knowledge other than by breach of the Contract or any other confidentiality obligation.
Department Data	has the meaning given to it in clause 1.1 of Schedule 11 (Confidentiality Deed)
Department Executive	the person(s) the Department notifies the Health Services Manager from time to time are person(s) with the authority to exercise the power of the “Department Executive” for the purposes of the Contract.
Department Health Policy	any Department health related policy: (a) available on the Department’s instruction system (Legend); (b) listed in Schedule 15 (Australian Government and Department Health Policies); or (c) notified by the Department to the Health Services Manager in accordance with clause 11.4 of the Contract.
Department Health Policy Manual	the document of that name described in Schedule 15 (Australian Government and Department Health Policies)
Department Material	any material or information provided by the Department to the Health Services Manager for the purposes of the Contract or which is copied or derived from that material or information.

Department Personnel	the officers, employees, agents, advisers and contractors of the Department (other than the Health Services Manager and Health Services Manager Personnel) and excludes any Department Services Provider and their respective officers, employees, agents, advisers and contractors of the Department Services Providers.
Department Policy	any Department policy relating to immigration detention: (a) available on the Department's instruction system (Legend); (b) listed in Schedule 15 (Australian Government and Department Health Policies; or (c) notified by the Department to the Health Services Manager from time to time as applicable to the Contract, but excludes Australian Government Policy and Department Health Policy and Guidelines.
Department Records	records created by either Party or delivered to it by a third party for the purposes of the Contract, and includes records relating to matters between either of the parties, and any Health Services Manager Personnel and Network Providers, or any of them, but not including those records which are specifically created and maintained by the Health Service Manager or any Health Services Manager Personnel or Network Providers solely for its own use.
Department Representatives	has the meaning given to it by clause 66.8 of the Health Services Contract.
Department Services Providers	comprise: (i) Services Providers; and (ii) any other service provider the Department notifies the Health Services Manager is a “Department Services Provider” providing services in relation to Transferees.
Department System	the Department's information technology systems that may be used by the Health Services Manager for the provision of the Health Services and includes all hardware and software and documentation specified in it. .

Direction	a direction issued to the Health Services Manager in accordance with clause 21 of the Contract.
Discharge	the Removal or Release of a Transferee from a Facility.
Dispute	any dispute or difference between the Department and the Health Services Manager arising out of or in connection with the Contract or the Health Services, including any dispute arising out of proceedings brought by: <ul style="list-style-type: none"> (a) a third party against the Health Services Manager; or (b) the Department or by the Health Services Manager or the Department against a third party.
Dispute Notice	the notice referred to in clause 60.3 of the Contract.
Emergency Response	means the response by the Health Services Manager to a declared emergency and which falls within the scope of this Contract at which time the Health Services Manager will attend the emergency and provide medical services to a level commensurate with the clinical qualifications of the attending medical staff.
Essential Loose Assets	those assets identified by the Department as essential Loose Assets for the purposes of the Contract
Excepted Network Provider	means either: <ul style="list-style-type: none"> (a) a public hospital or a public health care provider funded by a Government; or (ii) a Network Provider for which, in relation to the relevant obligation of the Health Services Manager for that Network Provider, the Department has agreed in writing to a specific exception directly referable to the clause or context in which the term is used.
Existing Health Care Record	health records that are in existence at the Commencement Date for those people that are designated as Transferees on or after the Commencement Date.

Extended Term	means an extension to the Term under clause 5.2 of the Contract main terms and conditions
Expert Determination	determination by an expert as described in clause 60.5 of the Contract main terms and conditions.
Facility	means a facility for processing Transferees located on Nauru or Manus Island.
Financial Indebtedness	any actual or contingent present or future obligation of a person to pay any money in respect of any moneys borrowed or raised by that person.
Financial Undertaking	the Financial Undertaking in Schedule 9 (Performance Securities).
Financial Year	a period of one year commencing on 1 July and ending on 30 June.
Force Majeure Event	act of war (whether declared or not), military conflict, invasion, act of terrorism, act of foreign enemies, hostilities (whether or not war has been declared), civil war, civil commotion or riots (except where caused within a Facility), rebellion, revolution, insurrection, military or usurped power or martial law or confiscation by order of any foreign government, or peace-keeping operation, accidental fire, disaster, flood, catastrophic weather condition, earthquake, or act of God, rain in areas with reactive clay soils preventing passage, strike or other industrial action not specific to or attributable to any action of the Health Services Manager, embargo, or a loss or limitation of essential services such as electricity and water supply.
General Practitioner	means a medical practitioner who holds a qualification of a similar standing to Australian qualifications and are capable of providing health care to a standard comparable with Australian standards.
GP	means a General Practitioner.
GST Law	the same as "GST Law" means in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).

Government Agency	a State or Australian Government or government department or agency, or a state or federal governmental, semi-governmental person (whether autonomous or not) charged with the administration of any applicable law or governmental executive function.
Guidelines	means the Guidelines issued by the Department under clause 21.1 of this Contract.
Heads of Agreement	means the interim agreement, signed by the Parties on 14 September 2012, under which the Health Services Manager has been providing health services to Transferees and Recipients.
Health Care	means any health procedure, treatment, assessment, investigation or other clinical health service available or provided to a Transferee or Recipient.
Health Care Provider	means: (a) any health professional employed by the Health Services Manager to provide Health Care to Transferees or Recipients under the Contract; (b) any Network Provider; or (c) health professional employed or engaged by a Network Provider.
Health Care Record	means a health care record of a Transferee or Recipient created and maintained by the Health Services Manager under the clause 13.2 of the Contract.
Health Discharge Assessment	the assessment conducted by the Health Services Manager under Part 2 of Schedule 2 (Statement of Work).
Health Induction Assessment	the assessment referred to in Schedule 2 (Statement of Work) and conducted under a separate Contract.

Health Services	are any or all of the services described in Schedule 2 (Statement of Work) and any other obligation that the Health Services Manager is required to perform under the Contract, as changed from time to time in accordance with the Contract.
Health Services Administrator	the administrator appointed by the Health Services Manager in accordance with the Contract, and any replacement notified to the Health Services Manager in writing by the Department from time to time.
Health Services Authority	the authority appointed by the Health Services Manager in accordance with the Contract, and any replacement notified to the Health Services Manager in writing by the Department from time to time.
Health Services Manager	includes, as the context requires, Health Services Manager Personnel.
Health Services Manager Confidential Information	the information listed as Health Services Manager Confidential Information in Schedule 10 (Confidential Information).
Health Services Manager Material	any material or information provided by the Health Services Manager to the Department for the purposes of the Contract, or which is copied or derived from that material or information.
Health Services Manager Personnel	means the officers, employees and agents of the Health Services Manager, and their respective officers, employees and agents, engaged or involved in performing the Health Services or other activities associated with performance of the Contract, but does not include Network Providers or Network Provider Personnel.
Health Services Regional Manager	the regional manager appointed by the Health Services Manager and identified in Schedule 4.2 (Governance) having responsibility for the day to day performance of Health Services in a specified Facility.

Hot Contingency	is any Facility which is not Operational and which the Department identifies to the Health Services Manager as a "hot contingency" Facility. For the avoidance of doubt, at the Commencement Date there are no Hot Contingency Facilities under this Contract.
HSM Network	means the Health Care Provider network established by the Health Services Manager under clause 15 of the Contract main terms and conditions and clause 5.1 of Schedule 2 (Statement of Work)
IAS	means Internationally Assigned Staff.
IHMS Third Party Software	<p>means any and all software which is owned by or licensed to any Related Body Corporate of the Health Services Manager and which:</p> <p>(a) is not part of, or a component of, CHIRON; but which</p> <p>(b) is used by or with or in conjunction with CHIRON for the management of the Facilities and Health Services.</p> <p>For the purposes of clarity, IHMS Third Party Software is not and will not be considered a component of CHIRON.</p>
Implementation Plan	means the plan prepared by the Health Services Manager and Approved by the Department that details the process the Health Services Manager will follow prior to the commencing provision of the Health Services at a Facility.
Incident	is any Critical Incident or Other Incident
Incident Report	means a report from the Health Services Manager to the Department (in the form specified in the Procedures Manual) in relation to a Critical or Other Incident at a Facility.
Individual Service Provider Report	is the monthly performance report submitted by the Health Services Manager to the Department. It records the results of the Health Services Manager's performance against its contractual requirements and the Department's expected outcomes.
Individual Service Provider Report Instruction Manual	it contains instructions on the Individual Service Provider Report, including templates of documents that may accompany the Individual Service Provider Report.

Individual Service Provider Template or ISPR Template	ISPR Template is a template of the Individual Service Provider Report and is attached to the ISPR Instruction Manual.
Information Privacy Principles	has the same meaning as in the Privacy Act.
Infrastructure Failure	Means a failure in any infrastructure required to deliver the Health Services that was beyond the reasonable control of the Health Services Manager,
Initial Approved Major Subcontractors	those subcontractors listed in Schedule 7 (Key Personnel and Approved Major Subcontractors) of the Contract.
Initial Notice	the notice referred to in clause 60.2 of the Contract.
Initial Term	has the meaning given in clause 5.1 of the Contract.
Instructions	the list of instructions described as such in Schedule 15 (Australian Government and Department Health Policies).
Intellectual Property	<p>all present and future rights conferred by law in or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable.</p> <p>These rights include:</p> <p>(a) all rights in all applications to register these rights;</p> <p>(b) all renewals and extensions of these rights; and</p> <p>(c) all rights in the nature of these rights, excluding moral rights.</p>
Internationally Assigned Staff	means a person employed by the Health Services Manager from countries other than Australia and countries represented by Other Country Nationals. This includes countries in Western Europe, United States, United Kingdom, North America, South America , South Africa, and New Zealand. Medical professionals are registered to practise with the relevant body in their country of origin.

Key Performance Indicators	means the service lines that outline the Department's expected outcomes. The Health Services Manager's performance is assessed against the Contract Responsibilities measured within these Key Performance Indicators.
Key Personnel	is any of the Personnel described in Schedule 4.2 (Governance).
Key Position	is any key position described in Schedule 4.2 (Governance).
Laws	<p>(a) the requirements of all applicable Legislation and all regulations and requirements made under such Legislation;</p> <p>(b) the legal requirements of any applicable Commonwealth, State, Territory or Local government department, agency, body, authority or instrumentality, including statutory tribunals or commissions and similar governmental bodies;</p> <p>(c) treaties, conventions, agreements, compacts and similar instruments that have been ratified or adopted by the Australian Government or by a relevant foreign government;</p> <p>(d) court decisions, common law and equity; and</p> <p>(e) guidelines, policies and codes of the Commonwealth, States and Territories,</p> <p>with which the Health Services Manager or the Department is legally required to comply.</p>
Legislation	includes all Commonwealth, State, Territory or local or other legislation, including regulations, legislative instruments, by-laws and other subordinate legislation.
Local	means a person employed by the Health Services Manager from Nauru or a Papua New Guinea resident.
Local Hospital	means a hospital that is located on Nauru or Manus Island that is operated primarily for the treatment of the citizens of Nauru or Papua New Guinea.
Loose Assets	assets that the Department reasonably considers necessary for the delivery of Health Services to Transferees and Recipients on Nauru and Manus Island.

Major Subcontract	a contract between the Health Services Manager and a subcontractor of the Health Services Manager for the performance of work under the Contract, with a total value greater than \$250,000.
Major Subcontractor	a person who has entered into a Major Subcontract with the Health Services Manager.
Manus Island	means the island that forms part of the Manus Province in northern Papua New Guinea.
Material	includes documents, equipment, software, reports, goods, information, plans, charts, drawings, calculations, tables, and data stored by any means including all copies and extracts.
Medical Director	the Medical Director specified in Schedule 7 (Key Personnel and Approved Major Subcontractors).
Medical Officer	means a medical practitioner who holds a qualification of a similar standing to Australian qualifications and are capable of providing health care to a standard comparable with Australian standards.
Mental Health Team Leader	an appropriately qualified Health Care Provider employed by the Health Services Manager to coordinate mental Health Care for Transferees.
Minimum Clinic Hours	in respect of each Onsite Health Clinic, is the minimum number of hours that the clinic is required to be open to deliver Health Care in accordance with Annexure B (Onsite Health Services) of Schedule 2 (Statement of Work).
Minister	the Minister for Immigration and Citizenship.
Month	a calendar month.
Moral Rights	means any right of attribution or authorship, right not to have authorship falsely attributed, or right of integrity of authorship, or other analogous rights arising under any applicable Law.
National Privacy Principles	has the same meaning as in the Privacy Act.

Network Provider	means the Health Care Provider organisations or entities that the Health Services Manager appoints or proposes to appoint to the HSM Network.
Network Provider Agreement	means an agreement between the Health Services Manager and a Network Provider that gives effect to the requirements specified in clause 5.4 of Schedule 2 (Statement of Work) and that is in a form agreed between the Parties.
Network Provider Personnel	means persons employed or engaged by a Network Provider.
Non Disclosure Deed Poll	the form of deed poll set out in Schedule 12 (Deed of Non-Disclosure of Personal Information).
Occupational Health and Safety Management Plan	the document of that name to be developed by the Health Services Manager as described in Schedule 2 (Statement of Work).
OCN	means Other Country National.
Other Country National	means a person employed by the Health Services Manager from countries other than Australia or nationalities represented by the Internationally Assigned Staff. This includes countries in the Middle East and Asia. Health professionals are registered to practise with the relevant body in their country of origin.
Regional Processing Countries Health Services	means the Health Services that are delivered outside Australia and its External Territories.
Onsite Health Clinic	Health Care delivered by the Health Services Manager to Persons in Detention at a Facility in accordance with Schedule 2 (Statement of Work) and Annexure B (Minimum Onsite Health Services) of Schedule 2 , and includes: <ul style="list-style-type: none"> (a) registered nurse clinics; (b) general practitioner clinics; (c) mental health clinics; and (d) dental clinics.

Operational	any Facility that contains Transferees.
Other Incident	has the meaning given to that term in Annexure A of Schedule 2 (Statement of Work).
Party	means a party to this Contract, including any permitted assignees.
Pass Through Cost	has the meaning given to it in clause 4 of Schedule 5 (Fees and Payments).
Performance Failure	when the Health Services Manager fails to achieve the relevant minimum performance threshold for a performance measure as outlined in Schedule 4.1 (Performance Management Manual) .
Performance Linked Fee	means the fee that is at risk of being withheld or abated each month due to performance failures as per Schedule 4.1 (Performance Management Framework).
Performance Measures	means the threshold for assessing, quantitatively, how the Health Services Manager has performed against the Contract Responsibility.
Performance Measure Threshold	is the minimum performance level, below which a performance failure has occurred.

Permitted Security Interest	<p>(a) a Security Interest in respect of which full details have been given to the Secretary in writing at least two Business Days before the date of the Contract, or a Security Interest created after the date of the Contract, if:</p> <ul style="list-style-type: none"> (i) the Secretary has consented (such consent not to be unreasonably withheld having regard to the affect which that Security Interest may have on the ongoing solvency of the Health Services Manager) to that Security Interest and to a maximum amount which at any time it may secure; and (ii) the amount secured by that Security Interest (other than costs, fees and uncapitalised interest or monies in the nature of interest (such as discounts on bills of exchange)) does not increase beyond the amount in respect of which the Secretary has consented; or <p>(b) a lien or right of set off which arises solely by operation of law in the ordinary course of ordinary business, where the amount secured is not overdue for payment or where the amount secured is not being contested on reasonable grounds in good faith.</p>
Personal Information	has the meaning in clause 48.1 of the Contract.
Personnel	means any Health Services Manager Personnel or Department Personnel (as appropriate).
Personnel shortfall	means a shortfall in the number of appropriately skilled Health Services Manager Personnel required to perform the Health Services at a Facility that is beyond the reasonable control of the Health Services Manager.
Policy and Procedures Manual	is the manual of standard operating policies, procedures and processes developed by the Health Services Manager under Schedule 2 (Statement of Work).

Professional Indemnity Policy of Insurance	means the policy or policies that the Health Services Manager must effect and maintain under clause 1(c) (professional indemnity or errors and omissions insurance) of Schedule 13 (Health Services Manager Insurance).
Privacy Act	the <i>Privacy Act 1988</i> (Cth).
Protective Security Manual	the Australian Government's Protective Security Manual issued by the Attorney-General's Department, as amended from time to time.
Quarter	each successive period of three (3) months, the first of which commences on the Commencement Date if the Commencement Date is the first date of a month, and otherwise on the first day of the month immediately following the Commencement Date.
Recipient	means a person, other than a Transferee, nominated by the Department from time to time to receive Health Services at a Facility.
Record	any document, writing or material (including tapes or other electronic matter) including records of Transferees, business records, and any other records created, developed or required for the purpose of performing the Health Services and may include biometric data and/or personal identifiers.
Related Body Corporate	has the same meaning as in the <i>Corporations Act 2001</i> (Cth).
Release	the release of a person from a Facility into the Australian community under a valid visa.
Removal or Removed	means the repatriation of a Transferee to his or her country of origin or any other country that accepts the Transferee for processing or settlement.
Remove	has the same meaning as Removal.
S4 or S4 medication	Means a prescription only medicine as listed in Schedule 4 of the Standard for the Uniform Scheduling of Medicines and Poisons.

S8, S8 medication or S8 drug	Means a Controlled Drug as listed in Schedule 8 of the Standard for the Uniform Scheduling of Medicines and Poisons.
Secretary	the Secretary of the Department.
Security Interest	<p>(a) any bill of sale, mortgage, charge, pledge, hypothecation, title retention arrangement, trust or power as or in effect as security for the payment of a monetary obligation or the observance of any other obligations;</p> <p>(b) any lien, profit à prendre, easement, restrictive covenant, any equity or interest in the nature of an encumbrance, garnishee order, writ of execution, right of set-off, lease, licence to use or occupy, assignment of income or monetary claim; or</p> <p>(c) an agreement to create or give any arrangement referred to in paragraphs (a) or (b) of this definition.</p>
Services	means the Health Services.
Services Network	the service delivery network for Nauru and Manus Island.
Services Providers	the entity or entities that the Department notifies the Health Services Manager are providing services to the Department (other than the Health Services) at each Facility.
Service Delivery Model	the document of that name described in Schedule 15 (Australian Government and Department Health Policies).
Statement of Work	comprises Schedule 2 (Statement of Work), as amended from time to time in accordance with the Contract.
Subcontractor	means any person, other than the Department or a Network Provider, that directly or indirectly provides goods or services, for the purposes of the Contract, to the Health Services Manager; and "Subcontract" has a corresponding meaning.

Tax	any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding (together with any related interest, penalty, fine or expense in connection with any of them) levied or imposed by any Government Agency, other than any imposed on net overall income.
Term	means the Initial Term and includes any extension of that period provided for under clause 5 of the Contract.
Termination Notice	the notice referred to in clause 62.1 of the Contract.
Third Party	a person or entity other than the Department or the Health Services Manager.
Third Party Software	any Software in which a Third Party holds Intellectual Property rights.
Third Party Software Provider	any Third Party that provides software that the Health Services Manager will use to deliver the Health Services under the Contract.
Transfer	the transfer of a Transferee from placement in one Facility to another Facility or to Australia for detention in the Immigration Detention Network.
Transferee	means an irregular maritime arrival who is transferred to a Facility.
Transferee Population Groups	has the meaning given to that term in the Data Collection and Reporting Manual, as described in Schedule 15 (Australian Government and Department Health Policies).
Transition Out	the process of preparing for handover of the Health Services from the Health Services Manager to any new provider of health services to the Department.
Transition Out Plan	the plan prepared by the Health Services Manager under clause 65.1 of the Contract, detailing how the Health Services Manager proposes to disengage on expiry or earlier termination of the Contract.

Vector Control	means the vector control management referred to in clause 16.3 of Schedule 2 (Statement of Work).
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Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 2

STATEMENT OF WORK

TABLE OF CONTENTS

INTRODUCTION	6
1. PHILOSOPHY	6
PART 1: HEALTH MANAGEMENT SERVICES	8
2. CORPORATE AND CLINICAL GOVERNANCE.....	8
2.1 CORPORATE GOVERNANCE	8
2.2 CLINICAL GOVERNANCE.....	8
3. POLICY AND PROCEDURES MANUAL	9
3.1 DEVELOPMENT OF MANUAL	9
3.2 COMPLIANCE WITH MANUAL	9
4. IMPLEMENTATION PLAN.....	9
4.1 DEVELOPMENT OF IMPLEMENTATION PLAN	9
5. HSM NETWORK	10
5.1 ESTABLISHMENT OF HSM NETWORK	10
5.2 SUPPORT AND TRAINING OF NETWORK PROVIDERS.....	10
5.3 REVIEW AND UPDATE OF HSM NETWORK.....	11
5.4 NETWORK PROVIDER AGREEMENTS.....	11
6. HUMAN RESOURCE MANAGEMENT	14
6.1 INDUCTION PROGRAMME AND ONGOING TRAINING.....	14
6.2 QUALIFICATIONS, SKILLS, REGISTRATION AND INSURANCE REQUIREMENTS FOR HEALTH CARE PROVIDERS.....	16
6.3 CLEARANCES AND CHECKS.....	17
6.4 CLINICIAN STAFF RECORDS.....	18
6.5 OCCUPATIONAL HEALTH AND SAFETY	19
7. COLLABORATIVE WORKING ARRANGEMENTS	19
7.1 GENERAL.....	19
7.2 WORKING WITH THE DEPARTMENT AND DEPARTMENT SERVICES PROVIDERS	20
8. ENVIRONMENTAL HEALTH SERVICES	21
9. INCIDENT NOTIFICATION	21

9.1	DEVELOPMENT OF SYSTEM	21
9.2	NOTIFICATION AND REPORTING	21
9.3	CORRECTIVE OR FOLLOW UP ACTION	22
10.	HEALTH MANAGEMENT	22
10.1	DELIVERY OF HEALTH CARE	22
10.2	ACCESS TO SPECIALIST, HOSPITAL AND ALLIED HEALTH CARE	24
10.3	COORDINATION AND FOLLOW UP	24
10.4	TRANSFER AND SHARING OF TRANSFEREE HEALTH INFORMATION	25
10.5	COMMUNICATING WITH TRANSFEREES	26
10.6	INFORMED CONSENT FOR DELIVERY OF HEALTH CARE	27
10.7	TRANSFEREE REQUESTS	27
11.	INFORMATION AND HEALTH CARE RECORDS MANAGEMENT	28
11.1	TRANSFEREE HEALTH CARE RECORDS	28
11.2	INFORMATION MANAGEMENT AND EXCHANGE	29
12.	FINANCIAL MANAGEMENT	29
13.	INFORMATION AND TECHNOLOGY REQUIREMENTS	30
13.1	INFORMATION TECHNOLOGY REQUIREMENTS	30
13.2	REMOVAL OF HARDWARE.....	31
13.3	ACCESS TO INFORMATION TECHNOLOGY SYSTEMS	31
14.	QUALITY MANAGEMENT AND CONTINUOUS IMPROVEMENT	31
14.1	QUALITY MANAGEMENT SYSTEM	31
15.	COMPLAINTS AND FEEDBACK	32
15.1	MANAGING COMPLAINTS AND FEEDBACK OF TRANSFEREES.....	32
15.2	FEEDBACK FROM HEALTH CARE PROVIDERS	32
16.	HEALTH FACILITIES, EQUIPMENT AND CONSUMABLES	33
16.1	SUPPLY OF MEDICAL EQUIPMENT, CONSUMABLES AND OTHER SUPPLIES	33
16.2	MANAGEMENT AND MAINTENANCE OF DEPARTMENT ASSETS	33
16.3	VECTOR CONTROL MANAGEMENT	34
16.4	DISEASE PREVENTION AND INFECTION CONTROL	35
16.5	DISPOSAL OF CLINICAL WASTE.....	35
16.6	SUPPLY AND MANAGEMENT OF PHARMACEUTICALS (AND OTHER MEDICINES)	35
PART 2:	HEALTH CARE DELIVERY TO TRANSFEREES	37

17.	DELIVERY OF HEALTH CARE TO TRANSFEREES	37
18.	PERFORMANCE STANDARDS	37
19.	SCOPE	38
20.	HEALTH CARE RECORDS AND INFORMATION	38
20.1	CREATION OF HEALTH CARE RECORD FOR TRANSFEREES	38
20.2	PROVISION OF HEALTH SERVICES INFORMATION	38
21.	HEALTH DISCHARGE ASSESSMENT	39
21.1	DESIGN OF PROCESS	39
21.2	CONDUCT AND TIMING OF THE HEALTH DISCHARGE ASSESSMENT	41
22.	VACCINATION PROGRAM	42
23.	DIABETES MANAGEMENT	42
24.	CONTINUING HEALTH CARE	42
24.1	HEALTH MANAGEMENT	42
24.2	COLLECTION OF MEDICAL RESULTS	43
25.	MENTAL HEALTH CARE	43
25.1	GENERAL	43
25.2	MENTAL HEALTH SCREENING AND ASSESSMENT	44
26.	MEDICAL ESCORT AND EVACUATION SERVICES (LOCAL OR INTERNATIONAL)	45
26.1	REQUIREMENT FOR MEDICAL ESCORT	45
26.2	REQUIREMENT FOR MEDICAL EVACUATION	46
26.3	POOL OF MEDICAL ESCORTS	46
26.4	NOTIFICATION OF REQUIREMENT	46
27.	HEALTH CARE ARRANGEMENTS	47
27.1	NAURU AND MANUS ISLAND	47
27.2	EXCLUSIONS	53
28.	AFTER HOURS SERVICE	53
28.1	AFTER HOURS SERVICE	53
28.2	INITIAL RESPONSE	53
28.3	AFTER HOURS GP	54
PART 3: HEALTH CARE DELIVERY TO RECIPIENTS		56
29.	DELIVERY OF HEALTH CARE TO RECIPIENTS	56

30.	PERFORMANCE STANDARDS	56
31.	RECIPIENT HEALTH CARE RECORDS	56
31.1	RECIPIENT HEALTH CARE RECORDS	56
31.2	PROVISION OF HEALTH SERVICES INFORMATION.....	57
32.	HEALTH CARE ARRANGEMENTS FOR RECIPIENTS	57
32.1	GENERAL.....	57
33.	COUNSELLING SERVICE	58
33.1	GENERAL.....	58

INTRODUCTION

1. PHILOSOPHY

The overarching philosophy of Health Care provided on Nauru and Manus Island is to ensure that Transferees and Recipients have access to clinically recommended care, that is the best available in the circumstances and broadly comparable with health services available within the Australian community, taking into account the diverse and potentially complex health needs of Transferees. Health Care must be delivered in accordance with the principles underpinning the Service Delivery Model.

The Statement of Work requires the Health Services Manager to provide Health Care to both Transferees and Recipients. **Part 1** of this **Schedule 2** sets out the general requirements for the delivery of Health Services to both Recipients and Transferees. Where general services are to be delivered to both Transferees and, under limited circumstances, to Recipients, this is specified by referring to "Transferees and Recipients". Where general services are to be delivered to Transferees only, this is specified by referring to "Transferees" only. The specific Health Care to be delivered to Transferees is set out in **Part 2** of this **Schedule 2**. The specific Health Care to be delivered to Recipients is set out in **Part 3** of this **Schedule 2**.

Health Care must be coordinated, high quality, safe and prioritised on the basis of clinical need. It should also be delivered without any form of discrimination, and with appropriate dignity, humanity, cultural and gender sensitivity, and respect for privacy and confidentiality.

The Health Services Manager has responsibility for managing and organising the delivery of Health Care to Transferees and Recipients by a multi-disciplinary team of Health Care Providers. The Health Services Manager will directly provide Critical Health Care Services to Transferees and Recipients, and establish the HSM Network of credentialed providers for the delivery of other Health Care to Transferees and Recipients.

In delivering Health Care to Transferees and Recipients, the Health Services Manager will be required to liaise and work co-operatively with the Department and the Department Services Providers, with the aim of providing integrated, coordinated and effective service delivery to Transferees and Recipients.

A primary focus of the Health Services Manager must be to ensure ease of access for Transferees and Recipients to primary level Health Care. The Health Services Manager will be required to facilitate and coordinate the delivery of clinically necessary specialist, health and allied health services to Transferees and Recipients. The Health Services Manager must ensure that Health Care delivered to Transferees and Recipients is continuous and coordinated, during each episode of care and for the duration of their time on Nauru and Manus Island.

The delivery of coordinated quality and safe Health Care will be facilitated and supported by the Health Services Manager developing and implementing appropriate corporate, clinical and operational policies, procedures and processes.

PART 1: HEALTH MANAGEMENT SERVICES

2. CORPORATE AND CLINICAL GOVERNANCE**2.1 Corporate Governance**

The Health Services Manager must develop, implement and manage corporate governance arrangements that give effect to and support the delivery of the Health Services in accordance with the Contract. Without limitation, these arrangements must be capable of:

- (a) fostering cooperative, coordinated and professional working relationships with the Department, Health Care Providers and Department Services Providers;
- (b) respecting and giving effect to the competing values of medical impartiality, clinical autonomy and collaborative service delivery; and
- (c) promoting and supporting effective Agreement and relationship management arrangements consistent with the Contract and which ensure the coordinated and continuous delivery of Health Care to Transferees and Recipients on Nauru and Manus Island (the Facilities).

2.2 Clinical Governance

- (a) The Health Services Manager must develop, implement and manage a system of clinical governance for the delivery of Health Care to Transferees and Recipients.
- (b) This system must provide a systematic approach to assuring and continuously improving the standard and quality of Health Care delivered to Transferees and Recipients. These arrangements must be consistent with and support performance of the Contract, and include:
 - (i) transparent processes and defined lines of accountability for the overall quality and standard of Health Care provided to Transferees and Recipients;
 - (ii) clearly defined and articulated consultation, coordination, information exchange and reporting arrangements between Health Services Manager Personnel and Network Providers to facilitate and support the delivery of coordinated and continuous Health Care to Transferees and Recipients;
 - (iii) a comprehensive programme of quality assurance, risk management and continuous improvement activities, including any programs described or required by the Contract; and
 - (iv) operational level policies and procedures aimed at ensuring consistency in the quality and standard of Health Care delivered to Transferees and Recipients.

3. **POLICY AND PROCEDURES MANUAL**

3.1 **Development of Manual**

- (a) For the purposes of Regional Processing Countries Health Services, the Health Services Manager will use the existing draft Policy and Procedures Manual in accordance with this **clause 3**, until such time as the final Policy and Procedures Manual has been completed. The final Policy and Procedures Manual must:
- (i) describe in detail the range of operational and clinical policies, procedures and processes necessary and appropriate for the day to day delivery of Health Care to Transferees and Recipients in accordance with the Contract, including all policies and procedures expressly required under this **Schedule 2**;
 - (ii) adapt and tailor the policies and procedures developed under this **clause 3.1(a)** as appropriate for Nauru and Manus Island and each Transferee Population Group; and
 - (iii) be consistent (and support compliance) with the Contract, applicable Health Standards, Department Health Policy, codes of ethics of relevant professional bodies, societies and associations, and the mandatory registration requirements of Health Care Providers.
- (b) The Health Services Manager must consult with the Department in a timely manner during preparation of the final Policy and Procedures Manual for the purpose of ensuring completion of that manual in a form (and with content) acceptable to the Department (including by having obtained Department approval for any policy or procedure for which such approval is required under this **Schedule 2**).

3.2 **Compliance with Manual**

The Health Services Manager must comply with, and ensure all Health Services Manager Personnel and Network Providers comply with the draft Policy and Procedures Manual on and from handover of the Health Services in accordance with the Contract until a final Policy and Procedures Manual is completed in accordance with this **clause 3**. Following its completion, the Health Services Manager must comply with, and ensure all Health Services Manager Personnel and Network Providers comply with the final Policy and Procedures Manual.

4. **IMPLEMENTATION PLAN**

4.1 **Development of Implementation Plan**

- (a) The Health Services Manager must provide the Department with a draft Implementation Plan prior to the provision of health services on Nauru and Manus Island.

- (b) The Health Services Manager will provide an updated Nauru Implementation Plan for approval to the Department by 30 September 2012 or such later date as advised by the Department.
- (c) The Manus Island Implementation Plan must be provided to the Department, for approval, by 22 November 2012 or such later date as advised by the Department.

5. HSM NETWORK

5.1 Establishment of HSM Network

The Health Services Manager must:

- (a) establish and maintain over the Term the HSM Network comprising health care professionals and other providers that is sufficient and appropriate to deliver Health Services to Transferees and Recipients in accordance with the Contract. The HSM Network must include a sufficient number of appropriately qualified and experienced nurses (including mental health nurses), General Practitioners, psychologists, psychiatrists and other medical specialists, pharmacists, dentists, optometrists, paramedics, pathologists and other appropriate allied health professionals;
- (b) ensure that the HSM Network:
 - (i) has the capacity, gender mix and specialist diversity to meet the potentially complex health needs (including mental health) of culturally diverse Transferees;
 - (ii) comprises only providers that have been credentialed by the Health Services Manager, and confirmed as having all appropriate, work permits and visas; and
 - (iii) provides the Department value for money for the delivery of Health Services to Transferees and Recipients, including by ensuring all Network Provider fee schedules are benchmarked in accordance with **Schedule 5** (Fees and Payments) and by scrutinising invoices received from providers to identify any instances of potential over servicing and errors in the calculation of invoice amounts;
- (c) enter into a written agreement with each Network Provider in accordance with **clause 5.4** of this **Schedule 2**;

5.2 Support and training of Network Providers

The Health Services Manager must ensure all Network Providers are provided access to appropriate support and training (including through the provision of induction and continuing education training and advice), with a view to ensuring all providers understand:

- (a) the specific health needs and risks of Transferees and the environment of Nauru

and Manus Island;

- (b) their role and responsibilities in the delivery of Health Care to Transferees and Recipients, including by having a detailed working knowledge of the following requirements of this **Schedule 2**:
 - (i) *referral processes*, noting that providers of general practitioner services must facilitate and coordinate services with other Network Providers and have responsibility for referring Transferees and Recipients to other Health Care Providers for any (and only) clinically necessary Health Care, including in instances where a referral is not normally required (for example, for dental, optometry and other allied health services) (see **clause 10.2** of this **Schedule 2**);
 - (ii) *Transferee and Recipient consent processes* for the transfer of health information between relevant Health Care Providers and the Health Services Manager for the purpose of maintaining a comprehensive, contemporaneous Health Care Record for each Transferee and Recipient (see **clause 10.4** of this **Schedule 2**);
 - (iii) *exception processes*, noting the requirement for prior Department approval for any recommended or referred Health Care that falls outside the scope of Department Health Policy (see **clause 10.2** of this **Schedule 2**); and
 - (iv) *administrative processes* such as invoicing and payment arrangements, including the maintenance of a "cashless" transaction system for the provision of Health Care to Transferees and Recipients.

5.3 Review and update of HSM Network

The Health Services Manager must regularly monitor and review the performance and composition of the HSM Network. Following each review, the Health Services Manager must:

- (a) immediately seek to expand or change the mix of Health Care Providers to address any identified access or other service delivery issues; and
- (b) promptly remove from the HSM Network any provider that the Health Services Manager identifies as responsible for frequent or serious service failures or other service issues.

5.4 Network Provider Agreements

- (a) Prior to appointing a Network Provider to the HSM Network, the Health Services Manager must use reasonable endeavours to enter into a Network Provider Agreement with all other Network Providers.
- (b) For the avoidance of doubt, where:
 - (i) the Network Provider:

- (A) is a public hospital or a public health care provider funded by the Government; and
- (B) the Health Services Manager has used its reasonable endeavours to enter into a Network Provider Agreement with that Network Provider,

the Health Services Manager may nevertheless appoint that Network Provider to the HSM Network.

An example of where the Department might agree that a Network Provider does not need to enter into a Network Provider Agreement prior to being appointed to the HSM Network is where there is no other provider of general practitioner services in the area or immediate region in which that type of Health Care service for Transferees and Recipients is required that:

- (A) meets the minimum requirements and standards concerning the provision of the relevant specified Health Care to Transferees and Recipients; and
- (B) is willing to provide the specified Health Care to Transferees and Recipients and to enter into a Network Provider Agreement.

- (c) Unless otherwise agreed by the Department in writing, each Network Provider Agreement entered into by the Health Services Manager under **clause 5.4** must:
 - (i) describe the range of Health Care that the Network Provider has agreed to provide to Transferees and Recipients and specify the fee or rate (or reference to a scale of fees or rates published elsewhere) for the performance of the Health Care services the Network Provider will most commonly provide;
 - (ii) require the Network Provider to comply with the Policy and Procedures Manual as amended from time to time;
 - (iii) be signed by the Network Provider and the Health Services Manager before the Network Provider commences providing any Health Care to Transferees and Recipients;
 - (iv) allow the Health Services Manager to immediately terminate the Network Provider Agreement in the event of:
 - (A) any service failing on the part of the Network Provider or Network Provider Personnel;
 - (B) if the Network Provider is considered to no longer represent value for money for Health Care provided to Transferees and Recipients; or

- (C) in the event of a relevant change in scope or termination of this Agreement;
- (v) require the Network Provider to participate in pre-service induction training and ongoing training, as required from time to time by the Health Services Manager, and completed relevant training records, showing details of training provided and acknowledged by the relevant training recipients;
- (vi) require the Network Provider, once it becomes aware of a Critical Incident, to notify the Health Services Manager within two (2) hours of it becoming aware of that Critical Incident;
- (vii) describe the range of training and support to be provided to the Network Provider with a view to assisting the Network Provider understanding:
 - (A) the specific health needs and risks of Transferees and the environment of Nauru and Manus Island; and
 - (B) its role and responsibilities in the delivery of Health Care to Transferees and Recipients, including the referral processes, Transferee and Recipient consent processes, the exception processes and the administrative processes, as described in **clause 5.2** of this **Schedule 2**;
- (viii) require the Network Provider to participate in any investigation requested by the Department into that Network Provider's suitability;
- (ix) where a Network Provider might be required to deliver Health Care onsite at each Facility, require the Network Provider to ensure that it and each of its Network Provider Personnel that might be required to be onsite at each Facility, to undergo or have undergone an Australian Federal Police background check, or, where applicable, an equivalent check in the country where the Network provider and Network provider Personnel normally provides health services, within the twelve (12) Months immediately prior to delivering that Health Care on Nauru or Manus Island;
- (x) where a Network Provider might have contact with children in relation to this Agreement, require the Network Provider to ensure that, prior to having such contact, its personnel has successfully undergo or have undergone a relevant Working with Children Check.
- (xi) require the Network Provider to comply with any Occupational Health and Safety Management Plan developed by the Health Services Manager for the Facilities;
- (xii) require the Network Provider to maintain professional indemnity or errors and omissions (or similar) insurance for the duration of the Network Agreement and until the expiry of at least seven (7) years thereafter; and

(xiii) require the Network Provider to agree that it will not:

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

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

- (D) the Department, or Department Personnel (whether specifically referred to or not);
- (E) the Health Services;
- (F) the relationship between any of the Department, Health Services Manager, Network Provider or any other Department Services Provider; or
- (G) any other matter directly or indirectly related to the Network Provider Agreement,

other than:

- (H) to direct any such inquiry to the Department;
- (I) as is specifically authorised by and to the minimum extent necessary to fulfil the Network Provider's obligation under the Network Provider Agreement or comply with any Law; or
- (J) as may be otherwise specifically authorised in writing by the Department.

- (d) The Health Services Manager must take reasonable steps to enforce each Network Provider's compliance with the conditions specified in **clause 5.4(c)** above.

6. HUMAN RESOURCE MANAGEMENT

6.1 Induction Programme and Ongoing Training

- (a) The Health Services Manager must develop and deliver pre-service induction and ongoing training programs for all Health Services Manager Personnel and Network Providers that are sufficiently tailored for the different roles and

responsibilities of individual personnel and providers. These programmes must inform and explain personnel and providers of (as applicable):

- (i) the requirements of the Contract, including the referral, consent, exception and administrative processes referred to in **clause 5.2** of this **Schedule 2** and the operation of Department Health Policy;
 - (ii) the Health Services Manager's service delivery models and arrangements;
 - (iii) relevant content of the Policy and Procedures Manual;
 - (iv) cultural, race, gender and specific health issues, risks and sensitivities relevant to the delivery of Health Care to Transferees;
 - (v) working and positively engaging with Transferees who may be traumatised, including communication, building rapport, and mental health training
 - (vi) awareness of all the Department's mental health related policies, including the Department's Psychological Support Program (PSP) policy, and the identification and support of survivors of torture and trauma; and
 - (vii) any other matter that the Department reasonably notifies to the Health Services Manager as the subject of (or content for) a training or education program.
- (b) The Health Services Manager must provide the Department with copies or details of any training program (including course materials) developed under this **clause 6.1**, with the exception of **clause 6.1(a)(vi)**, within five (5) Business Days of any Department request. If the Department (acting reasonably) does not consider that a training programme (or course materials) meets the requirements of this **clause 6.1**, with the exception of **clause 6.1(a)(vi)**, the Health Services Manager must update the program or materials to take account of the Department's comments. With regard to **clause 6.1(a)(vi)**, the Department is to approve any updates to the training material to align with changes to policy.
- (c) The Health Services Manager must ensure that all Health Services Manager Personnel and Network Providers:
- (i) complete induction training appropriate for the individual before commencing any work or delivering Health Care under the Contract;
 - (ii) are kept informed on a timely basis of all relevant changes to the Contract, Department Health Policy and the Policy and Procedures Manual; and
 - (iii) have access at all times (whether in hardcopy or electronic form) to the Policy and Procedures Manual and relevant Department Health Policy.
- (d) The Health Services Manager must ensure there are either Health Services Manager Personnel or Network Providers on Nauru and Manus Island with

appropriate training or qualifications in providing torture and trauma support services to Transferees.

- (e) The Health Services Manager must maintain complete and up to date training records for all Health Services Manager Personnel and Network Providers showing details of training offered to, and completed by personnel and providers. The Health Services Manager must provide the Department with a copy of the training records kept under this **clause 6.1**, within five (5) Business Days of any Department request.
- (f) The Health Services Manager will provide the Department with a report on the number of staff trained and the training undertaken within the calendar month being reported within five (5) Business Days following the end of the month.

6.2 **Qualifications, Skills, Registration and Insurance Requirements for Health Care Providers**

- (a) The Health Services Manager must ensure that all Health Services Manager Personnel and Network Providers, who deliver Health Care to Transferees and Recipients:
 - (i) are (as applicable) appropriately licensed, qualified and registered to practice with the relevant body (and observe any conditions or requirements imposed on their licence or registration), before delivering any Health Care to Transferees and Recipients;
 - (ii) maintain their registration as current for so long as they continue to provide Health Care to Transferees and Recipients;
 - (iii) are appropriately insured in accordance with the Contract, the Law and professional and industry best practice and standards at all times when delivering Health Care to Transferees and Recipients; and
 - (iv) are actively involved in maintaining and updating their professional skills and standards through regular training and education, including by completing any training developed and made available by the Health Services Manager under this **Schedule 2**.
- (b) The Parties agree that the Health Services Manager may discharge its obligations in relation to Network Providers under **clause 6.2(a)** by sighting and reviewing documents that evidence that:
 - (i) for licence, qualification or registration:
 - (A) the Network Provider is licensed and registered with the relevant registration board, college or other relevant body to deliver the Health Care for which it has been appointed to the HSM Network to deliver; and

on the following dates:

- (B) immediately prior to appointing that Network Provider to the HSM Network;
 - (C) where that licence or registration has a recurring renewal date, on each such renewal date; and
 - (D) at any other time where it would be reasonable for the Health Services Manager to suspect that there may be a problem with that Network Provider's licence or registration.
- (ii) for insurances:
- (A) the Network Provider has the appropriate insurance coverage, on the following dates:
 - (B) immediately prior to appointing that Network Provider to the Network; and
 - (C) where an insurance policy effected has a renewal date, on each such renewal date throughout the Term.
- (c) The Health Services Manager must ensure that the Network Provider to whom a Transferee and Recipient is referred is qualified, licensed, registered and insured to deliver the specific Health Care for which they are referred.

6.3 Clearances and Checks

- (a) Prior to and as a condition of their employment or engagement in connection with the Contract, the Health Services Manager must make appropriate and reasonable investigations of the suitability of prospective Health Services Manager Personnel and Network Providers, other than an Excepted Network Provider's. These investigations must comprise (at the Health Services Manager's cost) a review of each individual's criminal, medical, professional and employment history. The results or findings of such investigations must be provided to the Department, within five (5) Business Days of any Department request.
- (b) The Health Services Manager must ensure that each non-Australian clinician:
 - (i) has obtained qualifications of a similar standing to the Australian qualifications for that category of clinician; and
 - (ii) are capable of providing health care to a standard comparable with Australian standards.
- (c) Without limiting **clause 6.3(a)**, the Health Services Manager must ensure:
 - (i) all Health Services Manager Personnel, Network Providers and Network Provider Personnel working onsite at a Facility successfully undergo or

have undergone within the twelve (12) Months immediately prior to delivering that Health Care onsite at a Facility, an Australian Federal Police background check, or, where applicable, an equivalent check in the country where the person normally provides health services, before commencing any work or delivering any Health Care in connection with the Contract, and annually thereafter; and

- (ii) all Health Services Manager Personnel, Network Providers and GPs who may have contact with children undergo a Working with Children Check before commencing any work or delivering any Health Care in connection with the Contract.
- (d) The Health Services Manager must promptly refer details of any offences or other issues identified by an Australian Federal Police Background Check, or equivalent check, or a Working with Children Check to the Department. The Department may refuse to allow any person who the Department considers is unsuitable on the basis of any such checks access to a Facility, a Transferee or a Recipient.
- (e) At any time where it would be reasonable for the Health Services Manager to suspect that there may be a problem with a Network Provider, or following a reasonable request by the Department to do so, the Health Services Manager must promptly:
 - (i) investigate the suitability of that Network Provider; and
 - (ii) provide the results or findings of such investigations to the Department on concluding the investigation or within five (5) Business Days of any Department request, whichever is the earlier.

6.4 Clinician Staff Records

- (a) The Health Services Manager must maintain and update staff records for each person who:
 - (i) is employed by the Health Services Manager and holds a clinical role detailed in **Annexure B** of this **Schedule 2** and whose principal place of work is Nauru or Manus Island; and
 - (ii) clinicians employed by the Health Services Manager who visit Nauru and Manus Island for regular but limited periods for the purpose of providing health care to Transferees.
- (b) The clinician staff record must include:
 - (i) personal contact details including phone number, residential address, email and emergency contact details;
 - (ii) expiry date of the person's professional registration details in accordance with **clause 6.2(a)(i)**;

- (iii) expiry date of the person’s Australian Federal Police background check or, where applicable, an equivalent check in the country where the clinician normally provides health services;
- (iv) expiry date of the person’ Working with Children checks; and
- (v) for non-Australian clinicians, a copy of the certification issued by the Health Services Manager Clinical Governance Team in accordance with **clause 6.3(b)**.

6.5 Occupational Health and Safety

- (a) The Health Services Manager must develop and implement at Nauru and Manus Island an Occupational Health and Safety Management Plan tailored to each Facility. The Occupational Health and Safety Management Plan must be developed and implemented in collaboration with the Department Services Providers and the Department.
- (b) Each Occupational Health and Safety Management Plan developed under this **clause 6.5** must have as its objective the goal of ensuring the health and safety of all Health Services Manager Personnel and Network Provider Personnel using or visiting medical facilities at each Facility. Each plan must include policies and procedures relating to:
 - (i) hazard and infection control;
 - (ii) occupational hygiene;
 - (iii) safety and security of persons working at each Facility;
 - (iv) occupational health and safety training requirements for Health Services Manager Personnel and Network Provider Personnel providing health care to Transferees and Recipients; and
 - (v) post Incident management and debrief activities.
- (c) The Occupational Health and Safety Management Plan developed under this **clause 6.5** must be incorporated into the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**.

6.6 Pre-deployment health checks

All Health Services Manager Personnel must have a pre-deployment medical screening consistent with acceptable industry standards. The Health Services Manager including any subcontractors have appropriate immunisations for either Nauru or Manus Island, and as a condition of their employment, other vaccines as specified by the Department. All costs related to pre-deployment health checks are agreed Pass Through Costs.

7. COLLABORATIVE WORKING ARRANGEMENTS

7.1 General

The Health Services Manager must develop, implement and manage appropriate policies and procedures that foster open, co-operative, constructive and professional working relationships with the Department and Department Services Providers. These policies and procedures must give effect to the requirements of **clause 7.2** of this **Schedule 2** and be incorporated in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**.

7.2 Working with the Department and Department Services Providers

- (a) The Health Services Manager must at all relevant times deal and work co-operatively with the Department and the Department Services Providers for the primary purpose of ensuring the delivery of continuous, coordinated, efficient, effective and safe Health Care to Transferees.
- (b) For the purposes of **clause 7.2(a)**, the Health Services Manager must:
 - (i) at the Department's request, cooperate with and assist the Department Services Providers to manage and respond to Transferees health or behavioural management issues or occurrences at each Facility, including by providing specialist health advice, education and support, assisting with the preparation and review of individual management plans and prevention plans and attending appropriate meetings, at the times and in the manner described in the Contract or as otherwise notified by the Department at the relevant time;
 - (ii) develop and work with the Department Services Providers in the preparation, communication, implementation and review of Critical Incident and emergency management plans and procedures ~~at each Facility~~;
 - (iii) assist the Department Services Providers to respond to and manage emergencies or Critical Incidents ~~at each Facility~~ by providing an appropriate Health Care response consistent with the procedures developed under **clause 7.2(b)(ii)**;
 - (iv) cooperate and assist the Department to respond to inquiries, investigations, complaints or reviews undertaken by the Minister, any House or Committee of the Parliament of the Commonwealth of Australia, the Commonwealth Auditor-General, the Privacy Commissioner, or other relevant stakeholder (including the Commonwealth and Immigration Ombudsman, and advocates for Transferees). This response may take the form of the provision of oral or written (as requested by the Department) advice or information on any matter relevant to the Contract and must address the matters requested by the Department;
 - (v) at the Department's request, provide training, education or advice to the Department or Department Services Providers on health concerns or issues relevant to the care or management of Transferees; and
 - (vi) work closely with the Department Services Providers to identify and

develop (as applicable) operational procedures and structured hand-over processes for all co-dependent, shared activities and service interfaces relevant to performance of the Contract. These policies and procedures must be approved by the Department before being incorporated in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**.

8. ENVIRONMENTAL HEALTH SERVICES

8.1 The Health Services Manager must:

- (a) monitor and provide medical advice, upon the Department's request, on the health impacts of climate change on Transferees, Department personnel and Department Services Providers personnel;
- (b) manage medical waste and its disposal, in accordance with **clause 16.5** of this **Schedule 2**;
- (c) where possible, manage unnecessary exposure of Transferees and other personnel to radiation, including regular servicing of the x-ray machine in accordance with Accepted Industry Practice;
- (d) engage with Department Services Providers in the prevention of recreational water illness, including educating Transferees on water safety; and
- (e) engage with Department Services Providers in the prevention of lead poisoning in children, including notifying the Department of a lead poisoning incident once the health services manager becomes aware of the incident.

9. INCIDENT NOTIFICATION

9.1 Development of system

- (a) The Health Services Manager must develop and implement a Critical and Other Incident management system for the timely identification, communication and reporting to the Department of Critical and Other Incidents at each Facility or which otherwise involve a Transferee.
- (b) The system developed under this **clause 9.1** must be incorporated in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**, ensure the Health Services Manager's compliance with the requirements of **clause 9.2**, and include controls such as retrospective reviews and examination of trends by the Clinical Governance Team. The Policy and Procedures Manual must attach the pro forma Incident Report that must be used for reporting Critical and Other Incidents to the Department, and prominently identify the Department's email address for the submission of all such reports.

9.2 Notification and reporting

- (a) The Health Services Manager must:

- (i) in the event the Health Services Manager or any Health Services Manager Personnel becomes aware of a Critical Incident:
 - (A) immediately inform (but no later than one (1) hour after first becoming aware of the Critical Incident) the Department of the Critical Incident; and
 - (B) provide the Department with a written report of the Critical Incident in accordance with **clause 9.2(b)**, within four (4) hours of notifying the Critical Incident under **clause 9.2(a)(i)(A)**;
 - (ii) in the event the Health Services Manager or any Health Services Manager Personnel becomes aware of an Other Incident, provide the Department with a written report of that Other Incident in accordance with **clause 9.2(b)**, within twenty four (24) hours of first becoming aware of the Other Incident.
 - (iii) For the purpose of **clause 9** of this **Schedule 2**, Critical and Other Incidents are defined in **Annexure A** of this **Schedule 2**.
- (b) An Incident Report provided to the Department under **clause 9.2(a)** must:
- (i) describe the background, participants and sequence of events relevant to the Critical or Other Incident being reported;
 - (ii) describe all action taken by Health Services Manager Personnel, Network Provider or Network Provider Personnel in response to the Critical or Other Incident; and
 - (iii) be in the form approved by the Department and submitted electronically to the Department's nominated email address.
- (c) Any Incident Report (and other information provided to the Department in response to an Incident) must be provided in accordance with relevant Laws and Department Health Policy.

9.3 **Corrective or follow up action**

Following notification of a Critical or Other Incident under this **clause 9**, the Health Services Manager must take such corrective or review action as agreed with the Department.

10. **HEALTH MANAGEMENT**

10.1 **Delivery of Health Care**

- (a) The Health Services Manager must:
 - (i) ensure that Transferees and Recipients are able to access and receive Health Care in accordance with the Contract, including at the times and in

the manner described in **Part 2** and **Part 3** of this **Schedule 2**;

- (ii) ensure no Transferee is denied or fails to receive (other than by reason of that person's own choosing) any clinically necessary Health Care, except where the recommended Health Care falls outside the scope of Department Health Policy; and
 - (iii) seek to ensure that Transferees take on shared responsibility for the management of their own health, whilst remaining alert and responsive to any Transferee with a chronic or serious health condition, who does not fully understand or accept the concept of self responsibility for management of their own health, or who is not reasonably capable of managing their own health.
- (b) The Health Services Manager must ensure:
- (i) all providers of Critical Health Services are current employees of the Health Services Manager, excluding disciplines which, for practical purposes, may be served by visiting specialists, such as optometrists and radiologists; and
 - (ii) all other providers of Health Care to Transferees and Recipients are employees of the Health Services Manager, except in the following circumstances when a provider that is not an employee of the Health Services Manager may be used by the Health Services Manager to deliver Health Care to Transferees and Recipients:
 - (A) where the Department has consented to the use of that other provider;
 - (B) where a Transferee requests another provider and the Health Services Manager arranges for the Transferee to see that provider solely at the person's own risk and cost in accordance with **clause 10.7(b)(ii)** of this **Schedule 2**; or
 - (C) in any case where the Department has separately agreed terms with a provider for the delivery of certain services and the Health Services Manager uses the Department's negotiated arrangement for the delivery of those services, in circumstances where the Health Services Manager demonstrates to the Department's satisfaction that the Department's negotiated arrangement offers the Department best value for money for the relevant services.
- (c) Without limiting the Health Services Manager's obligations under **clause 10** of this **Schedule 2**, the Health Services Manager must use its best endeavours to ensure consistency of Health Care Providers for Transferees during each episode of care, and for the duration of their time on Nauru and Manus Island.

10.2 Access to Specialist, Hospital and Allied Health Care

- (a) The Health Services Manager must ensure that no Transferee or Recipient accesses specialist, hospital (other than in a medical emergency) and allied health services (including all dental services, optometry services and pharmacy services) without a referral (or other written authority) from the person's GP or a nurse (as agreed with the Department). All referrals by a GP or a nurse (as agreed with the Department) must be on the basis of established clinical need. If a person's GP or a nurse (as agreed with the Department) recommends or provides a referral for Health Care outside the scope of Department Health Policy the Health Services Manager must obtain the Department's prior consent before actioning that referral.
- (b) If any Transferee at a Facility receives a referral for any specialist, hospital or allied Health Care, the Health Services Manager must ensure:
 - (i) an appointment is made for the person with the relevant Health Care Provider within an appropriate timeframe; and
 - (ii) the timing of the appointment scheduled under **clause 10.2(b)(i)** is appropriate and sufficient to ensure the delivery of relevant Health Care within a clinically appropriate timeframe.

10.3 Coordination and follow up

- (a) The Health Services Manager must maintain an up to date electronic register for each Facility of all Transferee and Recipient referrals to, and appointments and consultations with, Health Care Providers of specialist, hospital and allied health services. Each Facility and Health Services Manager must regularly monitor and review the register with a view to confirming:
 - (i) the actioning and arranging of referrals in accordance with **clause 10.2**;
 - (ii) Transferees attendance at scheduled appointments or consultations;
 - (iii) the complete and timely transfer of relevant health information between treating Health Care Providers in accordance with this **Schedule 2**;
 - (iv) the provision of clinically appropriate follow up care by a Transferee's GP following that person's referral to a specialist, hospital or allied Health Care Provider; and
 - (v) that referral patterns and practices within each Facility are consistent with the requirements of the Contract (including this **clause 10**).
- (b) The Health Services Manager must:
 - (i) promptly investigate, and take steps to address, any referral patterns or practices identified or suspected as not complying with the Contract;
 - (ii) notify the Department of all such referral patterns or practices identified

or suspected under **clause 10.3(b)(i)**, and steps taken (or proposed to be taken) by the Health Services Manager with a view to confirming or addressing such matters, within ten (10) Business Days of the Health Services Manager completing its review under **clause 10.3(a)**; and

- (iii) provide the Department with access to information contained in the register maintained under **clause 10.3(a)**, at the times and in the form reasonably requested by the Department.

10.4 **Transfer and sharing of Transferee Health Information**

- (a) The Health Services Manager must develop and implement appropriate policies, procedures and processes for the timely, complete and lawful exchange of Transferee health related information. These policies, procedures and processes must:
 - (i) provide for the sharing and transfer of all relevant Transferee health related information in accordance with the Contract (including this **clause 10.4**), irrespective of the person's geographic location or identity of treating Health Care Provider;
 - (ii) contain a link to a template "Release of Medical Information" consent form in the form approved by the Department;
 - (iii) where a Transferee declines to give consent to the release or transfer of his or her health information, describe policies and procedures for the management of that person's Health Care Record; and
 - (iv) recognise that Transferee health information may be exchanged or transferred at any time during a person's time on Nauru or Manus Island and also following their Release or Removal;
- (b) A draft of the policies and procedures developed under this **clause 10** must be incorporated in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**. These policies and procedures must be approved by the Department before being incorporated in the Policy and Procedures Manual.
- (c) The Health Services Manager must ensure all treating Health Care Providers seek a Transferee's consent to the transfer of his or her health information using the template "Release of Medical Information" included in the Policy and Procedures Manual.
- (d) In all cases where a Transferee agrees to the release of his or her health information, the Health Services Manager must:
 - (i) include a copy of the relevant signed consent form in the person's Health Care Record;
 - (ii) ensure all health information concerning the person is exchanged and transferred in accordance with terms of the consent and the policies and procedures developed under this clause;

- (iii) actively pursue and follow up with any Health Care Provider who fails to transfer and exchange Transferee health information in accordance with **clause 10.4(d)(ii)**; and
- (iv) withhold payment of any Network Provider invoice for Health Care provided to a Transferee pending that Network Provider's compliance with **clause 10.4(d)(ii)**.
- (e) If a Transferee declines to provide his or her consent (or consents to the release of information on terms substantially different to those approved by the Department), the Health Services Manager must notify the Department in accordance with **clause 9** of this **Schedule 2**, and manage that person's Health Care Record in accordance with the policies and procedures developed under this **clause 10.4**, or as agreed with the Department at the relevant time. The Health Services Manager must ensure that a Transferee is not denied any clinically necessary Health Care on the basis of his or her refusal to provide consent to the release of his or her health information.

10.5 Communicating with Transferees

The Health Services Manager must:

- (a) implement a communications policy (consistent with this **clause 10.5**) that sets out the standards and qualities that it expects of Health Services Manager Personnel, and Network Providers when interacting and dealing with Transferees. This policy must be incorporated in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**;
- (b) ensure all documentation and other written material or advice (for example, consent forms and health orientation and advice information that the Health Services Manager gives, prepares for distribution or directs to Transferees) is translated into each of the various key languages specified by the Department. If a Transferee is from a language group that is not represented by one of the key languages or is illiterate, the Health Services Manager must make suitable alternative arrangements for the communication of the information or material to the Transferee. This could include having the document or material read to the Transferee in their own language;
- (c) arrange, unless the Department has arranged separately, for the presence of 'face to face' interpreter services for any onsite health consultation or interaction with a Transferee that involves a complex or sensitive health issue and clear communication with the Transferee is of paramount importance (for example, where a Transferee needs to decide whether to pursue cancer treatment in Australia or return home to family in his or her country of origin);
- (d) at the Department's request, arrange for the presence of 'face to face' interpreter services at each Facility; and

- (e) in all cases where 'face to face' interpreter services are not available to a Transferee at the time of a health consultation or other scheduled interaction with a Health Care Provider, ensure the person has access, on request, to the services of a qualified and accredited telephone interpreter service. Each Transferee must be informed of available interpreter services (and given details of how to access those services) at the time of the person's arrival on Nauru or Manus Island.

10.6 Informed Consent for Delivery of Health Care

- (a) The Health Services Manager must ensure that Transferees and Recipients are fully informed about their health and Health Care options, consent to the delivery of all Health Care, and participate as far as reasonably possible in the management of their own health. The expressed wishes of a Transferee or Recipient who is considered reasonably capable of making informed decisions with regard to his or her own health must be respected. For this purpose, appropriate interpreter services must be used in accordance with **clause 10.5** to ensure that language or communication difficulties are not a factor for Transferee effectively participating in their health management.
- (b) The Health Services Manager must ensure that:
 - (i) a Transferee or Recipient's informed consent is sought in accordance with all relevant Laws and Department Health Policy;
 - (ii) if a Transferee or Recipient declines to give his or her consent for any recommended Health Care; and the person's health is thereby placed at serious risk, the Department is notified of that refusal in accordance with **clause 9** of this **Schedule 2**; and
 - (iii) any involuntary treatment of a Transferee or Recipient is in accordance with all relevant Laws and accepted professional standards and practice.

10.7 Transferee Requests

- (a) The Health Services Manager must develop and implement policies and procedures that allow Transferees to make requests in relation to their Health Care, and for the management of such requests in accordance with this **clause 10.7**. These policies and procedures must be incorporated in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**.
- (b) These systems and processes must ensure:
 - (i) *if a Transferee requests a second medical opinion* - this opinion is obtained only where it has been clinically recommended;
 - (ii) *if a Transferee requests access to his or her Health Care Record (or any information contained in that record)* – access is provided in accordance with relevant Laws, together with an explanation aimed at ensuring the person understands the information being provided.

- (c) The Health Services Manager must ensure all Transferee health related requests are acknowledged, responded to and actioned (as appropriate) in a timely and reasonable manner in accordance with the policies and procedures developed under this **clause 10.7**. If a request is of a kind mentioned in **clause 10.7(b)**, the Health Services Manager must action the request in accordance with the response described in that clause.

11. INFORMATION AND HEALTH CARE RECORDS MANAGEMENT

11.1 Transferee Health Care Records

- (a) Subject to the availability of appropriate communication services provided by the Department at each Facility pursuant to **clause 13.1** of this **Schedule 2**, the Health Services Manager must maintain a secure network of individual electronic Health Care Records for all Transferees. This network must be capable of collecting, storing, retrieving and exchanging relevant up-to-date health information for all Transferees, irrespective of their location. The system must allow multiple providers within a multi-disciplinary health team to simultaneously input and access data and information on a "need to know" basis. It must also provide for the collecting, sorting and archiving of scanned documents from Network Providers to ensure a holistic medical record is available for each person at any given time.
- (b) The Health Care Record maintained for each Transferee must:
- (i) contain a contemporaneous record of all mental health and individual management plans, health consultations and appointments attended by the person during his or her time in Australia and on Nauru or Manus Island, including consultation notes, test results, referrals, specialist reports and vaccination history, so as to provide an up to date and accurate picture of the person's health status at any given point in time;
 - (ii) contain copies of all signed consent forms and details of any instances in which the person did not consent (whether to clinically recommended Health Care, or to the release and transfer of his or her health information);
 - (iii) contain an up-to-date health summary consistent with applicable Health Standards and otherwise, Accepted Industry Practice, and must contain as a minimum the following information for each consultation with a *Transferee*:
 - (A) date and time of consultation;
 - (B) full name and position/title of health professional;
 - (C) *Transferee's* symptoms (if any);
 - (D) examinations/tests undertaken;
 - (E) clinical findings, provisional diagnosis or differential diagnosis;

- (F) allergies and immunisation plan;
 - (G) treatment plan (if required); and
 - (H) review date (if required);
- (iv) be securely stored, protected against unauthorised access, theft and damage and readily accessible by Health Services Manager Personnel;
 - (v) contain fields and classification indices that are capable of rapidly retrieving and sorting health data and other information and for ease of reporting to the Department; and
 - (vi) be otherwise created, maintained and used in accordance with the *Archives Act 1983*, AS ISO 15489-2002 Australian Standard for Records Management, and relevant Department Health Policy and applicable Law.
- (c) The Health Services Manager must ensure all health information received from a Network Provider in accordance with **clause 10.4** of this **Schedule 2** and any medical results collected in accordance with **clause 24.2** of this **Schedule 2** are incorporated into the relevant Transferee's Health Care Record, within twenty four (24) hours of the Health Services Manager receiving the information.
 - (d) The Health Services Manager must conduct regular audits of Health Care Records maintained under this **clause 11.1** to verify compliance with this clause. These audits must be conducted at intervals agreed with the Department (but no less than Quarterly) and applying Department approved methodologies and processes.

11.2 Information Management and Exchange

The Health Services Manager must develop and implement health information collection, storage and exchange policies and practices that:

- (a) are consistent with the *Archives Act 1983* (Cth) and AS ISO 23081 Information and Documentation-Records Management Processes - Metadata for Records;
- (b) facilitate and support the timely and complete exchange of all relevant Transferee and Recipient health information in accordance with the Contract;
- (c) ensure Transferees and Recipients have access to their own health information and records in accordance with relevant Laws; and
- (d) allow for the generation and production (as applicable) of Transferee health summaries, health data, reports and other material and information required by the Contract, including this **Schedule 2** and **Schedule 4.3** (Reporting).

12. FINANCIAL MANAGEMENT

The Health Services Manager must develop and implement a financial management

system that:

- (a) itemises and records the cost of Health Care delivered to Transferees and Recipients (including the cost of individual investigations, treatments or procedures or other services) in accordance with **Schedules 4.3** (Reporting) and **Schedule 5** (Fees and Payments);
- (b) maintains and supports a "cashless" transaction system for the delivery of Health Care to Transferees and Recipients, and supports the billing and fee arrangements agreed with each Network Provider;
- (c) itemises and records all Network Provider transactions (on the basis of "service type/category", "identity/location/speciality of Health Care Provider" and "Regional/Facility/placement"); and
- (d) links financial and itemised cost information to the Health Services Manager's information technology system in a manner which enables the automatic extraction and download of cost and service utilisation information and data to facilitate and support reporting to the Department.

13. **INFORMATION AND TECHNOLOGY REQUIREMENTS**

13.1 **Information Technology Requirements**

- (a) The Health Services Manager must provide, install, manage and support information technology systems that:
 - (i) have the software, hardware, encryption and scanning capacity and functionality to support compliance with the Contract;
 - (ii) are capable of collecting, storing, downloading and reporting health information and health data in accordance with the Contract;
 - (iii) comply with the logical security requirements of the Australian Government Information Security Manual, with the exception of components provided by the Department, in which case the Department is responsible for compliance with the Australian Government Protective Security Policy Framework in relation to those components;
 - (iv) meet the Department's security and privacy requirements for data and information protection, including by encrypting information classified as sensitive;
 - (v) are housed in secure locations adequate to prevent unauthorised access. Where a location for information technology systems is provided by the Department, the Department will be responsible for that location's security except to the extent that an act or omission of the Health Services Manager results in a breach of security;
 - (vi) are appropriately licensed at all times;

- (vii) have the capacity and flexibility to respond to fluctuations in service demand and volumes;
 - (viii) are properly maintained, supported and available at all necessary times for performance of the Health Services;
 - (ix) are updated and maintained on a regular basis;
 - (x) minimise multiple *Transferee* records; and
 - (xi) are in all respects suitable and appropriate for the performance of the Health Services, and are able to be easily used by appropriately trained Health Services Manager Personnel.
- (b) Before the end of each day, the Health Services Manager must produce a back up of all electronic data created or used in connection with the Contract, and store that data in a secure and safe location.
 - (c) The Health Services Manager must provide appropriate and timely training for Health Services Manager Personnel in the use of information technology relevant to their role and responsibilities in connection with the Contract.

13.2 **Removal of Hardware**

Unless otherwise agreed, the Health Services Manager must ensure that any information technology storage media, including hard drives, located at each Facility or at the Health Services Manager headquarters, that has at any time held Health Care Record or other health information relevant to a Transferee or Recipient, or other Department Confidential Information, is sanitised in accordance with the Australian Government Protective Security Policy Framework prior to leaving the Facility or the Health Services Manager's headquarters.

13.3 **Access to Information Technology Systems**

The Health Services Manager must ensure that only Health Services Manager Personnel approved or authorised by the Department have access to the Health Services Manager's information technology systems containing Transferee Health Care Records or other Transferee Information.

14. **QUALITY MANAGEMENT AND CONTINUOUS IMPROVEMENT**

14.1 **Quality Management System**

- (a) The Health Services Manager must develop, implement and maintain a quality management system for performance of the Health Services. This system must identify and analyse service delivery and other performance issues or failures across the Facilities and contain a systematic process for managing and responding to any identified service issues or failures. The objective of this system must be the continuous improvement of service delivery in order to

maximise value for money and achievement of the Department's Contract objectives.

15. COMPLAINTS AND FEEDBACK

15.1 Managing Complaints and Feedback of Transferees

- (a) The Health Services Manager must develop, implement and manage a system that allows Transferees to make a complaint or provide feedback on matters relevant to their Health Care, including the performance of any Health Care Provider or Health Services Manager Personnel. This system must specify policies and procedures that enable and support the management, response and resolution of Transferee complaints or feedback in a responsive, fair, open and timely manner.
- (b) The Health Services Manager must incorporate the complaints management system developed under this **clause 15.1** in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**. These policies and procedures must be approved by the Department before being incorporated in the Policy and Procedures Manual. The Health Services Manager must include material concerning the objectives and operation of this system in the induction and ongoing education training programs developed under **clause 6.1** of this **Schedule 2**.
- (c) The complaints management system must record the following information:
 - (i) the date the complaint or feedback was received;
 - (ii) the nature of the complaint or feedback; and
 - (iii) status of the complaint.
- (d) The Health Services Manager must keep the Department informed of complaints in accordance with **Schedule 4.3** (Reporting) of this Contract.

15.2 Feedback from Health Care Providers

- (a) The Health Services Manager must establish, implement and manage a system that enables Health Care Providers to raise, in confidence and without prejudice to their position or fear of negative repercussions, concerns over any aspect of Health Services delivery, or Health Care delivered to a Transferee. The Health Services Manager must notify the Department of any concerns notified by a Health Care Provider and, at the Department's option, work co-operatively with the Department and the relevant Health Care Provider in an attempt to address those concerns.
- (b) The Health Services Manager must incorporate the Health Care Provider feedback system developed under this **clause 15.2** in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**.

16. HEALTH FACILITIES, EQUIPMENT AND CONSUMABLES

16.1 Supply of Medical Equipment, Consumables and Other Supplies

- (a) The Health Services Manager must ensure that any areas or buildings (or parts of buildings) within the Facility that are used to deliver Health Care to Transferees and Recipients:
 - (i) are equipped, with supporting equipment maintenance arrangements, to the level and standard necessary to deliver Health Care to Transferees and Recipients in accordance with the Contract, Department Health Policy, applicable Health Standards (where applicable), and otherwise, Accepted Industry Practice. This includes ensuring access at each Facility to all medical equipment necessary to provide comprehensive primary health care, and resuscitation services, including access to an automated external defibrillator at each Facility;
 - (ii) provide a safe and effective working environment for all Health Services Manager Personnel and Network Provider Personnel; and
 - (iii) have available for use and consumption at all times all necessary medical consumables and supplies (including medicines, vaccines and other products) to deliver Health Care onsite at each Facility in accordance with the Contract.
- (b) The Health Services Manager must ensure that all assets and medical equipment that it has available for use at a Facility are kept in sound working condition and maintained and repaired in accordance with relevant Australian standards, applicable Health Standards and any manufacturers' recommendations. The Health Services Manager is responsible for the cleaning and sterilisation of all medical equipment. All consumables and supplies (including medicines and vaccines) must be kept in a usable condition, securely and safely stored and used or dispensed in accordance with all applicable Laws, the applicable Health Standards (where applicable), and otherwise, Accepted Industry Practice.
- (c) The Health Services Manager must conduct Quarterly audits (or more frequently where indicated) of medical equipment, consumables and supplies stocks at each Facility to ensure the safe and continuous supply of such items for the delivery of Health Care at each Facility. The Health Services Manager must ensure replacement equipment, consumables and supplies are anticipated and planned to ensure compliance with this **clause 16.1** at all times.

16.2 Management and Maintenance of Department Assets

- (a) The Health Services Manager must manage and maintain all Department owned assets that the Department makes available to the Health Services Manager for performance of the Health Services. The Department's assets must be managed and maintained:
 - (i) in accordance with any Department instructions, manufacturers'

recommendation or otherwise, Accepted Industry Practice; and

- (ii) with the aim of ensuring each asset achieves its design life and that the incidence of breakdowns and repairs of those assets is minimised.
- (b) At the Department's request, the Health Services Manager must conduct an annual physical stock take of all Department owned assets at each Facility that have been provided to the Health Services Manager in connection with the Contract. The Health Services Manager must provide the Department with a current complete asset listing at the times and in the form reasonably requested by the Department.
- (c) The Health Services Manager must promptly report to the Department any breakdown, loss of or damage to any Department owned asset, providing details of any known cause and the extent of the damage and estimated time and cost of repair or replacement. The Health Services Manager must arrange for the repair, or replacement of a Department asset with an asset of comparable quality and value, in accordance with any Department request.

16.3 Vector Control Management

- (a) The Health Services Manager will develop, implement and maintain an Integrated Vector Management Program (IVMP) to manage the risk of vector-borne infection in Transferees and Recipients, particularly in relation to Malaria and Dengue Fever on Manus Island. The term of the IVMP (IVMP Term) will be for the duration of the Contract or with an earlier expiration if the Department deems appropriate.
- (b) Within one month of the IVMP under the terms of this Contract being approved by the Department the Health Services Manager will conduct a malaria risk assessment that will design a malaria control program responsive to local circumstances.
- (c) As a minimum, the IVMP will include the following:
 - (i) Primary prevention: activities will focus on reducing vector activity and density as well as vector-human contact, including:
 - (A) Environmental Management of vectors;
 - (B) Establishment of a buffer zone;
 - (C) Environmental modifications;
 - (D) Environmental manipulation;
 - (E) Chemical Management of vectors;
 - (ii) Secondary prevention: reduction of individual risk by using a full range of personal protection and behaviour modification measures, including:
 - (A) Awareness;
 - (B) Bite prevention;
 - (C) Chemoprophylaxis; and

- (d) Where the Department requests a change to add Vector Control Services to the Health Services, the Health Services Manager must provide a Contract Change Proposal by the date reasonably specified by the Department in that request and not the timeframe set out in **clause 34** of the Contract.

16.4 **Disease Prevention and Infection Control**

- (a) The Health Services Manager must develop and implement at each Facility policies and procedures for the prevention, control and management of infectious and communicable disease outbreaks at each Facility. These arrangements must comply with all relevant Laws, Australian Government Policy and Department Health Policy, be developed in collaboration with the Department and the Department Services Provider, and be incorporated in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**.
- (b) In any case where a Transferee or Recipient at either Facility has been identified with an infectious or communicable disease the Health Services Manager must ensure that the person is immediately isolated and the Department and the Department Services Providers are immediately notified of the situation in accordance with **clause 9** of this **Schedule 2** and the relevant health authorities are notified in accordance with relevant Law. At this same time, the Health Services Manager must, in collaboration with the Department Services Providers and the Department, develop and implement an appropriate prevention and containment program for the relevant Facility. This program must be aimed at allaying fears of exposure and provide appropriate containment measures for any likely contacts.
- (c) The Health Services Manager must provide the Department and the Department Services Providers with advice and assistance reasonably requested by the Department to assist with the prevention and management of infection or disease outbreaks at a Facility. This assistance may extend to the Health Services Manager providing advice on appropriate containment measures and indications for quarantine, being responsible for ongoing communications with the respective health authorities, taking a coordination role in working with all parties involved in managing contact tracing and developing and implementing immunisation and vaccination programmes for Transferees and Recipients.

16.5 **Disposal of Clinical Waste**

The Health Services Manager must safely store and dispose of all medical waste at each Facility at which it provides onsite Health Care to Transferees and Recipients, in accordance with all relevant Laws and applicable Health Standards (where applicable) and otherwise, Accepted Industry Practice.

16.6 **Supply and management of Pharmaceuticals (and other medicines)**

- (a) The Health Services Manager must ensure:
 - (i) each Transferee has timely access to pharmaceuticals and non-prescription

- ("over the counter") medicines that have been prescribed or authorised for the person by a Health Care Provider in accordance with this **clause 16.6**;
- (ii) for Transferees, "over the counter" medicines may be obtained from the Facility;
 - (iii) all pharmaceuticals and other medicines for Transferees are sourced from pharmacists within the Health Services Manager's network of providers established under **clause 5.1** of this **Schedule 2**;
 - (iv) the Department receives value for money in the procurement and supply of all pharmaceuticals and other medicines to Transferees; and
 - (v) all restricted medicines (S4 and S8) are stored, secured and dispensed at a Facility in accordance with all applicable Laws, applicable Health Standards (where applicable) and otherwise, Accepted Industry Practice.
- (b) The Health Services Manager must develop, in consultation with the Department, a standard formulary for use by relevant Health Care Providers whenever prescribing medicines for Transferees. This list must ensure the use of generic medicines wherever possible. The Health Services Manager must ensure only medicines included on this list are prescribed and supplied to Transferee. Other medicines (not included on the list) may only be supplied to a Transferee with the Department's prior written approval. The Health Services Manager must provide the Department with a copy of the standard formulary developed under this **clause 16.5**, within five (5) Business Days of any Department request.
- (c) The Health Services Manager must store and administer pharmaceuticals. The Health Services Manager must work with the Department to develop appropriate policies and procedures for the storage, administration and dispensing of pharmaceuticals. These policies and procedures must be included in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**.
- (d) The Health Services Manager must ensure that the storage, recording and management of S8 and S4 medications are in accordance with applicable Health Standards, Department Health Policy and all relevant Laws. The Health Services Manager must ensure that any Transferee who requires treatment with S8 and S4 drugs are notified to Department and that the person is registered with the appropriate Health Department.

PART 2: HEALTH CARE DELIVERY TO TRANSFEREES**17. DELIVERY OF HEALTH CARE TO TRANSFEREES**

The Health Services Manager must ensure that Transferees have access to, and are able to obtain, Health Care on the terms, at the locations and times described in this **Part 2** of this **Schedule 2**. The Health Services Manager must structure and tailor its access and service delivery arrangements to reflect the characteristics and requirements of Nauru and Manus Island and the Transferee Population Groups.

18. PERFORMANCE STANDARDS

18.1 The Health Services Manager must ensure that:

- (a) the quality and standard of Health Care provided to Transferees during their time on Nauru and Manus Island is sufficient to maintain optimal health for Transferees while at the Facilities and is the best available in the circumstances and broadly comparable with health services available within the Australian community;
- (b) Health Care provided to Transferees:
 - (i) is provided with a cultural appreciation and understanding of the issues and concerns which may impact on the health of Transferees;
 - (ii) is provided without any form of discrimination and with respect for individual patient rights; and
 - (iii) is based on best available evidence and prioritised according to clinical need;
- (c) Transferees have direct and continuous access to health practitioner services for the duration of their time on Nauru or Manus Island;
- (d) a Transferee has a consultation with a health care practitioner within seventy two (72) hours of a request for a medical consultation;
- (e) Transferees on Nauru or Manus Island are able to access, and receive, the services described in **clause 27.1** of **Part 2** of this **Schedule 2**, onsite at each Facility, except for in the following circumstances where such services may be delivered offsite:
 - (i) with the Department's prior written approval; or
 - (ii) where the Health Services Manager demonstrates to the Department's reasonable satisfaction that the person could not have been safely and effectively treated onsite at the Facility (other than for any reason related to the Health Services Manager's failure to comply with any provision of the Contract); or
 - (iii) where the Department has agreed that the service will be physically

located at a different Facility (e.g. Dental, Radiology).

19. SCOPE

The Health Services Manager must provide in accordance with the Contract:

- (a) a Health Discharge Assessment (refer **clauses 21**);
- (b) a vaccination program and diabetes management (refer **clause 22** and **23**);
- (c) continuing Health Care, including health management and periodic mental health screening and assessment (refer **clauses 24** and **25**);
- (d) medical escort and evacuation services (refer **clause 26**);
- (e) at Nauru and Manus Island, the services described in **clause 27.1**;
- (f) an After Hours Service, as described in **clause 28**; and
- (g) provision of telemedicine, as described in **clause 29**.

20. HEALTH CARE RECORDS AND INFORMATION

20.1 Creation of Health Care Record for Transferees

The Health Services Manager must ensure that each Transferee has an up-to-date individual Health Care Record. Transferee Health Care Records will be available to the Health Services Manager on Nauru and Manus Island. At the time of completion of the person's Health Induction Assessment, this record must:

- (a) note the date and location of the assessment and the name of the Health Care Provider conducting the assessment;
- (b) contain an accurate and complete summary of the person's clinical history;
- (c) comprehensively describe all stages of the assessment and the findings or conclusions of each stage;
- (d) contain details of all recommended follow up action, including copies of referrals to other Health Care Providers;
- (e) include a copy of all consents obtained from the person and details of any consents the person declined to provide; and
- (f) include an alert notifying of any special requirements pertaining to the care and management of the person, including any requirement for interpreter services.

20.2 Provision of Health Services Information

- (a) At the time of arrival on Nauru or Manus Island, the Health Services Manager must ensure the Transferee is provided with clear and accurate information about the person's available Health Care and access arrangements relevant to the provision of that care. This information must include:
- (i) detailed information about the range of available Health Services, and how and when the services may be accessed (including, as applicable to each Facility, Scheduled Clinic Times for each Onsite Health Clinic, details of emergency arrangements when the Onsite Health Clinics are not operating);
 - (ii) details of key Health Care Providers (for example, the person's dedicated general practitioner service);
 - (iii) an explanation of the arrangements in place for the provision of interpreter services and how those services may be accessed by the person;
 - (iv) an explanation of how the person may provide feedback or lodge a complaint about any health related matter;
 - (v) the Health Services Manager's policy on the use and treatment of personal health information; and
 - (vi) a Business Hours contact for the provision of further information.
- (b) For any Transferee, the information provided under this **clause 20.2(a)** must be in writing (except for where the person is illiterate), in a form agreed between the Parties and translated (where necessary) into a language appropriate for the person. If the person is illiterate, the information must be conveyed using an alternative communication method appropriate for the person. For Transferee in each Facility, the information referred to in **clause 20.2(a)** must also be reinforced and promoted at every reasonable opportunity, including through the use of public displays on common noticeboards and other prominent signage at each Facility.
- (c) The Health Services Manager must ensure that information provided to Transferees under this **clause 20.2(a)** is kept up to date and current at all times, including by providing replacement or additional information in response to any material change to a person's Health Care arrangements. Any replacement or additional health information provided under this **clause 20.2** must be provided within seventy two (72) hours of the relevant change taking effect or, in the case of a person's Transfer, within seventy two (72) hours of the Health Services Manager receiving notice of the Transfer.

21. HEALTH DISCHARGE ASSESSMENT

21.1 Design of process

- (a) The Health Services Manager must develop and manage a Health Discharge Assessment process aimed at establishing a Transferee's health status at the time

of his or her Discharge, and which facilitates continuity of Health Care on a Transferee's Discharge.

- (b) The health discharge process designed under this **clause 21.1** must:
- (i) be based on current best available evidence and consistent with Accepted Industry Practice;
 - (ii) reflect the health risk profile and health status of the individual being Discharged;
 - (iii) satisfy the requirements of this **clause 21**, Department Health Policy and all relevant Laws; and
 - (iv) be incorporated in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**.
- (c) Subject to Department Health Policy, the Health Discharge Assessment process designed under this **clause 21.1** must comprise the following elements:
- (i) a desk review of the Transferee's Health Care Record to determine his or her health status for Discharge, to assist with establishing the remaining elements of the person's Health Discharge Assessment, to identify any potential health issues or concerns that may prevent the person's Discharge and any requirements the person may have for ongoing health care or treatment after his or her Discharge;
 - (ii) a physical examination of the person in the circumstances described in **clause 21.1(d)**;
 - (iii) if the person is being Discharged, determination of the person's "fitness to travel" by aircraft;
 - (iv) determination of any medical escort requirement for the person;
 - (v) the preparation and supply of a Health Discharge Assessment to the Transferee and the Department. This assessment must be sufficient to inform any future health services providers of the person's clinical history, treatment received during their time on Nauru and Manus Island, any ongoing treatment regimes and health Critical Incidents that occurred during the person's time on Nauru and Manus Island. When preparing this assessment, the Health Services Manager must seek input, as appropriate, from all treating Health Care Providers. For any person being Removed, the assessment must be translated into a language appropriate for the person and his or her destination;
 - (vi) the provision of a fourteen (14) days supply (or supply for such longer period as approved by the Department) of all clinically indicated medication, including instructions (translated where necessary) regarding the safe storage and administration of that medication; and

- (vii) where required, clinical handover arrangements, including the provision of referrals for any continuing treatment. As part of the handover arrangements, the Health Services Manager must provide contact details of an appropriate Health Care Provider who can respond to questions and requests for further information about the Transferee's health status and medical history following the person's Discharge; and
- (d) If a Transferee is being Removed, a physical examination must be offered to the person and provided with his or her consent, unless a physical examination certifying the person's "fitness to travel" was previously performed within a twenty eight (28) day window of the person's proposed Discharge date and there has been no material change in the person's clinical condition since the date of examination. For any Transferee being Discharged to live in the community, a physical examination must be offered on the clinical recommendation of a Health Care Provider, but is voluntary, and any refusal of the person to undergo such examination must not delay his or her Discharge.

21.2 Conduct and Timing of the Health Discharge Assessment

- (a) The Health Services Manager must ensure a Health Discharge Assessment is completed for each Transferee who is being transferred from Nauru and Manus Island. This assessment must:
 - (i) be in accordance with the discharge process designed under **clause 21.1**; and
 - (ii) be appropriately tailored and structured for the person's individual health risk profile, health status and Discharge destination.
- (b) The Health Discharge Assessment for each Transferee must be completed within seventy two (72) hours of the Health Services Manager receiving notice from the Department.
- (c) The Health Services Manager must ensure each Health Discharge Assessment is properly completed. This includes:
 - (i) providing a response in each field of the Health Discharge Assessment; and
 - (ii) where the Health Services Manager determines that a field is not applicable to a particular Transferee, marking the field as "not applicable".
- (d) A Health Discharge Assessment will not be regarded as complete until:
 - (i) the Transferee's Health Care Record is updated to include all relevant details regarding the person's Health Discharge Assessment; and
 - (ii) the Department is provided with a copy of the Transferee's Health

Discharge Assessment.

- (e) The Health Services Manager must immediately notify the Department of any clinical recommendation of a Health Care Provider that advises against a person's Discharge for medical reasons. For any person being Discharged, the notice must include supporting reasons relevant to the person's "fitness to travel".
- (f) If a Transferee is being Released, at the time of that Person's Health Discharge Assessment the Health Services Manager will provide reasonable assistance to the Department's Settlement Area to assist the continuity of the person's health care.

22. VACCINATION PROGRAM

- (a) The Health Services Manager must provide Transferees with the opportunity to obtain appropriate vaccinations during their time on Nauru or Manus Island.
- (b) The Health Services Manager must ensure each Transferee is allocated into one of the following four categories within forty-eight (48) hours of their arrival on Nauru or Manus Island and conduct the subsequent action depending on the category:

Category	Description
A	Transferees who agree to receiving vaccinations. The initial vaccinations will commence being administered to the Transferee within one week of being categorised.
B	Transferees who decline vaccinations.
C	Transferees who do not require any further vaccinations because they can provide documentary evidence of previous and up-to-date vaccinations.
D	Transferees who claim to be able to obtain documentary evidence of previous vaccinations within one month (failure to produce evidence will result in the Health Services Manager requesting to commence initial vaccinations).

23. DIABETES MANAGEMENT

- (a) The Health Services Manager must ensure all Transferees are tested for diabetes where clinically relevant.
- (b) Once a Transferee has been diagnosed with diabetes they must be placed on an appropriate care plan within forty-eight (48) hours of diagnosis of diabetes or within forty-eight hours (48) hours of arrival on Nauru or Manus Island, whichever is the later.

24. CONTINUING HEALTH CARE

24.1 Health management

- (a) The Health Services Manager must ensure that if a Transferee presents, or is

identified with, a health condition or problem (whether at the time of his or her Health Induction Assessment or at any subsequent time) that person is provided with a clinically appropriate Health Care response in accordance with the Contract. This response may take the form of further assessment, treatment, monitoring or case management by a multidisciplinary team of Health Care Providers.

- (b) Any changes to a Transferee's health status in relation to **clause 16.4** must be appropriately notified and managed.
- (c) If clinically indicated, a treatment plan must be developed by the Transferee's GP in collaboration with (and as appropriate for) the Transferee and thereafter reviewed and updated, in a manner consistent with Accepted Industry Practice. The Health Services Manager must ensure the person's GP initiates and coordinates the development, implementation and review of any clinically appropriate treatment plan and involves, as necessary, other Health Care Providers.
- (d) The Health Services Manager must ensure any Transferee who has been on Nauru or Manus Island for longer than twelve (12) Months, and has not had contact with his or her GP for more than a continuous twelve (12) Month period, is offered an annual physical health check by his or her GP on expiry of each relevant twelve (12) Month period. This annual check must be conducted in accordance with relevant Department Health Policy and accepted professional and Accepted Industry Practice.
- (e) The Health Services Manager must ensure that any medication programs prescribed to a Transferee are regularly monitored, reviewed and amended in accordance with Accepted Industry Practice.

24.2 Collection of Medical Results

Upon receiving written notification that medical results (including pathology and radiology test results) are ready for collection from a Network Provider, the Health Services Manager must collect the medical results within 72 hours.

25. MENTAL HEALTH CARE

25.1 General

- (a) The Health Services Manager must ensure that the mental health needs of Transferees are adequately and appropriately identified, monitored and treated at all times during their time on Nauru and Manus Island, including by the conduct of periodic and indicated mental health screening, assessment and treatment services in accordance with this **clause 25**.

- (b) If any Transferee is identified at risk of, or as having, a mental health concern (whether at the time of his or her Health Induction Assessment or any subsequent time), the Health Services Manager must ensure that person is provided with a targeted mental health management plan, drawing on the expertise of a multidisciplinary team of specialist mental Health Care Providers. As appropriate for the person, this team may comprise mental health nurses, psychologists, senior counsellors, GPs and psychiatrists.
- (c) In any case where a Transferee requires in-patient mental health treatment, this must be arranged by the Health Services Manager through clinical pathways established with a public hospital, or a private hospital that is a Network Provider, in accordance with the Contract. This will generally involve the person being referred to the nearest public hospital. However, in the case of voluntary treatment, the person may be referred to a Network Provider that provides clinically appropriate private hospital services with the Department's prior written notice.
- (d) If a Transferee requires involuntary assessment and treatment under mental health legislation:
 - (i) the Health Services Manager must notify the Department that the Transferee requires involuntary assessment and treatment, such notification to be given in accordance with the Critical Incident notification procedures set out in **clause 9.2(a)(i)** of this **Schedule 2**; and
 - (ii) the involuntary assessment and treatment must be done by a person authorised under the relevant legislation and who is either a Health Services Manager Personnel or a Network Provider, in consultation with the Medical Director and in accordance with relevant Laws.

25.2 Mental Health Screening and Assessment

- (a) The Health Services Manager must develop, implement and manage policies, procedures and processes for the monitoring and periodic assessment of the mental health of Transferees on Nauru and Manus Island. These policies and procedures must:
 - (i) be flexible and able to respond to changes in the mental health status of Transferees at any time during their time on Nauru or Manus Island;
 - (ii) be adapted and tailored to address the mental health risk profile and status of the various Transferee Population Groups;
 - (iii) be consistent with and implement relevant Department Health Policy;
 - (iv) include a description of the tools (including screening instruments) methodologies and Health Care Providers involved with the conduct of mental health screening and assessment;

- (v) be developed and implemented in consultation with the Department and, at the Department's request, the Department Services Providers; and
 - (vi) be incorporated in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**.
- (b) The Health Services Manager must deliver mental health screening and assessment services to all Transferees in accordance with the policies and procedures developed under **clause 25.2(a)**.
- (c) The Health Services Manager must:
- (i) screen Transferees in accordance with the policies and procedures developed under **clause 25.2(a)** to identify signs and symptoms of torture and trauma; and
 - (ii) for each person presenting with signs and symptoms of torture and trauma, deliver appropriate treatment, which may include referral to a specialist torture and trauma service, and follow up as appropriate.
- (d) The Health Services Manager must consider and use (as appropriate) the results or findings of any mental health screening and assessments conducted under this **clause 25.2** to develop appropriate management strategies (including treatment plans) for Transferees who are identified as having, or at risk of having, mental health concerns. At the Department's option (and without impinging on any relevant professional or ethical requirements or Laws), management strategies and treatment plans must be developed, implemented and reviewed collaboratively with the Department and the Department Services Providers.

26. **MEDICAL ESCORT AND EVACUATION SERVICES (LOCAL OR INTERNATIONAL)**

26.1 **Requirement for medical escort**

- (a) At the Department's request, the Health Services Manager must provide medical escort services for Transferees, including for their Removal or Release. This service must be available on a twenty four (24) hours a day, seven (7) days a week basis and provided within the timeframes reasonably specified by the Department at the time of each request.
- (b) The specific requirements of this service will be determined by the Department in consultation with the Health Services Manager at the time of each request, and may include (at the Department's option), any or all of the following:
 - (i) the provision of advice to the Department by the Medical Director on the health risks and medical needs of the person being transported;
 - (ii) attendance of an appropriate Health Care Provider in accordance with **clause 26.2** to provide medical care and support for the person during his or her transportation;

- (iii) the supply of medical equipment and medication recommended by the Medical Director as necessary for the care and support of the person being transported; and
- (iv) assistance with arranging/facilitating the provision of appropriate follow up or continuing Health Care and conducting clinical handover in accordance with Accepted Industry Practice for the person at his or her destination.

26.2 Requirement for medical evacuation

- (a) At the Department's request, the Health Services Manager must obtain, coordinate and ensure the provision of medical evacuation services for Transferees and Recipients. This service must be available on a twenty four (24) hours a day, seven (7) days a week basis and must be provided within the timeframes specified by the Department at the time of each request.
- (b) The Health Services Manager must provide emergency observation and treatment of Transferees and Recipients, especially critically ill patients for up to 20 hours, including artificial ventilation, before the Transferee or Recipient is to be evacuated.

26.3 Pool of medical escorts

- (a) The Health Services Manager must maintain a pool of suitably qualified Health Care Providers who are available to act as medical escorts in response to a Department request under **clause 26.1(a)**. The pool must include an appropriate number of suitably trained and experienced registered nurses, GPs, mental health nurses, psychologists and specialist medical providers. The Health Services Manager must ensure all escorts are extensively trained and have a detailed working knowledge of the Department's "fitness to travel" requirements.
- (b) Wherever possible, the selected escort must be a Health Care Provider known and trusted by the person being transported. If the Health Services Manager reasonably considers that a clinically appropriate escort is not available from the Transferee's known and trusted Health Care Providers, the Health Services Manager may source an alternative escort, with the Department's prior written consent. The escort must be extensively briefed by the Medical Director on the medical issues of the case (including any equipment, medication and special care requirements), prior to commencement of the relevant medical escort task.

26.4 Notification of requirement

The Health Services Manager must advise the Department (giving reasons and as much notice as possible) of any instance where a Health Care Provider considers that a Transferee may require a medical escort. Any advice provided by the Health Services Manager under this **clause 26.4** must be confirmed by the Medical Director for clinical appropriateness before being given to the Department.

27. HEALTH CARE ARRANGEMENTS

27.1 Nauru and Manus Island

(a) *General*

- (i) The Health Services Manager must provide Health Care to Transferees at each Facility by operating and managing the range of health services described in this **clause 27.1**.
- (ii) The Health Services Manager will make available a scheduled number of clinic hours to be delivered on a weekly basis and at staffing levels in accordance with **Schedule 2 Annexure B** (Onsite Health Services). The Health Services Manager will liaise and agree the allocation of these hours with the Department at each Facility, based on the anticipated and actual demand on the Health Services.
- (iii) In the case of any Transferee with serious or complex health problems that require specialised skills and facilities which are not available onsite at a clinic, the Health Services Manager must ensure those people are referred by a GP to a clinically appropriate specialist. The Health Services Manager must also notify the Department if the requirement to refer to a specialist service will result in a transfer to a hospital service. However, in the case of a medical emergency, a Transferee may be taken directly to the hospital.

(b) *Range of health services*

- (i) The Health Services Manager must operate and manage, in accordance with this **Schedule 2** and **Annexure B** (Onsite Health Services) of this **Schedule 2**, the following services:
 - (A) registered nurse clinics;
 - (B) nurse immunisation and vaccination services;
 - (C) health promotion services;
 - (D) radiography-trained nursing services;
 - (E) GP clinics;
 - (F) preventative health services;
 - (G) emergency observation and treatment of critically ill Transferees and Recipients;
 - (H) minor surgical procedures;
 - (I) visiting specialists; and

- (J) mental health clinics, comprising:
 - (I) counselling;
 - (II) clinical psychology;
 - (III) mental health nursing; and
 - (IV) psychiatry.
- (ii) For the purpose of **clause 27.1(b)(i)(H)**, minor surgical procedures includes routine, non-urgent-surgery provided by a GP in a clinic using local anaesthetic and no respiratory support.
- (iii) At the Dental Facility, the Health Services Manager must ensure the provision of a Dental Service in accordance with this **Schedule 2**.
- (iv) The Health Service Manager must provide after hours emergency response service through the provision of appropriately trained paramedics in accordance with this **Schedule 2**.
- (v) **Annexure B** (Onsite Health Services) of this **Schedule 2** describes the staffing levels, according to the population of Transferees on Manus Island and Nauru, required to deliver the Health Services. The Health Services Manager must ensure that staffing on Manus Island and Nauru complies with **Annexure B** (Onsite Health Services) of this **Schedule 2**.
- (vi) The Health Services Manager must ensure that, in accordance with **Annexure B** (Onsite Health Services) to this **Schedule 2**, during the clinical hours allocated for each profession, the relevant Health Care Provider is reallocated to different Facilities or deferred to alternate days in the same week if:
 - (I) the Health Services Manager acting reasonably is required to respond to an unplanned event; or
 - (II) the Department and the Health Services Manager agree the clinic hours should be reallocated.
- (vii) Onsite Health Clinics will be delivered during the twelve hour clinic opening times, and the Health Services Manager is only entitled to be paid the fixed fee per day specified in **Schedule 5** (Fees and Payments) in addition to any services that may be classified as Pass Through Costs.
- (viii) For dental, pathology, optometry, radiography, clinical psychological and psychiatric services, the Health Services Manager must ensure Transferees and Recipients can access services only via referral from a GP or a nurse (as agreed with the Department).
- (ix) A Transferee in a Facility must be able to access services from the registered nurse clinic at the relevant Facility, within seventy two (72)

hours of making a request for a consultation at that Onsite Health Clinic. The Health Services Manager must implement and maintain a system for collecting requests for consultations from Transferees and must collect requests at least daily.

(c) ***Registered Nurse Clinics***

The range of services that must be available from the onsite registered nurse clinic at each Facility include:

- (i) Health Discharge Assessment (including “fitness to travel” certification);
- (ii) triage (including for referral to a GP clinic) and assessment and initial treatment services (with an emphasis on early intervention);
- (iii) prescribing, sourcing and administering medications in accordance with **clause 16.6** of this **Schedule 2**;
- (iv) medication management, storage and administration;
- (v) referral, coordination and follow up services (including management and follow up of clinic appointments, referral to general practitioner services and to other Health Care Providers);
- (vi) health protection (including development and implementation of infection control programmes, infections outbreak management, testing and treatment for infectious diseases, immunisation and vaccination services, and reporting of notifiable diseases);
- (vii) management and maintenance of medical equipment and supplies (including stocktake, ordering of supplies, checking expiry dates, maintenance of vaccine cold chain, sharps and medical waste disposal and management);
- (viii) primary care level first aid and emergency response;
- (ix) health education, awareness and promotion (including preventative care, education and support to promote Transferee self-care, developing and delivering mental health awareness programs for non-clinical staff and other personnel); and
- (x) any other services of a kind routinely provided by a community general practice nurse.

(d) ***GP Clinics***

The range of services that must be available from the onsite GP clinic at each Facility include:

- (i) Health Discharge Assessment (including "fitness to travel" certification);

- (ii) assessment (including assessment necessary for a visa application), treatment and monitoring (including individual treatment planning, review and update for patients with chronic or complex health conditions);
- (iii) medication management, review and prescription services (for prescription and over the counter medications);
- (iv) oversight of health education, awareness and promotion (including preventative care, education and support to promote Transferee self care, developing and delivering mental health awareness programs for non-clinical staff and other personnel);
- (v) coordination, management and follow up of referrals to other Health Care Providers (including referrals to Mental Health Team, and off site specialists, allied health professionals and hospitals);
- (vi) primary care level first aid and emergency response while on duty and in cooperation with the paramedics;
- (vii) health protection (including development and implementation of infection control programmes, infections outbreak management plans, testing and treatment for infectious diseases, reporting of notifiable diseases);
- (viii) primary care mental health services (including, as part of Mental Health Team, managing and treating Transferee with mild to moderate mental health conditions normally dealt with in a primary care setting, ongoing periodic assessment and monitoring of mental health of Transferees as per treatment plans); and
- (ix) any other service required or contemplated by the mandatory requirements of applicable Health Standards.

(e) ***Mental Health Clinics***

Each mental health clinic must be managed by a Mental Health Team Leader and be staffed by a mental health team comprising the mix of mental health professionals specified in **clause 27.1** of this **Schedule 2** and **Annexure B** (Onsite Health Services) to this **Schedule 2**. Access to services of the onsite mental health clinic other than counselling services, must be via referral of the Mental Health Team Leader or the onsite GP clinic.

The range of services that must be available from each onsite mental health clinic at each Facility, include:

- (i) coordination, management and review of mental health case load by Mental Health Team Leader;
- (ii) developing and delivering mental health awareness and education programs;
- (iii) attendance by Mental Health Team Leader at appropriate meetings;

- (iv) provision of advice by Mental Health Team Leader to Department on placement and behavioural management issues for Transferees;
 - (v) general counselling services in the form of confidential face to face individual and group counselling sessions for Transferees;
 - (vi) psychological services in the form of clinical assessment, treatment, management and referral to other clinically appropriate Health Care Providers;
 - (vii) specialist psychiatric services (including assessment, treatment, report preparation and liaison with other members of Mental Health Team). In addition to onsite attendance for consultations with referred Transferees, psychiatrists must also be available to provide telephone advice and assistance, as needed; and
 - (viii) behavioural management advice services (including providing advice, education and support to the Department Services Providers and Department on behavioural management issues; attendance and participation at appropriate workshops, committees and meetings).
- (f) ***Dental Clinic***
- (i) Subject to the availability of appropriate clinical infrastructure, the Health Services Manager must ensure the provision of Dental Services to Transferees in accordance with this **clause 27.1** and **Annexure B** (Onsite Health Services) to this **Schedule 2**, including:
 - (A) a dental practitioner with a minimum qualification of Bachelor of Dental Surgery;
 - (B) a Dental Assistant with a minimum qualification of Certificate of Dental Assisting; and
 - (C) general dentistry services, including scaling, cleaning and restorative procedures in accordance with Department Health Policy.
 - (ii) In a medical emergency or in any case where a Transferee has a complex dental problem that necessitates further specialised care or treatment, the person may be referred for specialist treatment. The Health Services Manager must also notify the Department if the requirement to refer to a specialist service will result in a transfer to a mainland dental service. However, in the case of a medical emergency, a Transferee may be taken directly to the hospital.
 - (iii) The Health Services Manager must supply all consumables necessary to provide the dental services, which will be reimbursed in accordance with **Schedule 5** (Fees and Payments).

(g) ***Radiography Services***

- (i) Upon the acquisition of an x-ray machine on Nauru and Manus Island, the Health Services Manager ensure the provision of radiography services to Transferees in accordance with this **clause 27.1**, including:
 - (A) a registered nurse with appropriate training in radiography imaging from the relevant State or Territory registration board or overseas equivalent;
 - (B) general radiography services, chest x-ray and limb x-ray procedures in accordance with Department Health Policy; and
 - (C) a Radiography service, ensuring that only clinicians with a minimum qualification of an accredited university programme that directly satisfies the Australian Institute of Radiography requirements for a validated statement of accreditation provide the service.
- (ii) The Health Services Manager must supply all consumables necessary to provide the Radiological services, which will be reimbursed in accordance with **Schedule 5** (Fees and Payments).

(h) ***After Hours Service***

The Health Services Manager must provide an After Hours Service pursuant to **clause 28**.

(i) ***Optometry Services***

- (i) The Health Services Manager must provide optometry services to Transferees in accordance with this **clause 27.1** and **Annexure B** (Onsite Health Services) to this **Schedule 2**, including:
 - (A) making available non-prescription ‘pharmacy style’ spectacles.

(j) ***Preventative Health Services***

- (i) The Health Services Manager must provide preventative health services to Transferees in accordance with this **clause 27.1** and **Annexure B** (Onsite Health Services) to this **Schedule 2**, including:
 - (A) health education, awareness and promotion services (including advice on nutrition, diet, exercise, hygiene, sexual and reproductive Health Care); and
 - (B) preventative mental health education, awareness and promotion services (including advice on dealing with post-traumatic stress disorder and techniques used in cognitive behaviour therapy).

(k) Visiting specialists

- (i) The Health Services Manager will coordinate a range of visiting specialists to provide Health Care to Transferees on Nauru and Manus Island. The frequency of each specialist visit will be determined by Transferee demand.
- (ii) The Health Services Manager will advise the Department of an identified need for a specialist to visit Nauru or Manus Island. The advice will include all costs associated with the travel. Prior Departmental approval is required prior to the commencement of travel.
- (iii) The range of visiting specialists that may travel to Nauru and Manus Island are outlined in **Annexure B** to this **Schedule 2**.

27.2 Exclusions

The Health Services Manager will not be responsible for failure to deliver the services outlined in **clause 27.1** of this **Schedule 2** for any period of time during which there is:

- (a) a Personnel Shortfall; or
- (b) an Infrastructure Failure relating to the service or task in question, to the extent that the Personnel Shortfall or Infrastructure Failure contributes to the failure to deliver the services.

28. AFTER HOURS SERVICE**28.1 After Hours Service**

- (a) The Health Services Manager must operate and manage an After Hours Service which involves the provision of a health triage service and initial health advice to Transferees in accordance with this **clause 28**.
- (b) The After Hours Service must:
 - (i) be available for all Transferees on Nauru and Manus Island; and
 - (ii) be available at all times during which any GP clinics on Nauru and Manus Island are not open.
- (c) The Health Services Manager must establish a dedicated telephone number for the purposes of providing the After Hours Service (the **AHS Number**).

28.2 Initial response

- (a) The Health Services Manager must make available a number of paramedics in accordance with **Annexure B** (Schedule Health Services) of this **Schedule 2** to provide the initial After Hours Service response.

- (b) The Health Services Manager must ensure that any call made to the AHS Number is answered within ten (10) seconds.
- (c) The initial response by the After Hours Service paramedic must include an initial examination and triage of the Transferee. After making the initial examination and triage of a Transferee pursuant to **clause 28.2(b)** of this **Schedule 2**, the paramedic must:
 - (i) where appropriate, treat the if the health concern of the is not urgent, make an appointment for the at the nurse clinic or general practitioner clinic (refer to **clause 28.1(b)(i) Schedule 2**);
 - (ii) where appropriate given the complexity of the health concern of the, call the Transferee After Hours GP pursuant to **clause 28.3** of this **Schedule 2**; and/or
 - (iii) in the case of emergency, refer the patient to the local hospital.

28.3 After Hours GP

- (a) The Health Services Manager must make available an after hours GP (**After Hours GP**) to provide general practitioner services to Transferees after hours.
- (b) The After Hours GP must be contactable by telephone by a paramedic providing After Hours Services, at any time during which the After Hours Service is available to Transferees.
- (c) Upon receiving a call from a paramedic providing After Hours, the After Hours GP must, where appropriate:
 - (i) provide advice and assistance to the paramedic over the telephone regarding the treatment of the Transferees; and/or
 - (ii) attend the Transferee to provide treatment.

29. Telemedicine

- 29.1 The Health Services Manager will establish telemedicine services on Nauru and Manus Island to support the provision of services onsite. Telemedicine will be used for a variety of clinical consults, including mental health.
- 29.2 The Telemedicine Service will be used when a specialist consultation is required and the specialist is offsite: telemedical consultations and follow-ups will be arranged with that specialist. Telemedical consults will also be made to specialists who are not part of the visiting specialist scheme, and who may be consulted less frequently.
- 29.3 The Telemedicine Service will be made available Monday through Friday (excluding public holidays at the location of the consultant) during normal working hours for the consulting specialist.

- 29.4 The telemedicine consultation will be conducted with the transferee, translator and in the presence of a Health Services Manager doctor who has seen the patient and/or has made the original referral.
- 29.5 The Health Services Manager must incorporate the management of telemedicine as detailed under this **clause 30** in the Policy and Procedures Manual developed under **clause 3** of this **Schedule 2**.

PART 3: HEALTH CARE DELIVERY TO RECIPIENTS

30. DELIVERY OF HEALTH CARE TO RECIPIENTS

The Health Services Manager will provide Recipients with Health Care as described in this **Part 3** of this **Schedule 2**.

31. PERFORMANCE STANDARDS

The Health Services Manager must ensure that:

- (a) the quality and standard of Health Care provided to Recipients during their time on Nauru and Manus Island is sufficient to maintain optimal health for Recipients while at the Facilities and is the best available in the circumstances and broadly comparable with health services available within the Australian community;
- (b) Health Care provided to Recipients is based on best available evidence and prioritised according to clinical need;
- (c) a Recipient has a consultation with a health care practitioner within seventy two (72) hours of a request for a medical consultation; and
- (d) Recipients receive Health Care at an appointed staff clinic. In Nauru this clinic is at the local hospital and onsite on Manus Island.

32. RECIPIENT HEALTH CARE RECORDS**32.1 Recipient Health Care Records**

- (a) The Health Services Manager must create a Health Care Records for a Recipient at the time of the person's first consultation and must contain as a minimum the following information for each consultation with a *Recipient*:
 - (A) date and time of consultation;
 - (B) full name and position/title of health professional;
 - (C) *Recipient's* symptoms (if any);
 - (D) examinations/tests undertaken;
 - (E) clinical findings, provisional diagnosis or differential diagnosis;
 - (G) treatment plan (if required); and
 - (H) review date (if required).

- (b) The Health Services Manager must maintain a secure network of individual paper or electronic Health Care Records for any Recipient that requires Health Care whilst on Nauru or Manus Island.
- (c) Health Care Records for Recipients must be maintained in accordance with **clause 11.1(c)** of this **Schedule 2**.
- (d) The Health Services Manager will maintain up-to-date health summary notes within the Recipient Health Care Records to ensure a comprehensive handover of medical information to the individual's GP in Australia upon their departure from Nauru or Manus Island.
- (e) The Health Services Manager must ensure that if a Recipient requests access to his or her Health Care Record (or any information contained in that record), access is provided in accordance with relevant Laws.

32.2 Provision of Health Services Information

- (a) At the time of the first consultation, the Health Services Manager must ensure the Recipient is provided with clear and accurate information about their available Health Care and access arrangements relevant to the provision of that care.

33. HEALTH CARE ARRANGEMENTS FOR RECIPIENTS

33.1 General

- (a) The Health Services Manager will provide primary care and emergency response to Recipients.
 - (i) Primary care is within the limits of the services available on Nauru and Manus Island, which would be investigation of conditions by a GP including radiography and ultrasonography, routine laboratory investigations and treatment with generic medications with a maximum of three (3) months supply.
 - (ii) Emergency response is to resuscitate and stabilise the Recipient and hold for up to 20 hours prior to medical evacuation.
- (b) If the Recipient requires health care beyond **clause 32.1** of this **Schedule 2**, it will require follow up and investigation in Australia and would be the responsibility of the individual Recipient.
- (c) The Health Services Manager must ensure Recipients are able to access a GP during the staff clinic opening times.
- (d) GPs will be required to provide referrals for Recipients to access services provided by other Network Providers, in accordance with **clause 5.2(b)(i)** of **Part 1** of this

Schedule 2.

- (e) The Health Services Manager must ensure that pain relief and emergency dental procedures are available to Recipients. Routine and cosmetic dental work is not to be provided by the Health Services Manager.
- (f) The Health Services Manager must provide After Hours Services to Recipients in the case of an emergency.
- (g) Where a Recipient requires medical evacuation from Nauru or Manus Island, the Health Services Manager will provide this service in accordance with **clause 26.2** of **Part 2** of this **Schedule 2**.
- (h) The Health Services Manager will not provide routine health checks or treatment for cosmetic purposes for Recipients on Nauru or Manus Island.
- (i) If required by the Recipient, the Health Services Manager will prescribe generic medications with a maximum supply of three months. The Health Services Manager will not be required to provide medications to Recipients for pre-existing chronic health issues.

34. COUNSELLING SERVICE**34.1 General**

Where counselling services are not available to a Recipient through its own employment or contract arrangements, the Health Services Manager must provide counselling services.



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Regional Processing Countries Health Services Contract

**SCHEDULE 2 ANNEXURE A
INCIDENTS**

1. This **Annexure** defines the terms Critical Incidents and Other Incidents.

2. **CRITICAL INCIDENTS**

The following matters or events are classified as a Critical Incident:

- (a) where the treating Health Care Provider believes that there is a serious risk to the Transferee's health or life;
- (b) where a Transferee requires involuntary assessment and treatment under mental health legislation;
- (c) the death of a Transferee;
- (d) a confirmed public health risk (including outbreak of an infectious or communicable disease at a Facility);
- (e) a refusal or failure of a Transferee to provide consent to any clinically recommended Health Care and where the treating Health Care Provider believes that this refusal or failure to consent poses a serious risk to the Transferee's health or life, or a serious risk to the health or life of another person;
- (f) any other event, circumstance, matter or thing that the Health Services Manager reasonably considers is sufficiently grave to warrant immediate notification to the Department as a "critical incident" under **clause 9 of Schedule 2** (Statement of Work); and
- (g) Sentinel Event, is defined by The Joint Commission (TJC) as any unanticipated event in a healthcare setting resulting in death or serious physical or psychological injury to a patient or patients, and not related to the natural course of the patient's illness.

3. **OTHER INCIDENTS**

The following matters or events are classified as Other Incidents:

- (a) a serious accident/injury resulting in hospitalisation of a Transferee;
- (b) an acute psychiatric hospital admission of a Transferee;
- (c) an occurrence of self harm resulting in injury to a Transferee;
- (d) an occurrence of attempted self harm by any Transferee;
- (e) the voluntary starvation (over 48 hours) of a Transferee;
- (f) the end of Voluntary Starvation (three subsequent meals consumed) of a Transferee;

- (g) any possible public health risk (including suspected outbreak of an infectious or communicable disease at a Facility), or the identification of a Transferee with an infectious or communicable disease;
- (h) an admission to or treatment of a Transferee at a hospital
(Note: in addition to the reporting obligations described in **clause 9 of Schedule 2 (Statement of Work)**, for hospital admissions of less than one week duration, daily written reports of the person's condition and other relevant details must be provided to the Department. For hospital admissions exceeding one week duration, weekly written reports must be provided to the Department, unless a significant change is observed in the person, in which case a further written report must be provided to the Department outlining the change in the person's condition, within twenty four (24) hours of the change occurring);
- (i) a discharge of a Transferee from hospital;
- (j) an identified or suspected torture and trauma sufferer;
- (k) the theft or loss of medication or other medical supplies or equipment at a Facility;
- (l) the refusal of a Transferee to consent to a Health Induction Assessment, Health Discharge Assessment, or any clinically recommended Health Care, treatment or procedure (other than any refusal required to be reported under **clause 2(e) of this Annexure A to Schedule 2 (Statement of Work)**);
- (m) all complaints received from Transferee, and any complaints referred (whether by the Health Services Manager or a Person in Detention) for external investigation; and
- (n) any Occupational Health and Safety incidents (as described in the Occupational Health and Safety and Environment Policy and Planning) that occurs at an onsite medical clinic; and
- (o) any other event, circumstance, matter or thing that the Health Services Manager reasonably considers should be reported to the Department as an "other incident" under **clause 8 of Schedule 2 (Statement of Work)**.



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**SCHEDULE 2 ANNEXURE B
ONSITE HEALTH SERVICES**



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Regional Processing Countries Health Services Contract

SCHEDULE 3

DEED OF SUBSTITUTION

SCHEDULE 3: DEED OF SUBSTITUTION

This Deed of Substitution made on the day of 2012

BETWEEN

THE COMMONWEALTH OF AUSTRALIA, ACTING THROUGH AND REPRESENTED BY THE DEPARTMENT OF IMMIGRATION AND CITIZENSHIP (Department)

AND

[THE MAJOR SUBCONTRACTOR] [INSERT FULL NAME AND ADDRESS] (the Subcontractor)

AND

INTERNATIONAL HEALTH AND MEDICAL SERVICES PTY LIMITED ABN 40 073 811 131 (Health Services Manager)

(together, **the Parties**)

- A The Health Services Manager and the Department are parties to an agreement executed on *[insert date of execution of Regional Processing Countries Health Services Contract]* (**Agreement**).
- B The Health Services Manager and the Subcontractor are parties to a subcontract under the Agreement executed on *[insert date of execution of subcontract]* (**Subcontract**).
- C The Parties have agreed that the Department may issue a notice to the effect that the Department is substituted for the Health Services Manager in the Subcontract (Notice of Substitution).
- D The parties have agreed that the Department will be substituted for the Health Services Manager under the Subcontract on the terms of this Deed.

1. Interpretation

- 1.1 The terms in this Deed will be interpreted as they apply in the Agreement, unless the contrary intention appears.

2. Substitution

- 2.1 The Parties agree that on and from the date of issue of a Notice of Substitution:

- (a) the Department is substituted for the Health Services Manager under the Subcontract;

(b) all references in the Subcontract to the Health Services Manager are to be read and construed as if they were references to the Department;

(c) the Subcontractor:

(i) is bound by and must comply with the Subcontract for the benefit of the Department; and

(ii) directs the Health Services Manager to ensure that any amounts due under the Subcontract which became payable to the Department prior to the date of the Notice of Substitution are paid to the Department; and

(d) the Department:

(i) is bound by and must comply with the Subcontract; and

(ii) enjoys all the rights and benefits of the Health Services Manager under the Subcontract.

3. Further assurances

3.1 Each Party must take the steps, sign the documents, and do all other acts and things as may be reasonably required by the other Party to give effect to this Deed of Substitution.

4. Discharge of Deed of Substitution

4.1 This Deed of Substitution is discharged only if the Subcontractor meets all its obligations in relation to the Subcontract.

4.2 To avoid doubt, the Subcontractor is not released or discharged from this Deed of Substitution by any relief given by the Department to the Health Services Manager in relation to the Health Services Manager's obligations under the Agreement.

5. Settlement of disputes

5.1 If a dispute arises between the Parties in relation to this Deed of Substitution that cannot be settled by negotiation, the Parties may agree to use an alternative dispute resolution process to attempt to resolve the dispute.

6. Notices

6.1 Any notice or other communication required to be given under this Deed of Substitution is taken to have been given:

(a) for the Department and the Health Services Manager, given in accordance with clause 67 of the Agreement; and

(b) for the Subcontractor, if given to the Subcontractor in accordance with clause 67 of the Agreement as if the Subcontractor were a party to the Agreement with an address for service at (*insert Subcontractor's Postal and Fax Details*).

7. Laws

7.1 The laws of the Australian Capital Territory apply to this Deed of Substitution. The courts of the Australian Capital Territory have non-exclusive jurisdiction to decide any matter arising out of this Deed.

Executed as a Deed for and on behalf of the
**Commonwealth of Australia represented by
the Department of Immigration and
Citizenship** by its duly authorised delegate:

.....
Signature of witness

.....
Name of witness (print)

.....
Signature of delegate

.....
Name of delegate (print)

.....
Position of delegate (print)

Executed as a Deed by [the Major Subcontractor] by its duly authorised delegate:

.....
Signature of witness

.....
Signature of delegate

.....
Name of witness (print)

.....
Name of delegate (print)

.....
Position of delegate

Executed as a Deed by International Health and Medical Services Pty Ltd ABN 40 073 811 131 by its duly authorised delegate:

.....
Signature of witness

.....
Signature of delegate

.....
Name of witness (print)

.....
Name of delegate (print)

.....
Position of delegate (print)



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 4.1

PERFORMANCE MANAGEMENT FRAMEWORK

CONTENTS

1. INTRODUCTION TO THE PERFORMANCE MANAGEMENT FRAMEWORK	3
2. KEY PRINCIPLES OF THE FRAMEWORK	3
3. KEY ELEMENTS OF THE FRAMEWORK	4
4. KEY PERFORMANCE INDICATORS	5
5. CONTRACT RESPONSIBILITIES	6
6. RISK OF NON-COMPLIANCE OF CONTRACT RESPONSIBILITIES	6
7. PERFORMANCE MEASURES	7
8. PERFORMANCE RATINGS	7
9. ABATEMENT REGIME	9
10. QUALITY PERFORMANCE ACROSS ALL KPI AREAS	13
11. QUALITATIVE SURVEY	14
12. INNOVATION BONUS	14
13. MANAGEMENT OF UNDERPERFORMANCE IN KPIS	15
14. PERFORMANCE FRAMEWORK REPORTING	16
15. AUDITS OF MONTHLY PERFORMANCE REPORTS	17

1. INTRODUCTION TO THE PERFORMANCE MANAGEMENT FRAMEWORK

- 1.1. The Performance Management Framework (the Framework) describes the performance assessment process and outlines key performance indicators that are expected of the Health Services Manager. The Framework has been designed to assist the Department in monitoring and evaluating the performance of the Health Services Manager against its contractual requirements and the Department’s expected outcomes.
- 1.2. The Framework requires a collaborative approach between the Department and the Health Services Manager. The performance assessment process is risk based, and focuses primarily on performance against the responsibilities of the Health Services Manager as described in the Statement of Work (Schedule 2). Successful performance by the Health Services Manager is expected to be achieved through quality service delivery, addressing identified risks and providing the Department with evidence of performance.
- 1.3. Instructions on the Individual Service Provider Report (ISPR) are specified in ISPR Instruction Manual. Attached to the ISPR Instruction Manual is the ISPR Template that is used to record the results of the monthly performance assessment. The Department will maintain and update the ISPR Instruction Manual with the agreement of the Health Services Manager.

2. KEY PRINCIPLES OF THE FRAMEWORK

- 2.1. The Framework uses a risk (abatement) and reward (incentive) approach to incentivise performance in Key Performance Indicators (KPIs). The performance management regime has the following key principles:
 - a. Financial abatement

Poor performance against KPIs will result in the Health Services Manager’s Performance Linked Fee being abated. The level of abatement will depend on risk ratings assigned to the KPIs and the frequency of occurrence of performance failures. The monthly Performance Linked Fee is defined in Schedule 5 (Fees and Payment).
 - b. Performance incentive

If the Health Services Manager’s performance against KPIs exceeds the Department’s expectations, the Health Services Manager may be rewarded through incentive payments, calculated as a percentage of the combined Performance Linked Fee for all sites. In particular if the Health Services Manager performs exceptionally across all applicable contract responsibilities for all sites, the Health Services Manager will receive an incentive payment.
 - c. Innovation bonus

If the Health Services Manager identifies and implements new or changed processes that have the potential to improve performance and lead to cost savings

for the benefit of the Department, the Health Services Manager may be entitled to receive a share of up to 15% of the proposed cost savings, if the innovation is successfully implemented.

d. Repeat underperformance

Consistent poor performance (measured as “Unsatisfactory” as defined in the ISPR Instruction Manual) against the KPIs, and the Health Services Manager’s inability to remedy the performance failures within an agreed period of time, may ultimately lead to termination of the Health Services Manager’s contract in accordance with **clause 62** of the Regional Processing Countries Health Services Contract.

2.2. Base Period

2.2.1. The Base Period will cease in one month following Contract Variation One for all Facilities. During the Base Period, the Health Services Manager is required to monitor, measure and report on its performance against the Contract Responsibilities (in accordance with the Framework, but the Department will not apply the abatement regime as a result of reduced standards of performance during the Base Period.

2.2.2. During the base period, the Health Service Manager’s performance results against the Contract Responsibilities will not be applied to the calculation of an incentive payment.

2.2.3. Following the expiry of the Base Period, the Department will apply the abatement regime for any recorded performance failures.

3. KEY ELEMENTS OF THE FRAMEWORK

3.1. The Framework applies to the Health Services Manager’s performance at each site.

3.2. The Framework includes the following key elements:

- a. Key Performance Indicators (KPIs) and KPI outcomes: The Health Services Manager’s performance is assessed against KPIs. The KPIs represent the critical areas or service lines that frame the Department’s expected outcomes. The performance assessment is designed to measure the extent to which the Health Services Manager’s performance has contributed to the achievement of the Department’s KPI outcomes.
- b. Contract responsibilities: The Health Services Manager’s performance for each KPI is assessed against Contract Responsibilities (CRs) that reflect the services set out in the Statement of Work (Schedule 2).
- c. Risk ratings: The performance framework adopts a risk based approach that focuses on the Health Services Manager’s CRs. At the commencement of each quarter, the Health Services Manager is required to rate its risk of non-compliance for each identified CR. The Health Services Manager and the Department will jointly agree on the risk ratings.

- d. Performance measures: The performance measures define the method of quantitatively assessing how the Health Services Manager has performed against its CRs and is evidenced by data recorded by the Health Services Manager. The result of the performance measure provides an evidence basis for performance ratings and for financial abatements for underperformance, if applicable.
- e. Performance ratings: On a monthly basis the Health Services Manager is required to assess its performance against the CRs and assign a performance rating. The ratings are defined as: exceptional, exceeds expectations, meets expectations, improvement needed or unsatisfactory. A rating of Improvement needed or Unsatisfactory indicates there has been a performance failure. The performance rating will be informed by the results of the performance measures.
- f. Abatement regime: In order to manage underperformance and non-compliance with CRs, the Framework adopts an abatement regime for identified performance failures. The level of abatement is determined by both the risk rating assigned to performance failures and the frequency of occurrence of the performance failure. In a reporting period where abatement is applicable, a financial abatement linked to the Health Services Manager’s Performance Linked Fee may be applied.
- g. Incentives for successful performance and innovation: If the Health Services Manager’s performance exceeds expectations this may be rewarded in the form of an incentive payment calculated as a percentage of the Performance Linked Fee. If the Health Services Manager submits an innovative, cost savings proposal that is approved by the Department, the Health Services Manager may be rewarded with an innovation bonus.
- h. Performance reporting: The Health Services Manager is required to report on its performance to the Department by submitting an ISPR. The ISPR is a monthly report on the Health Services Manager’s risk ratings, performance against CRs and abatements for performance failures (if applicable).

4. KEY PERFORMANCE INDICATORS

4.1. The Health Services Manager’s performance is assessed against Key Performance Indicators (KPIs). The KPIs represent critical areas or service lines that frame the Department's expected outcomes. The KPIs and the associated expected outcomes are summarised in Table 1:

Table 1 KPI areas and KPI Outcomes

KPI areas and service lines	KPI Outcomes
Welfare	The cultural, spiritual, social, mental and emotional wellbeing of transferees and transferee community is maintained and positively influenced by Health Services Manager involvement where practical.
Care	The physical wellbeing of transferees and the overall transferee community is maintained and positively influenced by Health Services Manager involvement.

KPI areas and service lines	KPI Outcomes
Security	The safety, integrity and good order of the facility, its people and its operations are maintained.
Health and Medical	Transferees and authorised personnel are given timely access to health and medical services that are provided to accepted professional standards
Education and recreation	Transferees are given the opportunity to access education services, achieving reasonable education and training outcomes to accepted professional standards.
Counselling	Transferees are given the opportunity to access counselling services to accepted professional standards.
Interpreters	Transferees are given the opportunity to access interpreting services to facilitate communication.
Logistics, Reporting and Support	The efficient, effective and economical operation of the centre is maintained. Performance reports are completed accurately and submitted in a timely manner.
Strategic and Relationships	The Health Services Manager takes a collaborative and integrated approach to the provision of services, will be effective in managing complex stakeholder and governance issues, and builds long term relationships with the Department and other service providers. The Health Services Manager drives continuous improvements in service delivery and actively puts forward innovative, value for money proposals that are for the benefit of transferees and the Department.

5. CONTRACT RESPONSIBILITIES

- 5.1. The Health Services Manager’s performance for each KPI will be assessed through the use of Contract Responsibilities (CRs) that reflect the services set out in the Statement of Work (Schedule 2). The CRs are identified and defined in the ISPR Template.
- 5.2. The CRs will be jointly reviewed by the Department and the Health Services Manager on a six-monthly basis. The purpose of the review will be to examine the effectiveness and practicality of the CRs. If certain CRs are found to be ineffective or are unable to be accurately measured as described in the definition of the performance measure, the Department and the Health Services Manager may agree to amend the CRs. The updated CRs will be approved by the Department and the ISPR Template updated accordingly.

6. RISK OF NON-COMPLIANCE OF CONTRACT RESPONSIBILITIES

- 6.1. Prior to Contract Variation One the Health Services Manager’s national office and the Department’s national office will jointly agree on the Health Services Manager’s risk of non-compliance against each identified CR, that is provide a risk rating against each

CR. Risk ratings are defined as either; Extreme, High, Medium, Minor or Low as explained in the ISPR Template.

- 6.2. For each CR with an assigned risk rating the Health Services Manager is required to detail its risk mitigation strategies setting out the controls and procedures it has in place to mitigate the risks.
- 6.3. Within the first three business days of each quarter following Contract Variation One, the Health Services Manager is required to review, and if necessary update the risk ratings and submit them to the Department for approval.
- 6.4. The Department will review and either endorse or dispute the recommended ratings within three business days of receiving the revised risk ratings. If a dispute occurs, the Dispute Resolution process defined in **clause 60** of the head agreement will prevail. The risk ratings that were agreed and recorded in the ISPR Template for the previous quarter will remain in place until the updated risk ratings have been jointly agreed by Department and the Health Services Manager.

7. PERFORMANCE MEASURES

- 7.1. Performance Measures (PMs) measure the Health Services Manager’s performance against its CRs and are used to inform performance ratings. The PMs provide a benchmark of expected performance standards.
- 7.2. The Health Services Manager’s performance against each CR is either quantitatively or qualitatively assessed using the PMs described in the ISPR Template, as agreed between the Department and the Health Services Manager. The result of this performance assessment, referred to as the performance measure result, is to be supported by data recorded by the Health Services Manager and provides an evidence base to support the performance rating.

8. PERFORMANCE RATINGS

8.1. General

- 8.1.1 As part of the Framework’s monthly performance reporting process, the Health Services Manager is required to assess its performance against the CRs and assign a performance rating. The Health Services Manager is required to inform its performance rating by reference to the quantitative and qualitative results of the performance measure results. The performance rating definitions are summarised in Table 2 below.

Table 2 Performance rating definitions

Performance rating	Definition
Exceptional (5)	Performance far exceeded expectations in all essential areas of responsibility
Exceeds expectations (4)	Performance consistently exceeded expectations in all essential areas of responsibility.
Meets expectations (3)	Performance consistently met expectations in all essential

	areas of responsibility
Improvement needed (2)	Performance did not consistently meet expectations – performance failed to meet expectations in one or more essential areas of responsibility and/or one or more of the most critical goals were not met.
Unsatisfactory (1)	Performance was consistently below expectations in most essential areas of responsibility and/or reasonable progress toward critical goals was not made. Significant improvement is needed in one or more important areas.

8.2. Performance failures

8.2.1 Performance ratings of either a 2 (improvement needed) or 1 (unsatisfactory) are considered to be performance failures and are subject to either financial abatement and/or additional reporting through submission of action plans, as described under the abatement regime at clause 9 of this document.

8.3. Performance rating disputes

8.3.1 Performance rating disputes between the Health Services Manager and the Department will be managed under clause 60 of the head agreement.

8.4. Excusable performance failures

8.4.1 The Department recognises that circumstances may arise in which it may be reasonable to take into account specific instances or events that have resulted in a performance failure by the Health Services Manager. Instances or events such as these will be excluded for the purpose of determining whether a performance failure has been triggered and whether abatement applies for that measure.

8.4.2 The categories of events that may constitute excusable performance failures for the purpose of this clause 8.4 are:

- a. events that the Department recognises as being beyond the reasonable control of the Health Services Manager (provided the Health Services Manager has taken all proper and reasonable steps to minimise the occurrence or impact of such events); or
- b. a Force Majeure Event;

The Department will (acting reasonably) have the final say on whether an event qualifies for exclusion under this clause.

8.4.3 The Health Services Manager must notify the Department’s national office of any event that it considers qualifies as an excusable performance failure as soon as practicable (no later than three days) after the Health Services Manager becomes aware of the event. Details about the event and reasons why the event are considered an excusable performance failure must be provided to the Department’s national office for consideration. Additionally, the Health Services Manager must include an estimate of the flow-on effect of the event, including time required to overcome the event, and how the effect impacts the Health Services Manager from achieving the CRs.

8.4.4 The Department will consider any events including the flow-on effects nominated by the Health Services Manager, in conjunction with the Department's Service Delivery Manager, as excusable performance failures and will notify the Health Services Manager of whether it accepts or rejects that the event is an excusable performance failure within three business days of receiving the details of the claimed excusable performance failure from the Health Services Manager. If the Department rejects an event as an excusable performance failure, the Department will provide the Health Services Manager with reasons in writing for the rejection. If the Department fails to provide a written response to the Health Services Manager within three business days, the excusable performance failure will be automatically accepted.

9. ABATEMENT REGIME

9.1. General

1.1.1 Where a performance rating of either 1 (Unsatisfactory) or 2 (Improvement needed) has been assigned to a CR, that is, a performance failure has occurred, the Health Services Manager may incur a financial abatement and/or be required to provide additional reports to the Department as described below.

9.2. Financial abatements for performance failures

9.2.1 Performance deductions (financial abatements) may be applied in respect of the Health Services Manager's performance failures. The financial abatement is in the form of a percentage deduction of the Health Services Manager's monthly Performance Linked Fee for all sites. The percentage level of abatement is dependent on:

- a. the risk rating assigned to the CR for which a performance failure has occurred and;
- b. the frequency of occurrence of the performance failure.

9.3. Frequency of occurrence of performance failures

9.3.1 The frequency of occurrence of performance failures, together with the risk ratings, will determine whether a financial abatement is to be: applied immediately or; a percentage of the Performance Linked Fee withheld or; nil financial abatement is to be applied.

9.3.2 The performance failure frequency of occurrence is defined as:

- a. A first occurrence of a performance failure is referred to as an initial failure; a second occurrence of a performance failure is referred to as a secondary failure; and a third occurrence of a performance failure is referred to as a third failure.
- b. For a performance failure to become a secondary or third failure, the same performance failure must have occurred in two or three consecutive reporting periods. For example, a performance failure occurring in July and August would

constitute an initial failure in the July ISPR and a secondary failure in the August ISPR. A performance failure occurring in July, August and September would constitute an initial failure in the July ISPR, a secondary failure in the August ISPR and a third failure for the purpose of the September report. If a performance failure occurs in July and then again in September, it would not constitute a secondary failure, but would be considered an initial failure in both the July and September reports.

9.3.3 If a performance failure occurs in more than three consecutive monthly reporting periods, it will be treated as a Third Failure.

9.4. **Tiered approach to applying financial abatements**

9.4.1 Based on the risk rating assigned to the performance failure and the frequency of occurrence, a tiered approach to financial abatement is applied.

9.4.2 Where there has been a performance failure and the risk rating is:

- a. Extreme, a financial abatement will be applied immediately (i.e. on invoicing at the end of the relevant monthly reporting period) regardless of the frequency of occurrence.
- b. High or Medium, a percentage of the Performance Linked Fee will be withheld until the Department approves that the performance failure has been rectified/addressed, unless the frequency of occurrence is a secondary or third failure in which case immediate financial abatement will apply.
- c. Minor or Low, no financial abatement will apply unless the frequency of occurrence is a secondary failure in which case a percentage of the Performance Linked Fee will be withheld until rectified, or third failure in which case an immediate financial abatement will apply.

9.4.3 Table 3 summarises the tiered approach to applying financial abatements to the Health Services Manager’s Performance Linked Fee.

Table 3 Summary of tiered approach to applying financial abatements

Risk Rating assigned to CR	Performance Rating	Frequency of occurrence of Performance Failure	Financial Abatement applicable	Abatement % of Performance Linked Fee
Extreme	> = 3	Nil	No	n/a
	2 or 1	Initial Failure	Yes	50%
		Secondary Failure	Yes	
		Third Failure	Yes	
High	> = 3	Nil	No	n/a
	2 or 1	Initial Failure	*Yes	30%
		Secondary Failure	Yes	
		Third Failure	Yes	

Medium	> = 3	Nil	No	n/a
	2 or 1	Initial Failure	*Yes	10%
		Secondary Failure	Yes	
		Third Failure	Yes	
Minor	> = 3	Nil	No	n/a
	2 or 1	Initial Failure	No	n/a
		Secondary Failure	*Yes	5%
		Third Failure	Yes	
Low	> = 3	Nil	No	n/a
	2 or 1	Initial Failure	No	n/a
		Secondary Failure	*Yes	5%
		Third Failure	Yes	
* refer to section 9.5.1.				

9.5. Failure to earn back withholding fee

9.5.1 In Table 3, Where an asterisk (*) appears next to ‘yes’, the financial abatement will be withheld from the Health Services Manager and subsequently released upon the Department approving that the performance failure has been rectified/addressed.

9.5.2 If, by the end of the Term, any fees withheld that have not been earned back by the Health Services Manager, the amount of the fees up to a maximum of three months of withholding fees, being the last three withholding fees to have been withheld, will be negotiated in good faith with the intent of remedying any impact that the causative event may have had on the Department. For the sole purpose of resolving this matter, **clause 60** of the Contract will survive the termination of the contract but only to the extent of this **clause 9.5**. In the event that resolution cannot be reached then IHMS agrees that the withheld fees are to be retained by the Department as liquidated damages.

9.5.3 If a performance failure is repeated three (non-consecutive) times in five consecutive months, on the third performance failure within that five month period, rather than a withholding financial abatement being applied, an immediate financial abatement will be applied. If this event occurs, the five consecutive month period will reset upon the abatement of the third month.

9.5.4 During the last month of the Contract, the Department will not retain a withholding fee, but the Health Services Manager is expected to submit an ISPR Template.

9.6. Action Plans to address performance failures

9.6.1 For each performance failure against a CR that is reported as part of the monthly performance reporting, the Health Services Manager is to prepare an action plan. The action plan is required to outline the activities that the Health Services Manager will

undertake to address the issues that led to the performance failure and include a timeframe for the implementation of a rectification strategy. The format of the action plan is set out in the ISPR Instruction Manual.

9.6.2 Where a performance failure has occurred in relation to a CR with an Extreme or High risk rating, an action plan is to be submitted to the Department within three business days of the performance failure being identified. Otherwise, the action plan is to be submitted prior to or concurrent with the next performance report.

9.7. **Example scenarios**

9.7.1 The ISPR Instruction Manual contains a number of examples of how the performance Framework would be applied given a range of scenarios.

9.8. **Calculation of financial abatement**

9.8.1 The financial abatement for each performance failure shall be calculated in accordance with the following formula [a detailed breakdown of the payment mechanism will be included in Schedule 5 (Fees and Payment)]:

Financial abatement per Performance Failure =

$$\text{Performance Linked Fee} \times \text{abatement \% assigned to the Risk Rating of the performance failure (per table 5)} \div \sum (\text{Contract Responsibilities in the same Risk Rating category})$$

Worked example of the financial abatement calculation:

Step 1: Determine the amount of fee at risk for each Risk Rating category, that is, Performance Linked Fee multiplied by the relevant abatement Percentage for each Risk Rating category (A)

Step 2: Determine the number of Contract Responsibilities with the same Risk Rating (B)

Step 3: Calculate the financial abatement per performance failure as: financial abatement for each performance failure = Performance Linked Fee x (A) / (B)

Step 4: Calculate the total financial abatement for the month as \sum (financial abatement per performance failure x number of Performance Failures)

Step 1: Assume the Monthly Performance Linked Fee is \$3,000,000

The fee at risk for each Risk Rating category is:

<i>Risk Rating</i>	<i>Abatement %</i>	<i>Amount at risk \$ (A)</i>
<i>Extreme</i>	<i>50%</i>	<i>1,500,000</i>

<i>High</i>	<i>30%</i>	<i>900,000</i>
<i>Medium</i>	<i>10%</i>	<i>300,000</i>
<i>Minor</i>	<i>5%</i>	<i>150,000</i>
<i>Low</i>	<i>5%</i>	<i>150,000</i>

Step 2: The monthly ISPR Template shows the following number of Contract Responsibilities in each of the Risk Rating categories (B): : 2 High Risk Ratings, 10 Medium Risk Ratings, 25 Risk Ratings of low and minor.

Step 3: The financial abatement per performance failure in each risk rating category is calculated as follows (A) / (B):

Performance failures with a Risk Rating of High: \$900,000 ÷ 2 risks = \$450,000 abatement per performance failure

Performance failures with a Risk Rating of Medium: \$300,000 ÷ 10 risks = \$30,000 abatement per performance failure

Performance failures with a Risk Rating of Minor and Low: \$300,000 ÷ 25 risks = \$12,000 abatement per performance failure

Step 4: The monthly ISPR Template shows the following number of performance failures (PF): 1 PF with a Risk Rating of High; 2 PFs with a Risk Rating of Medium; and 5 PFs with a Risk Rating of Low.

The total financial abatement for the month = \$570,000[(1 x \$450,000) + (2 x \$30,000) + (5 x \$12,000)]

10. QUALITY PERFORMANCE ACROSS ALL KPI AREAS

- 10.1. The Department expects that the Health Services Manager will, at least, meet performance expectations across all applicable KPI areas as a whole, and across all Facilities.
- 10.2. To encourage quality performance across all applicable CRs an average overall performance rating (AO rating) will be calculated by the Department based on the monthly ISPR Template.
- 10.3. If the Health Services Manager receives a monthly AO rating of 5 across all sites, the Health Services Manager may receive a performance reward incentive payment. The incentive payment will be subject to there being no instances of a performance rating of 1 (Unsatisfactory) against any of the CRs and the Department determining there are no circumstances preventing the award of an incentive payment.

- 10.4. The Health Services Manager may be rewarded an incentive payment equivalent to 10% of the amount abated over the last month in which the performance failure occurred.
- 10.5. The incentive payment cannot offset the abatement from the same month more than once. In this instance, the Health Services Manager may be rewarded an incentive payment equivalent to 10% of the amount abated over the last one month in which the performance failure occurred.

Example:

Abatement in April: \$150,000.00

Incentive calculation: \$150,000.00 x 10%

The Health Services Manager will be rewarded an incentive of \$15,000

11. QUALITATIVE SURVEY

- 11.1. The extent to which the Health Services Manager has contributed to a collaborative relationship with the Department and other service providers, and delivered a culture of continuous improvement, will be assessed based on the results of the qualitative survey for the Strategic Collaboration and Innovation KPI (KPI 9).
- 11.2. The Department will conduct a quarterly survey questionnaire to assess the Health Services Manager’s performance against KPI 9. The results of the survey will be expressed as a percentage and a performance rating assigned as set out in table 4.

Table 4 KPI 9 Survey scores and Performance Ratings

KPI 9 Survey score	Performance Rating
Over 90%	5 (Exceptional)
81 – 90 %	4 (Exceeds expectations)
71 – 80%	3 (Meets expectations)
50 – 70%	2 (Improvement needed)
Less than 50%	1 (Unsatisfactory)

12. INNOVATION BONUS

- 12.1. The Department expects that the Health Services Manager will drive continuous improvements in service delivery and actively put forward innovative, value for money

proposals that identify performance improvements and/or cost savings for the benefit of the Department.

- 12.2. Where the Health Services Manager proposes to implement a new or changed service or system/procedure which has the potential effect of leading to cost efficiencies for the benefit of the Department, the Health Services Manager may submit an innovation proposal (IP) to the Department. The IP should detail the nature of the innovation and incorporate a business case which demonstrates how it will benefit the Department.
- 12.3. The Health Services Manager may submit a maximum of one IP containing a maximum of one innovative idea every six months.
- 12.4. If the Department approves the IP, and any specific conditions specified by the Department have been satisfied, an innovation bonus of 15% of the Department's expected cost savings as set out in the IP] will be payable on the Health Services Manager successfully implementing the innovation.

The expected cost savings must be realised within the same period as noted below:

- a. 1 April 2014 – 30 June 2014
 - b. 1 July 2014 – 30 June 2015
 - c. 1 July 2014 – October 2015
- 12.5. The decision to approve the IP and the amount of the innovation bonus will be at the Department's discretion and may be subject to an annual cap determined by the Department. The Department agrees to notify the Health Services Manager of its decision within 6 weeks of receiving the IP.

13. MANAGEMENT OF UNDERPERFORMANCE IN KPIS

- 13.1. The Department may exercise the following options at its discretion to manage underperformance of KPIS:
 - a. If at any time the Health Services Manager has received, or is on a trajectory where it is likely to receive, three consecutive performance failures, then:
 - i. The Department may require the Health Services Manager to submit a rectification plan with respect to the performance failures. The content and format of a rectification plan is set out in the ISPR Instruction Manual.
 - ii. If performance is not fully rectified in accordance with the rectification plan and within the agreed timeframe, then the Department may request a meeting with the Health Services Manager to discuss the continued performance failure.
 - b. If at any time the Health Services Manager has received, or is on a trajectory where it is likely to receive, an AO rating for all sites of two or less for three or more consecutive months, then:

- i. The Department may require the Health Services Manager to submit a rectification plan with respect to the overall performance at the underperforming site.
- ii. If performance is not fully rectified in accordance with the rectification plan and within the agreed timeframe, then the department may request a meeting with the Health Services Manager to discuss the continued performance failure.

14. PERFORMANCE FRAMEWORK REPORTING

- 14.1. The monthly performance reporting process involves the Health Services Manager submitting the following reports to the Department (collectively referred to as the monthly performance reports) for each site:
- a. An ISPR Template in accordance with the format and content described in the ISPR Instruction Manual.
 - b. Action plans for performance failures (if applicable) as described in **clause 9.6**.
 - c. EPF submissions (if applicable) as described in **clause 8.4**.
- 14.2. The Health Services Manager and the Department will collaboratively agree on the Health Services Manager's performance results as set out in the ISPR Template and discuss performance failures resolved through action plans or excusable performance failure (EPF) submissions.
- 14.3. The Health Services Manager's national office will electronically submit the ISPR Template to the Department's national office no later than ten business days following the end of the calendar month.
- 14.4. The Department will make a decision to accept or dispute the ISPR Template and notify Health Services Manager's national office of its decision within five business days following the submission of the ISPR Template to the Department's national office.
- 14.5. In the event of a dispute, the Health Services Manager may submit sufficient documentation to support the calculation within three business days following notification of a dispute. Documentation provided after three business days of this dispute resolution period will not be accepted. For the avoidance of doubt, the dispute resolution process at **clause 60** of the Contract is to be followed.
- 14.6. Upon receiving additional documentation, the Department will provide written notice of its final decision of the ISPR Template no later than three business days following receipt of the documentation.

15. AUDITS OF MONTHLY PERFORMANCE REPORTS

- 15.1. The Department may periodically conduct audits of the Health Services Manager's compliance with its performance obligations under the Contract (including as set out in this Performance Framework), including the Health Services Manager's:
- a. monitoring, measuring or reporting against any contract responsibility, for the purpose of verifying the derivation and calculation of any measure; and
 - b. implementation of any action plan.
- 15.2. An audit conducted under this **clause 15** will be undertaken by a review team comprising of any or more of the following personnel:
- a. Department national office staff;
 - b. Department staff on Nauru and Manus Island; and
 - c. An independent third party subject to that party having no vested interest in the services being provided by the Health Services Manager, and the Health Services Manager agreeing to the Department's engagement of that third party for the purpose of the audit contemplated by this **clause 15.2**.
- 15.3. This audit will involve the following steps:
- a. the cross-checking and verification of data produced by the Health Services Manager against other data or information available to the Department, including from invoices, the Department system, and the quarterly-reported detention health dataset;
 - b. site visits to any or all facilities or regions within scope of the audit; and
 - c. interviewing of Health Services Manager personnel and network providers, Department services provider, Department personnel, transferees and other relevant stakeholders.
- 15.4. The Health Services Manager will cooperate with and assist the Department in completing audits conducted under this clause 15.



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 4.2 – GOVERNANCE

1. PURPOSE

- 1.1 The purpose of this **Schedule 4.2** (Governance) is to outline the roles and responsibilities required of the Health Services Manager and describe the Department's and Health Services Manager's accountability for delivery of the Health Services. It outlines the broad governance structure, including the committee and management teams that the Health Services Manager is required to participate.

2. DEPARTMENT AND HEALTH SERVICES MANAGER PARTNERING

2.1 Code of Conduct

The Health Services Manager must ensure that all Health Services Manager Personnel comply with the Code of Conduct in **Annexure A** (Code of Conduct) to this **Schedule 4.2**. The Code of Conduct sets out the Department's expectations of all Health Services Manager Personnel in the performance of the Health Services.

3. CONTRACT GOVERNANCE

- 3.1 In accordance with **clause 20** of the Contract, the Health Services Manager must appoint a Health Services Authority and a Health Services Administrator (as counterparts to the Department's Contract Authority and Contract Administrator).
- 3.2 The Health Services Authority is the signatory officer of the Health Services Manager who is responsible for:
- (a) making decisions and approvals of any variations to the Contract; and
 - (b) participating in the governance arrangements as outlined in this **Schedule 4.2**.
- 3.3 The Health Services Administrator is the contact officer of the Health Services Manager who is responsible for:
- (a) overseeing the commercial delivery of the Contract;
 - (b) coordinating the Health Services Manager's participation in the governance arrangements as outlined in this **Schedule 4.2**;
 - (c) managing any variations, disputes or resolution processes associated with the Contract;
 - (d) managing invoicing and payment processes for the Health Services Manager; and
 - (e) management of requests for Additional Services, Scope Changes and Contract Changes.

4. CLINICAL GOVERNANCE

The Health Services Manager must appoint a Clinical Governance Team in accordance with this **clause 4** to manage the delivery of Health Services in accordance with **Schedule 2** (Statement of Work).

4.1 Clinical Governance Team

- (a) The Clinical Governance Team must be comprised of the Key Personnel occupying the following three key positions:
 - (i) Medical Director, IHMS;
 - (ii) National Operations Manager; and
 - (iii) Medical Director, Mental Health Services.

- (b) The responsibilities of the Medical Director, IHMS must include:
 - (i) coordinating, credentialing and managing the identification, training and ongoing engagement of suitable health professionals and other providers for the HSM Network;
 - (ii) providing second opinions on clinic matters and professional development and support to all Health Care Providers (including through the development of appropriate induction and ongoing training modules);
 - (iii) collating and providing medical opinion advice in the format requested by the Department about any Transferee;
 - (iv) overseeing and managing the accreditation process against applicable Health Standards;
 - (v) coordinating any Department request for medical escort or evacuation services;
 - (vi) developing and overseeing implementation of the clinical audit program;
 - (vii) developing and monitoring the Health Services Manager's performance against the Performance Measures;
 - (viii) ensuring that all medical protocols, treatment regimens, emergency evacuation and other procedures are documented and observed; and
 - (ix) ensuring that site formularies, drugs and disposable inventories, purchasing and prescribing guidelines are appropriate and monitored.

- (c) The responsibilities of the National Operations Manager include:

- (i) managing the development, review and update of the Policies and Procedures Manual;
 - (ii) ensuring the Health Service are delivered in accordance with the Policy and Procedures Manual;
 - (iii) overall responsibility for the operational aspects of the contract including selection and management of Network Providers, review of the HSM Network and Network Provider Agreements.
 - (iv) ensuring that all investigations of the suitability of prospective Health Services Manager Personnel and Network Providers are undertaken, including that all checks are performed and clearances obtained in accordance with **clause 6.3 of Schedule 2** (Statement of Work);
 - (v) in conjunction with the Medical Director, IHMS, ensuring a comprehensive programme of continuous improvement and quality assurance is implemented including
 - that all audits resulting from the performance management process are supported.
 - (vi) developing and implementing systems to support and inform Network Providers to ensure Network Providers understand the specific health needs of Transferees and the particular roles and responsibilities of Network Providers, including providing Network Providers with the appropriate training, education and advice;
 - (vii) ensuring that all Health Care Providers, receive all appropriate induction and on-going training and advice to support them and facilitate an understanding of specific health requirements of Transferees and their roles and responsibilities; and
 - (viii) investigating and confirming that all Health Care Providers are suitably qualified, skilled and registered.
- (d) The responsibilities of the Medical Director, Mental Health Services include:
- (i) ensuring the provision of welfare, counselling and psychological Health Services to Transferees in accordance with **Schedule 2** (Statement of Work);
 - (ii) in partnership with the Medical Director, IHMS, planning, developing, coordinating and evaluating mental health services across the services prescribed in this Contract in collaboration with relevant stakeholders;
 - (iii) liaising on a regular basis with the Health Services Regional Manager, the Department, other Department services providers, other government and

non-government organisations and community groups, and cultivating their involvement in the planning process;

- (iv) in partnership with the mental health management team, facilitating the operational aspects of service delivery ensuring that this contributes to and is consistent with, the development and maintenance of an integrated, comprehensive continuum of care;
- (v) managing the mental health service staff on Nauru and Manus Island, ensuring appropriate procedures for staff recruitment and selection, training and development, clinical supervision, performance appraisal and support;
- (vi) ensuring that appropriate Transferee records are maintained Monthly, and that relevant data is collected, monitored and analysed to assist in planning for the service;
- (vii) providing reports as required including, at the Department's request, service monitoring and other ad hoc reports;
- (viii) ensuring, as far as practicable, staff under their supervision have a safe working environment in consultation with those staff;
- (ix) participating in multidisciplinary team meetings involving case management and intervention planning decisions;
- (x) liaising on a regular basis with the Department, and other Department service providers regarding the management of Transferees;
- (xi) ensuring that mental health clinical staff adhere to the standard operating policies, procedures and processes of the Health Services Manager and applicable Health Standards as they pertain to mental health and the National Standards for Mental Health, as applicable to Transferees on Nauru and Manus Island;
- (xii) delivering appropriate clinical consultation and supervision:
 - (A) on a fortnightly basis to staff under their supervision; and
 - (B) Monthly to other mental health service providers;
- (xiii) developing and implementing a training program for mental health clinical staff in accordance with the clinical needs and professional needs of those mental health clinical staff;
- (xiv) incorporating education material on cultural differences for any person who is likely to either work in or be treated at the health centre;
- (xv) developing relevant education material for distribution to detainees; and

- (xvi) developing and coordinating a relevant quality assurance plan for the mental health service in accordance with applicable Health Standards as they pertain to mental health and the National Standards for Mental Health and other relevant standards, as applicable to Transferees on Nauru and Manus Island.

5. GOVERNANCE ARRANGEMENTS

5.1 General

- (a) The Department’s governance framework has been developed to support the effective delivery of services under the immigration detention services contracts. A key feature of the governance framework is three distinct layers of governance at the strategic, tactical and delivery level, to provide clear pathways to raise, discuss, respond to, and resolve issues.
- (b) While Regional Processing Countries processing is not considered part of the immigration detention services, for the purposes of governance of the services under this Contract the parties agree that those services will be considered under the governance framework contemplated by this **Clause 5**.
- (c) The Service Provider must cooperate with the Department by actively participating in committees and meetings that have been (or are being) established across all levels of governance.

5.2 Cooperation, Collaboration and Meetings

- (a) The Service Provider must cooperate with the Department, other service providers in the detention services network, and stakeholders, to meet the needs of Transferees and assist the Department to meet its obligations.
- (b) The Service Provider must attend, participate in, and action agreed items resulting from all meetings, consultative committees and forums at the request of the Department. This will include, but is not limited to:

Tier	Meeting frequency	Parties
Strategic	Biannual	Department, Health Services Manager (represented by the Health Services Authority), other service providers at the Department’s discretion.
Tactical	Two (2) monthly	Department, Health Services Manager (represented by the Health Services Administrator), other service providers as required.
Delivery	Daily/weekly/as required	Department, Health Services Manager, other service providers as required.

- (c) In certain situations, and particularly at the delivery level of governance, the Service Provider will be required to chair and lead these initiatives.
- (d) The Service Provider must provide updates, reports and briefings for meetings, consultative committees and forums at the request of the Department.



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 4.2 – ANNEXURE A
CODE OF CONDUCT

1. INTRODUCTION

- 1.1 When providing any Health Services to the Department, the Health Services Manager and Health Services Manager Personnel must observe and uphold the standards of conduct outlined in this document. These standards are considered fundamental to the successful performance of the Health Services.
- 1.2 The Code of Conduct is intended to provide an ethical framework to guide the Health Services Manager and Health Services Manager Personnel in their decisions, actions and behaviour, and it advocates values that include integrity, honesty and impartiality.
- 1.3 The Code of Conduct must be integrated into the induction training for Health Services Manager Personnel provided under **Schedule 2** (Statement of Work), and included in any other suitable training and development programmes, particularly leadership development, management and supervisor training.
- 1.4 Specific reference to the Code of Conduct must be made in all job descriptions and it will be a key area of focus of performance appraisal and development discussions between Health Services Manager Personnel and their managers.
- 1.5 A hardcopy of the Code of Conduct must be provided to all Health Services Manager Personnel, and additional copies made available at each Facility on Nauru and Manus Island.
- 1.6 Implementation of the Code of Conduct must be regularly reviewed and critically evaluated through audits, personnel surveys (including exit interviews) and other appropriate mechanisms. The results of these reviews and surveys may be taken into account for the purpose of determining whether the Health Services Manager has met its obligations under the Contract

2. STANDARDS OF CONDUCT

2.1 An Open and Accountable Organisation

In carrying out their duties and in all their dealings with Transferees, the Health Services Manager and Health Services Manager Personnel must:

- (a) behave honestly and with integrity;
- (b) be open and accountable for their decisions, actions and omissions;
- (c) disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with their duties;
- (d) not make improper use of information, their status, power or authority, in order to gain, or to seek to gain, a benefit or advantage for themselves or any other person;
- (e) at all times behave in a way that upholds the values, integrity and good reputation of the Department;

- (f) avoid any practice or activity which could be seen as bringing the Department into disrepute; and
- (g) report behaviour that breaches the Code of Conduct and all allegations and/or possible incidents of criminal activity, corruption, dishonesty, unlawful conduct and conflicts of interest.

2.2 Fair and Reasonable Dealings with Transferees

In carrying out their duties and in all their dealings with Transferees, the Health Services Manager and Health Services Manager Personnel must:

- (a) act fairly and reasonably in all of their dealings;
- (b) not provide false or misleading information in response to a request for information;
- (c) respect privacy and confidentiality and comply with their obligations under any Confidentiality Deed and the Deed of Non-Disclosure of Personal Information which they have signed;
- (d) ensure Transferees are not subject to discrimination on any ground, including race, colour, gender, sexual preference, religion, political or other opinion, age, national social origin, status or disability; and
- (e) facilitate access for Transferees to internal and external complaints mechanisms, and process requests promptly and in a fair and equitable manner in accordance with the requirements of the Contract.

2.1 Well Trained and Supported Personnel

In carrying out their duties and in all their dealings with Transferees, the Health Services Manager and Health Services Manager Personnel must:

- (a) comply with all applicable Laws, including those applicable on Nauru and Manus Island, any Australian Government Policies and Department Health Policies in accordance with the Contract;
- (b) comply with any lawful and reasonable direction given by the relevant Department Executive in accordance with the Contract;
- (c) demonstrate awareness of sensitivity, interest in and public scrutiny of, the environment, and, with this in mind, conduct themselves in an appropriate manner whenever on or off duty;
- (d) use the facilities contained in the Facilities on Nauru and Manus Island and the Department equipment and systems in a proper and respectful manner; and
- (e) comply with any other conduct requirement that is prescribed by regulations, determinations and directions.

2.2 Duty of Care

In carrying out their duties and in all their dealings with Transferees, the Health Services Manager and Health Services Manager Personnel must:

- (a) act with care and diligence;
- (b) take actions and comply with relevant policies and procedures to maintain a safe working environment;
- (c) ensure the requirements for separation detention are upheld, and that the integrity of the Department's visa determination process is maintained;
- (d) in respect of any children, ensure they receive appropriate and individual care; and
- (e) be alert for Transferees who are or appear to be, traumatised and/or vulnerable to self-harm or to harm by the actions of others.

2.3 Supportive Culture

In carrying out their duties and in all their dealings with Transferees, the Health Services Manager and Health Services Manager Personnel must:

- (a) support and promote a stable and harmonious environment, and seek to resolve situations and tensions peacefully;
- (b) treat everyone with respect and courtesy, and without harassment of any kind;
- (c) be supportive and helpful to Transferees who make a request in relation to their Health Care as required by **Schedule 2** (Statement of Work);
- (d) conduct all duties sensitively, enabling Transferees to maintain their dignity, and with due regard for their individual circumstances and backgrounds;
- (e) behave in a tolerant, respectful and culturally sensitive manner towards Transferees and avoid perceptions of discrimination and bias; and
- (f) show understanding, respect and sensitivity for religious beliefs and conventions of an individual Transferee and their particular needs.

2.4 Promoting a Healthy Environment

In carrying out their duties and in all their dealings with Transferees, the Health Services Manager and Health Services Manager Personnel must:

- (a) not be under the influence, or displaying the after effects, of drug or alcohol consumption; and

- (b) respect the natural environment in and surrounding the Facilities on Nauru and Manus Island.

2.5 Providing Appropriate Amenities

In carrying out their duties and in all their dealings with Transferees, the Health Services Manager and Health Services Manager Personnel must be aware of and monitor any Transferee with special needs, including children, the elderly and infirm, ensuring they are treated individually, accorded respect and provided with as much personal privacy as is reasonably possible, and receive timely and equitable access to the relevant services.

3 COMPLAINTS ABOUT CONDUCT

- 1.1 Copies of the Code of Conduct must be displayed prominently within the Facilities on Nauru and Manus Island at all times during the Term.
- 3.1 The Department and the Health Services Manager are committed to fair, transparent and timely resolution of complaints from Transferees regarding breaches of this Code of Conduct.
- 3.2 Transferees must be informed of their rights and are entitled to comment on or complain without hindrance or fear of reprisal:
 - (a) about any matter relating to their Health Care or breach of this Code of Conduct;
 - (b) in the case of a suspected criminal offence, to the police; or
 - (c) in the case of suspected child abuse, to the relevant State/Territory welfare agency.
- 3.3 Complaints made by Transferees to the Health Services Manager and Health Services Manager Personnel, that are either expressed to be for the attention of a third party (including those agencies referred to in **clause 3.2** above) or are deemed by the Department and/or the Health Services Manager to be more appropriately resolved by a third party, must be forwarded to the relevant agency in a timely fashion and in accordance with applicable Law.
- 3.4 Material advising of the right to complain in accordance with the procedures developed under **Schedule 2** (Statement of Work) must be displayed prominently throughout the Facilities at all times and made available to each individual Transferee.
- 3.5 All complaints to the Health Services Manager and Health Services Manager Personnel, or the Department must be fully investigated and determined in accordance with the processes and procedures developed under **Schedule 2** (Statement of Work).
- 3.6 As part of this process, all relevant information must be considered and interviews may be undertaken by the Health Services Manager, with its relevant Health Services Manager Personnel. All Health Services Manager Personnel must cooperate fully with such interviews and any requests for information.

- 3.7 Following investigation, if necessary, the Department may require the Health Services Manager take corrective or disciplinary action against Health Services Manager Personnel who have breached the Code of Conduct.
- 3.8 The Health Services Manager must notify the Department of any complaint by a Transferee about the conduct of Health Services Manager Personnel within twelve (12) hours of the complaint.

4 INCONSISTENCIES WITH THE CODE

- 4.1 The obligations contained in this Code of Conduct are subject to:
- (a) any contrary express Contractual obligations; and
 - (b) any contrary directions given by the Department Executive under the Contract.



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 4.3 - REPORTING

1. Performance Reporting

1.1 The Health Services Manager must prepare and submit a monthly Individual Service Provider Report (ISPR) that details the Health Services Manager's performance against the Contract Responsibilities in accordance with **Schedule 4.1** (Performance Management Framework) of this Contract.

1.2 The ISPR must be submitted to the Department each calendar month within ten (10) business days after the last business day of the month.

1.3 Performance Assessment and Results

(a) The ISPR must be prepared in accordance with the template agreed by the Department and the Health Services Manager and will contain:

(i) Performance results against each Contract Responsibility as reflected in the ISPR Template.

(ii) A performance rating against each Contract Responsibility as reflected in the ISPR Template.

(iii) A reason for the performance rating against each Contract Responsibility as reflected in the ISPR Template

(b) Where a Contract Responsibility is assessed by the Department's national office, the Health Services Manager must provide evidence to accompany the performance rating against the respective Contract Responsibility due in the monthly ISPR.

1.4 Where Performance Failure occurs against a Contract Responsibility, the following information is to accompany the ISPR:

(a) Where applicable, details of the Health Services Manager's proposed action plan for rectifying any Performance Failures;

(b) Where applicable, details of the Health Services Manager's proposed rectification plan in accordance with **clauses 13.1(a), and 13.1(b)** of **Schedule 4.1** (Performance Management Framework); and

(c) Where applicable, details of all excusable Performance Failure submissions that have been approved.

2. Regular Reporting

2.1 The Health Services Manager is to provide the following reporting to the Department. The reporting is to be provided in a form acceptable to the Department and a separate report is to be provided for Nauru and Manus Island:

- (a) Confirmation of standard clinics offered – type of clinics, days and hours of operation, plus exception reporting and explanation for any days where there was under-delivery against standard clinic hours.

Reporting timeframe: Monthly within 10 business days of end of month.

- (b) An analysis of health trends amongst the Transferee population over the previous quarter (by location), including consideration of environmental factors and detailing responses undertaken or planned to address trends of concern.

Reporting timeframe: Quarterly within 20 business days of end of quarter, the first quarter ending 31 December 2012.

3. Additional Regular Reporting

3.1 The Health Services Manager must provide to the Department, in a format agreed by the Parties, reporting as described and according to the timeframes specified in an Additional Regular Reporting Register ('Reporting Register').

3.2 The contents of the Reporting Register will be agreed by the Parties, maintained by the Department and jointly reviewed with the Health Services Manager at least quarterly.

4. Ad Hoc Reporting

4.1 The Health Services Manager must provide the following at the Department's request:

- (a) Written or verbal psychiatric, psychological and medical reports and advice on any Transferee in accordance with all relevant Law, Department Health Policy and professional and ethical standards; and
- (b) Written or verbal reports or advice in response to any Ministerial, Parliamentary or other stakeholder inquiry, review or investigation.

All ad hoc reports provided under this **clause 5.1** must address the issues identified by the terms of the relevant request, and be provided within the timeframe reasonably specified by the Department at the time of the request.



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 5
FEES AND PAYMENTS

1. FEES AND PAYMENTS

1.1 Overview of fees payable under this Agreement

The fees which the Health Services Manager is entitled to be paid for performance of the Contract comprise:

- (a) Onsite Health Clinic Fee (refer clause 2)
- (b) Pass Through Costs (refer clause 4)
- (c) IT Transition-in Fee (refer clause 5)
- (d) Establishment Costs (refer clause 6)
- (e) Site Health Review Fee (refer clause 7)
- (f) Additional Fees (refer clause 8)
- (g) Medical Consumables (refer clause 9)
- (h) Medical Evacuation (refer clause 10)

1.2 Vector Control

- (a) The Health Services Manager will carry out a comprehensive vector control program on Manus Island, in accordance with **clause 16.3** of **Schedule 2** (Statement of Work).
- (b) The Department will pay the Health Services Manager a monthly flat rate as specified in **Annexure A** Pricing Tables to this **Schedule 5**. The monthly rate does not include the following costs:
 - (i) Travel and accommodation;
 - (ii) All associated equipment and on-going consumables costs;
 - (iii) Freight and transport related costs; and
 - (iv) Storage infrastructure for equipment.

1.3 Calculation of fees per day

Onsite Health Clinic Fees will be calculated monthly on a role-by-role basis, based on the relevant occupancy and capacity bands as notified by the Department to the Health Services Manager. Notification will be sent to the Health Services Manager within ten (10) business days upon the commencement of the previous month advising of the estimated capacity band for the following month. The Health Services Manager must comply with the requirements of this contract in respect of the new occupancy and capacity band in accordance with the Departments notice considered in this **clause 1.3**, within (4) weeks

when the notice requires a reduced occupancy and capacity band and within two (2) weeks when the notice requires an increased occupancy and capacity band. In the event that the Health Services Manager is unable to comply as a result of matters beyond its reasonable control (including but not limited to, delay in the issuance of visas by Nauru and Papua New Guinea, the non-availability of passenger flights into or out of either facility, and extended time taken for the registration of clinical staff by the Nauru and Papua New Guinea governments) the Health Services Manager will notify the Department of the reasoning and such delay will not be considered as part of this **clause 1.3**.

2. **ONSITE HEALTH CLINIC FEE**

- 2.1 The Onsite Health Clinic Fee payable to the Health Services Manager for the performance of the Health Services, other than Pass Through Costs, is a fixed fee per day. The amount of the Onsite Health Clinic Fee must be calculated in accordance with **clause 1.3** of this **Schedule 5**, applying the fixed fee per day set out in **Annexure A** (Pricing Tables) to this **Schedule 5**.
- 2.2 The Onsite Health Clinic Fee for Nauru and Manus Island is to be calculated by apportioning weightings to the two respective facilities Onsite Health Clinic Tables at **Annexure A** (Pricing Tables) to this **Schedule 5** on a role-by-role basis, according to the utilisation of Australian and Other Country Personnel Primary Health Care Nurses and GPs during that period for which the fee is being calculated.
- 2.3 Adjustment of the Health Service Fee based on the demand predictor
- (a) The purpose of the demand predictor is to provide the Health Services Manager with an estimation of the likely capacity band of each Facility. This is to enable the Health Services Manager to effectively plan for any predicted increases or decreases in the numbers of transferees in any Facility.
 - (b) At the time of executing Contract Variation One, the Department will make an initial three (3) month prediction commencing immediately after the execution of Contract Variation One. This initial prediction will state the relevant three months, the predicted capacity band utilisation for each Facility. Thereafter, at the end of each month, the Department will provide further updated capacity utilisation prediction for the following third month (that is, the Department will provide capacity predictions two (2) months in advance of the actual month commencing).
 - (c) For the avoidance of doubt, **Schedule 4.1** (Performance Management Framework) applies when staffing levels consistent with the capacity bands are attained. However, in the event that the Demand Predictor has under predicted the expected capacity band and, as a result, the Health Services Manager is unable to meet specific Contract Responsibilities reflected in the ISPR, as approved by the Department from time to time, due to insufficient staffing being available, the Health Services Manager will not be required to measure performance against these specific Contract Responsibilities until staffing levels are sufficient to meet these Contract Responsibilities. However, the Health Services Manager must continue to

measure performance against the remaining Contract Responsibilities not affected by the lower staffing level in accordance **Schedule 4.1** regardless of insufficient staffing, and may claim Excusable Performance Failures as usual if necessary.

- (d) Where the demand predictor has over predicted the expected capacity band of a Facility, and the Health Services Manager is able to demonstrate to the Department's satisfaction that it incurred reasonable additional costs based on the Department's predicted figures, the Department may agree to accept for the relevant month an invoice calculated using the Department's predicted capacity band for any one or more of the following fees:
 - (i) Facility Management Fee for the respective Facility;
 - (ii) Onsite Health Clinic Fees for the respective Facility.

3. HEALTH SERVICES FOR RECIPIENTS

- 3.1 There will be no additional fees for Health Services provided to Recipients, other than Pass Through Costs which are provided for under **clause 4** of this **Schedule 5**.
- 3.2 Health Services for Recipients are to be provided utilising personnel already deployed on Manus Island or Nauru for the purpose of providing Health Services to Transferees (in accordance with the occupancy bands and personnel levels provided at **Annexure A** (Pricing Tables) to this **Schedule 5**.
- 3.3 Recipients are not to be included in the occupancy band calculation per **Annexure A** (Pricing Tables) to this **Schedule 5**.

4. PASS THROUGH COSTS

- 4.1 The Health Services Manager may be reimbursed for the following items on a Pass Through Cost basis in line with **clause 13**:
 - (a) cost of Health Care delivered to Transferees and Recipients, except health care delivered at Onsite Health Clinics;
 - (b) for Personnel deployed for at least ~~five (5)~~ four (4) weeks continuously, unless the Department approves otherwise, on Nauru or Manus Island and visiting specialists to provide Health Care Services, the cost of air travel (domestic and international), in accordance with **Schedule 6** of the Contract;
 - (c) for Personnel deployed for at least ~~five (5)~~ four (4) weeks continuously, unless the Department approves otherwise, on Nauru or Manus Island and visiting specialists to provide Health Care Services, the cost of accommodation, meals, taxis and public transport incurred in connection with travel (domestic and international) in accordance with **Schedule 6** of the Contract;

- (d) the cost for air travel (domestic and international), accommodation, meals, taxis and public transport incurred by the Health Services Manager Personnel with the Departments prior agreement or acceptance;
- (e) Medical Escort fees calculated using the rates specified at **Annexure A** of this **Schedule 5**;
- (f) cost of undertaking pre-deployment health checks for Health Services Manager personnel;
- (g) cost of undertaking Federal police background checks for Network Providers delivering Health Care at a Facility;
- (h) cost of undertaking “Working with Children” checks for Network Providers delivering Health Care to Children; and
- (i) any other costs that the Contract expressly provides may be recovered by the Health Services Manager on a Pass Through Cost basis.
- (j) any other associated costs in relation to health services provided by a Network Service Provider, in line with this Contact with the prior written approval by the Department.

4.2 Where:

- (a) The Health Services Manager has expressed an urgency in deployment of staff or materiel to either Nauru or Manus Island, and
- (b) The Health Services Manager has submitted a proposal to the department for approval for such deployment, and
- (c) The Health Services Manager has advised the Department of limited opportunity to deploy staff or materiel to Nauru or Manus Island with a view to meeting the Department’s expectation for the provision of the Health Services, and
- (d) Twenty-four hours have passed since the proposal we submitted, and all attempts to contact the Contract Manager and Administrator have been exhausted;

the Health Services Manager will proceed with the deployment on the basis that the need for the deployment is to meet clinical or operational requirements. The Pass Through Costs of this deployment will be deemed to have been approved by the Department.

4.3 Pass Through Costs in foreign currency are to be converted into Australian Dollars utilising the exchange rate reported by the Reserve Bank of Australia for the day the Pass Through Cost was paid by the Health Services Manager.

4.4 All Pass through Costs must be claimed within nine (9) months of the date on which the relevant goods or services are provided by the Health Services Manager, with no-Pass

Through Costs able to be claimed more than 273 days after the expiration or earlier termination of the Contract (or not later than 273 days after the expiration of any extension of the Term, as the case may be). The Department will not reimburse, and will not pay the Pass Through Cost Fee in relation to, any Pass Through Costs claimed after that time. The Department will consider exemptions to this **clause 4.4** on a case by case basis and with a business case from the Health Services Manager.

5. IT Transition-in Fee

5.1 The IT Transition-In Fee payable to the Health Services Manager for the performance of the Transition-In is specified in **Annexure A** (Pricing Tables) to this **Schedule 5**.

6. ESTABLISHMENT COSTS

6.1 Subject to **clauses 6.2-6.4**, the Health Services Manager will be reimbursed for costs required to establish the Onsite Health Clinics.

6.2 These costs will generally relate to assets such as fixtures and fittings (including furniture) which are non-consumables and exclude those costs provided for under any other part of this **Schedule 5**. These costs may incorporate a pricing mark up of no greater than 10% on the actual cost of the individual item (specifically excluding postage and handling fees).

6.3 The Health Services Manager is required to have received the Department's prior written approval of any expenditure for which it seeks reimbursement under this **clause 6**.

6.4 All establishment costs under this **clause 6** must have been requested by IHMS and subsequently approved by the Department within the initial eight (8) weeks of the Onsite Health Clinic commencing Health Care.

6.5 Unless the Department notifies the Health Services Manager otherwise, assets reimbursed under this **clause 6** are considered to be Departmental Assets from the time they are received by the Health Services Manager and confirmed by the Health Services Manager to have been delivered in good order.

7. SITE HEALTH REVIEW FEE

7.1 The Site Health Review Fee for the performance of Site Health Reviews by the Health Services Manager is specified in **Annexure A** (Pricing Tables) to this **Schedule 5**. The Site Health Review Fee will be payable once for Manus Island and once for Nauru.

8. ADDITIONAL FEES

Any additional or expanded services provided by the Health Services Manager under **clause 31** of the Contract will be priced according to the following principles:

- (a) If a relevant pricing mechanism, methodology or metric already exists within the framework of this Contract – the fee for the additional or expanded services will

be calculated by applying that mechanism, methodology or metric (including any applicable rates specified in a schedule of labour rates in the Pricing Tables);

- (b) If no relevant pricing mechanism, methodology or metric exists within the framework of this Contract – the fee for the additional or expanded services will be determined according to what the Department considers (acting reasonably) is fair and reasonable at that time, having regard to the then prevailing market rates or prices commercially available in the market for similar service to like customers; or
- (c) If the adjustment cannot be determined under either (a) or (b), or by agreement of the Parties, the cost of the additional service will be recovered by the Health Services Manager as a Pass Through Cost.

9. **MEDICAL CONSUMABLES**

9.1 **Clinical Consumables, Pharmaceuticals and other Medicines**

- (a) For the purposes of the Health Services provided by the Health Services Manager on Nauru and Manus Island, the cost of medical consumables, including pharmaceuticals and other medicines provided by the Health Services Manager under **Part 1 of Schedule 2** (Statement of Work) will be priced on a Pass Through basis;
- (b) For the procurement of clinical consumables, pharmaceuticals and other medicines, the Health Services Manager is to follow the Guidelines issued by the Department.

10. **MEDICAL EVACUATION AND ESCORT**

10.1 Where medical evacuation or escort of a Transferee or Recipient is required, the Health Services Manager will seek to arrange Department approval of costs associated with the evacuation or escort prior to the evacuation or escort taking place.

11. **PERFORMANCE MANAGEMENT REGIME**

Withholding and abatements

- (a) The Performance Linked Fee will be seven (7) per cent of the monthly revenue calculated against the respective monthly invoices, excluding pass through costs.
- (b) The Health Services Manager will ensure the invoices required for **clause 11(a)** are submitted to the Department in accordance with **clause 12.1** of this **Schedule 5**.
- (c) The Department will review the Individual Service Provider Report (ISPR) and confirm with the Health Services Manager any applicable withholding or abatement fee amounts applicable for that reporting month.

- (d) The Health Services Manager will provide the Department with a credit note for any withholding or abatement fee amount. On the Department's advice and following receipt of the credit note, the Department will proceed to release the residual funds owing to the Health Services Manager.
- (e) The withheld fees will be released to the Health Services Manager upon meeting the requirements as outlined in **Schedule 4.1** (Performance Management Framework) and upon the submission of an invoice reversing the previous credit note for that amount.

Incentives

- (f) Following review of the monthly ISPR, the Department will make an assessment of whether any performance incentives are owing to the Health Services Manager. Where performance incentives are owed, the Department will advise the Health Services Manager, who should submit an invoice for this amount within ten business days to enable payment
- (g) The Health Services Manager is entitled to an innovation bonus of up to 15% of the Department's expected cost savings as per **clause 12** of **Schedule 4.1** (Performance Management Framework). The innovation bonus is determined as follows:

(A) * x% = Health Services Manager's entitled innovation bonus payment
A represents the expected cost savings to the Department by implementing the innovation proposal.

- (h) Where performance innovation bonus is owed, the Department will advise the Health Services Manager, who should submit an invoice for this amount within ten business days to enable payment.

12. INVOICING ARRANGEMENTS AND FEE CALCULATIONS

12.1 Invoicing Arrangements

- (a) On acceptance and signing of this Agreement by both parties, the Health Services Manager must invoice the Department, monthly in arrears and in accordance with the requirements as set out in this **clause 12**.
- (b) Invoices must be in the form approved by the Department and submitted within ten (10) Business Days of the end of the monthly billing period.
- (c) Each month, the Health Services Manager must submit the following invoices for payment of the fees:
 - (i) Onsite Health Clinic Fee by Facility;
 - (ii) Pass Through Costs by Facility; and

- (iii) Additional Fees by Facility.
- (d) Separate invoices must be submitted for payment of:
 - (i) the IT Transition-in Fee by Facility;
 - (ii) Establishment Costs by Facility; and
 - (iii) Site Health Review Fee by Facility,

at the commencement of the month following receipt by the Health Services Manager of notification of acceptance by the Department that the requirements of these fees have been met.
- (e) The Department will pay the invoices within the timeframe specified at **Part 11** of the Contract.
- (f) In addition to submitting invoices for payment, the Health Services Manager must provide a summary report with each invoice that identifies health services provided to Transferees and Recipients listed by Recipient Employer.

13. **REIMBURSEMENT OF PASS THROUGH COSTS**

- (a) Subject to this **clause 13**, the Department will reimburse the Health Services Manager at cost (and without any mark up, unless otherwise stated) for any of the Pass Through Cost items described in **clause 3** and **6** of this **Schedule 5**.
- (b) The Department will not reimburse the Health Services Manager for the cost of any Pass Through Cost item unless the relevant invoice claiming payment for the amount is accompanied by sufficient supporting documentation, including copies of third party invoices verifying the Health Services Manager’s payment of each amount.
- (c) The Pass Through Cost invoice amount for Health Care delivered by a Network Provider to a Transferee or Recipient on Nauru and Manus Island will be calculated on a daily rate as agreed between the Department and the Health Services Manager.
- (d) The Pass Through Cost invoice amount for hospital services delivered by a Network Provider to a Transferee or Recipient will be calculated on a daily rate as agreed between the Department and the Health Services Manager, unless the pass through cost is set by;
 - (i) The rates agreed by way of memorandum of understanding between the Commonwealth and the relevant government institution, where such an instrument exists;
 - (ii) Any variations to the quotation provided by the Health Services Manager and agreed by the Department during the patient’s admission.
- (e) Medical escort fees will apply to escorts provided by the Health Services Manager under **clause 26** of **Schedule 2** (Statement of Work) by applying the applicable “fee

per period” of escort set out in **clause 5-6** (Medical Escorts) of **Annexure A** (Pricing Tables)). For each escort, the period to which the “fee per period” applies comprises:

- (i) Where applicable, the agreed pre-escort period immediately prior to the escort and the post-escort period immediately following the escort, applied strictly in accordance with **clause 10** of this **Schedule 5**; and
- (ii) The total time spent by the medical escort in the company of the Transferee, excluding the pre-escort period and the post escort period.

For the avoidance doubt, the medical escort fees do not include any incidentals such as but not limited to travel, subsistence and accommodation costs.

- (f) The pre-escort and post escort periods referred to in this **clause 13(f)** of this **Schedule 5** are:
 - (i) For escort via land transportation within Nauru or Manus Island departing from an Onsite Clinic:
 - (A) No pre-escort period applies for an escort that commences during Business Hours;
 - (B) A pre-escort period of two (2) hours applies for an escort that commences outside of Business Hours;
 - (C) No post-escort period applies following an escort that concludes during Business Hours; and
 - (D) A post-escort period of one (1) hour applies following an escort that concludes outside of Business Hours;
 - (ii) For escort via land travel transportation within Nauru and Manus Island departing from a place other than an Onsite Clinic:
 - (A) A pre-escort period of two (2) hours applies, whether or not that escort commences outside Business Hours;
 - (iii) For escort via air travel to or from Nauru or Manus Island:
 - (A) A pre-escort period of three (3) hours immediately prior to the first voyage of the scheduled flight departure applies; and
 - (B) A post-escort period of two (2) hours immediately following the flight applies.
- (g) The Department is not obliged to reimburse the Health Services Manager for any Pass Through Cost that is included in an invoice, where the amount for which reimbursement is being sought:

- (i) Relates to Health Care that was provided by a Network Provider to a Transferee or Recipient and the Network Provider has not transferred all relevant health information to the Health Services Manager in accordance with **clause 10.4** of **Schedule 2** (Statement of Work);
 - (ii) Relates to Health Care outside the scope of relevant Department Health Policy (and for which the Department's prior written consent was not obtained), or is for any specialist, allied health or hospital service provided to a Transferee in breach of **clause 10.2(a)** of **Schedule 2** (Statement of Work); or
 - (iii) Relates to Health Care provided to a Transferee off site of a Facility in breach of **clause 18.1(e)** of **Schedule 2** (Statement of Work).
- (h) Where, due to demand by Transferees in exceptional circumstance and with the prior written approval of the Department's national office, an Onsite Health Clinic is required to operate after Minimum Clinic Hours for that Contact Day have been exceeded, the Additional Hours rates specified in Table 8 (Additional Hours rates – onsite) of **Annexure A** (Pricing Tables) to this **Schedule 5** (Fees and Payment) will apply to Health Care delivered from the time the Minimum Clinic Hours for that Contact Day have been exceeded.
- (i) Additional Hours rates specified in Table 8 (Additional Hours rates – onsite) of **Annexure A** (Pricing Tables) to this **Schedule 5** will only be applied strictly in accordance with **Schedule 2** (Statement of Work) for Onsite Health Clinic services delivered outside of Minimum Clinic Hours each Contact Day with prior approval of the Department's national office, and will be charged at a minimum fee rate equivalent to three hours duty per call out.

ANNEXURE A (PRICING TABLES):

¹ All pricing is calculated in AUD exclusive of GST and Withholding Tax



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 6

PERSONNEL ARRANGEMENTS AND CONDITIONS

1. PERSONNEL ARRANGEMENTS

- 1.1 The Health Services Manager must arrange for, and incur the cost of obtaining, the required permits of all its Personnel to work on Nauru and Papua New Guinea.
- 1.2 Unless otherwise specified, all Health Services Manager Personnel, (including expatriate Australian, locally engaged and citizens of other countries) staff, will work 54 hours per week while based on Manus Island and Nauru. The psychiatrist, dentist and dental assistant will work 40 hours per week and the Logistics Officer on Port Moresby will work 38 hours per week.
- 1.3 Unless the Department approves otherwise, Health Services Manager Personnel will be required to work for at least four (4) consecutive weeks and then undertake a period of four (4) weeks off-location.
- 1.4 The Department must provide prior written approval for any Network Provider deployment less than four (4) consecutive weeks.

2. TRAVEL ARRANGEMENTS AND REIMBURSEMENT

- 2.1 The Department will not be responsible for arranging travel, or arranging accommodation related to travel, for Health Services Manager Personnel.
- 2.2 The Department will reimburse (subject to the limits set out below) the Health Services Manager for the cost of domestic and international air travel for Health Services Manager Personnel at the lowest practical fare at an economy class rate. Unless the Department gives prior written approval otherwise, it is intended that reimbursement will cover one return fare for each four week period on Nauru or Manus Island. Reimbursement of additional trips will be considered on a case by case basis in consultation with the Department.
- 2.3 For Personnel sourced from Australia, the Department will reimburse the Health Services Manager for an air fare between Nauru or Manus Island and the airport closest to the Health Services Manager Personnel's usual place of residence in Australia.
- 2.4 For Personnel sourced from outside Australia, the air fare reimbursement per person per voyage (between their usual place of residence and Manus Island or Nauru) will be the lesser amount of the cost of the air fare or AUD2000. The Department will not reimburse air fare costs above AUD2000 per person per voyage unless it has provided the Health Services Manager with prior written approval.
- 2.5 For Personnel sourced from Australia or outside Australia, the Department will reimburse the cost of taxi or public transport between the usual places of residence of the Health Services Manager Personnel and the airport nearest to their usual place of residence when

associated with a reimbursed air trip. The reimbursement will not exceed AUD100 per person per voyage without the Department's prior written approval.

- 2.6 The Department will reimburse the Health Services Manager for reasonable accommodation and meals related to Health Services Manager Personnel travel, at non-SES rates commensurate with the Department's then current travel policy. The exemption to this **clause 2.6** is senior management positions as agreed in writing.
- 2.7 The Department will not reimburse the Health Services Manager for excess baggage costs for Health Services Manager Personnel without the Department's prior written agreement.
- 2.8 The Department will not cover the cost of travel insurance. The Health Services Manager must arrange for and provide appropriate travel insurance at its cost.

3. STAFF ACCOMMODATION AND MEALS

- 3.1 The Department will provide accommodation and meals to Health Services Manager Personnel while they are on deployment on Manus Island or Nauru.

4. GUIDELINES

- 4.1 The Department may issue Guidelines with respect to the management of Personnel Arrangements and Conditions. The Health Services Manager must comply with the Guidelines even if they are inconsistent with this Schedule.



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 7

**KEY PERSONNEL AND APPROVED MAJOR
SUBCONTRACTORS**

1. Key Personnel

1.1 Key Personnel of the Health Services Manager are set out in the table below:

Key Personnel	Key Position
Mr Michael Gardner	Health Services Authority
Ian Gilbert	Health Services Administrator
Dr Mark Parrish	Medical Director
Dr Peter Young	Medical Director, Mental Health Services
Damien Johnston	Regional Operations Director, Offshore

1.2 Key Personnel may be changed by written agreement between the Parties.

5. Approved Major Subcontractors

2.1 The initial Approved Major Subcontractors are as follows:

(a) **Nauru**

Name: International Health and Medical Services (South Pacific)
Address: c/- Nauru Agency Corporation, PO Box 300, Nauru, Central Pacific
Contact: Site Manager
Telephone: +674 557 0200

(b) **Manus Island**

Name: International Health and Medical Services (Nuigini)
Address: 156 TransAir Hangar, General Aviation, Jacksons Airport, Port Moresby
N.C.D., Papua New Guinea
Contact: Site Manager
Telephone: +675 721 00592



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 8
DEPARTMENT ASSETS

1. **Nauru Processing Centre**

- 1.1 The Health Services Manager is required to update and maintain a Department Asset register for Nauru. The Health Services Manager must submit the Department Asset register to the Department no later than the end of each Month. The Department may direct the Health Services Manager to amend the Department Asset register as reasonably required.

2. **Manus Island Processing Centre**

- 2.1 The Health Services Manager is required to update and maintain a Department Asset register for Manus. The Health Services Manager must submit the Department Asset register to the Department no later than the end of each Month. The Department may direct the Health Services Manager to amend the Department Asset register as reasonably required.



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 9
PERFORMANCE SECURITIES

SCHEDULE 9 – PERFORMANCE SECURITIES**PART A - UNCONDITIONAL FINANCIAL UNDERTAKING**

THIS UNDERTAKING is made on the _____ day of _____ 201

in favour of the Commonwealth of Australia, represented by the Department of Immigration and Citizenship (**the Department**)

by [_____] ACN [_____] (**Guarantor**)

AGREEMENT

1. The Department wishes to procure the Health Services (as defined in the Contract) and, subject to the issue of this undertaking, International Health and Medical Services Pty Ltd (ABN 40 073 811 131) (**Health Services Manager**) will supply the Health Services to the Department under the Contract.
2. At the request of the Health Services Manager and in consideration of the Department accepting this undertaking, the Guarantor unconditionally and irrevocably, as a primary obligation, undertakes and covenants to pay to the Department, on demand, and without reference to the Health Services Manager and notwithstanding any notice given by the Health Services Manager to the Guarantor not to pay the same, any sum or sums which may from time to time be demanded in writing by the Department to a maximum of seven hundred thousand Australian dollars (AUD\$700,000).
3. The Guarantor's liability under this undertaking is a continuing liability and continues until payment is made under this undertaking of the Guaranteed Amount, or a period no longer than seven (7) years after the termination of the Contract, or such time as the Department notifies the Guarantor that this undertaking is no longer required. The obligations of the Guarantor under this undertaking are not affected by anything which, but for this provision, might operate to exonerate it from that liability in whole or in part and this undertaking may be enforced against the Guarantor without the Department being required to exhaust any remedy it may have against the Health Services Manager. The Guarantor agrees that it is not to be discharged or released from this undertaking by any arrangement made between the Health Services Manager and the Department.
4. The Guarantor acknowledges that it has received valuable consideration for entering into this undertaking.
5. The Guarantor must make payments to the Department under this undertaking to the Department's bank account the details of which the Department will designate by notice to

the Guarantor under this Guarantee no later than 11:00am Canberra time on the date that payment is demanded by the Department.

6. If a law requires the Guarantor to withhold or deduct taxes from a payment so that the Department would not actually receive for its own benefit the full amount provided for under this undertaking, then:

(c) the amount payable is increased so that, after that deduction and deductions applicable to additional amounts payable, that the Department receives the amount it would have received if no deduction had been required;

(d) the Guarantor must make the deduction; and

(e) the Guarantor must pay the full amount deducted to the relevant authority in accordance with applicable law.

7. This undertaking is governed by, and is to be construed in accordance with, the laws for the time being of the Australian Capital Territory and the parties agree that the courts of that territory will have jurisdiction to entertain any action in respect of, or arising out of, this undertaking and hereby submit themselves to the jurisdiction of those courts.

8. The Guarantor indemnifies the Department against, and will pay the Department on demand, the amount of all losses, damages, liabilities, costs, expenses, stamp duty and goods and service taxes payable in connection with this undertaking and in connection with preserving its rights under this undertaking.

SIGNED by [])
as attorney for)
under Power of Attorney dated)
(Registration No:))
in the presence of)

.....
Signature of witness [Name]

.....
Name of witness (print)

4. The indemnity in **clause 3** extends to any loss that is not recoverable because of any legal limitation, disability or incapacity of or affecting the Health Services Manager, Health Services Manager employees, agents or subcontractors or any other person for whom the Health Services Manager is vicariously liable.
5. The Guarantor agrees to pay interest to the Department on any amount payable by it to the Department under this Guarantee from when it becomes due for payment, during the period that it remains unpaid, on demand, or at times determined by the Department calculated on daily balances at the Reserve Bank of Australia's (RBA) 90-Day Bank-Accepted Bill Rate less ten (10) basis points, and is capitalised (if not paid) every seven (7) calendar days.
6. The Guarantor must make payments to the Department's bank account the details of which the Department will designate by notice to the Guarantor under this Guarantee no later than 11:00am Canberra time on the due date.
7. If a law requires the Guarantor to withhold or deduct taxes from a payment so that the Department would not actually receive for its own benefit on the due date the full amount provided for under this Guarantee, then:
 - (h) the amount payable is increased so that, after that deduction and deductions applicable to additional amounts payable, the Department receives the amount it would have received if no deduction had been required;
 - (i) the Guarantor must make the deduction; and
 - (j) the Guarantor must pay the full amount deducted to the relevant authority in accordance with applicable law.
8. The Guarantor will not be discharged or released or excused from this Guarantee by an arrangement made between the Health Services Manager and the Department with or without the consent of the Guarantor, or by any alteration, amendment or variation in the obligations assumed by the Health Services Manager or by any forbearance whether as to payment, time, performance or otherwise. The guarantee by the Guarantor in this Guarantee to assume the obligations of the Health Services Manager will continue in force and effect until completion of all the Health Services Manager 's obligations under the Contract or until the completion of the undertakings under this Guarantee by the Guarantor.
9. The undertakings of the Guarantor under this Guarantee will not exceed the obligations of the Health Services Manager under the Contract. Any liability of the Guarantor shall be coextensive, but not in excess of any liability of the Health Services Manager to the Department under the Contract. The Guarantor shall be entitled to all rights, privileges and defences otherwise available, to the Health Services Manager with respect to any such liability, including without limitation all provisions of the Contract relating to the limitation of liability and the resolution of disputes.
10. This Guarantee is subject to, and is to be construed in accordance with, the laws in force in the Australian Capital Territory and the parties agree that the courts of that Territory have jurisdiction to entertain any action in respect of, or arising out of, this Guarantee and the parties submit themselves to the jurisdiction of those courts.

11. For the purpose of this Guarantee, where an obligation of the Health Services Manager under the Contract has not been performed, the Health Services Manager will be taken to have failed to perform that obligation notwithstanding that the Health Services Manager has been dissolved or is subject to external administration procedures under chapter V of the *Corporations Act 2001* or any other law.
12. The guarantee and indemnity in this Guarantee survive the expiry or termination of this Guarantee.
13. The following notice arrangements apply:
 - (a) notice or other communication which may be given to or served on the Guarantor under this Guarantee will be deemed to have been duly given or served if it is in writing, signed on behalf of the Department and is either delivered by hand, posted or faxed or a copy transmitted electronically to the Guarantor or its agent at any registered office of the Guarantor or posted to the Guarantor's address set out above or such other address as is notified in writing to the Department from time to time;
 - (b) a notice or other communication which may be given to or served on the Department under this Guarantee will be deemed to have been duly given or served if it is in writing, signed by or on behalf of the Guarantor and is either delivered by hand, posted or faxed or a copy transmitted electronically to the address set out above or such other address as is notified in writing to the Guarantor from time to time;
 - (c) a notice sent by post will be deemed to have been given at the time when, in due course of transmission, it would have been delivered at the address to which it is sent; and
 - (d) a notice sent by facsimile transmission or transmitted electronically will be deemed to have been given when the machine on which the notice is sent reports that the notice has been transmitted satisfactorily.
14. A statement, signed on behalf of the Department by any of its authorised representatives, as to any matter or any amount at the date specified in the statement is conclusive evidence in the absence of manifest error.
15. Until the obligations of the Health Services Manager have been performed in full, the Guarantor may not:
 - (a) share in any security interest or money received or receivable by the Department in relation to the guaranteed obligations, or stand in the place of the Department in relation to any security interest or right to receive money;
 - (b) take any steps to enforce a right or claim against the Health Services Manager relating to any money paid by the Guarantor to the Department under this Guarantee;
 - (c) have or exercise any rights as surety in competition with the Department;

- (d) receive, claim or have the benefit of any payment (including a payment under a guarantee), distribution or security interest from or on account of the Health Services Manager or any other person; and
 - (e) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any agreement or document to which the Department is a party.
- 16. If the Health Services Manager is wound up or bankrupted, the Guarantor irrevocably authorises the Department to prove for all money that the Guarantor has paid under this Guarantee until the guaranteed obligations have been irrevocably performed in full. The Department is not obliged to do this.
- 17. If, after the Department applies any amount against any of the obligations of the Health Services Manager, it forms the view that it is obliged to make a payment in respect of the amount so applied by it to any person under any law relating to bankruptcy, winding up or the protection of creditors:
 - (a) the rights of the Department are to be reinstated and will be the same in respect of that amount, or the relevant part of it, as if the application, or the payment or transaction giving rise to it, had not been made; and
 - (b) the Guarantor shall immediately do anything (including the signing of documents) required by the Department to restore to the Department any guarantee to which it was entitled immediately before that application or the payment or transaction giving rise to it.
- 18. The Guarantor indemnifies the Department against, and will pay the Department on demand, the amount of all stamp duty and goods and service taxes payable in connection with this Guarantee and in connection with preserving its rights under this Guarantee.
- 19. The Guarantor shall indemnify the Department against each claim, action, proceeding, judgment, damage, loss, reasonable expense or liability incurred or suffered by or brought or made or recovered against the Department in connection with any breach of the provisions of this Guarantee by the Guarantor.
- 20. The Guarantor agrees for the term of the Performance Guarantee to provide to the Department:
 - (a) a letter issued to the Guarantor, by the directors of AEA International Holdings Pte. Ltd. or its successor parent company (Ultimate Parent Company), indicating that:
 - (i) the Ultimate Parent Company will continue to provide financial support to the Guarantor to ensure that the Guarantor can meet its obligations and debts as and when they fall due; and
 - (ii) it will provide the Department with the financial statements of the Ultimate Parent Company within 30 days of such audited financial statements being signed by the directors and auditors of the Guarantor, for the purpose of enabling the Department to undertake a credit quality assessment of the Ultimate Parent Company;
 - (b) such information as undertaken to be given by the Ultimate Parent Company pursuant to clause 20(a)(ii); and

- (c) the audited financial statements of the Guarantor and other relevant information reasonably required by the Department to undertake a credit quality assessment of the Guarantor, within 30 days of such audited financial statements being signed by the directors and auditors of the Guarantor or as otherwise requested by the Department.

THE COMMON SEAL of)
 [Guarantor] was affixed in the presence)
 of, and the sealing is witnessed by:)
)

.....

.....

Secretary
Name (Printed)

Director
Name (Printed)



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 10
CONFIDENTIAL INFORMATION

The Health Service Manager's confidential information is limited to the information set out in Table 1.

Health Services Manager Confidential Information	Period of Confidentiality
Annexure A (Staffing Profiles) to Schedule 2 (Statement of Work)	Term of Contract
Annexure A (Pricing Tables) to Schedule 5 (Fees and Payments), but not the total fees payable to the Health Services Manager for performance of the Contract, or the total fees payable under each individual category of fees.	Term of Contract
Clinical Practice Guidelines and related flowcharts and forms associated with the Policy and Procedures Manual	Perpetual
Pricing methodology and the make-up of the price	Perpetual

Table 1 – Health Services Manager Confidential Information



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 11
CONFIDENTIALITY DEED

SCHEDULE 11 – CONFIDENTIALITY DEED

THIS DEED POLL is made the _____ day of _____ 20____
in favour of the **COMMONWEALTH OF AUSTRALIA** represented by the Department of
Immigration and Citizenship (**the Department**)

BY [*Insert name and address of Confidant*] (the **Confidant**)

RECITALS

- A The Department and International Health and Medical Services Pty Ltd (**Health Services Manager**) have entered into a contract under which the Health Services Manager will provide the Regional Processing Countries Health Services to the Department.
- B. The performance of the Regional Processing Countries Health Services requires access to information confidential to the Department.
- C. The Confidant will be performing Health Services.

THE CONFIDANT DECLARES AS FOLLOWS:

1. INTERPRETATION

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

Contract means the Contract between the Department and the Health Services Manager for the provision of Regional Processing Countries Health Services dated January 2013.

Department Confidential Information means information that:

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

and includes to the extent that it is confidential:

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

but does not include information which:

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

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

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

Health Services means the Health Services specified in the Contract.

2. NON DISCLOSURE

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

3. RESTRICTION ON USE

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

4. CRIMES ACT

- 4.1 The Confidant acknowledges that section 3(1) of the *Crimes Act 1914* (Cth) states that the term "Commonwealth officer" includes a person who "performs services for or on behalf of the Commonwealth".
- 4.2 The Confidant acknowledges that:
 - (a) any unauthorised and intentional access, destruction, alteration, addition or impediment to access or usefulness of personal information stored in any computer in the course of performing, a contract with the Commonwealth is an offence under Part VIA of the *Crimes Act 1914* to which may attract a substantial penalty, including imprisonment; and

- (b) the publication or communication by the Confidant of any fact or document which has come to their knowledge or into their possession or custody by virtue of the performance of the Contract (other than to a person to whom the Confidant is authorised to publish or disclose the fact or document) may be an offence under section 70 of the *Crimes Act 1914* (Cth), punishment for which may be a maximum of two (2) years (section 70) or seven (7) years (section 79) imprisonment.

5. DELIVERY UP OF DOCUMENTS

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

6. CONFLICT OF INTEREST

- 6.1 The Confidant warrants that no conflict of interest exists or is likely to arise in the performance of the Health Services.
- 6.2 The Confidant warrants that it will not permit any situation to arise or engage in any activity during the performance of the Health Services which may result in a conflict of interest.

7. SURVIVAL OF OBLIGATIONS

- 7.1 The obligations in this Deed are perpetual.

8. INDEMNITY

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

- 8.1 The Confidant indemnifies the Department and its officers, employees and agents against any claim, loss, liability or expense incurred by them which is caused or contributed to by:
- (a) the Confidant's failure to comply with this Deed; or
 - (b) the act or omission of the Confidant's employees, agents or subcontractors in relation to Department Confidential Information.
- 8.2 The Health Services Manager agrees that the Department may enforce the indemnity in **clause 8.1** in favour of any Department officers, employees or agents.

Executed as a Deed

Drafting Note: *Use appropriate signature block.*

SIGNED, SEALED and DELIVERED by
[*Confidant*] in the presence of:

Signature of Confidant

Signature of witness

Name

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

Signature of director

Signature of director/secretary

Name

Name



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 12
DEED OF NON-DISCLOSURE OF PERSONAL
INFORMATION

SCHEDULE 12 – DEED OF NON-DISCLOSURE OF PERSONAL INFORMATION

THIS DEED POLL is made the _____ day of _____ 20____
in favour of the **COMMONWEALTH OF AUSTRALIA** represented by the Department of Immigration and Citizenship (**the Department**)

BY [*Insert name and address of Confidant*] (**the Confidant**)

1. The Confidant understands that in the course of performing duties in relation to a Contract between the Department and International Health and Medical Services Pty Ltd (**Health Services Manager**) dated _____ January 2013 (**Contract**) for the Health Services, the Confidant may have access to personal information, being information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion (**Personal Information**).
2. The Confidant acknowledges and agrees that it may not access, use, disclose, publish, communicate or retain, or otherwise deal with in any way, Personal Information except in the course of, and for the purpose of, performing its duties in relation to the Contract.
3. The Confidant agrees, with respect to all Personal Information to which it has access in the course of performing duties in relation to the Contract, to:
 - (a) not do any act, or engage in any practice that would breach:
 - (i) the Health Services Manager's obligations under the Contract to protect Personal Information if done or engaged in by the Health Services Manager; or
 - (ii) the Information Privacy Principles set out in the *Privacy Act 1988* (Cth) (**Privacy Act**) if done or engaged in by the Department.
 - (b) implement all reasonable measures to assist the Department in meeting the obligations under the Privacy Act concerning the security, use and disclosure of information to which the Department is subject in respect of that Personal Information;
 - (c) co-operate with any reasonable demands or enquiries made by the Commonwealth Privacy Commissioner;
 - (d) not disclose such Personal Information without the written authority of the Department except in the course of, and for the purpose of, performing the Contract, and it will immediately notify the Department where it becomes aware that a disclosure of such information may be required by law;
 - (e) ensure that any person who has an access level which would enable that person to obtain access to any information in respect of which the Department has obligations under the Privacy Act is made aware of, and undertakes in writing, to observe the provisions of this Deed;
 - (f) take all reasonable measures to ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only Health Services Manager personnel have access to it. For the

avoidance of doubt, Personal Information must not be used for, or in any way relating to, any direct marketing purpose;

- (g) not transfer such Personal Information outside Australia, or allow parties outside Australia to have access to it, without the prior approval of the Department;
 - (h) inform any person, on his or her request, in writing of the content of any provision of the Contract that is inconsistent with an approved privacy code binding the Health Services Manager or a National Privacy Principle as set out in the Privacy Act, in accordance with the Health Services Manager's obligations under section 95C of the Privacy Act;
 - (i) immediately notify the Department when the Confidant becomes aware of a breach of any obligation concerning security, use and disclosure of such Personal Information by itself or any representative, employee or officer;
 - (j) notify the Department of, and co-operate with the Department in the resolution of, any complaint alleging an interference with privacy;
 - (k) give to any person, on his or her request, having taken reasonable steps to satisfy itself of that person's identity, access to that person's Personal Information held by the Health Services Manager, except to the extent that the Health Services Manager is required or authorised by law to refuse to provide the person with access to that Personal Information;
 - (l) if requested to correct or update such Personal Information by a person to whom the Personal Information relates, take reasonable steps to correct or update the Personal Information;
 - (m) upon written notice from the Department, destroy or permanently de-identify any Personal Information as soon as practicable after it is no longer required for the purpose for which it was originally collected;
 - (n) not adopt as its own identifier of a person an identifier that has been assigned by the Department, or use or disclose any such identifier except for the purpose of fulfilling its obligations under the Contract, or where required or authorised by law; and
 - (o) if the Personal Information is sensitive information or health information, as those
 - (p) terms are defined in the Privacy Act, not collect, use or disclose such information without the consent of the person to whom that information relates, subject to any exception provided for by law.
4. The Confidant agrees that its obligations under this Deed and to perform duties in relation to the Contract:
- (a) to the extent of any inconsistency with the National Privacy Principles in the Privacy Act 1988 (Cth) or any privacy codes or privacy principles contained in, authorised by or registered under any law, take priority to the fullest extent permitted by applicable law; and
 - (b) to the extent not so inconsistent, are in addition to any obligations the Confidant may have under the Privacy Act 1988 (Cth) or any privacy codes or privacy principles contained in, authorised by or registered under any law.

5. The Confidant acknowledges that failure by it to comply with the obligations under the Privacy Act in accordance with paragraph 3 may result in the Health Services Manager or the Department taking action against the Confidant (including, without limitation, disciplinary action).
6. The Confidant acknowledges that any unauthorised access, alteration, removal, addition, possession, control, supply or impediment to the access, reliability, security or operation of data held in any computer (or, in some cases, any storage device) in the course of performing a contract with the Commonwealth may be an offence under Part 10.7 of the Criminal Code 1995 (Cth) for which there are a range of penalties, including imprisonment.
7. The Confidant acknowledges that:
 - (a) section 3(1) of the Crimes Act 1914 (Cth) states that the term "Commonwealth officer" includes a person who "performs services for or on behalf of the Commonwealth";
 - (b) the publication or communication by the Confidant of any fact or document which has come to its knowledge or into its possession or custody by virtue of the performance of the Contract (other than to a person to whom the Confidant is authorised to publish or disclose the fact or document) may be an offence under section 70 or 79 of the Crimes Act 1914 (Cth), punishment for which may be a maximum of two (2) years (section 70) to seven (7) years (section 79) imprisonment and if the Confidant is not an employee of the Health Services Manager, the Confidant agrees to act in accordance with the obligations in section 79 of the Crimes Act 1914 (Cth) as if it was bound by that provision; and
 - (c) it is an offence under Division 137 of the Criminal Code 1995 (Cth) to give false and misleading information to the Commonwealth or its officers or agents.
8. The Confidant agrees to treat all Personal Information with the utmost care and to protect that information at all times in accordance with all security and privacy requirements imposed by the Contract on persons performing duties in relation to the Contract.
9. The Confidant acknowledges and agrees that this Deed survives the termination or expiry of any contract providing for the performance of services by it (whether directly or indirectly) in relation to the Contract.
10. This Deed will be governed by, and construed in all respects in accordance with, the law of the Australian Capital Territory and the Confidant agrees to submit to the applicable jurisdiction of the Courts of that Territory in respect of all matters arising under, or in relation to, this Deed.
11. Without limiting the rights of the Department to enforce this Deed, the Department may also enforce this Deed against the Confidant.

Executed as a Deed

Drafting Note: *Use appropriate signature block.*

SIGNED, SEALED and DELIVERED by
[*Confidant*] in the presence of:

Signature of Confidant

Signature of witness

Name

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

Signature of director

Signature of director/secretary

Name

Name



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 13
HEALTH SERVICES MANAGER INSURANCE

SCHEDULE 13 – INSURANCE

1. Insurance on Nauru

The Health Services Manager must effect and maintain or cause to be effected and maintained:

- (a) public and products liability insurance, written on an occurrence basis, with a limit of indemnity of at least \$10 million in respect of each and every occurrence, and in respect of products liability only also in the aggregate for all occurrences arising during any one twelve (12) Month policy period, and which covers:
 - (i) the Health Services Manager's liability and the liability of its employees (including to the Department); and
 - (ii) the Department's vicarious liability (and its liability as principal arising from a breach of its non-delegable duty of care) for the acts or omissions of the Health Services Manager and its employees;

in respect of:

- (iii) loss of, damage to, or loss of use of any real or personal property (including any Facility, Department Assets or Department System; and
- (iv) the bodily injury of, disease or illness (including mental illness) to, or death of, any person (except employees of the Health Services Manager);

arising out of or in connection with the Health Services Manager's performance of any Health Services or this Contract or any products manufactured or deemed to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, repaired, serviced, treated, sold, supplied (including services) or distributed including packaging or any container (other than a Vehicle).

- (b) workers' compensation insurance which insures any injury, damage, expense, loss or liability suffered or incurred by any person engaged in work by the Health Services Manager under this Contract including employees, Subcontractors and consultants or their dependents:
 - (i) giving rise to a claim under any statute relating to workers' or accident compensation to the level, and as required by the relevant state or territory law;
 - (ii) where common law claims are possible outside of the statutory scheme referred to at **clause 1(b)(i) above**, for employer's liability at common law with a limit of indemnity of not less than \$50 million for any one (1) event and in the aggregate for any twelve (12) Month policy period;
 - (iii) in each State or Territory where the Health Services Manager's employees normally reside or where their contract of employment was made; and

- (iv) where possible under the relevant law or scheme governing workers compensation insurance and in respect of all employers' liability policies, extending to indemnify the Department for its liability as principal.
- (c) professional indemnity or errors and omissions insurance:
- (i) which covers the liability of the Health Services Manager and its employees (other than a liability insured under a medical malpractice insurance policy effected in compliance with **clause 1(d) below** arising from a breach of duty owed in a professional capacity, or an error or omission in judgment;
 - (ii) extending to include cover for unintentional breaches of Intellectual Property rights;
 - (iii) with no exclusion for claims arising from personal injury or illness;
 - (iv) with a limit of indemnity of at least \$20 million in respect of each claim and \$40 million in the aggregate for all claims in any one twelve (12) Month policy period, and with one (1) automatic right of reinstatement; and
 - (v) with a retroactive date not later than the date of the commencement of the Health Services.
- (d) medical malpractice insurance:
- (i) which covers the liability of registered or licensed medical practitioners under the law of an Australian State or Territory who will be performing any Health Services arising from a breach of duty owed in a professional capacity; and
 - (ii) with a limit of indemnity of at least \$20 million in respect of each claim and \$40 million in the aggregate for all claims in any one twelve (12) Month policy period, and with one (1) automatic right of reinstatement.
- (e) property insurance:
- (i) except to the extent covered by the insurance referred to at clause (a) above, industrial special risks insurance covering all Health Services Manager Assets which are material to the Health Services Manager's ability to perform its obligations under this Contract, against the risks of loss, damage or destruction caused by all insurable risks (including theft, malicious damage, fire, lightning, storm, flood and tempest) for their full reinstatement or replacement value; and
 - (ii) with a limit of indemnity of at least \$20 million in respect of each claim and \$40 million in the aggregate for all claims in any one twelve (12) Month policy period.

2. Insurance on Manus Island

The Health Services Manager must effect and maintain or cause to be effected and maintained:

Public and Products Liability, Professional Indemnity and Medical Malpractice, with an overall limit of \$38 million in respect of each and every occurrence and in the aggregate for all claims, except Medical Malpractice, in any one twelve (12) Month policy period. A limit of \$20 million in the aggregate for Medical Malpractice will be applied.

- (a) public and products liability insurance, written on an occurrence basis, with a limit of indemnity as mentioned above, and in respect of products liability only also in the aggregate for all occurrences arising during any one twelve (12) Month policy period, and which covers:
 - (i) the Health Services Manager's liability and the liability of its employees (including to the Department); and
 - (ii) the Department's vicarious liability (and its liability as principal arising from a breach of its non-delegable duty of care) for the acts or omissions of the Health Services Manager and its employees;

in respect of:

- (iii) loss of, damage to, or loss of use of any real or personal property (including any Facility, Department Assets or Department System); and
- (iv) the bodily injury of, disease or illness (including mental illness) to, or death of, any person (except employees of the Health Services Manager);

arising out of or in connection with the Health Services Manager's performance of any Health Services or this Contract or any products manufactured or deemed to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, repaired, serviced, treated, sold, supplied (including services) or distributed including packaging or any container (other than a Vehicle).

- (b) workers' compensation insurance which insures any injury, damage, expense, loss or liability suffered or incurred by any person engaged in work by the Health Services Manager under this Contract including employees, Subcontractors and consultants or their dependents:
 - (i) giving rise to a claim under any statute relating to workers' or accident compensation to the level, and as required by the relevant state or territory law;
 - (ii) where common law claims are possible outside of the statutory scheme referred to at **clause 2(b)(i) above**, for employer's liability at common law with a limit of indemnity of not less than \$50 million for any one (1) event and in the aggregate for any twelve (12) Month policy period;

- (iii) in each State or Territory where the Health Services Manager's employees normally reside or where their contract of employment was made; and
 - (iv) where possible under the relevant law or scheme governing workers compensation insurance and in respect of all employers' liability policies, extending to indemnify the Department for its liability as principal.
- (c) professional indemnity or errors and omissions insurance:
- (i) which covers the liability of the Health Services Manager and its employees (other than a liability insured under a medical malpractice insurance policy effected in compliance with **clause 2(d)** below arising from a breach of duty owed in a professional capacity, or an error or omission in judgment;
 - (ii) extending to include cover for unintentional breaches of Intellectual Property rights;
 - (iii) with no exclusion for claims arising from personal injury or illness;
 - (iv) with a limit of indemnity as mentioned above in respect of each claim and in the aggregate for all claims in any one twelve (12) Month policy period, and with one (1) automatic right of reinstatement; and
 - (v) with a retroactive date not later than the date of the commencement of the Health Services.
- (d) medical malpractice insurance:
- (i) which covers the liability of registered or licensed medical practitioners under the law of an Australian State or Territory who will be performing any Health Services arising from a breach of duty owed in a professional capacity; and
 - (ii) with a limit of indemnity as mentioned above in any one twelve (12) Month policy period, and with one (1) automatic right of reinstatement.
- (e) property insurance:
- (i) except to the extent covered by the insurance referred to at clause (a) above, industrial special risks insurance covering all Health Services Manager Assets which are material to the Health Services Manager's ability to perform its obligations under this Contract, against the risks of loss, damage or destruction caused by all insurable risks (including theft, malicious damage, fire, lightning, storm, flood and tempest) for their full reinstatement or replacement value; and
 - (ii) with a limit of indemnity of at least \$20 million in respect of each claim and \$40 million in the aggregate for all claims in any one twelve (12) Month policy period.



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

**SCHEDULE 13A
NETWORK PROVIDER INSURANCE**

SCHEDULE 13A – NETWORK PROVIDER INSURANCE

1. The Health Services Manager must ensure that each Network Provider effects and maintains, or causes to be effected and maintained, professional indemnity or errors and omissions (or similar) insurance for the duration of this Contract, and must agree in each Network Provider Agreement that the Network Provider will continue to maintain such insurance until the expiry of at least seven (7) years after the expiry or termination of the Network Provider Agreement:
 - (a) that covers the liability of the Network Provider arising from a breach of duty owed in a professional capacity or an error or omission in judgment, as a result of an act or omission of its Network Provider Employees, officers, consultants and contractors;
 - (b) with no exclusion for claims against the Network Provider relating to the personal injury of, disease, illness (including mental illness) to, or death of, a person , arising from a breach of duty owed in a professional capacity, or an error or omission in judgement, of the Network Provider, the Network Provider Employees, officers, consultants and contractors;
 - (c) with a retroactive date not later than the date of the appointment of the Network Provider to the HSM Network;
 - (d) for each Network Provider that delivers the Health Care specified in **clause 1(f)** below:
 - (i) with a limit of indemnity in respect of each claim of at least the relevant amount or amounts listed in **clause 1(f)** below; and
 - (ii) with a limit of indemnity in the aggregate for all claims in any one twelve (12) Month policy period of at least the relevant amount or amounts listed in **clause 1(f)** below; and
 - (e) for each Network Provider that delivers Health Care not specified in **clause 1(f)** below:
 - (i) with a limit of indemnity in respect of each claim of:
 - (A) an amount that accords with the minimum recommendations of the professional body or bodies for that industry or industries in which the Network Provider and its Network Provider Employees, officers, consultants and contractors operate; or
 - (B) where there is no such minimum recommendation, \$5 million; and
 - (ii) with a limit of indemnity in the aggregate for all claims in any one twelve

(12) Month policy period of:

- (A) the amount that accords with the minimum recommendations of the professional body or bodies for that industry or industries in which the Network Provider and its Network Provider Employees, officers, consultants and contractors operate; or
- (B) where there is no such minimum recommendation, \$5 million.
- (f) For the purpose of **clause 1(d)** and **clause 1(e)** above, the minimum limits of indemnity for each type of Health Care are set out in the table below:

Service	Minimum limit of indemnity for each claim	Minimum limit of indemnity in the aggregate for all claims in any one 12 month period
General Practitioner	\$10 million	\$20 million
Specialist Doctor	\$10 million	\$20 million
Optometry	\$10 million	\$10 million
Pharmacy	\$5 million	\$5 million
Physiotherapy	\$5 million	\$5 million
Psychiatry	\$10 million	\$20 million
Dentistry	\$10 million	\$10 million
Pathology	\$10 million	\$10 million
Radiology	\$10 million	\$20 million
Public Hospitals	in accordance with State health provisions	in accordance with State health provisions

2. The Health Services Manager must ensure that each Network Provider who is an individual and each Approved GP effects and maintains, or causes to be effected and maintained, medical malpractice (or similar) insurance for the duration of this Contract, and must agree in each Network Provider Agreement that the Network Provider and each Approved GP will continue to maintain such insurance until the expiry of at least seven (7) years after the expiry or termination of the Network Provider Agreement:

- (a) that covers the liability of the Network Provider and Approved GP arising from a breach of duty owed in a professional capacity;
- (b) for each Network Provider that delivers the Health Care specified in **clause 2(d)** below:
- (i) with a limit of indemnity in respect of each claim of at least the relevant amount listed in **clause 2(d)** below; and
- (ii) with a limit of indemnity in the aggregate for all claims in any one twelve (12) Month policy period of at least the relevant amount listed in **clause 2(d)** below; and
- (c) for each Network Provider that delivers the Health Care not specified in **clause 2(d)** below:
- (i) with a limit of indemnity in respect of each claim of:
- (A) the amount which accords with the minimum recommendations of the relevant professional body or bodies for that industry or industries in which the Network Provider and Approved GP (as the case may be) operate; or
- (B) where there is no such minimum recommendation, \$5 million; and
- (ii) with a limit of indemnity in the aggregate for all claims in any one twelve (12) Month policy period of:
- (A) the amount which accords with the minimum recommendations of the relevant professional body or bodies for that industry or industries in which the Network Provider and Approved GP (as the case may be) operate; or
- (B) where there is no such minimum recommendation, \$5 million.
- (d) For the purpose of **clause 2(b)** and **clause 2(c)**, the minimum limits of indemnity for each type of Health Care are set out in the table below:

Service	Minimum limit of indemnity for each claim	Minimum limit of indemnity in the aggregate for all claims in any one 12 month period
General Practitioner	\$10 million	\$20 million
Specialist Doctor	\$10 million	\$20 million

Optometry	\$10 million	\$10 million
Pharmacy	\$5 million	\$5 million
Physiotherapy	\$5 million	\$5 million
Psychiatry	\$10 million	\$20 million
Dentistry	\$10 million	\$10 million
Pathology	\$10 million	\$10 million
Radiology	\$10 million	\$20 million
Public Hospitals	in accordance with State health provisions	in accordance with State health provisions



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 14
CHANGE CONTROL

SCHEDULE 14 – CHANGE CONTROL

PART A – CONTRACT CHANGE PROPOSAL

Parties:	THE COMMONWEALTH OF AUSTRALIA (the Department)
	INTERNATIONAL HEALTH AND MEDICAL SERVICES PTY LTD (the Health Services Manager)
Contract Details:	Contract for Regional Processing Countries health services between the Department and the Health Services Manager
Date:	<i>[insert date of this Contract Change Proposal]</i>
Contract Change Proposal No:	<i>[insert sequential Contract Change Proposal No.]</i>
Proposal Title:	
Operative provisions:	<p>This Change Proposal is given pursuant to clause 34 (Contract Change Procedure) of the Contract.</p> <p>The party proposing this change proposes the variations to the Contract specified in the schedule to this Change Proposal.</p>
Enquiries:	Any questions in relation to this notice should be directed to the officer issuing this notice as specified below:
Issuing Officer:
Contract Details:	<p><i>[Insert details of person authorised to give the Notice]</i></p> <p>.....</p> <p><i>[Insert contact details of Issuing Officer]</i></p>
Party proposing change	<i>[The Department] or [the Health Services Manager]</i>

Schedule to Change Proposal

1. THE VARIATIONS PROPOSED ARE AS FOLLOWS:

[Insert details of the proposed variation(s) to the Contract including:

- (a) details of the change and its extent (nature, scope, scale and technology employed);
- (b) a statement of reasons for proposing the change;
- (c) the steps required to implement the Contract Change Proposal;
- (d) the time within which the Health Services Manager proposes to implement the Contract Change;
- (e) the impact of the Contract Change Proposal on the delivery of Regional Processing Countries Health Services under this Contract, including any necessary amendments to this Contract, Plans and/or procedures in the format of old clause and marked up new clause;
- (f) the changes to the Onsite Health Clinic Fee which the Health Services Manager proposes to apply to the change supported by reasons for the price change and relevant measurements or documents which support or validate the change;
- (g) a financial statement of the change in financial cost to the Health Services Manager as a result of the Contract Change Proposal certified by an accountant independent of the Health Services Manager declaring:
 - (i) the Change Proposal cannot be accommodated within the existing Onsite Health Clinic Fee; and
 - (ii) the accuracy of the financial information provided to the Department;
- (h) details of the review the Health Services Manager has undertaken to allow the Contract Change Proposal to be accommodated within the existing requirements of this Contract, including the Onsite Health Clinic Fee;
- (i) any reduction to the Onsite Health Clinic Fee (if any) which the Health Services Manager proposes as a result of the Contract Change Notice, in order to reflect all cost savings to the Health Services Manager resulting from any changes to the Health Services Manager's then current arrangements or operations for the provision of the Health Services;
- (j) the adjustments (if any) to the Performance Measures which the Health Services Manager proposes as a result of the Contract Change Notice, and reasons for the adjustments;
- (k) any risks associated with the proposed change and any recommendations for minimising those risks; and
- (l) the Health Services Manager 's reasonable costs of preparing this Contract Change Proposal.

2. THE DATE OF EFFECT OF THE CONTRACT CHANGE IS PROPOSED TO BE

[Insert Date]

IN SIGNING THIS CONTRACT CHANGE PROPOSAL, THE HEALTH SERVICES MANAGER WARRANTS THAT ALL COSTS ARE REASONABLE AND PROFIT DOES NOT EXCEED THAT USED IN THE ORIGINAL ONSITE HEALTH CLINIC FEE AND TAKES ACCOUNT OF ANY SAVINGS ON OTHER ASPECTS OF THE REGIONAL PROCESSING COUNTRIES HEALTH SERVICES AFFECTED BY THE CHANGE PROPOSAL.

Additional Information

3. ADDITIONAL INFORMATION IS PROVIDED AS FOLLOWS:

The Health Services Manager Certification <i>(Certification that the Health Services Manager and any Subcontractor costs are reasonable.)</i>	
Comments from the Health Services Administrator	
Comments from the Contract Administrator	
Other relevant documentation <i>(Other information relevant to the proposal is attached, including a financial statement of the change in financial cost to the Health Services Manager.)</i>	

SIGNED for and on behalf of **the Health Services Manager** by:

.....

Name:

Title

PART B – VARIATION NOTICE

Contract Change Proposal No:

Contract No:

The Contract Change Proposal referred to above is agreed in the form attached to this Variation Notice.

Signed for and on behalf of **Commonwealth of Australia**

By:

Signature

Signature of Witness

Name of Witness in full

Signed for and on behalf of **International Health and Medical Services Pty Ltd**

By:

Signature

Signature of Witness

Name of Witness in full

PART C – DEED

CONTRACT NUMBER:

This Deed is made on *[insert date]*

Between

THE COMMONWEALTH OF AUSTRALIA, represented by the Department of Immigration and Citizenship, ABN 68 706 814 312 (**the Department**)

and

INTERNATIONAL HEALTH AND MEDICAL SERVICES PTY LTD, ABN 40 073 811 131 (**the Health Services Manager**)

RECITALS:

- A The Department has entered into a contract with the Health Services Manager dated *[insert date]* (**the Contract**) for the provision of Regional Processing Countries Health Services.
- B The Contract provides that Variations must be effected by way of a formal amendment.
- C The Department and the Health Services Manager propose to vary the Contract in accordance with the provisions of this Deed.

OPERATIVE PROVISIONS

1. INTERPRETATION

- (a) Terms defined in the Contract have the same meaning when used in this Deed.

2. CONSIDERATION

- (a) Each party acknowledges that it has received valuable consideration for entering into this Deed.

3. AMENDMENT

- (a) The Contract is amended with effect on and from [specify the date of this Deed or another date specified in the Contract Change Proposal] (the Variation Date) as follows:

[insert details of variation – ie clause # is deleted and replaced with #]

- (b) **Clause 3(a)** does not affect any right or obligation that arises before the Variation Date



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 15
AUSTRALIAN GOVERNMENT AND DEPARTMENT
POLICIES

SCHEDULE 15 – AUSTRALIAN GOVERNMENT AND DEPARTMENT POLICIES

1. Department Policies

Department Policies include:

- (a) Integrated Business Model;
- (b) Cultural Diversity Charter;
- (c) Asset Replacement Plan and Philosophy.

2. Australian Government Policies

Australian Government Policies in force from time to time, include:

Australian Government Policies	Published by
Australian Communications – Electronic Security Instructions (ACSI 33)	Defence Signals Directorate
Commonwealth Fraud Control Guidelines 2002	Attorney General's Department
Commonwealth Procurement Rules	Department of Finance and Administration
Fair Work Principles	Department of Education, Employment and Workplace Relations
Commonwealth Disability Strategy	Department of Families, Housing, Community Services and Indigenous Affairs
Australian Government Protective Security Framework	Attorney-General's Department
Identification and Support of People in Immigration Detention Who are Survivors of Torture and Trauma	Department of Immigration and Citizenship
Psychological Support Program (PSP) for the Prevention of Self-Harm in Immigration Detention	Department of Immigration and Citizenship
Mental Health Screening for People in Immigration Detention	Department of Immigration and Citizenship

3. International Treaties, Charters, Covenants and Agreements

The Health Services Manager must comply with all Australia's obligations under any international treaties. Charters, covenants and agreement including:

- (a) International Covenant on Civil and Political Rights;
- (b) Convention relating to the States of Refugees;
- (c) Convention on the Rights of the Child;
- (d) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- (e) Convention on the Elimination of All Forms of Racial Discrimination;
- (f) Convention on the Elimination of All Forms of Discrimination against Women;
- (g) Convention on the Rights of Persons with Disabilities; and
- (h) Universal Declaration of Human Rights.



Australian Government

Department of Immigration and Citizenship

Regional Processing Countries Health Services Contract

SCHEDULE 16
INTELLECTUAL PROPERTY

(A)	Configuration Identifier Item	(B)	Unique Line Item Description	(C)	Source and Ownership of IP	Limitations on the IP		(F)	(G)	(H)	(I)
						(D)	(E)				
						Usage	Licensing Rights	Background (B) / Foreground (F) / Third Party (T)	IP Records	IP Transition	Further Information