

Provision of Security Services to Serco of Immigration and Citizenship (DIAC) Detention Centres

Final Agreement

Issue:

Date:

Serco Australia Pty Limited ABN 44 003 677 352

Level 10, 90 Arthur Street North Sydney NSW 2060

Issue No.	Approved By	Date
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Contents

Clause No.		Page No.
1.	Term	1
2.	Services	1
3.	Facilities, materials, etc	2
4.	Service standards	2
5.	General standards	2
6.	Personnel	2
7.	Compliance with Serco directions	3
8.	Cooperation with other Others	3
9.	Problem or delay	3
10.	Payment	3
11.	Invoicing procedure	4
12.	Annual Indexation of Fees	5
13.	Interaction with Others	6
14.	Immigration Detention Objectives	6
15.	Immigration Detention Values	6
16.	Duty of Care	7
17.	Subcontracting of the Services	7
18.	Serco obligations	7
19.	Intellectual property	8
20.	Moral Rights	9
21.	Specified Acts	9
22.	Confidential information	9
23.	Privacy	10
24.	Archives Act 1983	11
25.	Inspections	11
26.	Key Performance Indicators	11
27.	Review of Performance	11
28.	Continuous Improvement	12
29.	Audit Requirements	12
30.	Interruptions to Service Delivery	14
31.	Incidents	15
32.	Step in Rights	17
33.	Representations and Warranties	17
34.	Indemnity	19
35.	Limitation of Liability	20
36.	Proportionate Reduction of Liability	21
37.	Insurance	21

38.	Dispute Resolution	23
39.	Default and Termination	27
40.	Termination for Convenience	30
41.	Health and Safety	31
42.	General	34
43.	Notices	34
44.	Interpretation	35
45.	Non-solicitation of employees	37
Schedule 1	Description of Services	39
Schedule 2	Definitions	42
Schedule 3	Insurances	45
Schedule 4	Key Performance Indicators	47

PART 1 – DETAILS

The Contractor agrees to provide goods and/or services to Serco Services Australia Pty Limited ("Serco"), on the following terms:

A. The Contractor

Name	MSS Security Pty Limited		
		ACN 100 573 966	ABN29 100 573 966

Address	149 – 155 Milton Street	
	Ashfield NSW	2131

(Notices must be sent to this address)

Manager: (Clause 7.3)			
	Tel:	Fax:	Email address:

For payment purposes:	Bank account name: MSS Security Pty Limited	
	BSB and account number: BSB 032 000 Acc 255464	Email address for remittance advice: ar.payments@msssecurity.com.au

(Please see clause 5 for invoicing procedure)

B. Serco ABN: 44 003 677 352

Address	Level 10, 90 Arthur Street	
	North Sydney NSW	2060

(Notices must be sent to this address)

Contact person	Peter Bauerhuit, A/g Assistant Director Commercial & Finance		
	Tel: 02 6196 1020	Fax: 02 6196 1001	email address: peter.bauerhuit@serco-ap.com.au

C. Term of agreement (clause 1.1)

Period from to

Option years Period of notice required - at days
(clause 1.2) least

(Exercise of the option is at the sole discretion of Serco)

D. Not used

E. Serco assistance to be provided (clause 7.4)

(Part E should contain a complete description of the assistance Serco must provide the contractor to perform the services eg a description of the documents, work space or software to be provided by Serco, if applicable.)

F. Insurance (clause 10.1)

Type:	Minimum amount:	Number of years Contractor is required to retain these insurances after end of this agreement
Public liability insurance	\$ 50 million	
Workers compensation insurance	In accordance with applicable State or Territory legislation and with all commonly available extensions.	
Professional indemnity insurance	\$ 20 million	

G. Fees and Expenses

State	Flat Rate	Weekday	Night	Saturday	Sunday	Public Hols
NT Metro		Commercial in confidence				
SA Metro						
WA metro						
Vic Metro						
Qld Metro						
NSW Metro permanent						
NSW Metro ad hoc and T&E						
Car (Fixed Patrol)						
Car (T&E)	Cost plus	Commercial in confidence				
National remote/regional excluding meals						
National remote/regional including meals						
WA Christmas Island – including meal allowance						
Dedicated Admin/Ops Controller						

All prices exclude GST.

H. Confidential Provisions of this agreement (if any)

Clauses:

PART 2 - TERMS AND CONDITIONS

1. Term

- 1.1 The term of this agreement is set out in Part C of the Details above.
- 1.2 Serco may extend this agreement for the period described in that Part, by giving the Contractor notice, as specified in that Part.

2. Services

2.1 Application of this clause:

- (a) This clause 2 applies if the Contractor is required to supply Services to Serco, as described in Schedule 1.

2.2 Supply of Services:

- (a) The Contractor must provide Serco with the services described in Schedule 1 ("**Services**").
- (b) When Serco requires the Services it will consult with the Contractor about the following details:
 - (i) the nature of the Services to be performed;
 - (ii) the personnel who will perform the Services; and
 - (iii) the time frame within which the Services will be performed.
- (c) If Serco requires the Contractor to perform Services at a new site, it will provide the Contractor with prior written notice of at least 24 hours.
- (d) If Serco requires the Contractor to cease performing Services at a site, it will provide the Contractor with prior written notice of at least 14 days.
- (e) These details will form individual agreements between Serco and the Contractor under this agreement.
- (f) When the details of the Services have been agreed the Contractor will then supply the Services to Serco.
- (g) At its discretion Serco:
 - (i) may request the Services at any time relevant to its business needs;
 - (ii) is not obliged to use the Services; and
 - (iii) may at any time purchase or acquire Services the same or similar to the Services in any other way, from any other person on such terms and conditions as may be agreed between Serco and that other person.
- (h) In addition to the Services described in Schedule 1 the Contractor must provide any services that are reasonably necessary or incidental to the services described in Schedule 1, or for the proper performance of those Services.
- (i) The Contractor must do all things necessary to ensure that the Services are properly delivered and all works finished off to the satisfaction of Serco.

3. Facilities, materials, etc

- 3.1 Except as specified in this agreement, the Contractor must provide all facilities, personnel, materials and assistance necessary for the proper performance of the Services.

4. Service standards

- 4.1 The Contractor must perform the Services in accordance with the service standards (if any) described in Schedule 1.

5. General standards

- 5.1 Without limiting the Contractor's obligations in clause 4, the Contractor must perform the Services:
- (a) in accordance with applicable law, Australian standards and other industry standards and codes of practice;
 - (b) in accordance with any Serco policies or guidelines notified to the Contractor from time to time;
 - (c) in accordance with good industry practice;
 - (d) with due care, skill and diligence; and
 - (e) in a professional and timely manner.
- 5.2 The Contractor must participate, and ensure its personnel who will be performing the Services participate, in Serco's induction process as required by Serco from time to time. The parties agree that the Service Fee includes costs for 2 hours of induction training and process for each employee of the Contractor. If Serco requires any of the Contractor's employees to attend induction for a period of more than 2 hours (except in circumstances where the requirement to attend such induction arises as a result of the Contractor's failure to comply with its obligations under this agreement, including its obligations under clause 41), the Contractor shall be entitled to be paid for the additional time required for attendance in accordance with the Schedule of Rates.

6. Personnel

- 6.1 Serco may, at its absolute discretion, request the Contractor to remove personnel from work in relation to the Services.
- 6.2 Where clause 6.1 applies, Serco may request the Contractor to provide replacement personnel acceptable to Serco at no additional cost and at the earliest opportunity.
- 6.3 If the Contractor does not comply with any reasonable request made under clause 6, Serco may terminate this.
- 6.4 Serco must not (for a period of 3 months after the expiration of the Term):
- (a) canvass, solicit, approach or accept any approach from, or deal in any way with, the Contractor's personnel with a view to employing the personnel; or
 - (b) induce or encourage any of the Contractor's personnel to leave their employment or engagement with the Contractor.

7. Compliance with Serco directions

- 7.1 The Contractor must comply with any reasonable direction of Serco in relation to the performance of the Services.
- 7.2 Any direction which Serco may give to the Contractor's employee on the site in respect of the performance of the Services is deemed to be made to the Contractor.
- 7.3 The Contractor's obligations under this agreement are not affected by:
- (a) the giving of any direction by Serco except in circumstances where the direction given is contrary or inconsistent with the express provisions of this agreement, in which case, the Contractor will not be liable for the consequences of complying with such direction; or
 - (b) Serco's assistance in, or supervision of, the performance of any of the Contractor's obligations under this agreement.

8. Cooperation with other Others

- 8.1 The Contractor must:
- (a) co-operate with Serco and any subcontractor engaged by Serco, where relevant, to ensure the efficient and effective carrying out of works and provision of services for Serco; and
 - (b) provide reasonable assistance to other subcontractors, if requested by Serco.

9. Problem or delay

- 9.1 The Contractor must immediately notify Serco if there is a problem or delay that has, or may have, an impact on the timing, cost or quality of the Services being provided in accordance with this agreement.
- 9.2 Nothing in clause 9.1 limits Serco's rights.

10. Payment

- 10.1 Fees:
- (a) The Contractor's fees for the Services are described in Part G of the Details.
 - (b) The fees are exclusive of GST.
- 10.2 Expenses:
- (a) Serco must reimburse the Contractor for the expenses described in Part G of the Details, in the manner described in that Part.
 - (b) Otherwise, the fees are inclusive of all costs and expenses incurred by the Contractor.
 - (c) The Contractor may not charge Serco any amount for which the Contractor can obtain an Input Tax Credit.
- 10.3 Month to Month Adjustment of Services Fee:
- (a) When making payment of the Services Fee, Serco may decrease the amount payable to take account of:

- (i) the application of an Abatement by the Department which relates to or arises out of any default by the Contractor of its obligations under this agreement,
- (ii) the withholding by the Department of an invoiced amount which is in dispute, provided that the dispute relates to or arises out of any alleged default by the Contractor of its obligations under this agreement,
- (iii) the off-setting by the Department of an any underpayment which resulted from the Contractor providing an incorrect invoice; accordance,
- (iv) the suspension of obligations following a Force Majeure,
- (v) subject to clause 32.4, the cost borne by Serco as part of its step in rights,
- (vi) the costs borne by Serco as a result of implemented a default rectification plan,
- (vii) any Services which were not provided as a result of a breach of contract or default of services, and
- (viii) any other right allowed to the Serco under the terms of this Contract.

10.4 GST registration:

- (a) The Contractor warrants that it is registered for GST.

11. Invoicing procedure

11.1 Invoicing

- (a) The Contractor must give Serco an invoice each month in a form approved by Serco, via one of the following methods:
 - (i) Email: scanningcentre@serco-ap.com.au
 - (ii) Post: Scanning Centre PO Box 856
Bondi Junction
NSW 1355
 - (i) Fax: 1300 366 842
- (b) The payment terms of this agreement prevail over any payment terms in a purchase order issued by Serco.
- (c) The Contractor must submit an invoice in a form approved by Serco and otherwise including the following information:
 - (i) the name and date of this agreement and purchase order number;
 - (ii) location of the facility where the Services were provided
 - (iii) details of the work that is the subject of the invoice, including the period of time during which the work was carried out;
 - (iv) substantiation of expenses to the reasonable satisfaction of Serco;
 - (v) available payment methods (Serco prefers direct credit); and
 - (vi) contact person (including address, email address and telephone number) for accounts queries.
- (d) The invoices must be in the form of a valid Tax Invoice.

11.2 Payment:

- (a) Serco must pay correctly rendered invoices within 30 days of receipt, subject to performance of the Services in the period to which the invoice relates to Serco's reasonable satisfaction.
- (b) The payment of any fee instalment or any other amount by Serco shall not be taken as evidence or as an admission that any work or service has been

performed in accordance with the Contract, but will be taken to be payment on account only.

12. Annual Indexation of Fees

12.1 The Services Fee will remain fixed from a period of six (months) from that commencement date of the Contract. On 1 July 2011, the Service Fee will become subject to rise and fall, whereby the prices set out in the Contract are subject to the Contractor seeking to pass on to Serco any variation in Award/Labour rates, statutory costs, Government charges and workers compensation costs. The Service Fee will only be varied as a result of rise fall if:

- (a) the Contractor issues to Serco a claim for variation in writing and supported by documentary evidence; and
- (b) the variation claimed by the Contractor has been approved by Serco.

12.2 Not used

12.3 Pass through of abatements and other deductions;

- (a) The Contractor acknowledges that under the terms of the Head Contract, DIAC is entitled to impose abatements and other deductions from the fees otherwise payable to Serco for failure to meet certain performance goals and minimum standards of performance.
- (b) Subject to paragraphs (c) and (d) below, to the extent that any abatement or other deduction made by DIAC in respect of the fees that would otherwise be payable to Serco is attributable to a failure by the Contractor to provide the Services or to otherwise discharge its obligations under this Contract, then Serco shall deduct an amount equivalent to any such abatement or other deduction imposed by DIAC from the Services Fee.
- (c) Notwithstanding any other provision of this Contract, the total liability of the Contractor for any abatements made by DIAC or under this Contract is limited to 5% of the total Service Fee.
- (d) The limitation on the Contractor's liability in clause 12.3(c) does not apply:
 - (i) claims in relation to death, or bodily injury, disease or illness (including mental illness) of any person, including People in Detention, caused by the Contractor's breach of Contract, negligent act or omission, Wilful Default, or breach of Legislation; or
 - (ii) fraud, criminal acts, malicious damage or Wilful Default of the Contractor;
 - (iii) statutory penalties;
 - (iv) liability that cannot be excluded at law;
 - (v) breach of State or Commonwealth privacy legislation;
 - (vi) breach of confidentiality;
 - (vii) third party claims in relation to infringement of intellectual property; or
 - (viii) claims brought by third parties, including People in Detention, to the extent they are caused by the deliberate breach of Contract, Wilful Default, or gross negligence of the Contractor.

12.4 Month to month adjustment of Services Fee

When making payment of the Services Fee, Serco may decrease the amount payable to take account of:

- (a) the application of an abatement in accordance with clause 12.3;
- (b) the off-setting by Serco of an any underpayment or overpayment which resulted from the Contractor providing an incorrect invoice;
- (c) the suspension of obligations following a Force Majeure Event in accordance with clause 30.4;
- (d) any Services which were not provided as a result of an Incident in accordance with clause 31.3(c); and
- (e) any other right allowed to Serco under the terms of this Contract.

13. Interaction with Others

13.1 The Contractor must:

- (a) permit Other Contractors to carry out their work;
- (b) fully co-operate with Other Contractors;
- (c) carefully co-ordinate and interface the Contractor's Activities with the work carried out or to be carried out by Other Contractors; and
- (d) carry out the Contractor's Activities so as to avoid interfering with, disrupting or delaying the work of Other Contractors.

14. Immigration Detention Objectives

14.1 The primary objectives of this Contract are to:

- (a) enhance the well-being of People in Detention by implementing the Immigration Detention Values;
- (b) continuously improve the quality, effectiveness and efficiency of the Services;
- (c) enhance the management and operation of Facilities through cooperation between Serco, the Contractor and other Stakeholders; and
- (d) enable Serco to receive best value for money for the provision of the Services (collectively Objectives).

14.2 This clause 14 is intended to describe the intention of the Parties in entering into this Contract. It is not intended to alter the plain meaning of the provisions of this Contract. However, to the extent that the provisions of this Contract do not address a particular circumstance or are otherwise unclear or ambiguous, those provisions are to be interpreted and construed as far as is consistent with the Law, by reference to the Objectives described in clause 14.1.

15. Immigration Detention Values

15.1 The Government's seven key immigration detention values are:

- (a) Mandatory detention is an essential component of strong border control;
- (b) To support the integrity of Australia's immigration program, three groups will be subject to mandatory detention:
 - (i) all unauthorised arrivals, for management of health, identity and security risks to the community
 - (ii) unlawful non-citizens who present unacceptable risks to the community and

- (iii) unlawful non-citizens who have repeatedly refused to comply with their visa conditions.
- (c) Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre (IDC);
- (d) Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review;
- (e) Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time;
- (f) People in detention will be treated fairly and reasonably within the law;
- (g) Conditions of detention will ensure the inherent dignity of the human person.

15.2 In delivering the Services and in all its dealings with Serco, Serco, People in Detention, other Contractors, Stakeholders or the public, the Contractor will seek to give effect to the Immigration Detention Values.

16. Duty of Care

- 16.1 Each Party acknowledges and agrees that it has a duty of care to People in Detention;
- 16.2 The Contractor must meet its duty of care to People in Detention and any duty of care it has to Visitors or other persons arising from the performance of its obligations under this Contract.
- 16.3 While children will not be placed in a Detention Centre, the Contractor may be required to perform the Services around children in places of Alternative Detention. The Contractor must ensure, when providing any Services around children, that all reasonable steps are taken to ensure the safety of any children in the areas affected by the Services.
- 16.4 The Contractor acknowledges and agrees that Serco's and Serco's duty of care does not in any way:
- (a) detract from the Contractor's obligations under this Contract; or
 - (b) alter the allocation of rights, obligations and liabilities under this Contract.

17. Subcontracting of the Services

- 17.1 The Contractor must not subcontract any of the Services it provides without the prior written consent of Serco (which must not be unreasonably withheld).

18. Serco obligations

- 18.1 Access to Serco premises:
- (a) Serco must provide the Contractor's employees with access to the Detention Centres to the extent required to perform the Services.
- 18.2 Induction:
- (a) Serco will provide on-site orientation including emergency procedures and workplace and safety issues.

18.3 Serco to provide assistance:

- (a) Serco will nominate a Manager who will be responsible for the management of this agreement.
- (b) Serco must provide the assistance described in Part E of the Details (if any).
- (c) Where software is included in the assistance Serco provides, Serco grants a non-exclusive, non-transferable, royalty-free licence to the Contractor for the term of this agreement to use the software for the purposes of this agreement.
- (d) The Contractor must only use the assistance provided by Serco under this agreement for the provision of the Services.

18.4 Confidentiality of contract provisions

- (a) Serco and the Contractor must keep confidential the provisions of this agreement (if any) described in Part H of the Details, except:
 - (i) in equivalent circumstances to those described in clause 22.1; or
 - (ii) in response to a request from a House of the Commonwealth Parliament or a Commonwealth Parliamentary committee.

18.5 Effect of consent by Serco

- (a) The grant of any approval or consent by Serco under this agreement will not relieve the Contractor from any liability under this agreement.

18.6 Provision of facilities

- (a) Serco shall provide all necessary facilities (including shelter) and equipment (other than PPE) which comply with occupational health and safety legislation and environmental legislation in relation to each site where the Services are being provided by the Contractor.

19. Intellectual property

19.1 Ownership of Intellectual Property in Deliverables

- (a) Serco will own the title to, and all Intellectual Property in, any Deliverable provided by the Contractor in the course of providing the Goods or Services, subject to clauses 19.2 and 19.3.
- (b) The Contractor will continue to own all Intellectual Property:
 - (i) it had prior to this agreement; or
 - (ii) developed independently of this agreement.
- (e) The Contractor will also own the Intellectual Property in any methodologies it develops or refines for the purpose of providing the Goods or Services, not embodied in the Deliverables, unless otherwise agreed.

19.2 Licence of Contractor and third party material

- (a) The Contractor grants Serco a permanent, irrevocable, non-exclusive, worldwide licence (including a right to sublicense) to use any material owned by the Contractor or a third party that is embodied in the Deliverables, for any purpose other than commercial exploitation.
- (b) The licence in clause 19.2(a) is perpetual and royalty-free.

19.3 Warranties

- (a) The Contractor warrants that the Contractor's performance of this agreement (including the provision of the Deliverables), and Serco's, and its employees', agents' and contractors', use of the Deliverables, will not infringe the Intellectual Property or Moral Rights of any person.
- (b) The Contractor indemnifies Serco against all loss, liability or expense arising out of or in connection with a claim by a third party that the Contractor's performance of this agreement (including the provision of the Deliverables), or Serco's, or its employees', agents' or contractors', use of a Deliverable, infringes their Intellectual Property or Moral Rights.
- (c) In this clause 19, "use" includes run (in the case of software), copy, make extracts from, display publicly or publicise, or integrate.

20. Moral Rights

20.1 Moral Rights consent

- (a) To the extent permitted by applicable laws, and for the benefit of Serco, the Contractor must use its best endeavours to ensure that each of the personnel used by the Contractor and any subcontractor consents in writing to the use of the Deliverables for the Specified Acts, even if the use would otherwise be an infringement of their Moral Rights.

20.2 Third party consents

- (a) If the Contractor includes any Third Party Material in the Deliverables, the Contractor must use its best endeavours to obtain the consent of the holder of the Moral Rights in the Third Party Material for the Specified Acts, even if the use would otherwise be an infringement of their Moral Rights.

20.3 Moral rights notification

The Contractor must notify Serco if the Contractor fails to obtain the consent referred to in clauses 20.1 and 20.2 from a person within a reasonable time, and must not use any material produced by that person in the performance of the Services or the provision of the Goods without Serco's consent.

21. Specified Acts

21.1 In this clause, 'Specified Acts' means:

- (a) failure to identify the authorship of any part of a Deliverable (including without limitation literary, artistic, musical and dramatic works and cinematograph films within the meaning of the Copyright Act 1968);
- (b) materially altering the content, layout, colours, format, resolution or style of any part of a Deliverable;
- (c) reproducing, communicating, adapting, publishing or exhibiting a Deliverable without identifying the authorship; and
- (d) adding additional content or information (including without limitation Serco Material or any other material) to a Deliverable.

22. Confidential information

22.1 Confidential information

- (a) The Contractor must not use any Confidential Information for any purpose other than the provision of the Goods and Services, or disclose any such information, except:
 - (i) to employees, legal advisers, auditors and sub-contractors requiring the information for the purposes of this agreement;
 - (ii) with the consent of Serco;
 - (iii) if the Contractor is required to do so by law or a stock exchange; or
 - (iv) as necessary in connection with legal proceedings relating to this agreement.
- (b) In the case of use or disclosure under clause 22.1(iii) or (iv), the Contractor must give Serco as much prior notice of the use or disclosure as is reasonably practicable in the circumstances.

22.2 Employees and subcontractors to sign separate deeds

- (a) The Contractor must ensure that any employees and sub-contractors performing the Services or providing the Goods sign a deed of confidentiality, if required by Serco, before undertaking any work. The deed must be in a form acceptable to Serco.
- (b) The signed deeds must be provided to Serco on request.

23. Privacy

23.1 General

- (a) The Contractor must:
 - (i) use personal information provided by Serco, or collected by the Contractor in the course of performing its obligations under this agreement, only for the purposes of performing its obligations under this agreement;
 - (ii) not disclose any such information without Serco's consent;
 - (iii) comply with the Information Privacy Principles applying to Commonwealth agencies under the Privacy Act 1988; and
 - (iv) include equivalent requirements (including this clause 23.1(d)(iv)) in any subcontract entered into for the provision of any of the Goods or Services.
- (b) In addition to these obligations, the Contractor must also comply with:
 - (i) any applicable requirements of the National Privacy Principles applying to the private sector under the Privacy Act; and
 - (ii) Serco's privacy policy, as amended from time to time.

23.2 System security

- (a) The Contractor must:
 - (i) maintain reasonable safeguards against loss, unauthorised access, use, modification or disclosure and other misuse of personal information held in connection with this agreement; and
 - (ii) not list or index that information by government identifiers except by ABNs.

23.3 Notification of infringement

- (a) If the Contractor becomes aware of any infringement or alleged infringement of its obligations under this clause, or the corresponding obligations of any subcontractor, the Contractor must:

- (i) notify Serco immediately; and
- (ii) comply at its own cost with any reasonable directions from Serco with respect to remedying that infringement or alleged infringement.

24. Archives Act 1983

- 24.1 The Contractor must not transfer, or permit the transfer of, custody or the ownership of any Commonwealth record (as defined in the Archives Act 1983) without the prior approval of Serco and the Australian Archives.
- 24.2 If Serco authorises the transfer of custody of Commonwealth records to the Contractor, the Contractor must comply with the requirements of the Archives Act 1983.
- 24.3 The Contractor must comply with any reasonable direction given by Serco for the purpose of transferring the Commonwealth records to the custody of the Australian Archives or providing the Australian Archives with full and free access to those records.

25. Inspections

- 25.1 Serco is entitled at any time to:
 - (a) Witness the performance of any Services by the Contractor; and
 - (b) Carry out independent inspections or tests of individual parts of the Systems using suitably qualified personnel.
- 25.2 In addition, Serco is entitled to conduct inspections with the Contractor's Supervisor on any day after the Service has been carried out.
- 25.3 The Contractor shall provide a written report to Serco by the following working day. The report shall be in a format approved and agreed with Serco or Serco's Nominated Representative.
- 25.4 Serco will audit the site quarterly against agreed Key Performance Indicators

26. Key Performance Indicators

- 26.1 Key Performance Indicators will be incorporated into the contract. However, these are to be developed and implemented in consultation with and with agreement of the Contractor during the first 3 months of the contract term.
- 26.2 Key Performance Indicators will become effective on and from 1 January 2011.

27. Review of Performance

- 27.1 The parties will conduct an annual review of this Contract and the Scope of Services;
- 27.2 For the purposes of clause 27.1, Serco will determine the scope, criteria and objectives of the annual review;

27.3 The scope of the reviews under clause 27.1 will include consideration of the appropriateness and effectiveness of the Key Performance Indicators. As a result of the review, Key Performance Indicators may be amended to reflect the Parties' commitment to continuous improvement and an analysis of any failures in the preceding 12 months.

28. Continuous Improvement

28.1 The Contractor must commit itself to continuous improvement of the Services through:

- (a) the identification and application of proven techniques and tools (from the Contractor's other operations) that would benefit Serco either operationally or financially; and
- (b) the implementation of programmes, practices and measures designed (at a minimum) to ensure that the Services are performed in accordance with this Contract and to improve levels of performance.

29. Audit Requirements

29.1 Subject of Audits

- (a) An audit of part or this entire Contract under clause 30.1 may be conducted at any time by Serco or its nominee. These audits may include:
 - (i) the Contractor's operational practices and procedures as they relate to this Contract;
 - (ii) the efficiency of the Contractor's operations in relation to the provision of the Services under this Contract;
 - (iii) the accuracy of the Contractor's invoices and Reports in relation to the provision of the Services and the calculation and payment of the Services Fee under this Contract;
 - (iv) the Contractor's compliance with the applicable Laws, Australian Government Policies and Detention-specific policies;
 - (vii) the Contractor's compliance with its confidentiality, privacy and security obligations; and
 - (viii) any other matters determined by Serco to be relevant to the performance of the Services, including ongoing financial viability.

29.2 Conduct of Audits

- (a) Except for those circumstances in which notice is not practicable (eg. caused by a regulatory request with shorter notice or investigation of theft or breach of Contract), Serco must give the Contractor not less than 10 Business Days' notice of an audit and a list of the documents which the auditor will reasonably require;
- (b) The Contractor must participate cooperatively in audits of this Contract at the frequency and in relation to the matters specified by Serco, including on an ad hoc basis if requested by Serco, 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 Contractor's responsibility to perform its obligations in accordance with this Contract;
- (d) Serco may appoint an independent person to assist in the audits. Serco will require its nominee to execute a confidentiality undertaking;
- (e) Each Party must bear its own costs of any audits.

29.3 Grant of Access

- (a) For the purposes of clause 30, the Contractor must, and must ensure that its Subcontractors, grant Serco and its nominees' access as required, to:
 - (i) the Contractor'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 Contractor's or its Subcontractors' custody, possession or control for inspection and/or copying.
- (b) In the exercise of the general rights granted by clause 30.3 (a) Serco must use reasonable endeavours not to interfere with the Contractor's performance under this Contract in any material respect.

29.4 Facilities to be Made Available

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

29.5 Commonwealth and Immigration Ombudsman, Auditor-General, Privacy Commissioner and Australian Human Rights Commission

- (a) Without limiting any other provision of this Contract, the Commonwealth and Immigration Ombudsman or a delegate of the Commonwealth and Immigration Ombudsman, the Commonwealth Auditor-General or a delegate of the Commonwealth Auditor-General, the Privacy Commissioner or a delegate of the Privacy Commissioner, or the Australian Human Rights Commission or a delegate of the Australian Human Rights Commission for the purpose of performing the Commonwealth and Immigration Ombudsman's, Auditor-General's, Privacy Commissioner's or the Australian Human Rights Commission's statutory functions and/or powers respectively, may, at reasonable times:
 - (i) access the premises of the Contractor;
 - (ii) contact and engage with the Contractor, its employees, agents or subcontractors;
 - (iii) require the provision by the Contractor, its employees, agents or subcontractors, of Records and other information which are related to this Contract;
 - (iv) access, inspect and copy documentation and Records or any other matter relevant to the Contractor's obligations or performance of this Contract, however stored, in the custody or under the control of the Contractor, its employees, agents or subcontractors.
- (b) The Contractor must, and must ensure that Contractor's Personnel and Subcontractors, cooperate with any enquiries or investigations by the Commonwealth and Immigration Ombudsman or a delegate of the Commonwealth and Immigration Ombudsman, the Commonwealth Auditor-General or a delegate of the Auditor-General, the Privacy Commissioner or a delegate of the Privacy Commissioner, or the Australian Human Rights Commission or a delegate of the Australian Human Rights Commission; and
- (c) Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Commonwealth and Immigration Ombudsman or a delegate of the Commonwealth and Immigration Ombudsman, the Commonwealth Auditor-General or a delegate of the Commonwealth Auditor-General, the Privacy Commissioner or a delegate of

the Privacy Commissioner, or the Australian Human Rights Commission or a delegate of the Australian Human Rights Commission.

29.6 Survival of Clause

- (a) This clause 30 applies for the Term and for a period of seven years from the date of its expiration or termination.

30. Interruptions to Service Delivery

30.1 Force Majeure

(a) Force Majeure Notice

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

(b) Suspension Notice

- (i) In addition to any notice given under clause 30.1(a), the Contractor must give the Manager a suspension notice as soon as possible, but not later than two days, after any Force Majeure Event occurs, containing:
 - (A) full particulars of the Force Majeure Event;
 - (B) its nature and an estimate of its likely duration; and
 - (C) the obligations affected by it, and the nature and extent of its effect on those obligations.

(c) Management of Force Majeure Event

- (i) The Contractor must comply with all directions of the Manager in relation to the Force Majeure Event, or the effects of the Force Majeure Event.
- (ii) Subject to clause 30.1(c)(i), the Contractor must take all reasonable steps to avoid being, or to mitigate the extent to which it is, prevented from meeting its obligations or achieving the relevant Key Performance Indicators as a result of the Force Majeure Event.

(d) Meeting between the Parties

- (i) The Parties will meet within two Business Days of the suspension notice being issued to discuss any additional measures that may be necessary to maintain as much as possible the effective and timely provision of Services.

(e) Suspension of Obligations

- (i) Subject to clause 30.6, if the Contractor 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 Contractor gives a suspension notice in respect of that Force Majeure Event until the cessation of the Force Majeure Event.

(f) If an obligation is suspended pursuant to clause 30.1(e)(i) the Contractor 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 Contractor's performance against any relevant Key Performance Indicator, providing that the Contractor has complied fully with the requirements of this clause 31 and can demonstrate to the satisfaction of the Manager that the obligations affected by the claimed Force Majeure Event cannot be reasonably accommodated within the existing applicable timeframe.

30.2 Where the Force Majeure Event is the exercise of a step in right by Serco under clause 25 then clause 30.1(e)(i) shall only apply to the extent that the Contractor is prevented from performing an obligation other than an obligation in which has been suspended under clause 32.1(a).

30.3 Contractor Must Update Manager

- (a) The Contractor must keep the Manager informed at reasonable intervals during any suspension and upon the request of the Manager, provide written advice to the Manager of:
 - (i) the estimate of the likely duration of the Force Majeure Event;
 - (ii) the action taken and the action proposed by the Contractor 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 Contractor's obligations.
- (b) The Contractor must give immediate notice to the Manager 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.

30.4 Alternative Supply and Fee Reduction

- (a) During the suspension of any obligation, the Manager may:
 - (i) make alternative arrangements for the performance whether by another person or otherwise of any obligation so suspended without incurring any liability to the Contractor; and
 - (ii) reduce the Services Fee to exclude any amount otherwise payable for the suspended obligation.

30.5 Payments, Unconditional Financial Undertaking and Performance Guarantee

- (a) This clause does not apply to any obligation by the Contractor to pay money or provide an Unconditional Financial Undertaking or Performance Guarantee.

30.6 Termination

- (a) If DIAC terminates the contract with Serco due to a prolonged Force Majeure Event (being an event that precludes the performance of obligations for a continuous period of 60 days or more) then Serco shall terminate this Contract in accordance with clause 40.1 by notice in writing to the Contractor.

31. Incidents

31.1 Incident Prevention

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

31.2 Notification of Incidents

- (a) Upon an Incident occurring or the Contractor becoming aware that an Incident is likely to occur, the Contractor must comply with the notification requirements set out in Schedule 1 (Services) and:
- (b) immediately implement the provisions of the Incident Management Protocols insofar as they relate to the Incident; and
- (c) as far as possible, continue delivering the Services in accordance with this Contract.

31.3 Incident Response and Management

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

31.4 Joint Development of Incident Management and Response Policies

- (a) The Contractor must actively contribute to the ongoing maintenance and development of Serco's Incident management and response policies and procedures both generally and specifically related to this document. In particular the Contractor must:
 - (i) be an active participant in any Incident management structure that covers Serco's operations including the Services provided under this Contract;
 - (ii) be seen as an Incident prevention and management champion and role model;
 - (iii) be an active participant in Incident analysis, debriefing, organisational learning, training and simulation exercises;
 - (iv) ensure Incident management and response policies and procedures, training and risk management have a high profile and are diligently pursued throughout the Contractor's operations; and
 - (v) promptly advise Serco of any matter, fact or circumstance that the Contractor believes is or may not be adequately dealt with by Incident Management Protocols policies or procedures or their related training, awareness and compliance programmes.

32. Step in Rights

- 32.1 Serco may step-in at any time if:
- (a) it considers that circumstances exist which require Serco's intervention in the performance of the Services, Serco may, upon reasonable grounds, suspend the performance of any service by the Contractor, arrange for Serco or a third party to perform such suspended service or otherwise intervene in the management of a Facility by giving written notice to the Contractor (Step-in Right)
- 32.2 Serco's Step-in Right will continue until the circumstance giving rise to the Step-in Right have been rectified or cease to exist. The Contractor must cooperate with Serco during a step-in period including without limitation by ensuring compliance by the Contractor and Contractor Personnel with all directions given by Serco.
- 32.3 Nothing in this clause 32.1 obliges Serco to exercise the powers given under this clause 32.1. The exercise of the powers under this clause is without prejudice to any other rights Serco may have to enforce or terminate this Contract.
- 32.4 If the exercise of the Step-in Right was not due to a breach of Contract by the Contractor, the Contractor will be entitled to payment of any costs necessarily incurred as a result of compliance with its obligations under this clause 32.1 which are not recovered through the Services Fee.

33. Representations and Warranties

33.1 Contractor Representations and Warranties

The Contractor 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,
 - (i) 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 a material adverse effect on it;
- (h) **(accounts):**
 - (i) the accounts and any other financial statements and reports that it has given to Serco have been prepared in accordance with the Law and (unless inconsistent with the Law) generally accepted accounting principles consistently applied;
 - (ii) the accounts that it has given to Serco 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 Serco that could have an adverse effect on it;
- (i) **(no unpaid employee entitlements)** the Contractor and its Subcontractors do not have any unpaid claims in respect of judicial decisions made against the Contractor or its Subcontractors relating to employee entitlements;
- (j) **(other information):**
 - (i) the other information and reports (if any) that it has given to Serco 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 Contractor), as at the Commencement Date or, if given later, when given;
- (k) **(disclosure of relevant information)** it has disclosed to Serco all the information that is material to an assessment by Serco of the risks that it assumes by entering into this Contract;
- (l) **(no filings or Taxes)** it is not necessary or desirable, to ensure that this Contract is legal, valid, binding or admissible in evidence, that this Contract or any other document be filed or registered with any Government Authority, or that any Taxes be paid;
- (m) **(no default)** no material breach of this Contract has occurred and is continuing, and it is not in material breach of any other document or agreement in a manner that could have a material adverse effect on it or any of its subsidiaries.

33.2 Repetition of Representations and Warranties

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

33.3 Reliance on Representations and Warranties

- (a) The Contractor acknowledges that Serco 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.

33.4 No Representations by Serco

- (i) The Contractor acknowledges that it has not relied and will not rely on any representation, statement or promise made by or on behalf of Serco in deciding to enter into this document or to exercise any right or perform any obligation under it.

34. Indemnity

34.1 Indemnity

- (a) The Contractor indemnifies Serco from and against any Loss arising out of, or as a consequence of, any of the following:
 - (i) death, or bodily injury, disease or illness (including mental illness) of any person, including People in Detention;
 - (ii) loss of or damage to property of Serco (including Facilities, Serco Assets or Loose Assets); and
 - (iii) loss of or damage to property of a third party, including People in detention;
- (b) arising from:
 - (i) any negligent act or omission, Wilful Default, or breach of Legislation, on the part of the Contractor, Contractor Personnel or subcontractors; or
 - (ii) any breach by the Contractor of its obligations or warranties under this Contract, including circumstances where the act, omission, neglect or breach results in a breach of Serco's non-delegable duty of care to a Person in Detention

34.2 Non-exclusive Remedy

- (a) The right of Serco to be indemnified under clause 34.1 is in addition to, and not exclusive of, any other right, power or remedy provided by Law, but Serco is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage, or expense.

34.3 Meaning of "Serco" in this Clause

- (a) The Contractor acknowledges and agrees that:
 - (i) in this clause 35, "Serco" includes officers, employees, agents and contractors (other than the Contractor) of Serco; and
 - (ii) Serco may enforce the indemnity on behalf of those persons referred to in clause 35.3(a).

34.4 Survival of this Clause

- (a) This clause 34 will survive for the period of seven years following the expiration or termination of this Contract. The expiry of the seven year period will not affect any other right, power or remedy provided by Law to Serco.

35. Limitation of Liability

35.1 Limitation of Contractor Liability

- (a) Subject to clause 35.2, but otherwise notwithstanding any other clause of this Contract, the total liability of the Contractor to Serco arising under, or in relation to, this Contract (including in respect of liquidated damages) is limited to the sum of:
 - (i) the amount of insurance proceeds recovered by the Contractor in respect of Loss that is the subject of a policy of insurance required to be effected pursuant to clause 37 of the Contract; and
 - (b) If the Contractor is liable to Serco for a Loss that is the subject of the limitation of liability in clause 35.1(a), the Contractor must:
 - (i) promptly make a claim on any applicable insurance policy effected in accordance with clause 37 and diligently pursue indemnity for the liability from the insurer; and
 - (ii) compensate Serco for the Loss by using all amounts paid out by its insurer for the liability for the Loss and by paying the retention, excess or deductible amount.
 - (c) If the Contractor is liable to Serco for a Loss that is the subject of the limitation of liability in clause 36.1(a), and the Contractor is not entitled or unable to recover an amount equal to the Loss in accordance with clause 36.1(b), the Contractor must provide Serco with a written notice that:
 - (i) sets out the amount that is available (if any) from insurers; and
 - (ii) confirms that none of the events referred to in clauses 35.1(d)(i) and 36.1(d)(ii) have occurred.
 - (d) Subject to clause 36.1(e), the limitation of liability in clause 35.1(a) does not apply to the extent that the Contractor is not indemnified under any insurance policy required to be effected in accordance with clause 36 due to:
 - (i) a failure by the Contractor to take out or maintain the relevant insurance policy; or
 - (ii) a breach by the Contractor of the terms and conditions of the relevant insurance policy;
- (Insurance Failures) is defined as and limited solely to clauses 35.1(d)(i) and 35.1(d)(ii).
- (e) Where an Insurance Failure arises, the liability of the Contractor under clause 35.1(a) is limited to
 - (i) the amount of insurance proceeds recovered by the Contractor in respect of Loss that is the subject of a policy of insurance required to be effected pursuant to clause 36 of the Contract; and
 - (f) The limitation of liability in clause 37.1(a) does not limit recourse by Serco against the Contractor for any Loss suffered by Serco to the extent that in the absence of clause 37.1(a)(i) the Contractor would be entitled to indemnity from an insurer under a policy of insurance required by this Contract.

35.2 Exclusions to Limitation of Contractor Liability

- (a) The limitation on the Contractor's liability in clause 37.1(a) does not apply to Loss arising from :
 - (viii) claims in relation to death, or bodily injury, disease or illness (including mental illness) of any person, including People in Detention, caused by the Contractor's breach of Contract, negligent act or omission, Wilful Default, or breach of Legislation; or
 - (ix) fraud, criminal acts, malicious damage or Wilful Default of the Contractor;

- (x) statutory penalties;
- (xi) liability that cannot be excluded at law;
- (xii) breach of State or Commonwealth privacy legislation;
- (xiii) breach of confidentiality;
- (xiv) third party claims in relation to infringement of intellectual property; or
- (xv) claims brought by third parties, including People in Detention, to the extent they are caused by the deliberate breach of Contract, Wilful Default, or gross negligence of the Contractor.

36. Proportionate Reduction of Liability

36.1 Proportionate Reduction in Contractor's Liability

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

36.2 Proportionate Reduction of Serco's Liability

- (a) Serco's liability for any common law or statutory cause of action arising out of the operation of this Contract will be reduced proportionately to the extent that any breach of this Contract by the Contractor or any act or omission on the part of the Contractor contributed to the relevant cost, liability, loss, damage, or expense.

36.3 Survival of this Clause

- (a) This clause 41 will survive for the period of seven years following the expiration or termination of this Contract. The expiry of the seven year period will not affect any other right, power or remedy provided by Law to Serco.

37. Insurance

37.1 The Contractor must effect and maintain, or cause to be effected and maintained, the insurances as specified in Schedule 3.

37.2 Duration of Insurance

- (a) The Contractor must ensure that each of the insurances required by clause 37.1 is maintained from the Commencement Date until the earlier of the performance of all Services or the termination of this Contract, except for professional indemnity insurance which must be maintained for at least seven years following the completion of all Services.

37.3 Reputable and Solvent Insurer

- (a) The Contractor must ensure that each of the insurances required by clause 37.1 (except statutory insurances) is taken out with reputable solvent insurers with a credit security rating of A- or better by Standard and Poors or an equivalent rating with another reputable rating agency acceptable to Serco.

37.4 Terms of Insurance

- (a) The Contractor must ensure that the insurance required by Serco is effected for the benefit of the Contractor 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 Contractor must ensure that the insurance required by Serco is effected in the name of the Contractor and Contractor Personnel, and Serco (but only for its vicarious liability and its liability as principal for breach of its non-delegable duty of care arising from the acts and omissions of the other insureds) and includes:
- (c) 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;
- (d) 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
- (e) 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.

37.5 Copies of Certificates of Currency

- (a) The Contractor must provide to the Manager a copy of the certificate of currency in respect of the insurances referred to in clause 37.1 evidencing compliance with the requirements of clause 37:
 - (i) on the Commencement Date;
 - (ii) thereafter upon each policy renewal; and on the Manager's reasonable written request.

37.6 Contractor's Insurance Obligations

- (a) In relation to the insurance required by clause 37.1, the Contractor must:
 - (i) 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;
 - (ii) punctually pay or cause to be paid all premiums when due;
 - (iii) comply with and abide by all the terms and conditions of the policies;
 - (iv) not do anything that would entitle the insurers to void, cancel or reduce their liability in respect of any claim;
 - (v) not cancel, materially vary or allow any insurance policy to expire without obtaining a replace policy without the prior written consent of Serco;
 - (vi) reinstate or cause to be reinstated a policy if it lapses; and
 - (vii) do everything reasonably required to claim and to collect or recover monies due under any policy.

37.7 Contractor's Notification Obligations

- (a) The Contractor must notify the Manager immediately when the Contractor:

- (i) becomes aware of any actual, threatened or likely claim under any of the insurances which the Contractor is obliged to effect and maintain under clause 38.1, which could materially reduce the available limits or involve Serco and must reinstate any reduced limit if required by the Manager; or
- (ii) receives a notice of cancellation in respect of any of the insurances which the Contractor is obliged to effect and maintain under clause 37.1.
- (iii) becomes aware that an insurer's security rating has fallen below A- with Standard & Poors or the equivalent rating with another recognised rating agency, and if requested by Serco, seek alternative equivalent insurance to replace the insurance held with such an insurer without unreasonable delay.

38. Dispute Resolution

38.1 Application

- (a) 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:
 - (i) that Party has complied with the requirements of this clause 38 and the dispute remains unresolved in accordance with clause 38.4; or
 - (ii) the proceedings are brought in accordance with clause 38.11.

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

- (a) If a Dispute arises, a Party must give the other Party an Initial Notice in respect of the Dispute. From the giving of the Initial Notice, the Parties have 40 Business Days to resolve the Dispute by negotiation.
- (b) If a Dispute is resolved in accordance with clause 38.1(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 38.2(b) in relation to all or part of the Dispute within 40 Business Days after the giving of the Initial Notice, the Dispute (or that part of the Dispute in respect of which there is no written agreement) is deemed to be unresolved.
- (d) Where an Initial Notice has been given under clause 38.2(a) by either Party, Serco may, at any time prior to the expiration of 40 Business Days, give to the Contractor an expedition notice requiring a Dispute Notice to be issued in accordance with clause 38.6(b).

38.3 Negotiation between Serco and the Contractor

- (a) If a Dispute or part of a Dispute is unresolved in accordance with clause 38.2(c), or if an expedition notice has been given under clause 38.2(d), the Party who gave the Initial Notice must give to the other Party a Dispute Notice in accordance with clause 38.3(b).
- (b) The Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is given pursuant to this clause 38.3;
 - (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:
 - (aa) provisions of the Contract;
 - (ab) direction, instruction or document; or
 - (ac) 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 39.2(b); and
- (iv) be given no later than 10 Business Days after the Dispute or part of the Dispute is deemed to be unresolved in accordance with clause 39.2(c) or the date on which an expedition notice has been given under clause 39.2(d).
- (c) Within 20 Business Days of the giving of a Dispute Notice, Serco's representative and the Contractor's representative must meet at places and times agreed by them to attempt to resolve the Dispute.
 - (d) The Parties must ensure that their representatives at all meetings make genuine efforts to resolve the Dispute.
 - (e) If the Dispute or part of the Dispute is resolved within 20 Business Days of the giving of the Dispute Notice, Serco's representative and the Contractor's representative 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 38.3(e) in relation to all or part of the Dispute within 20 Business Days after the giving of the Dispute Notice, the Dispute or that part of the Dispute in respect of which there is no written agreement is deemed to be unresolved and the Dispute, or any part of the Dispute, is thereby:
 - (i) Referred for expert determination in accordance with clause 38.4;
 - (ii) Referred for expedited arbitration in accordance with clause 38.5; or
 - (iii) Referred for mediation in accordance with clause 38.6.

38.4 Expert Determination

- (a) The expert determination must be conducted in accordance with the Institute of Arbitrators and Mediators Australia (IAMA) Expert Determination Rules as published from time to time.
- (b) The expert determination must be conducted:
 - (i) by an expert agreed upon between the Parties, with that agreement to be reached within five Business Days of the referral pursuant to clause 38.3(f)(i) or such further period as Serco's Deputy Secretary may reasonably determine; or
 - (ii) if the Parties are unable to agree on the identity of the expert to be appointed within the time period detailed in clause 38.4(b)(i), on the application of either Party, by an expert nominated by the President for the time being of IAMA, or such person authorised by the President to make the appointment, where that expert accepts appointment as an expert.

- (c) The Parties must promptly sign whatever reasonable terms of engagement the expert requires (including any indemnity), but if one of them does not so sign, the other may engage the expert by itself.
- (d) In respect of any Dispute or part of a Dispute that is referred to expert determination:
 - (i) the Parties must agree on the terms of reference and the matters to be determined by the expert within 10 Business Days of the referral pursuant to clause 38.3(f)(i), failing which the terms of reference will be clarified in accordance with the IAMA Expert Determination Rules; and
 - (ii) each Party will be their own costs associated with the expert determination (and share the costs of the Expert equally), unless the Parties agree otherwise in the terms of reference.
- (e) Any information which either Party obtains from the other under this clause 38.4 is taken to be Confidential Information for the purposes of clause.
- (f) The expert determination will be final and binding on both Parties if the total amount of the determination (excluding costs) is equal to or less than \$100,000.00.
- (g) Nothing in this clause 38.4 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 38.4 until the earlier of:
 - (i) the conclusion, or termination by agreement, of the expert determination; or
 - (ii) the expiration of 40 Business Days from the date of appointment of an expert if the Dispute or part of the Dispute is not resolved by expert determination at this date.

38.5 Expedited Arbitration Procedure

- (a) Within 10 Business Days of the referral pursuant to clause 38.3(f)(ii) or within such further period as Serco's representative may reasonably determine, the Parties must arrange for the appointment of an arbitrator, to be appointed by IAMA.
- (b) The Parties must, within five Business Days of the appointment of the arbitrator, sign whatever reasonable terms of engagement the arbitrator requires (including any indemnity), but if one of them does not so sign, the other may engage the arbitrator by itself.
- (c) The Parties agree that:
 - (i) the expedited arbitration must be conducted in accordance with the IAMA Rules for the Determination of Commercial Arbitration, specifically, Schedule 2, as published from time to time (EA Rules);
 - (ii) they must abide by the EA Rules and must procure the arbitrator's agreement to conduct the expedited arbitration according to the EA Rules;
 - (iii) they may be represented by legal counsel at the expedited arbitration; and
 - (iv) for the purposes of interpreting the EA Rules, a reference to the Notice of Dispute in the EA Rules shall be a reference to the notice in clause 38.3(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 42.5 is taken to be Confidential Information for the purposes of clause 24.

- (f) The Parties have not fully complied with this clause 42.5 until the earlier of:
 - (i) the conclusion, or termination by agreement, of the expedited arbitration; or
 - (ii) the expiration of 40 Business Days from the date of appointment of an arbitrator if the Dispute or part of the Dispute is not resolved by expedited arbitration at this date.

38.6 Mediation Procedure

- (a) Within 10 Business Days of the referral pursuant to clause 38.3(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 38.6(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 Serco and provided the person nominated agrees to act as mediator.
- (c) The Parties must, within five Business Days of the appointment of the mediator, sign whatever reasonable terms of engagement the mediator requires (including any indemnity), but if one Party does not so sign, the other Party may engage the mediator by itself.
- (e) Within 20 Business Days of the referral pursuant to clause 38.3(f)(iii) the Parties must hold a preliminary conference in that mediation, in the presence of the mediator.
- (f) 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 38.3(f).
- (g) Each Party will bear its own costs of the mediation, unless otherwise agreed between the Parties.
- (h) The Parties have not fully complied with this clause 38.6 until the earlier of:
 - (i) the conclusion, or termination by agreement, of the mediation; or
 - (ii) the expiration of 40 Business Days from the date of appointment of a mediator if the Dispute or part of the Dispute is not resolved by mediation at this date.

38.7 Continuance of Performance

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

38.8 Summary or Urgent Relief

- (a) Nothing in this clause 42 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.

38.9 Continuance of Obligations

- (a) The whole of the Parties' obligations under this clause 38 continue notwithstanding that the Dispute relates to proceedings that have been commenced by:
- (b) a third party against the Contractor and/or Serco; or the Contractor and/or Serco against a third party.

38.10 Termination

38.11 This clause 38 does not apply to an action by Serco to terminate this Contract under clause 39 or clause 40.

39. Default and Termination

39.1 Default Notification

- (a) The Contractor must notify the Manager of the occurrence of a Default as soon as it becomes aware of the occurrence of the Default.

39.2 Serco Rights

- (a) If a Default occurs (whether or not the Contractor has notified the Manager of that Default), Serco may:
 - (i) give the Contractor a Default Notice; and
 - (ii) issue a certificate and reduce the Services Fee in accordance with clause 12.4.

39.3 Default Cure

- (a) If a Default is capable of remedy Serco must specify in the Default Notice that it requires the Contractor to remedy the Default, in which case, upon receipt of a Default Notice, the Contractor:
 - (i) will have the time specified in the Default Notice (Cure Period) from the date of the Default Notice to remedy the Default; and
 - (ii) must submit a Cure Plan within five Business Days of the Default Notice, or such other period agreed between the Parties, setting out how the Contractor will cure the Default within the Cure Period.
- (b) Where Serco specifies in a Default Notice that it requires the Contractor to remedy a Default, the Contractor 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 Serco following submission of a Cure Plan.
- (c) In determining the Cure Period, Serco will act reasonably and have regard to the nature of the Default required to be remedied.

39.4 Default Remedies

- (a) If a Default has occurred and the Contractor fails to remedy the Default within the Cure Period or such extended period as is agreed by Serco following submission of a Cure Plan, Serco may exercise all or any of the following remedies:
 - (i) sue the Contractor for compensation arising directly or indirectly out of that Default; or
 - (ii) any other remedies available to Serco 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.

39.5 Termination by Serco for Default

- (a) Where Serco seeks to terminate this Contract in accordance with this clause 39, it must give written notice (Termination Notice) to the Contractor specifying at least:
 - (i) the reasons for termination; and
 - (ii) the date of termination.

39.6 Consequences of Termination for Default

If this Contract is terminated under this clause 43:

- (a) subject to this Contract and clause 45 in particular, the Parties are relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
- (b) subject to the requirements of the Contractor to perform Services in accordance with clause 45, all licences and Authorisations granted to the Contractor by Serco, terminate immediately despite anything to the contrary contained in the relevant licence or Authorisation;
- (c) the Contractor must comply with clause 45; and
- (d) Serco must pay the Contractor for any Services that were performed in accordance with this Contract prior to the date of termination.

39.7 Termination Events

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

- (a) the Contractor commits a breach of this Contract (which breach is capable of remedy) and the Contractor fails to remedy the breach within the Cure Period specified in a Default Notice;
- (b) the Contractor commits a material breach of this Contract which breach is not capable of remedy;
- (c) notwithstanding clauses 40.7(a) and 40.7(b), the Contractor commits a breach or breaches of this Contract that at common law entitles Serco to terminate this Contract;
- (d) the Contractor fails to replace any Key Personnel, with replacements reasonably acceptable to Serco;
- (e) the Contractor fails to comply with any of Serco's security requirements set out in Schedule 1 (Description of Services);
- (f) any of the representations or warranties in clause 33 ceases to be true; or
- (g) a Continuous Failure occurs for 6 or more successive months.

39.8 Insolvency and Other Events

- (a) Without prejudice to its rights at common law or any other right which has accrued or may accrue to Serco under clauses 43.7(a), 43.7(c) or otherwise, the following events are termination events for the purposes of clause 43.7(c):
- (b) the Contractor suspends payment of its debts or becomes insolvent;
- (c) 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 Contractor;
- (d) the Contractor 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);
- (e) 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 Contractor, or the Contractor 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;
- (f) the Contractor suffers any execution against its assets having adverse effect on its ability to perform this Contract;
- (g) the Contractor ceases, or threatens to cease, to carry on its business;
- (h) the Contractor assigns its rights otherwise than in accordance with the requirements of this Contract;
- (i) any matter relating to the Contractor 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;
- (j) the Contractor is prevented by a Force Majeure Event (or a series of Force Majeure Events) from performing obligations under this Contract that is continuing for a period of 60 days or more; or
- (k) the Contractor suffers a change in control or ownership which in the reasonable opinion of Serco, materially adversely affects the Contractor's ability to perform the Services.
- (l) MSS Security staff cease to be recognised as "officers" under the Migration Act or are removed by DIAC as an approved subcontractor..

39.9 Materiality

- (a) The materiality of any breach and whether a breach has a material adverse affect, for the purposes of clauses 43.7 and 43.8 will be determined in light of the absolute importance to Serco that the Australian public have, and continue to have, confidence in the efficient, effective and competent administration of the Facilities.

39.10 Repayment on Termination

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

39.11 Contractor's Acknowledgement

- (a) The Contractor acknowledges that the performance of the Services is critical to the performance of the functions of Serco and that Serco will incur expenses in seeking a Successor and transferring the Services to a Successor.

39.12 Termination Notice

- (a) Serco is required under this agreement to give the Contractor 30 days notice in writing of any termination event under clauses 39 and 40.

39.13 In the event that any monies due to the Contractor are not paid by the due date in accordance with this agreement, the Contractor may issue a notice to Serco requiring such monies to be paid within a further period of 30 days from the date of any such notice. If payment has not been made in accordance with the notice, the Contract may forthwith terminate the agreement

40. Termination for Convenience

40.1 Serco May Terminate for Convenience

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

40.2 Transition Out Obligations

Notwithstanding that the Contractor may have received a notice under clause 40.1, the Contractor must comply with its obligations under clause 41 and with any directions given by the Manager.

40.3 Payment for Services Rendered Prior to Termination

Serco must pay the Contractor for any Services that were performed in accordance with this Contract prior to the date of termination.

40.4 Compensation for Unavoidable Losses

- (a) Serco is liable to the Contractor for any substantiated unavoidable losses necessarily incurred by the Contractor in connection with this Contract to the extent that the unavoidable loss was necessarily incurred as a consequence of termination of this Contract in accordance with this clause 40.
- (b) For the purposes of this clause 40.4, "unavoidable loss": is limited to reasonable wind-down expenses (for example, redundancy expenses);
- (c) must not include any amount on account of loss of profits;
- (d) subject to clause 40.5, includes costs incurred in respect of terminated subcontracts or supply agreements and other costs reasonably and necessarily incurred in anticipation of completing the Contract; and
- (e) must not exceed the amount that would have been payable if Serco had not terminated the Contract pursuant to clause 40.1.

40.5 Termination of Subcontracts for Convenience

The Contractor 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 Serco's right of termination under this clause 40 and the Contractor must, where appropriate, make use of such rights to mitigate losses in the event of termination by Serco under the provisions of this clause 40.

40.6 Unfettered Discretion

For the avoidance of doubt, Serco has an unfettered discretion to terminate this Contract in accordance with this clause 40.

40.7 Deemed Termination for Convenience

If a purported termination for default by Serco under clause 39 is determined by a competent authority not to be properly a termination for default, then that termination by Serco will be deemed to be a termination for convenience under clause 41 which termination has effect from the date of the notice of termination.

41. Health and Safety

41.1 As identified in other sections of this document health and safety must be complied with in all respects to these documents, the relevant Occupational Health and Safety Act (OH&S Act), and include but are not limited to:

- (a) Adherence to the OHS&E Act and any other safety codes practices, legislation, ordinances and by-laws; and
- (b) Staff appropriately trained in relation to OH&S; and
- (c) Review number of incidents and action taken; and
- (d) Advise of potential hazards and pro-active approach; and
- (e) All tools and equipment correctly calibrated and compliant to requirements; and
- (f) Regular attendance by Contractors representative; and
- (g) Appropriate OH&S audits undertaken.

41.2 The Contractor shall undertake all work under this Contract in accordance with its obligations under the OH & S Act and other relevant legislation, in particular the Hazardous Substances Regulations, and failure to observe any safety requirement will be deemed a breach of this Contract.

41.3 The Contractor must:

- (a) Both before and whilst undertaking any work under this Contract, take all reasonable precautions to prevent injury to any person or damage to premises
- (b) Provide such systems of work, information, training and supervision as may be necessary to ensure the health and safety of its employees whilst at the premises.
- (c) Provide documented safe systems of work, information, training and supervision as may be necessary which will include Permits to Work (where required) and Job Safety Analysis in the form proscribed in Tender Schedules to ensure the health and safety of its employees whilst at the premises.

- (d) Prior to using any agent the use of which is controlled by the Dangerous Goods Act, the Poisons Act, or other applicable legislation, notifies Serco as to the use thereof. The Contractor shall notify Serco of any intended change in use of agents that are subject to the above-mentioned Acts. Material Safety Data Sheets shall be prominently displayed where the chemicals are stored. The Contractor shall provide Serco with a manual containing copies of MSDS for all agents used on site, if requested by Serco. This manual is to be maintained and up to date by the Contractor.
- 41.4 Prior to work commencing Serco shall conduct a site-specific induction of all hazards and special requirements while working at premises. This will consist of a short presentation.
- 41.5 The Contractor and its personnel will be provided with a copy of House Rules. Compliance to these rules is mandatory. These include but are not limited to:
- (a) Access to the loading dock is only by arrangement with the Maintenance Manager; and
 - (b) All personnel must sign in as directed by Serco; and
 - (c) All new personnel working on site must obtain a Serco ID which should be worn at all times whilst on site; and
 - (d) Site access to the Contractor and its staff will only be granted after all documents and approvals have been gained as outlined in this document; and
 - (e) Where work is to take place out of hours, a minimum of twenty four (24) hours notice is required in writing from the Contractor, indicating the name of the employee, expected arrival times and expected duration of work and other relevant details; and
 - (f) Parking arrangement, and general loading and unloading requirement must be made before arrived on site (24 hours) with the Maintenance Manager; and
 - (g) Identifying areas where trades can eat meals, have crib breaks, etc
- 41.6 The Contractor shall ensure that its personnel comply with all safety procedures and requirements which apply to the property including the site specific OH&S management plans issued by Serco.
- 41.7 If the Contractor fails to comply with a safety procedure, direction or requirement, Serco may issue a written notice requiring the Contractor to remedy the default.
- 41.8 The Contractor shall remedy the default within the time specified in the notice, failing which Serco may remedy the default and the Contractor will be liable for losses suffered by Serco and the Contractor may be excluded from the site.
- 41.9 The Contractor shall nominate a competent Safety Supervisor with authority to resolve matters of safety relevant for the activities of its staff.
- 41.10 Serco may from time to time require reasonable proof that the Contractor and any Subcontractors' personnel are appropriately trained and instructed. The Contractor shall ensure that its personnel are not directed or expected to undertake work or

activities, which might be detrimental to the safety, health or welfare of themselves or others.

- 41.11 If any of the Contractor's personnel are involved in an accident required to be notified to a statutory authority, the Contractor shall notify the relevant authority in accordance with relevant Federal and State authorities. A copy of the notice must be forwarded to Serco within 3 days of the occurrence of the accident.
- 41.12 All work is to be performed within the requirements of relevant Work Cover, Occupational Health and Safety Acts and Regulations applying to the State or Territory of the site. For example
- (a) Work Cover Legislation of the respective state or territory; and/or
 - (b) Any other relevant act or authority that may apply.
- 41.13 The Contractor must take all reasonable precautions to ensure that the service operations cause as little disturbance as possible to the building operations and Serco's users and promptly remove all materials and equipment, once maintenance work has been completed in each area identified.
- 41.14 The Contractor, in the carrying out of the service duties, shall not enter or seek to enter or be upon premises other than those in which they are entitled to be present pursuant to the terms of the Contract.
- 41.15 Serco and the Contractor have an obligation to notify the other immediately it is aware of:
- (a) the death or injury to any person or damage to property arising from the use of any item of the Equipment; or
 - (b) any event or circumstance adversely affecting or likely to adversely affect the safe working of any item of the Equipment; or
 - (c) a notice or instruction issued by a Statutory or Public Authority in respect of any part of the Equipment.
- 41.16 Notification must be made within 1 hour of any of the above incidences by telephone and with a formal written report documenting the incident within 24 hours.
- 41.17 Serco agrees to allow the Contractor adequate and safe access to the site such that the Contractor can undertake its obligations under this Contract. This is not an exclusive right of access. The Contractor shall make all arrangements for access to the site with Serco, giving not less than 24 hours notice. The Contractor shall comply with all requirements for signing on and off the site, and for the use of keys and access cards to the site for the purposes of the Contract.
- 41.18 Serco shall provide adequate lighting and ventilation to each equipment room, and shall provide water and energy (electricity and gas as applicable) free of charge as reasonably required by the Contractor for the purposes of the Contract.

41.19 The Contractor may make use of communications facilities (telephones, radios and the like) available on the site as scheduled or as directed by the Nominated Representative.

41.20 The Contractor shall provide all leads (tagged and tested), hoses and the like that it requires to connect to the existing site services.

41.21 Car parking, ablution facilities and storage facilities shall be provided as scheduled, and as otherwise agreed in writing by Serco.

41.22 Notwithstanding anything else in this agreement:

- (a) The Principal agrees that it will comply with all relevant laws relating to occupational health and safety in the workplace and will ensure that all sites are safe and without risks to the health and safety of MSS and its personnel.
- (b) Where MSS identifies a risk or potential risk to the health and safety of personnel, MSS will notify the Principal and where necessary seek the Principal's assistance to eliminate such risk. If the risk is not eliminated and continues to threaten health and safety of personnel, MSS may suspend the provision of security operations to the extent necessary to protect personnel from such risk.

The Principal agrees that it will notify MSS of any accident or injury, property or environmental damage that may relate to the provision of the services or at a site.

42. General

42.1 Conflict of Interest

- (a) The Contractor warrants that to the best of its knowledge after making diligent inquiry, at the date of signing this Contract and at all times during the Term, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract by itself or by Contractor Personnel and that based upon reasonable inquiry it has no reason to believe that any Subcontractor has such a conflict.
- (b) If during the Term a conflict or risk of conflict of interest arises, the Contractor undertakes to notify Serco immediately after the conflict or risk of conflict becomes known.
- (c) The Contractor must not, and must use its best efforts to ensure that any Personnel, agent or Subcontractor does not, during the Term, engage in any activity or obtain any interest likely to conflict with, or restrict the fair and independent performance of obligations under this Contract and must immediately disclose to Serco such activity or interest.
- (e) If the Contractor fails to notify Serco or is unable or unwilling to resolve or deal with the conflict as required, Serco may terminate this Contract in accordance with the provisions of clause 42.

43. Notices

43.1 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 Contractor to the Serco, signed by the Service Contractor's representative and marked for the attention of Serco's representative or the Manager at the address set out in 43.2 or as otherwise notified from time to time by the Contractor; or
- (b) if given by Serco to the Contractor, signed by Serco's representative or the Manager and marked for the attention of the Contractor's representative at the address set out in clause 43.2 or as otherwise notified from time to time by Serco.

43.2 Addresses

The Address for Serco

National Commercial Manager
Serco Immigration Services
Level 1, MTA Building
CANBERRA ACT 2609
Facsimile: +61 2 6196 1001

The address for the Contractor

National Manager Strategic Markets
MSS Security
149 – 155 Milton Street
ASHFIELD NSW 2131
Facsimile: +61 2 9930 4288

43.3 Delivery of Notices

- (a) A notice or any other communication in connection with this agreement must be:
 - (i) in writing;
 - (ii) marked for the attention of the person described in Part A or B of the Details (as applicable); and
 - (iii) left at the address of the addressee, sent by post to the street address of the addressee, sent by facsimile to the facsimile number of the addressee or by email to the email address of the addressee which is specified in Part A or B (as applicable) of the Details.

43.4 A communication is taken to be received:

- (a) in the case of a pre-paid, ordinary posted letter within Australia, upon the expiry of the second business day after the date on which it is sent;
- (b) in the case of a pre-paid, ordinary posted letter outside Australia, upon the expiry of the fifth business day after the date on which it is sent;
- (c) in the case of facsimile, at the time the machine on which it has been sent records that it has been transmitted successfully; and
- (d) in the case of email, when it is delivered to a system from which the addressee can retrieve it.

44. Interpretation

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

- (a) capitalised terms have the meaning ascribed to them in Schedule 2 (Definitions);
- (b) a word suggesting a gender includes all genders;
- (c) a singular word includes the plural, and vice versa;
- (d) headings are for convenience only, and do not affect interpretation;
- (e) the word person includes any type of entity or body of persons (including a body politic), whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
- (f) a reference to an amount in dollars, \$AUD or \$AU is to that amount in Australian dollars;
- (g) a reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as, from time to time, amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) 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;
- (h) a section is to a section in a Schedule or an Annexure of or to this Contract as varied from time to time;
- (i) any body is:
 - (i) if that body is replaced by another organisation, deemed to refer to that organisation; and
 - (ii) 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;
- (j) 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;
- (k) a person holding an office in Serco or the Contractor includes any person from time to time holding, occupying or performing the duties of that office; and
- (l) an office in Serco or the Contractor 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;
- (m) 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;
- (n) a Party to this Contract or any other document or arrangement includes that Party's permitted substitute or a permitted assign of that Party;
- (o) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing; and
- (p) the word agreement includes an undertaking or other binding arrangement or understanding, whether or not in writing.

44.2 Precedence of documents

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

- (i) the Main Terms and Conditions;
- (ii) All Schedules, Annexures and Attachments

(iii) provisions of documents incorporated by express reference in this agreement, including any State and/or Commonwealth policy documents,

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

45. Non-solicitation of employees

The parties agree that for during the term of this agreement, and for a period of 12 months from the termination of provision of services hereunder, neither party will directly or indirectly solicit any employee to terminate his or her employment with the other party.”

SIGN

Execution page

SIGNED by

P. Mahoney as
authorised representative for **Serco**
Australia Pty Limited in the presence of:

H Prout
Signature of witness

HAMISH PROUT
Name of witness (block letters)

62 RAMSGATE AVE, BONDI BEACH, NSW
Address of witness

CHARTERED ACCOUNTANT
Occupation of witness

Date:

31 / 1 / 2011

SIGNED by

Mike McKinnon as
authorised representative for the
Contractor in the presence of:

Warren Webb
Signature of witness

Warren Webb
Name of witness (block letters)

149 Milton St., Ashfield NSW
Address of witness

Solicitor
Occupation of witness

Date:

22 December 2010

P. Mahoney
By executing this agreement the signatory
warrants that the signatory is duly
authorised to execute this agreement on
behalf of ~~the National Gallery of Australia~~

SERCO AUSTRALIA PTY LIMITED

Warren Webb
By executing this agreement the signatory
warrants that the signatory is duly
authorised to execute this agreement on
behalf of the Contractor.

1. Scope of Works

The service provided under this contract is the provision of qualified security staff who will contribute to the maintenance of security at various Department facilities around the country. MSS staff will be required to implement the Immigration Detention Values in the performance of their duties.

1.1 Staff Qualifications

All staff supplied under this agreement are required to have and to provide evidence of the following qualifications to Serco prior to the commencement at site;

- (a.) a minimum Certificate II in Security Operations,
- (b.) a current code 32 AFP check,
- (c.) a current Working with Children check (as applicable on a state by state basis),
- (d.) a current security licence as applicable on a state to state basis, and
- (e.) a DIAC approved induction course.

All qualifications are to be to be maintained by the undertaking of appropriate training and obtaining the relevant qualifications.

1.2 Engagement of illegal workers prohibited

- (a.) For the purposes of this Clause 1.2, an "illegal worker" is a person who is an Unlawful Non-Citizen, or a Non-Citizen who is performing work in breach of a Visa Work Condition, and the following definitions also apply:
 - (i) "Contractor" will, where the context so admits, include the officers, employees, volunteers, bailees, agents and authorised subcontractors of the Contractor; and
 - (ii) "Non-Citizen" has the same meaning as under the Migration Act 1958; and
 - (iii) "Unlawful Non-Citizen" has the same meaning as under the Migration Act 1958; and
 - (iv) "Visa Work Condition" means a condition of a visa restricting the work that the Non-Citizen may do in Australia,and a reference to the Migration Act 1958 is a reference to that Act as amended or replaced from time to time.
- (b.) The Contractor must ensure that each person referred under this Contract would not, in doing the work for which they are referred, be an illegal worker.
- (c.) The Contractor must remove, or cause to be removed, any illegal worker from any involvement in the carrying out of the Services and arrange for their replacement at no cost and immediately upon becoming aware of the involvement of the illegal worker.

- (d.) For the avoidance of doubt, compliance with the Contractor's obligations under this Clause 1.1 will not constitute a force majeure event, give rise to an entitlement to claim any delay or otherwise excuse the Contractor from compliance with its obligations under this Contract.
- (e.) When requested in writing, the Contractor will provide evidence within 14 days that it has taken all reasonable steps to ensure that it has complied and is complying with its obligations under this Clause 1.1.
- (f.) The Contractor may check the entitlement to work in Australia at www.immi.gov.au/evo

1.3 Induction

Induction training is to be delivered by suitably qualified staff from a Registered Training Organisation (RTO).

1.4 Priorities for Service Delivery

The priorities for Service delivery are identical at each site and for each Service, as detailed in the Statement of Works contained in the main contract, but can be summarised as follows.

- (a.) To conform to Department Operational Updates and the Manager's Rules of the Detention Centre, to assist and support the Manager in their delivery of services and to obey all lawful instructions.
- (b.) To pay special attention to duty under the Migrations Act 1958.
- (c.) To fulfil the duties outlined in the Position Description

1.5 Example of Services to be Delivered

- (a.) Welfare
 - (i) Respond to and assist in resolving problems decisively, professionally and non-confrontationally
 - (ii) Inform the Centre Manager promptly of any abuse or impropriety brought to your attention
 - (iii) Notify the Health Care Contractor team of any concern about the physical or mental health of a client
 - (iv) Treat clients with dignity, integrity and equality
 - (v) Treat clients in a manner that encourages self-respect, a sense of personal responsibility and tolerance towards others
- (b.) Logistics
 - (i) Maintain smooth running of area of assigned responsibility
 - (ii) Supervise entry and exit of people from area of assigned responsibility
- (c.) Maintain paperwork
 - (i) Keep logs and reports up to date
- (d.) Safety and Security
 - (i) Maintain a safe, secure working and living environment for all who work and live within the Centre
 - (ii) Maintain all security protocols, processes and procedures relevant to the operation of the Centre

- (iii) Manage and monitor area of assigned responsibility on a daily roster basis (i.e. vehicle checks, perimeter patrols etc)
- (iv) Account for and audit equipment
- (v) Carry out risk assessments under the Health & Safety umbrella, on an ongoing basis, in area of assigned responsibility
- (vi) Remain alert and attentive at all times

2. Service Standards

The staff provided under this contract are to maintain an appropriate level of professionalism and be well turned out at all times.

2.1 The staff provided by the Contractor are to;

- (a.) provide the Services in a manner equalling or exceeding the standard expected of a professional contractor experienced and qualified in the performance of the Services or services of a similar kind to the Services;
- (b.) be authorised, registered or licensed in accordance with the requirements of any regulatory requirements for the purposes of or incidental to the performance of the Services;
- (c.) comply with the time-frame for the performance of the Services specified by Serco from time to time;
- (d.) satisfy the mutually agreed KPIs or as otherwise specified by Serco from time to time; and
- (e.) provide any information Serco's may reasonably require and comply with any reasonable request made by Serco's Representative.

In this agreement:

Defined terms used in this Contract and not otherwise defined in this Schedule 2 have the meanings ascribed to them in the Head Contract.

"Business Day" means a day other than Saturday, Sunday or a public holiday anywhere in Australia.

"Claim" means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

"Commencement Date" means the date from which the Contractor commences to provide the Services under this Agreement;

"Commonwealth" means the Commonwealth of Australia;

"Confidential Information" means all information:

- of Serco; or
- in relation to which Serco owes an obligation of confidentiality,
- relating to the business, technology, financial or other affairs of Serco or a third party which:
 - is by its nature confidential;
 - is designated by Serco as confidential; or
 - the Contractor knows or ought to know is confidential,
 - other than Excluded Information.

"Contractor" means the provider of services or goods under this contract.

"Control" of a corporation means having:

- more than 19.9% of the votes eligible to be cast in the election of directors or any similar matter; or
- the right to appoint or remove directors (or members of a governing body having functions similar to a board of directors) or any similar matter representing more than 19.9% of the votes exercisable by all the directors (or persons having similar functions); or
- an interest of more than 49.9% in any category of the profits, distributions or net liquidation proceeds of that corporation.

"Details" means Part 1 of this agreement.

"Documents" means data, information and other documents (including electronic documents).

"Employee" or **"Employees"** means one or more natural persons engaged to perform work under this Agreement and includes natural persons engaged under a personal contract;

"Excluded Information" means information which:

- is in or becomes part of the public domain other than through breach of this agreement or breach of an obligation of confidence owed to the owner of the information;
- the disclosing party can prove by contemporaneous written documentation was already known to it at the time of disclosure (unless that knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- the recipient acquires from another source entitled to disclose it.

“Force Majeure Event” means any circumstance or event beyond the reasonable control of the party affected (but, in the case of the Contractor, does not include a failure to perform, or delay in performing, by a subcontractor unless that failure or delay was due to a circumstance or event beyond the subcontractor’s reasonable control).

“GST” has the same meaning as in the *GST Law*.

“GST Law” means the *A New Tax System (Goods and Services Tax) Act 1999*.

“Head Contract” means the contract between Serco and the Department of Immigration and Citizenship (DIAC) for the provision of services at Immigration Detention Centres.

“Input Tax Credit” has the same meaning as in the *GST Law*.

“Insolvent” means being an insolvent under administration or insolvent (each as defined in the *Corporations Act 2001*) or having a controller (as defined in the *Corporations Act 2001*) appointed, or being in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or being otherwise unable to pay debts when they fall due or having something with the same or similar effect happen under the laws of any jurisdiction.

“Intellectual Property” means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered and unregistered designs, circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields.

“Key Performance Indicators” means the key performance indicators set out in Schedule 4.

“Material” includes documents, equipment, software, goods, information and data stored by any means.

“Moral Rights” means the right of attribution, the right against false attribution and the right of integrity of authorship as defined in the *Copyright Act 1968* (Cth).

“Manager” means the nominated Serco representative as advised to the Contractor from time to time.

“Party” or **“Parties”** means a party or the parties to this Agreement and includes their successors and permitted assigns;

“Serco Documents” means all *Documents* owned by, or licensed to, Serco, provided to the Contractor by or on behalf of Serco, or otherwise obtained by the Contractor.

“Services” means all those services or activities which are identified in Schedule A to this Agreement or otherwise required to be performed or provided by the Contractor pursuant to this Agreement;

“Schedule of Rates” means the Schedule of Rates agreed between the Parties and set out in Part 1 of this agreement;

“Serco Centre Manager” means the Serco designated manager of the Immigration Detention Centre located in which the Contractor provides Service in accordance with the Statement of Work in this Agreement;

“Statement of Work” or **“SOW”** means the statement of work in Schedule A to this Agreement, which details the Services to be provided by the Contractor pursuant to this Agreement;

“Taxable Supply” has the meaning attributed in the GST Act; and

“Term” means the term of this Agreement as specified in Item C of the Recitals.

“Tax Invoice” has the same meaning as in the *GST Law*.

“Third Party Material” means *Material* owned by a third party that is provided to Serco as part of the *Deliverables*.

Schedule 3

Insurances

The Contractor must effect and maintain or cause to be effected and maintained under one or more policies of insurance (without requiring any risk to be double insured):

- (a) public and products liability insurance, written on an occurrence basis, with a limit of indemnity of at least \$50,000,000 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 12 month policy period, and which covers:
 - (i) the Contractor's liability and the liability of its employees (including to Serco); 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 Contractor and its employees;in respect of:
 - (iii) loss of, damage to, or loss of use of any real or personal property (including the Facilities, Department Assets, Loose Assets, Department Material and other Department or Client property in the care, custody or control of the Contractor to the extent not insured under the insurance referred to at section (g) below); and
 - (iv) the bodily injury of, disease or illness (including mental illness) to, or death of, any person (except employees of the Contractor);arising out of or in connection with the Contractor's negligent performance of any Services for 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) and, without limitation arising out of or in connection with the Contractor's delivery of People in Detention to any aircraft for transportation;
- (b) workers' compensation insurance which insures any injury, damage, expense, loss or liability suffered or incurred by any person engaged in work by the Contractor 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 section (i) above, for employer's liability at common law with a limit of indemnity of not less than \$50,000,000 for any one event and in the aggregate for any 12 month policy period;
 - (iii) in each State or Territory where the Contractor'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 the Contractor and its employees or consultants arising from a breach of duty owed in a professional capacity, or an error or omission in judgment;
 - (ii) which insures the Department for its liability as principal (including liability arising from the Department's non-delegable duty of care) for the acts or omissions of the Contractor, Contractor Personnel and Subcontractors;
 - (iii) extending to include cover for unintentional breaches of Intellectual Property rights; and

- (iv) with a limit of indemnity of at least \$20,000,000 in respect of each claim and in the aggregate for all claims in any one 12 month policy period, and with one automatic right of reinstatement;
- (d) except to the extent insured under the industrial special risks policy or public liability policy effected, or caused to be effected, by the Contractor in compliance with this Contract, motor vehicle insurance for not less than \$20,000,000 for each and every occurrence which covers:
 - (i) third party property damage arising from the use of any plant and equipment or vehicles (registered or unregistered) used in respect of the performance of the Services pursuant to this Contract; and
 - (ii) the personal injury of, disease or illness (including mental illness) to, or death of, any person arising from the use of any unregistered plant and equipment or vehicles used in respect of the performance of the Services pursuant to this Contract;
- (e) compulsory third party motor vehicle insurance in respect of all registered vehicles used in the performance of any Services or this Contract as required by Law; and
- (f) industrial special risks insurance covering all Facilities, Department Assets, Loose Assets, and any other property of the Department and the Contractor which is material to the Contractor'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 business interruption insurance for an indemnity period of not less than 12 months increased cost of working and loss of profit.

Schedule 4 Key Performance Indicators

The Key Performance Indicators follows immediately after this page.



Key Performance Measures

Site:

Account Manager:

Date:

KPI No.	Element	Performance Measure	Minimum Performance Standards	Rating 1 to 5	% Weighting	Score	Responsible Person	Completion Date
Service Provision								
1	Routine Staffing requests Satisfied	All shifts fulfilled	100%	2	2			
2	Ad hoc Staffing Requirement Satisfied	All shifts fulfilled	100%	10	10			
Security Officer On Site Performance								
3	Punctuality to site for Duties	On site prior to shift	100%	2	2			
4	Presentation of Uniform and suitability	Neat, tidy and complete	100%	2	2			
5	Conduct and Behaviour, whilst on duty	Professional and attentive	100%	2	2			
6	Customer Service Ethic	Compliant and cooperative	100%	2	2			
7	Ad hoc Requests Response	Fulfilled timely and in full	100%	2	2			
8	Emergency Response	Professional in response	100%	2	2			
9	Security Incident Reporting Timely and Accurate	Accurate and concise	100%	2	2			
10	Security Incident Management	Accurate and concise	100%	2	2			
11	General Completion of Duties	As stated	100%	2	2			
Security Officer Training and Licensing								
12	AFP Code 32	Obtained & Documented	100%	10	10			
13	Working with Children (where required)	Obtained & Documented	100%	10	10			
14	Current level ii certificate Available	Obtained and Documented	100%	10	10			
15	Security License	Current and documented	100%	10	10			
16	Visa details correct (as required)		100%	2	2			
17	Inducted	Inducted and Documented	100%	2	2			
18	Required Permits Completed	Obtained and Documented	100%	2	2			
19	Training	all staff must meet requirements	100%	2	2			
20	Qualification & Training Currency Register	provided weekly	100%					
21								
Safety, Health and Environment								
22	Compliant	Compliant to S.O.W & Serco Policy	100%	2	2			
23	Safety Incident Reporting Timely and Accurate	Accurate and concise	100%	2	2			
24	Safety Incident Management		100%	2	2			

25	(L7) Loss time injury Administration	100%	2
26	Invoice Timely, Accurate and Complete	100%	2
27	Credit Requests	100%	2
Relationship			
28	Meetings Held as per Agreed Timeframe	100%	2
29	Reports Provided On Request	100%	2
30	Availability of Security Support Staff (as required)	100%	2
31	Availability of Security Management (as required)	100%	2
32	Security Office Staff Friendly and Helpful	100%	2
Other or Specific Services for Measurement (Expand as Required)			
	Invoice Dispute Resolution	No measurement applicable	
	Identification of Service / Cost Saving Initiatives	No measurement applicable	
			100
			0

Rating Scale

- 1 Not Satisfactory 2 Marginally Below Acceptable Standards 3 Acceptable Standard - Room for Improvement 4 High Standard 5 Exceeds Expectations

Signature	Client Representative	Security Representative	Print Name

KPI IMPACT PER MONTH/ PER SITE

Number of Incidents

Impact	Incidents	Percentage	Overall Impact per site/per month
1	4 Greater than INCIDENTS	Failure 80%	5% reduction in fee's
2	3 INCIDENTS	85%	2% Reduction in fee's
3	2 INCIDENTS	90%	1% Reduction in fee's
4	1 INCIDENT	95%	0% Reduction in fee's
5	0 INCIDENTS	100%	1% Incentive reward

N.B

1

Should poor rating be experienced consecutively of a 3 month period on the same site, Serco Immigration reserves the right to terminate the Security provider at the associated site.

2

The reward is based upon national performance

3

Penalty is based upon relevant site monthly invoice fee and applies to labour component only

4

Incidents are to be substantiated by formal documentation i.e. formal incident report to be lodged in a timely manner

5

Security Provider is not to be penalised if incident is due to circumstances outside of its reasonable control and/or where extenuating circumstances apply and/or where the Security Provider could not reasonably have foreseen such circumstances which led to the incident.

B – Document produced by Serco on 9 December 2011

Provision of Security Services to Serco of Immigration and Citizenship (DIAC) Detention Centres

Draft Agreement

Issue:

Date:

Serco Australia Pty Limited ABN 44 003 677 352

Level 10, 90 Arthur Street North Sydney NSW 2060

Issue No.	Approved By	Date
Issued for Comment – v1	PB	03.07.2010
DRAFT for Review by WILSON SECURITY v2	PB	26.10.2010
DRAFT with Gadens changes		25.11.2010
DRAFT with JR edits		26.11.2010
Final DRAFT for Sign off by Serco		

Contents

Clause No.		Page No.
1.	Term	6
2.	Services	6
3.	Facilities, materials, etc	6
4.	Service standards	7
5.	General standards	7
6.	Personnel	7
7.	Compliance with Serco directions	7
8.	Cooperation with other Others	7
9.	Problem or delay	8
10.	Payment	8
11.	Invoicing procedure	8
12.	Annual Indexation of Fees	9
13.	Interaction with Others	10
14.	Immigration Detention Objectives	10
15.	Immigration Detention Values	11
16.	Duty of Care	11
17.	Subcontracting of the Services	11
18.	Serco obligations	12
19.	Intellectual property	12
20.	Moral Rights	13
21.	Specified Acts	13
22.	Confidential information	14
23.	Privacy	14
24.	Archives Act 1983	15
25.	Not Used [<i>note – covered in clause 31</i>]	Error! Bookmark not defined.
26.	Inspections	15
27.	Key Performance Indicators	15
28.	Review of Performance	15
29.	Continuous Improvement	16
30.	Audit Requirements	16
31.	Interruptions to Service Delivery	18
32.	Incidents	19
33.	Step in Rights	21
34.	Representations and Warranties	21
35.	Indemnity	23

36.	Limitation of Liability	24
37.	Proportionate Reduction of Liability	25
38.	Insurance	25
39.	Dispute Resolution	27
40.	Default and Termination	31
41.	Termination for Convenience	34
42.	Health and Safety	35
43.	General	37
44.	Notices	38
45.	Interpretation	39
Schedule 1	Description of Services	42
Schedule 2	Definitions	45
Schedule 3	Insurances	48
Schedule 4	Key Performance Indicators	50

PART 1 – DETAILS

The Contractor agrees to provide goods and/or services to Serco Services Australia Pty Limited ("Serco"), on the following terms:

A. The Contractor

Name	Wilson Parking Australia 1992 Pty Ltd, Trading as Wilson Security		
		ACN 052 475 911	ABN 67 052 475 911

Address	Level16, 360 Elizabeth Street Melbourne Victoria 3000	

(Notices must be sent to this address)

Manager: (Clause 7.3)	Mr John Rogers (National Operations Manager)		
	Tel: 03 9224 0214	Fax: 03 9224 0294	Email address: jrogers@wilsonsecurity.com.au

For payment purposes:	Bank account name: Wilson Security	
	BSB and account number: BSB 016 002 Acc 837957648	Email address for remittance advice: Billing@wilsonsecurity.com.au

(Please see clause 5 for invoicing procedure)

B. Serco ABN: 44 003 677 352

Address	Level 10, 90 Arthur Street	
	North Sydney NSW	2060

(Notices must be sent to this address)

Contact person	Peter Bauerhuit, A/g Assistant Director Commercial & Finance		
	Tel: 02 6196 1020	Fax: 02 6196 1001	email address: peter.bauerhuit@serco-ap.com.au

C. Term of agreement (clause 1.1)

Period from to

Option (clause 1.2) years Period of notice required - at days/
least months
(Exercise of the option is at the sole discretion of Serco)

Warranty Period (clause 3.7)

Budget Amount (clause 17.4)

D. Specified personnel (clause 2.8)

Can the Contractor use people other than the specified personnel to perform the Services?:

E. Serco assistance to be provided (clause 7.4)

(Part E should contain a complete description of the assistance Serco must provide the contractor to perform the services eg a description of the documents, work space or software to be provided by Serco, if applicable.)

1. SECURITY OFFICERS

Location	Shift	Per Hour Ex GST						
		VIC	TAS	NSW	ACT	WA	QLD	SA
Metro	Mon - Fri Day	Commercial in confidence						
	Mon - Fri Night							
	Mon - Fri Permanent Night							
	Sat							
	Sun							
	P/Holiday							
Country	Mon - Fri Day							
	Mon - Fri Night							
	Mon - Fri Permanent Night							
	Sat							
	Sun							
	P/Holiday							

2. SECURITY SUPERVISORS

Location	Shift	Per Hour Ex GST						
		VIC	TAS	NSW	ACT	WA	QLD	SA
Metro	Mon - Fri Day	Commercial in confidence						
	Mon - Fri Night							
	Mon - Fri Permanent Night							
	Sat							
	Sun							
	P/Holiday							
Country	Mon - Fri Day							
	Mon - Fri Night							
	Mon - Fri Permanent Night							
	Sat							
	Sun							
	P/Holiday							

Note:

1. Pricing is firm to 30 June 2011 after which we would seek an adjustment in accordance with any national wage decisions, changes to statutory Government charges and changes to employment conditions as a result of the Federal Government's award modernisation process.
2. Minimum charge is four hours for all States.
3. Pricing includes labour, uniforms, AFP Check, Working with Children Background Check and basic stationery items only.
4. Pricing does not include vehicles, travel, communications equipment, accommodation and meals.
5. Rates for remote locations will be subject to negotiation.
6. All pricing is shown exclusive of GST and is subject to GST at the rate operating from time to time.

F. Insurance (clause 10.1)

<i>Type:</i>	<i>Minimum amount:</i>	<i>Number of years Contractor is required to retain these insurances after end of this agreement</i>
Public liability insurance	\$ 50 million	
Workers compensation insurance	In accordance with applicable State or Territory legislation and with all commonly available extensions.	
Professional indemnity insurance	\$ 20 million	

H. Confidential Provisions of this agreement (if any)

Clauses:

--	--

PART 2 - TERMS AND CONDITIONS

1. Term

- 1.1 The term of this agreement is set out in Part C of the Details above.
- 1.2 Serco may extend this agreement for the period described in that Part, by giving the Contractor notice, as specified in that Part.

2. Services

- 2.1 Application of this clause:
 - (a) This clause 2 applies if the Contractor is required to supply Services to Serco, as described in Schedule 1.
- 2.2 Supply of Services:
 - (a) The Contractor must provide Serco with the services described in Schedule 1 ("**Services**").
 - (b) When Serco requires the Services it will consult with the Contractor about the following details:
 - (i) the nature of the Services to be performed;
 - (ii) the personnel who will perform the Services; and
 - (iii) the time frame within which the Services will be performed.
 - (c) If Serco requires the Contractor to perform Services at a new site, it will provide the Contractor with prior written notice of at least 24 hours.
 - (d) If Serco requires the Contractor to cease performing Services at a site, it will provide the Contractor with prior written notice of at least 24 hours.
 - (e) These details will form individual agreements between Serco and the Contractor under this agreement.
 - (f) When the details of the Services have been agreed the Contractor will then supply the Services to Serco.
 - (g) At its discretion Serco:
 - (i) may request the Services at any time relevant to its business needs;
 - (ii) is not obliged to use the Services; and
 - (iii) may at any time purchase or acquire Services the same or similar to the Services in any other way, from any other person on such terms and conditions as may be agreed between Serco and that other person.
 - (h) In addition to the Services described in Schedule 1 the Contractor must provide any services that are reasonably necessary or incidental to the services described in Schedule 1, or for the proper performance of those Services.
 - (i) The Contractor must do all things necessary to ensure that the Services are properly delivered and all works finished off to the satisfaction of Serco.

3. Facilities, materials, etc

- 3.1 Except as specified in this agreement, the Contractor must provide all facilities, personnel, materials and assistance necessary for the proper performance of the Services.

4. Service standards

- 4.1 The Contractor must perform the Services in accordance with the service standards (if any) described in Schedule 1.

5. General standards

- 5.1 Without limiting the Contractor's obligations in clause 4, the Contractor must perform the Services:
- (a) in accordance with applicable law, Australian standards and other industry standards and codes of practice;
 - (b) in accordance with any Serco policies or guidelines notified to the Contractor from time to time;
 - (c) in accordance with good industry practice;
 - (d) with due care, skill and diligence; and
 - (e) in a professional and timely manner.
- 5.2 The Contractor must participate, and ensure its personnel who will be performing the Services participate, in Serco's induction process as required by Serco from time to time.

6. Personnel

- 6.1 Serco may, at its absolute discretion, request the Contractor to remove personnel from work in relation to the Services.
- 6.2 Where clause 6.1 applies, Serco may request the Contractor to provide replacement personnel acceptable to Serco at no additional cost and at the earliest opportunity.
- 6.3 If the Contractor does not comply with any reasonable request made under clause 6, Serco may terminate this.

7. Compliance with Serco directions

- 7.1 The Contractor must comply with any reasonable direction of Serco in relation to the performance of the Services.
- 7.2 Any direction which Serco may give to the Contractor's employee on the site in respect of the performance of the Services is deemed to be made to the Contractor.
- 7.3 The Contractor's obligations under this agreement are not affected by:
- (a) the giving of any direction by Serco; or

- (b) Serco's assistance in, or supervision of, the performance of any of the Contractor's obligations under this agreement.

8. Cooperation with Others

8.1 The Contractor must:

- (a) co-operate with Serco and any subcontractor engaged by Serco, where relevant, to ensure the efficient and effective carrying out of works and provision of services for Serco; and
- (b) provide reasonable assistance to other subcontractors, if requested by Serco.

9. Problem or delay

9.1 The Contractor must immediately notify Serco if there is a problem or delay that has, or may have, an impact on the timing, cost or quality of the Services being provided in accordance with this agreement.

9.2 Nothing in clause 9.1 limits Serco's rights.

10. Payment

10.1 Fees:

- (a) The Contractor's fees for the Services are described in Part G of the Details.
- (b) The fees are exclusive of GST.

10.2 Expenses:

- (a) Serco must reimburse the Contractor for the expenses described in Part G of the Details, in the manner described in that Part.
- (b) Otherwise, the fees are inclusive of all costs and expenses incurred by the Contractor.
- (c) The Contractor may not charge Serco any amount for which the Contractor can obtain an Input Tax Credit.

10.3 Month to Month Adjustment of Services Fee:

- (a) When making payment of the Services Fee, Serco may decrease the amount payable to take account of:
 - (i) the application of an Abatement by the Department,
 - (ii) the withholding by the Department of an invoiced amount which is in dispute,
 - (iii) the off-setting by the Department of an any underpayment which resulted from the Contractor providing an incorrect invoice; accordance,
 - (iv) the suspension of obligations following a Force Majeure,
 - (v) the cost borne by Serco as part if its step in rights,
 - (vi) the costs borne by Serco as a result of implemented a default rectification plan,
 - (vii) any Services which were not provided as a result of an Incident, and
 - (viii) any other right allowed to the Serco under the terms of this Contract.

10.4 GST registration:

- (a) The Contractor warrants that it is registered for GST.

11. Invoicing procedure

11.1 Invoicing

- (a) The Contractor must give Serco an invoice each month in a form approved by Serco, via one of the following methods:
 - (i) Email: scanningcentre@serco-ap.com.au
 - (ii) Post: Scanning Centre PO Box 856
Bondi Junction
NSW 1355
 - (i) Fax: 1300 366 842
- (b) The payment terms of this agreement prevail over any payment terms in a purchase order issued by Serco.
- (c) The Contractor must submit an invoice in a form approved by Serco and otherwise including the following information:
 - (i) the name and date of this agreement and purchase order number;
 - (ii) location of the facility where the Services were provided
 - (iii) details of the work that is the subject of the invoice, including the period of time during which the work was carried out;
 - (iv) substantiation of expenses to the reasonable satisfaction of Serco;
 - (v) available payment methods (Serco prefers direct credit); and
 - (vi) contact person (including address, email address and telephone number) for accounts queries.
- (d) The invoices must be in the form of a valid Tax Invoice.

11.2 Payment:

- (a) Serco must pay correctly rendered invoices within 45 days of receipt, subject to performance of the Services in the period to which the invoice relates to Serco's reasonable satisfaction.
- (b) The payment of any fee instalment or any other amount by Serco shall not be taken as evidence or as an admission that any work or service has been performed in accordance with the Contract, but will be taken to be payment on account only.

12. Annual Indexation of Fees

- 12.1 The Services Fee will be adjusted annually on the 1 July of each year of the contract by any rise or fall in labour rates as a result of change in wages payable to the Contractor's employees under any relevant State or Federal award or legislation.
- 12.2 For the avoidance of doubt, the Service Fee or any other fee payable to the Contractor under this agreement will not be adjusted for any rise and fall in exchange rate fluctuation, cost of material and change in general economic conditions other than as expressly stated in clause 12.1.

12.3 Pass through of abatements and other deductions;

- (a) The Contractor acknowledges that under the terms of the Head Contract, DIAC is entitled to impose abatements and other deductions from the fees otherwise payable to Serco for failure to meet certain performance goals and minimum standards of performance.
- (b) To the extent that any abatement or other deduction made by DIAC in respect of the fees that would otherwise be payable to Serco is attributable to a failure by the Contractor to provide the Services or to otherwise discharge its obligations under this Contract, then Serco shall deduct an amount equivalent to any such abatement or other deduction imposed by DIAC from the Services Fee.

12.4 Month to month adjustment of Services Fee

When making payment of the Services Fee, Serco may decrease the amount payable to take account of:

- (a) the application of an abatement in accordance with clause 12.3;
- (b) the off-setting by Serco of an any underpayment or overpayment which resulted from the Contractor providing an incorrect invoice;
- (c) the suspension of obligations following a Force Majeure Event in accordance with clause 30.4;
- (d) any Services which were not provided as a result of an Incident in accordance with clause 31.3(c); and
- (e) any other right allowed to Serco under the terms of this Contract.

13. Interaction with Others

13.1 The Contractor must:

- (a) permit Other Contractors to carry out their work;
- (b) fully co-operate with Other Contractors;
- (c) carefully co-ordinate and interface the Contractor's Activities with the work carried out or to be carried out by Other Contractors; and
- (d) carry out the Contractor's Activities so as to avoid interfering with, disrupting or delaying the work of Other Contractors.

14. Immigration Detention Objectives

14.1 The primary objectives of this Contract are to:

- (a) enhance the well-being of People in Detention by implementing the Immigration Detention Values;
- (b) continuously improve the quality, effectiveness and efficiency of the Services;
- (c) enhance the management and operation of Facilities through cooperation between Serco, the Contractor and other Stakeholders; and
- (d) enable Serco to receive best value for money for the provision of the Services (collectively Objectives).

14.2 This clause 14 is intended to describe the intention of the Parties in entering into this Contract. It is not intended to alter the plain meaning of the provisions of this Contract. However, to the extent that the provisions of this Contract do not address a particular circumstance or are otherwise unclear or ambiguous, those provisions

are to be interpreted and construed as far as is consistent with the Law, by reference to the Objectives described in clause 14.1.

15. Immigration Detention Values

15.1 The Government's seven key immigration detention values are:

- (a) Mandatory detention is an essential component of strong border control;
- (b) To support the integrity of Australia's immigration program, three groups will be subject to mandatory detention:
 - (i) all unauthorised arrivals, for management of health, identity and security risks to the community
 - (ii) unlawful non-citizens who present unacceptable risks to the community and
 - (iii) unlawful non-citizens who have repeatedly refused to comply with their visa conditions.
- (c) Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre (IDC);
- (d) Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review;
- (e) Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time;
- (f) People in detention will be treated fairly and reasonably within the law;
- (g) Conditions of detention will ensure the inherent dignity of the human person.

15.2 In delivering the Services and in all its dealings with Serco, Serco, People in Detention, other Contractors, Stakeholders or the public, the Contractor will seek to give effect to the Immigration Detention Values.

16. Duty of Care

16.1 Each Party acknowledges and agrees that it has a duty of care to People in Detention;

16.2 The Contractor must meet its duty of care to People in Detention and any duty of care it has to Visitors or other persons arising from the performance of its obligations under this Contract.

16.3 While children will not be placed in a Detention Centre, the Contractor may be required to perform the Services around children in places of Alternative Detention. The Contractor must ensure, when providing any Services around children, that all reasonable steps are taken to ensure the safety of any children in the areas affected by the Services.

16.4 The Contractor acknowledges and agrees that Serco's and Serco's duty of care does not in any way:

- (a) detract from the Contractor's obligations under this Contract; or
- (b) alter the allocation of rights, obligations and liabilities under this Contract.

17.Subcontracting of the Services

17.1 The Contractor must not subcontract any of the Services it provides.

18.Serco obligations

18.1 Access to Serco premises:

- (a) Serco must provide the Contractor's employees with access to the Detention Centres to the extent required to perform the Services.

18.2 Induction:

- (a) Serco will provide on-site orientation including emergency procedures and workplace and safety issues.

18.3 Serco to provide assistance:

- (a) Serco will nominate a Manager who will be responsible for the management of this agreement.
- (b) Serco must provide the assistance described in Part E of the Details (if any).
- (c) Where software is included in the assistance Serco provides, Serco grants a non-exclusive, non-transferable, royalty-free licence to the Contractor for the term of this agreement to use the software for the purposes of this agreement.
- (d) The Contractor must only use the assistance provided by Serco under this agreement for the provision of the Services.

18.4 Confidentiality of contract provisions

- (a) Serco and the Contractor must keep confidential the provisions of this agreement (if any) described in Part H of the Details, except:
 - (i) in equivalent circumstances to those described in clause 22.1; or
 - (ii) in response to a request from a House of the Commonwealth Parliament or a Commonwealth Parliamentary committee.

18.5 Effect of consent by Serco

- (a) The grant of any approval or consent by Serco under this agreement will not relieve the Contractor from any liability under this agreement.

19.Intellectual property

19.1 Ownership of Intellectual Property in Deliverables

- (a) Serco will own the title to, and all Intellectual Property in, any Deliverable provided by the Contractor in the course of providing the Goods or Services, subject to clauses 19.2 and 19.3.
- (b) The Contractor will continue to own all Intellectual Property:
 - (i) it had prior to this agreement; or
 - (ii) developed independently of this agreement.
- (e) The Contractor will also own the Intellectual Property in any methodologies it develops or refines for the purpose of providing the Goods or Services, not embodied in the Deliverables, unless otherwise agreed.

19.2 Licence of Contractor and third party material

- (a) The Contractor grants Serco a permanent, irrevocable, non-exclusive, worldwide licence (including a right to sublicense) to use any material owned by the Contractor or a third party that is embodied in the Deliverables, for any purpose other than commercial exploitation.
- (b) The licence in clause 19.2(a) is perpetual and royalty-free.

19.3 Warranties

- (a) The Contractor warrants that the Contractor's performance of this agreement (including the provision of the Deliverables), and Serco's, and its employees', agents' and contractors', use of the Deliverables, will not infringe the Intellectual Property or Moral Rights of any person.
- (b) The Contractor indemnifies Serco against all loss, liability or expense arising out of or in connection with a claim by a third party that the Contractor's performance of this agreement (including the provision of the Deliverables), or Serco's, or its employees', agents' or contractors', use of a Deliverable, infringes their Intellectual Property or Moral Rights.
- (c) In this clause 19, "use" includes run (in the case of software), copy, make extracts from, display publicly or publicise, or integrate.

20. Moral Rights

20.1 Moral Rights consent

- (a) To the extent permitted by applicable laws, and for the benefit of Serco, the Contractor must use its best endeavours to ensure that each of the personnel used by the Contractor and any subcontractor consents in writing to the use of the Deliverables for the Specified Acts, even if the use would otherwise be an infringement of their Moral Rights.

20.2 Third party consents

- (a) If the Contractor includes any Third Party Material in the Deliverables, the Contractor must use its best endeavours to obtain the consent of the holder of the Moral Rights in the Third Party Material for the Specified Acts, even if the use would otherwise be an infringement of their Moral Rights.

20.3 Moral rights notification

The Contractor must notify Serco if the Contractor fails to obtain the consent referred to in clauses 20.1 and 20.2 from a person within a reasonable time, and must not use any material produced by that person in the performance of the Services or the provision of the Goods without Serco's consent.

21. Specified Acts

21.1 In this clause, 'Specified Acts' means:

- (a) failure to identify the authorship of any part of a Deliverable (including without limitation literary, artistic, musical and dramatic works and cinematograph films within the meaning of the Copyright Act 1968);
- (b) materially altering the content, layout, colours, format, resolution or style of any part of a Deliverable;
- (c) reproducing, communicating, adapting, publishing or exhibiting a Deliverable without identifying the authorship; and
- (d) adding additional content or information (including without limitation Serco Material or any other material) to a Deliverable.

22. Confidential information

22.1 Confidential information

- (a) The Contractor must not use any Confidential Information for any purpose other than the provision of the Goods and Services, or disclose any such information, except:
 - (i) to employees, legal advisers, auditors and sub-contractors requiring the information for the purposes of this agreement;
 - (ii) with the consent of Serco;
 - (iii) if the Contractor is required to do so by law or a stock exchange; or
 - (iv) as necessary in connection with legal proceedings relating to this agreement.
- (b) In the case of use or disclosure under clause 22.1(iii) or (iv), the Contractor must give Serco as much prior notice of the use or disclosure as is reasonably practicable in the circumstances.

22.2 Employees and subcontractors to sign separate deeds

- (a) The Contractor must ensure that any employees and sub-contractors performing the Services or providing the Goods sign a deed of confidentiality, if required by Serco, before undertaking any work. The deed must be in a form acceptable to Serco.
- (b) The signed deeds must be provided to Serco on request.

23. Privacy

23.1 General

- (a) The Contractor must:
 - (i) use personal information provided by Serco, or collected by the Contractor in the course of performing its obligations under this agreement, only for the purposes of performing its obligations under this agreement;
 - (ii) not disclose any such information without Serco's consent;
 - (iii) comply with the Information Privacy Principles applying to Commonwealth agencies under the Privacy Act 1988; and
 - (iv) include equivalent requirements (including this clause 23.1(d)(iv)) in any subcontract entered into for the provision of any of the Goods or Services.
- (b) In addition to these obligations, the Contractor must also comply with:
 - (i) any applicable requirements of the National Privacy Principles applying to the private sector under the Privacy Act; and
 - (ii) Serco's privacy policy, as amended from time to time.

23.2 System security

- (a) The Contractor must:
 - (i) maintain reasonable safeguards against loss, unauthorised access, use, modification or disclosure and other misuse of personal information held in connection with this agreement; and
 - (ii) not list or index that information by government identifiers except by ABNs.

23.3 Notification of infringement

- (a) If the Contractor becomes aware of any infringement or alleged infringement of its obligations under this clause, or the corresponding obligations of any subcontractor, the Contractor must:
 - (i) notify Serco immediately; and
 - (ii) comply at its own cost with any reasonable directions from Serco with respect to remedying that infringement or alleged infringement.

24. Archives Act 1983

- 24.1 The Contractor must not transfer, or permit the transfer of, custody or the ownership of any Commonwealth record (as defined in the Archives Act 1983) without the prior approval of Serco and the Australian Archives.
- 24.2 If Serco authorises the transfer of custody of Commonwealth records to the Contractor, the Contractor must comply with the requirements of the Archives Act 1983.
- 24.3 The Contractor must comply with any reasonable direction given by Serco for the purpose of transferring the Commonwealth records to the custody of the Australian Archives or providing the Australian Archives with full and free access to those records.

25. Inspections

- 25.1 Serco is entitled at any time to:
 - (a) Witness the performance of any Services by the Contractor; and
 - (b) Carry out independent inspections or tests of individual parts of the Systems using suitably qualified personnel.
- 25.2 In addition, Serco is entitled to conduct inspections with the Contractor's Supervisor on any day after the Service has been carried out.
- 25.3 The Contractor shall provide a written report to Serco by the following working day. The report shall be in a format approved and agreed with Serco or Serco's Nominated Representative.
- 25.4 Serco will audit the site quarterly against agreed Key Performance Indicators

26. Key Performance Indicators

- 26.1 Key Performance Indicators will be incorporated into the contract. However, these are to be developed and implemented in consultation with and with agreement of the Contractor during the first 3 months of the contract term.

27. Review of Performance

- 27.1 The parties will conduct an annual review of this Contract and the Scope of Services;

27.2 For the purposes of clause 27.1, Serco will determine the scope, criteria and objectives of the annual review;

27.3 The scope of the reviews under clause 27.1 will include consideration of the appropriateness and effectiveness of the Key Performance Indicators. As a result of the review, Key Performance Indicators may be amended to reflect the Parties' commitment to continuous improvement and an analysis of any failures in the preceding 12 months.

28. Continuous Improvement

28.1 The Contractor must commit itself to continuous improvement of the Services through:

- (a) the identification and application of proven techniques and tools (from the Contractor's other operations) that would benefit Serco either operationally or financially; and
- (b) the implementation of programmes, practices and measures designed (at a minimum) to ensure that the Services are performed in accordance with this Contract and to improve levels of performance.

29. Audit Requirements

29.1 Subject of Audits

- (a) An audit of part or this entire Contract under clause 30.1 may be conducted at any time by Serco or its nominee. These audits may include:
 - (i) the Contractor's operational practices and procedures as they relate to this Contract;
 - (ii) the efficiency of the Contractor's operations in relation to the provision of the Services under this Contract;
 - (iii) the accuracy of the Contractor's invoices and Reports in relation to the provision of the Services and the calculation and payment of the Services Fee under this Contract;
 - (iv) the Contractor's compliance with the applicable Laws, Australian Government Policies and Detention-specific policies;
 - (vii) the Contractor's compliance with its confidentiality, privacy and security obligations; and
 - (viii) any other matters determined by Serco to be relevant to the performance of the Services, including ongoing financial viability.

29.2 Conduct of Audits

- (a) Except for those circumstances in which notice is not practicable (eg. caused by a regulatory request with shorter notice or investigation of theft or breach of Contract), Serco must give the Contractor not less than 10 Business Days' notice of an audit and a list of the documents which the auditor will reasonably require;
- (b) The Contractor must participate cooperatively in audits of this Contract at the frequency and in relation to the matters specified by Serco, including on an ad hoc basis if requested by Serco, 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 Contractor's responsibility to perform its obligations in accordance with this Contract;

- (d) Serco may appoint an independent person to assist in the audits. Serco will require its nominee to execute a confidentiality undertaking;
- (e) Each Party must bear its own costs of any audits.

29.3 Grant of Access

- (a) For the purposes of clause 30, the Contractor must, and must ensure that its Subcontractors, grant Serco and its nominees' access as required, to:
 - (i) the Contractor'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 Contractor's or its Subcontractors' custody, possession or control for inspection and/or copying.
- (b) In the exercise of the general rights granted by clause 30.3 (a) Serco must use reasonable endeavours not to interfere with the Contractor's performance under this Contract in any material respect.

29.4 Facilities to be Made Available

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

29.5 Commonwealth and Immigration Ombudsman, Auditor-General, Privacy Commissioner and Australian Human Rights Commission

- (a) Without limiting any other provision of this Contract, the Commonwealth and Immigration Ombudsman or a delegate of the Commonwealth and Immigration Ombudsman, the Commonwealth Auditor-General or a delegate of the Commonwealth Auditor-General, the Privacy Commissioner or a delegate of the Privacy Commissioner, or the Australian Human Rights Commission or a delegate of the Australian Human Rights Commission for the purpose of performing the Commonwealth and Immigration Ombudsman's, Auditor-General's, Privacy Commissioner's or the Australian Human Rights Commission's statutory functions and/or powers respectively, may, at reasonable times:
 - (i) access the premises of the Contractor;
 - (ii) contact and engage with the Contractor, its employees, agents or subcontractors;
 - (iii) require the provision by the Contractor, its employees, agents or subcontractors, of Records and other information which are related to this Contract;
 - (iv) access, inspect and copy documentation and Records or any other matter relevant to the Contractor's obligations or performance of this Contract, however stored, in the custody or under the control of the Contractor, its employees, agents or subcontractors.
- (b) The Contractor must, and must ensure that Contractor's Personnel and Subcontractors, cooperate with any enquiries or investigations by the Commonwealth and Immigration Ombudsman or a delegate of the Commonwealth and Immigration Ombudsman, the Commonwealth Auditor-General or a delegate of the Auditor-General, the Privacy Commissioner or a delegate of the Privacy Commissioner, or the Australian Human Rights Commission or a delegate of the Australian Human Rights Commission; and
- (c) Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Commonwealth and Immigration

Ombudsman or a delegate of the Commonwealth and Immigration Ombudsman, the Commonwealth Auditor-General or a delegate of the Commonwealth Auditor-General, the Privacy Commissioner or a delegate of the Privacy Commissioner, or the Australian Human Rights Commission or a delegate of the Australian Human Rights Commission.

29.6 Survival of Clause

- (a) This clause 30 applies for the Term and for a period of seven years from the date of its expiration or termination.

30. Interruptions to Service Delivery

30.1 Force Majeure

- (a) Force Majeure Notice
 - (i) If the Contractor becomes aware of any matter likely to constitute a Force Majeure Event affecting its performance of any of its obligations under this Contract, the Contractor must provide notice of that fact to the Manager, together with particulars of its probable impact on Contract performance, within 24 hours of becoming so aware.
- (b) Suspension Notice
 - (i) In addition to any notice given under clause 30.1(a), the Contractor must give the Manager a suspension notice as soon as possible, but not later than two days, after any Force Majeure Event occurs, containing:
 - (A) full particulars of the Force Majeure Event;
 - (B) its nature and an estimate of its likely duration; and
 - (C) the obligations affected by it, and the nature and extent of its effect on those obligations.
- (c) Management of Force Majeure Event
 - (i) The Contractor must comply with all directions of the Manager in relation to the Force Majeure Event, or the effects of the Force Majeure Event.
 - (ii) Subject to clause 30.1(c)(i), the Contractor must take all reasonable steps to avoid being, or to mitigate the extent to which it is, prevented from meeting its obligations or achieving the relevant Key Performance Indicators as a result of the Force Majeure Event.
- (d) Meeting between the Parties
 - (i) The Parties will meet within two Business Days of the suspension notice being issued to discuss any additional measures that may be necessary to maintain as much as possible the effective and timely provision of Services.
- (e) Suspension of Obligations
 - (i) Subject to clause 30.6, if the Contractor 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 Contractor gives a suspension notice in respect of that Force Majeure Event until the cessation of the Force Majeure Event.
- (f) If an obligation is suspended pursuant to clause 30.1(e)(i) the Contractor 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 Contractor's performance against any relevant Key Performance Indicator, providing that the Contractor has complied fully with the requirements of this clause 31 and can demonstrate to the satisfaction of the Manager that the obligations

affected by the claimed Force Majeure Event cannot be reasonably accommodated within the existing applicable timeframe.

30.2 Where the Force Majeure Event is the exercise of a step in right by Serco under clause 25 then clause 30.1(e)(i) shall only apply to the extent that the Contractor is prevented from performing an obligation other than an obligation in which has been suspended under clause 32.1(a).

30.3 Contractor Must Update Manager

- (a) The Contractor must keep the Manager informed at reasonable intervals during any suspension and upon the request of the Manager, provide written advice to the Manager of:
 - (i) the estimate of the likely duration of the Force Majeure Event;
 - (ii) the action taken and the action proposed by the Contractor 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 Contractor's obligations.
- (b) The Contractor must give immediate notice to the Manager 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.

30.4 Alternative Supply and Fee Reduction

- (a) During the suspension of any obligation, the Manager may:
 - (i) make alternative arrangements for the performance whether by another person or otherwise of any obligation so suspended without incurring any liability to the Contractor; and
 - (ii) reduce the Services Fee to exclude any amount otherwise payable for the suspended obligation.

30.5 Payments, Unconditional Financial Undertaking and Performance Guarantee

- (a) This clause does not apply to any obligation by the Contractor to pay money or provide an Unconditional Financial Undertaking or Performance Guarantee.

30.6 Termination

- (a) If DIAC terminates the contract with Serco due to a prolonged Force Majeure Event (being an event that precludes the performance of obligations for a continuous period of 60 days or more) then Serco shall terminate this Contract in accordance with clause 43.8 (i) by notice in writing to the Contractor.

31. Incidents

31.1 Incident Prevention

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

a timely and professional manner and with appropriate discretion so as to protect the interests of Serco.

31.2 Notification of Incidents

- (a) Upon an Incident occurring or the Contractor becoming aware that an Incident is likely to occur, the Contractor must comply with the notification requirements set out in Schedule 1 (Services) and:
- (b) immediately implement the provisions of the Incident Management Protocols insofar as they relate to the Incident; and
- (c) as far as possible, continue delivering the Services in accordance with this Contract.

31.3 Incident Response and Management

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

31.4 Joint Development of Incident Management and Response Policies

- (a) The Contractor must actively contribute to the ongoing maintenance and development of Serco's Incident management and response policies and procedures both generally and specifically related to this document. In particular the Contractor must:
 - (i) be an active participant in any Incident management structure that covers Serco's operations including the Services provided under this Contract;
 - (ii) be seen as an Incident prevention and management champion and role model;
 - (iii) be an active participant in Incident analysis, debriefing, organisational learning, training and simulation exercises;
 - (iv) ensure Incident management and response policies and procedures, training and risk management have a high profile and are diligently pursued throughout the Contractor's operations; and
 - (v) promptly advise Serco of any matter, fact or circumstance that the Contractor believes is or may not be adequately dealt with by Incident

Management Protocols policies or procedures or their related training, awareness and compliance programmes.

32. Step in Rights

- 32.1 Serco may step-in at any time if:
- (a) it considers that circumstances exist which require Serco's intervention in the performance of the Services, Serco may, in its absolute discretion, suspend the performance of any service by the Contractor, arrange for Serco or a third party to perform such suspended service or otherwise intervene in the management of a Facility by giving written notice to the Contractor (Step-in Right)
- 32.2 Serco's Step-in Right will continue until the circumstance giving rise to the Step-in Right have been rectified or cease to exist. The Contractor must cooperate with Serco during a step-in period including without limitation by ensuring compliance by the Contractor and Contractor Personnel with all directions given by Serco.
- 32.3 Nothing in this clause 32.1 obliges Serco to exercise the powers given under this clause 33.1. The exercise of the powers under this clause is without prejudice to any other rights Serco may have to enforce or terminate this Contract.
- 32.4 If the exercise of the Step-in Right was not due to a breach of Contract by the Contractor, the Contractor will be entitled to payment of any costs necessarily incurred as a result of compliance with its obligations under this clause 33.1 which are not recovered through the Services Fee.

33. Representations and Warranties

33.1 Contractor Representations and Warranties

The Contractor 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,
 - (i) 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 a material adverse effect on it;
- (h) **(accounts):**
 - (i) the accounts and any other financial statements and reports that it has given to Serco have been prepared in accordance with the Law and (unless inconsistent with the Law) generally accepted accounting principles consistently applied;
 - (ii) the accounts that it has given to Serco 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 Serco that could have an adverse effect on it;
- (i) **(no unpaid employee entitlements)** the Contractor and its Subcontractors do not have any unpaid claims in respect of judicial decisions made against the Contractor or its Subcontractors relating to employee entitlements;
- (j) **(other information):**
 - (i) the other information and reports (if any) that it has given to Serco 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 Contractor), as at the Commencement Date or, if given later, when given;
- (k) **(disclosure of relevant information)** it has disclosed to Serco all the information that is material to an assessment by Serco of the risks that it assumes by entering into this Contract;
- (l) **(no filings or Taxes)** it is not necessary or desirable, to ensure that this Contract is legal, valid, binding or admissible in evidence, that this Contract or any other document be filed or registered with any Government Authority, or that any Taxes be paid;
- (m) **(no default)** no material breach of this Contract has occurred and is continuing, and it is not in material breach of any other document or agreement in a manner that could have a material adverse effect on it or any of its subsidiaries.

33.2 Repetition of Representations and Warranties

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

33.3 Reliance on Representations and Warranties

- (a) The Contractor acknowledges that Serco 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.

33.4 No Representations by Serco

- (i) The Contractor acknowledges that it has not relied and will not rely on any representation, statement or promise made by or on behalf of Serco in deciding to enter into this document or to exercise any right or perform any obligation under it.

34. Indemnity

34.1 Indemnity

- (a) The Contractor indemnifies Serco from and against any Loss arising out of any of the following:
 - (i) death, or bodily injury, disease or illness (including mental illness) of any person, including People in Detention;
 - (ii) loss of or damage to property of Serco (including Facilities, Serco Assets or Loose Assets); and
 - (iii) loss of or damage to property of a third party, including People in detention;
- (b) arising from:
 - (i) any negligent act or omission, Wilful Default, or breach of Legislation, on the part of the Contractor, Contractor Personnel or subcontractors; or
 - (ii) any breach by the Contractor of its obligations or warranties under this Contract, including circumstances where the act, omission, neglect or breach results in a breach of Serco's non-delegable duty of care to a Person in Detention

34.2 Non-exclusive Remedy

- (a) The right of Serco to be indemnified under clause 34.1 is in addition to, and not exclusive of, any other right, power or remedy provided by Law, but Serco is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage, or expense.

34.3 Meaning of "Serco" in this Clause

- (a) The Contractor acknowledges and agrees that:
 - (i) in this clause 35, "Serco" includes officers, employees, agents and contractors (other than the Contractor) of Serco; and
 - (ii) Serco may enforce the indemnity on behalf of those persons referred to in clause 35.3(a).

34.4 Survival of this Clause

- (a) This clause 34 will survive for the period of seven years following the expiration or termination of this Contract. The expiry of the seven year period will not affect any other right, power or remedy provided by Law to Serco.

35. Limitation of Liability

35.1 Limitation of Contractor Liability

- (a) Subject to clause 35.2, but otherwise notwithstanding any other clause of this Contract, the total liability of the Contractor to Serco arising under, or in relation to, this Contract (including in respect of liquidated damages) is limited to the sum of:
 - (i) the amount of insurance proceeds recovered by the Contractor in respect of Loss that is the subject of a policy of insurance required to be effected pursuant to clause 37 of the Contract; and
 - (ii) \$50 million.
 - (b) If the Contractor is liable to Serco for a Loss that is the subject of the limitation of liability in clause 35.1(a), the Contractor must:
 - (i) promptly make a claim on any applicable insurance policy effected in accordance with clause 37 and diligently pursue indemnity for the liability from the insurer; and
 - (ii) compensate Serco for the Loss by using all amounts paid out by its insurer for the liability for the Loss and by paying the retention, excess or deductible amount.
 - (c) If the Contractor is liable to Serco for a Loss that is the subject of the limitation of liability in clause 36.1(a), and the Contractor is not entitled or unable to recover an amount equal to the Loss in accordance with clause 36.1(b), the Contractor must provide Serco with a written notice that:
 - (i) sets out the amount that is available (if any) from insurers; and
 - (ii) confirms that none of the events referred to in clauses 35.1(d)(i) and 36.1(d)(ii) have occurred.
 - (d) Subject to clause 36.1(e), the limitation of liability in clause 35.1(a) does not apply to the extent that the Contractor is not indemnified under any insurance policy required to be effected in accordance with clause 36 due to:
 - (i) a failure by the Contractor to take out or maintain the relevant insurance policy; or
 - (ii) a breach by the Contractor of the terms and conditions of the relevant insurance policy;
- (Insurance Failures) is defined as and limited solely to clauses 35.1(d)(i) and 35.1(d)(ii).
- (e) Where an Insurance Failure arises, the liability of the Contractor under clause 35.1(a) is limited to
 - (i) the amount of insurance proceeds recovered by the Contractor in respect of Loss that is the subject of a policy of insurance required to be effected pursuant to clause 36 of the Contract; and
 - (ii) \$50 million.
 - (f) The limitation of liability in clause 37.1(a) does not limit recourse by Serco against the Contractor for any Loss suffered by Serco to the extent that in the absence of clause 37.1(a)(i) the Contractor would be entitled to indemnity from an insurer under a policy of insurance required by this Contract.

35.2 Exclusions to Limitation of Contractor Liability

- (a) The limitation on the Contractor's liability in clause 37.1(a) does not apply to Loss arising from :
 - (i) claims in relation to death, or bodily injury, disease or illness (including mental illness) of any person, including People in Detention, caused by the Contractor's breach of Contract, negligent act or omission, Wilful Default, or breach of Legislation; or
 - (ii) fraud, criminal acts, malicious damage or Wilful Default of the Contractor;
 - (iii) statutory penalties;
 - (iv) liability that cannot be excluded at law;
 - (v) breach of State or Commonwealth privacy legislation;
 - (vi) breach of confidentiality;
 - (vii) third party claims in relation to infringement of intellectual property; or
 - (viii) claims brought by third parties, including People in Detention, to the extent they are caused by the deliberate breach of Contract, Wilful Default, or gross negligence of the Contractor.

36. Proportionate Reduction of Liability

36.1 Proportionate Reduction in Contractor's Liability

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

36.2 Proportionate Reduction of Serco's Liability

- (a) Serco's liability for any common law or statutory cause of action arising out of the operation of this Contract will be reduced proportionately to the extent that any breach of this Contract by the Contractor or any act or omission on the part of the Contractor contributed to the relevant cost, liability, loss, damage, or expense.

36.3 Survival of this Clause

- (a) This clause 36 will survive for the period of seven years following the expiration or termination of this Contract. The expiry of the seven year period will not affect any other right, power or remedy provided by Law to Serco.

37. Insurance

37.1 The Contractor must effect and maintain, or cause to be effected and maintained, the insurances as specified in Schedule 3.

37.2 Duration of Insurance

- (a) The Contractor must ensure that each of the insurances required by clause 37.1 is maintained from the Commencement Date until the earlier of the performance of all Services or the termination of this Contract, except for professional indemnity insurance which must be maintained for at least seven years following the completion of all Services.

37.3 Reputable and Solvent Insurer

- (a) The Contractor must ensure that each of the insurances required by clause 37.1 (except statutory insurances) is taken out with reputable solvent insurers with a credit security rating of A- or better by Standard and Poors or an equivalent rating with another reputable rating agency acceptable to Serco.

37.4 Terms of Insurance

- (a) The Contractor must ensure that the insurance required by Serco is effected in the name of the Contractor and Contractor Personnel, and Serco (but only for its vicarious liability and its liability as principal for breach of its non-delegable duty of care arising from the acts and omissions of the other insureds).

37.5 Copies of Insurances and Certificates of Currency

- (a) The Contractor must provide to the Manager a certificate of currency in respect of the insurances referred to in clause 37.1 evidencing compliance with the requirements of clause 37:
 - (i) on the Commencement Date;
 - (ii) thereafter upon each policy renewal; and on the Manager's reasonable written request.

37.6 Contractor's Insurance Obligations

- (a) In relation to the insurance required by clause 37.1, the Contractor must:
 - (i) 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;
 - (ii) punctually pay or cause to be paid all premiums when due;
 - (iii) comply with and abide by all the terms and conditions of the policies;
 - (iv) not do anything that would entitle the insurers to void, cancel or reduce their liability in respect of any claim;
 - (v) not cancel, materially vary or allow any insurance policy to expire without obtaining a replace policy without the prior written consent of Serco, such consent not to be reasonably withheld;
 - (vi) reinstate or cause to be reinstated a policy if it lapses; and
 - (vii) do everything reasonably required to claim and to collect or recover monies due under any policy.

37.7 Contractor's Notification Obligations

- (a) The Contractor must notify the Manager immediately when the Contractor:
 - (i) becomes aware of any actual, threatened or likely claim under any of the insurances which the Contractor is obliged to effect and maintain under clause 38.1, which could materially reduce the available limits or involve Serco and must reinstate any reduced limit if required by the Manager; or
 - (ii) receives a notice of cancellation in respect of any of the insurances which the Contractor is obliged to effect and maintain under clause 37.1.
 - (iii) becomes aware that an insurer's security rating has fallen below A- with Standard & Poors or the equivalent rating with another recognised rating agency, and if requested by Serco, seek alternative equivalent insurance to replace the insurance held with such an insurer without unreasonable delay.

38. Dispute Resolution

38.1 Application

- (a) 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:
 - (i) that Party has complied with the requirements of this clause 38 and the dispute remains unresolved in accordance with clause 38.4; or
 - (ii) the proceedings are brought in accordance with clause 38.11.

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

- (a) If a Dispute arises, a Party must give the other Party an Initial Notice in respect of the Dispute. From the giving of the Initial Notice, the Parties have 40 Business Days to resolve the Dispute by negotiation.
- (b) If a Dispute is resolved in accordance with clause 38.1(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 38.2(b) in relation to all or part of the Dispute within 40 Business Days after the giving of the Initial Notice, the Dispute (or that part of the Dispute in respect of which there is no written agreement) is deemed to be unresolved.
- (d) Where an Initial Notice has been given under clause 38.2(a) by either Party, Serco may, at any time prior to the expiration of 40 Business Days, give to the Contractor an expedition notice requiring a Dispute Notice to be issued in accordance with clause 38.6(b).

38.3 Negotiation between Serco and the Contractor

- (a) If a Dispute or part of a Dispute is unresolved in accordance with clause 39.2(c), or if an expedition notice has been given under clause 38.2(d), the Party who gave the Initial Notice must give to the other Party a Dispute Notice in accordance with clause 38.3(b).
- (b) The Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is given pursuant to this clause 38.3;
 - (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:
 - (aa) provisions of the Contract;
 - (ab) direction, instruction or document; or
 - (ac) 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 39.2(b); and
- (iv) be given no later than 10 Business Days after the Dispute or part of the Dispute is deemed to be unresolved in accordance with clause 39.2(c) or the date on which an expedition notice has been given under clause 39.2(d).
- (c) Within 20 Business Days of the giving of a Dispute Notice, Serco's representative and the Contractor's representative must meet at places and times agreed by them to attempt to resolve the Dispute.
- (d) The Parties must ensure that their representatives at all meetings make genuine efforts to resolve the Dispute.
- (e) If the Dispute or part of the Dispute is resolved within 20 Business Days of the giving of the Dispute Notice, Serco's representative and the Contractor's representative 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 38.3(e) in relation to all or part of the Dispute within 20 Business Days after the giving of the Dispute Notice, the Dispute or that part of the Dispute in respect of which there is no written agreement is deemed to be unresolved and the Dispute, or any part of the Dispute, is thereby:
 - (i) Referred for expert determination in accordance with clause 38.4;
 - (ii) Referred for expedited arbitration in accordance with clause 38.5; or
 - (iii) Referred for mediation in accordance with clause 38.6.

38.4 Expert Determination

- (a) The expert determination must be conducted in accordance with the Institute of Arbitrators and Mediators Australia (IAMA) Expert Determination Rules as published from time to time.
- (b) The expert determination must be conducted:
 - (i) by an expert agreed upon between the Parties, with that agreement to be reached within five Business Days of the referral pursuant to clause 38.3(f)(i) or such further period as Serco's Deputy Secretary may reasonably determine; or
 - (ii) if the Parties are unable to agree on the identity of the expert to be appointed within the time period detailed in clause 38.4(b)(i), on the application of either Party, by an expert nominated by the President for the time being of IAMA, or such person authorised by the President to make the appointment, where that expert accepts appointment as an expert.
- (c) The Parties must promptly sign whatever reasonable terms of engagement the expert requires (including any indemnity), but if one of them does not so sign, the other may engage the expert by itself.
- (d) In respect of any Dispute or part of a Dispute that is referred to expert determination:
 - (i) the Parties must agree on the terms of reference and the matters to be determined by the expert within 10 Business Days of the referral pursuant to clause 38.3(f)(i), failing which the terms of reference will be clarified in accordance with the IAMA Expert Determination Rules; and

- (ii) each Party will be their own costs associated with the expert determination (and share the costs of the Expert equally), unless the Parties agree otherwise in the terms of reference.
- (e) Any information which either Party obtains from the other under this clause 38.4 is taken to be Confidential Information for the purposes of clause.
- (f) The expert determination will be final and binding on both Parties.
- (g) Nothing in this clause 38.4 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 38.4 until the earlier of:
 - (i) the conclusion, or termination by agreement, of the expert determination; or
 - (ii) the expiration of 40 Business Days from the date of appointment of an expert if the Dispute or part of the Dispute is not resolved by expert determination at this date.

38.5 Expedited Arbitration Procedure

- (a) Within 10 Business Days of the referral pursuant to clause 38.3(f)(ii) or within such further period as Serco's representative may reasonably determine, the Parties must arrange for the appointment of an arbitrator, to be appointed by IAMA.
- (b) The Parties must, within five Business Days of the appointment of the arbitrator, sign whatever reasonable terms of engagement the arbitrator requires (including any indemnity), but if one of them does not so sign, the other may engage the arbitrator by itself.
- (c) The Parties agree that:
 - (i) the expedited arbitration must be conducted in accordance with the IAMA Rules for the Determination of Commercial Arbitration, specifically, Schedule 2, as published from time to time (EA Rules);
 - (ii) they must abide by the EA Rules and must procure the arbitrator's agreement to conduct the expedited arbitration according to the EA Rules;
 - (iii) they may be represented by legal counsel at the expedited arbitration; and
 - (iv) for the purposes of interpreting the EA Rules, a reference to the Notice of Dispute in the EA Rules shall be a reference to the notice in clause 38.3(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 42.5 is taken to be Confidential Information for the purposes of clause 24.
- (f) The Parties have not fully complied with this clause 42.5 until the earlier of:
 - (i) the conclusion, or termination by agreement, of the expedited arbitration; or
 - (ii) the expiration of 40 Business Days from the date of appointment of an arbitrator if the Dispute or part of the Dispute is not resolved by expedited arbitration at this date.

38.6 Mediation Procedure

- (a) Within 10 Business Days of the referral pursuant to clause 38.3(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 38.6(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 Serco and provided the person nominated agrees to act as mediator.
- (c) The Parties must, within five Business Days of the appointment of the mediator, sign whatever reasonable terms of engagement the mediator requires (including any indemnity), but if one Party does not so sign, the other Party may engage the mediator by itself.
- (e) Within 20 Business Days of the referral pursuant to clause 38.3(f)(iii) the Parties must hold a preliminary conference in that mediation, in the presence of the mediator.
- (f) 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 38.3(f).
- (g) Each Party will bear its own costs of the mediation, unless otherwise agreed between the Parties.
- (h) The Parties have not fully complied with this clause 38.6 until the earlier of:
 - (i) the conclusion, or termination by agreement, of the mediation; or
 - (ii) the expiration of 40 Business Days from the date of appointment of a mediator if the Dispute or part of the Dispute is not resolved by mediation at this date.

38.7 Continuance of Performance

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

38.8 Summary or Urgent Relief

- (a) Nothing in this clause 42 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.

38.9 Continuance of Obligations

- (a) The whole of the Parties' obligations under this clause 38 continue notwithstanding that the Dispute relates to proceedings that have been commenced by:
 - (b) a third party against the Contractor and/or Serco; or the Contractor and/or Serco against a third party.

38.10 Termination

38.11 This clause 38 does not apply to an action by Serco to terminate this Contract under clause 39 or clause 40.

39. Default and Termination

39.1 Default Notification

- (a) The Contractor must notify the Manager of the occurrence of a Default as soon as it becomes aware of the occurrence of the Default.

39.2 Serco Rights

- (a) If a Default occurs (whether or not the Contractor has notified the Manager of that Default), Serco may:
 - (i) give the Contractor a Default Notice; and
 - (ii) issue a certificate and reduce the Services Fee in accordance with clause 12.4.

39.3 Default Cure

- (a) If a Default is capable of remedy Serco must specify in the Default Notice that it requires the Contractor to remedy the Default, in which case, upon receipt of a Default Notice, the Contractor:
 - (i) will have the time specified in the Default Notice (Cure Period) from the date of the Default Notice to remedy the Default; and
 - (ii) must submit a Cure Plan within five Business Days of the Default Notice, or such other period agreed between the Parties, setting out how the Contractor will cure the Default within the Cure Period.
- (b) Where Serco specifies in a Default Notice that it requires the Contractor to remedy a Default, the Contractor 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 Serco following submission of a Cure Plan.
- (c) In determining the Cure Period, Serco will act reasonably and have regard to the nature of the Default required to be remedied.

39.4 Default Remedies

- (a) If a Default has occurred and the Contractor fails to remedy the Default within the Cure Period or such extended period as is agreed by Serco following submission of a Cure Plan, Serco may exercise all or any of the following remedies:
 - (i) sue the Contractor for compensation arising directly or indirectly out of that Default; or
 - (ii) any other remedies available to Serco 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.

39.5 Termination by Serco for Default

- (a) Where Serco seeks to terminate this Contract in accordance with this clause 39, it must give written notice (Termination Notice) to the Contractor specifying at least:
 - (i) the reasons for termination; and
 - (ii) the date of termination.

39.6 Consequences of Termination for Default

If this Contract is terminated under this clause 43:

- (a) subject to this Contract and clause 45 in particular, the Parties are relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
- (b) subject to the requirements of the Contractor to perform Services in accordance with clause 45, all licences and Authorisations granted to the Contractor by Serco, terminate immediately despite anything to the contrary contained in the relevant licence or Authorisation;
- (c) the Contractor must comply with clause 45; and
- (d) Serco must pay the Contractor for any Services that were performed in accordance with this Contract prior to the date of termination.

39.7 Termination Events

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

- (a) the Contractor commits a breach of this Contract (which breach is capable of remedy) and the Contractor fails to remedy the breach within the Cure Period specified in a Default Notice;
- (b) the Contractor commits a material breach of this Contract which breach is not capable of remedy;
- (c) notwithstanding clauses 40.7(a) and 40.7(b), the Contractor commits a breach or breaches of this Contract that at common law entitles Serco to terminate this Contract;
- (d) the Contractor fails to replace any Key Personnel, with replacements reasonably acceptable to Serco;
- (e) the Contractor fails to comply with any of Serco's security requirements set out in Schedule 1 (Description of Services);
- (f) any of the representations or warranties in clause 33 ceases to be true; or
- (g) a Continuous Failure occurs for 6 or more successive months.

39.8 Insolvency and Other Events

- (a) Without prejudice to its rights at common law or any other right which has accrued or may accrue to Serco under clauses 43.7(a), 43.7(c) or otherwise, the following events are termination events for the purposes of clause 43.7(c):
- (b) the Contractor suspends payment of its debts or becomes insolvent;
- (c) 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 Contractor;
- (d) the Contractor 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);

- (e) 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 Contractor, or the Contractor 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;
- (f) the Contractor suffers any execution against its assets having adverse effect on its ability to perform this Contract;
- (g) the Contractor ceases, or threatens to cease, to carry on its business;
- (h) the Contractor assigns its rights otherwise than in accordance with the requirements of this Contract;
- (i) any matter relating to the Contractor 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;
- (j) the Contractor is prevented by a Force Majeure Event (or a series of Force Majeure Events) from performing obligations under this Contract that is continuing for a period of 60 days or more; or
- (k) the Contractor suffers a change in control or ownership which in the reasonable opinion of Serco, materially adversely affects the Contractor's ability to perform the Services.
- (l) Wilson Security staff cease to be recognised as "officers" under the Migration Act or are removed by DIAC as an approved subcontractor..

39.9 Materiality

- (a) The materiality of any breach and whether a breach has a material adverse affect, for the purposes of clauses 43.7 and 43.8 will be determined in light of the absolute importance to Serco that the Australian public have, and continue to have, confidence in the efficient, effective and competent administration of the Facilities.

39.10 Repayment on Termination

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

39.11 Contractor's Acknowledgement

- (a) The Contractor acknowledges that the performance of the Services is critical to the performance of the functions of Serco and that Serco will incur expenses in seeking a Successor and transferring the Services to a Successor.

39.12 Termination Notice

- (a) Serco is required under this agreement to give the Contractor 30 days notice in writing of any termination event under clauses 39 and 40.

40. Termination for Convenience

40.1 Serco May Terminate for Convenience

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

40.2 Transition Out Obligations

Notwithstanding that the Contractor may have received a notice under clause 40.1, the Contractor must comply with its obligations under clause 41 and with any directions given by the Manager.

40.3 Payment for Services Rendered Prior to Termination

Serco must pay the Contractor for any Services that were performed in accordance with this Contract prior to the date of termination.

40.4 Compensation for Unavoidable Losses

- (a) Serco is liable to the Contractor for any substantiated unavoidable losses necessarily incurred by the Contractor in connection with this Contract to the extent that the unavoidable loss was necessarily incurred as a consequence of termination of this Contract in accordance with this clause 40.
- (b) For the purposes of this clause 40.4, "unavoidable loss": is limited to reasonable wind-down expenses (for example, redundancy expenses);
- (c) must not include any amount on account of loss of profits;
- (d) subject to clause 40.5, includes costs incurred in respect of terminated subcontracts or supply agreements and other costs reasonably and necessarily incurred in anticipation of completing the Contract; and
- (e) must not exceed the amount that would have been payable if Serco had not terminated the Contract pursuant to clause 40.1.

40.5 Termination of Subcontracts for Convenience

The Contractor 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 Serco's right of termination under this clause 40 and the Contractor must, where appropriate, make use of such rights to mitigate losses in the event of termination by Serco under the provisions of this clause 40.

40.6 Unfettered Discretion

For the avoidance of doubt, Serco has an unfettered discretion to terminate this Contract in accordance with this clause 40.

40.7 Deemed Termination for Convenience

If a purported termination for default by Serco under clause 39 is determined by a competent authority not to be properly a termination for default, then that termination by Serco will be deemed to be a termination for convenience under clause 41 which termination has effect from the date of the notice of termination.

41. Health and Safety

41.1 As identified in other sections of this document health and safety must be complied with in all respects to these documents, the relevant Occupational Health and Safety Act (OH&S Act), and include but are not limited to:

- (a) Adherence to the OHS&E Act and any other safety codes practices, legislation, ordinances and by-laws; and
- (b) Staff appropriately trained in relation to OH&S; and
- (c) Review number of incidents and action taken; and
- (d) Advise of potential hazards and pro-active approach; and
- (e) All tools and equipment correctly calibrated and compliant to requirements; and
- (f) Regular attendance by Contractors representative; and
- (g) Appropriate OH&S audits undertaken.

41.2 The Contractor shall undertake all work under this Contract in accordance with its obligations under the OH & S Act and other relevant legislation, in particular the Hazardous Substances Regulations, and failure to observe any safety requirement will be deemed a breach of this Contract.

41.3 The Contractor must:

- (a) Both before and whilst undertaking any work under this Contract, take all reasonable precautions to prevent injury to any person or damage to premises
- (b) Provide such systems of work, information, training and supervision as may be necessary to ensure the health and safety of its employees whilst at the premises.
- (c) Provide documented safe systems of work, information, training and supervision as may be necessary which will include Permits to Work (where required) and Job Safety Analysis in the form proscribed in Tender Schedules to ensure the health and safety of its employees whilst at the premises.
- (d) Prior to using any agent the use of which is controlled by the Dangerous Goods Act, the Poisons Act, or other applicable legislation, notifies Serco as to the use thereof. The Contractor shall notify Serco of any intended change in use of agents that are subject to the above-mentioned Acts. Material Safety Data Sheets shall be prominently displayed where the chemicals are stored. The Contractor shall provide Serco with a manual containing copies of MSDS for all agents used on site, if requested by Serco. This manual is to be maintained and up to date by the Contractor.

41.4 Prior to work commencing Serco shall conduct a site-specific induction of all hazards and special requirements while working at premises. This will consist of a short presentation.

41.5 The Contractor and its personnel will be provided with a copy of House Rules. Compliance to these rules is mandatory. These include but are not limited to:

- (a) Access to the loading dock is only by arrangement with the Maintenance Manager; and
- (b) All personnel must sign in as directed by Serco; and

- (c) All new personnel working on site must obtain a Serco ID which should be worn at all times whilst on site; and
- (d) Site access to the Contractor and its staff will only be granted after all documents and approvals have been gained as outlined in this document; and
- (e) Where work is to take place out of hours, a minimum of twenty four (24) hours notice is required in writing from the Contractor, indicating the name of the employee, expected arrival times and expected duration of work and other relevant details; and
- (f) Parking arrangement, and general loading and unloading requirement must be made before arrived on site (24 hours) with the Maintenance Manager; and
- (g) Identifying areas where trades can eat meals, have crib breaks, etc

41.6 The Contractor shall ensure that its personnel comply with all safety procedures and requirements which apply to the property including the site specific OH&S management plans issued by Serco.

41.7 If the Contractor fails to comply with a safety procedure, direction or requirement, Serco may issue a written notice requiring the Contractor to remedy the default.

41.8 The Contractor shall remedy the default within the time specified in the notice, failing which Serco may remedy the default and the Contractor will be liable for losses suffered by Serco and the Contractor may be excluded from the site.

41.9 The Contractor shall nominate a competent Safety Supervisor with authority to resolve matters of safety relevant for the activities of its staff.

41.10 Serco may from time to time require reasonable proof that the Contractor and any Subcontractors' personnel are appropriately trained and instructed. The Contractor shall ensure that its personnel are not directed or expected to undertake work or activities, which might be detrimental to the safety, health or welfare of themselves or others.

41.11 If any of the Contractor's personnel are involved in an accident required to be notified to a statutory authority, the Contractor shall notify the relevant authority in accordance with relevant Federal and State authorities. A copy of the notice must be forwarded to Serco within 3 days of the occurrence of the accident.

41.12 All work is to be performed within the requirements of relevant Work Cover, Occupational Health and Safety Acts and Regulations applying to the State or Territory of the site. For example

- (a) Work Cover Legislation of the respective state or territory; and/or
- (b) Any other relevant act or authority that may apply.

41.13 The Contractor must take all reasonable precautions to ensure that the service operations cause as little disturbance as possible to the building operations and Serco's users and promptly remove all materials and equipment, once maintenance work has been completed in each area identified.

41.14 The Contractor, in the carrying out of the service duties, shall not enter or seek to enter or be upon premises other than those in which they are entitled to be present pursuant to the terms of the Contract.

41.15 Serco and the Contractor have an obligation to notify the other immediately it is aware of:

- (a) the death or injury to any person or damage to property arising from the use of any item of the Equipment; or
- (b) any event or circumstance adversely affecting or likely to adversely affect the safe working of any item of the Equipment; or
- (c) a notice or instruction issued by a Statutory or Public Authority in respect of any part of the Equipment.

41.16 Notification must be made within 1 hour of any of the above incidences by telephone and with a formal written report documenting the incident within 24 hours.

41.17 Serco agrees to allow the Contractor adequate and safe access to the site such that the Contractor can undertake its obligations under this Contract. This is not an exclusive right of access. The Contractor shall make all arrangements for access to the site with Serco, giving not less than 24 hours notice. The Contractor shall comply with all requirements for signing on and off the site, and for the use of keys and access cards to the site for the purposes of the Contract.

41.18 Serco shall provide adequate lighting and ventilation to each equipment room, and shall provide water and energy (electricity and gas as applicable) free of charge as reasonably required by the Contractor for the purposes of the Contract.

41.19 The Contractor may make use of communications facilities (telephones, radios and the like) available on the site as scheduled or as directed by the Nominated Representative.

41.20 The Contractor shall provide all leads (tagged and tested), hoses and the like that it requires to connect to the existing site services.

41.21 Car parking, ablution facilities and storage facilities shall be provided as scheduled, and as otherwise agreed in writing by Serco.

42. General

42.1 Conflict of Interest

- (a) The Contractor warrants that to the best of its knowledge after making diligent inquiry, at the date of signing this Contract and at all times during the Term, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract by itself or by Contractor Personnel and that based upon reasonable inquiry it has no reason to believe that any Subcontractor has such a conflict.

- (b) If during the Term a conflict or risk of conflict of interest arises, the Contractor undertakes to notify Serco immediately after the conflict or risk of conflict becomes known.
- (c) The Contractor must not, and must use its best efforts to ensure that any Personnel, agent or Subcontractor does not, during the Term, engage in any activity or obtain any interest likely to conflict with, or restrict the fair and independent performance of obligations under this Contract and must immediately disclose to Serco such activity or interest.
- (e) If the Contractor fails to notify Serco or is unable or unwilling to resolve or deal with the conflict as required, Serco may terminate this Contract in accordance with the provisions of clause 42.

43. Notices

43.1 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 Contractor to the Serco, signed by the Service Contractor's representative and marked for the attention of Serco's representative or the Manager at the address set out in 43.2 or as otherwise notified from time to time by the Contractor; or
- (b) if given by Serco to the Contractor, signed by Serco's representative or the Manager and marked for the attention of the Contractor's representative at the address set out in clause 43.2 or as otherwise notified from time to time by Serco.

43.2 Addresses

The Address for Serco

National Commercial Manager
Serco Immigration Services
Level 1, MTAA Building
CANBERRA ACT 2609
Facsimile: +61 2 6196 1001

The address for the Contractor

National Operations Manager
Wilson Security
Level 16, The Tower,
Melbourne Central,
360 Elizabeth Street.
Melbourne.
Victoria
3000
Facsimile: +61 3 9224 0294

43.3 Delivery of Notices

- (a) A notice or any other communication in connection with this agreement must be:
 - (i) in writing;

- (ii) marked for the attention of the person described in Part A or B of the Details (as applicable); and
- (iii) left at the address of the addressee, sent by post to the street address of the addressee, sent by facsimile to the facsimile number of the addressee or by email to the email address of the addressee which is specified in Part A or B (as applicable) of the Details.

43.4 A communication is taken to be received:

- (a) in the case of a pre-paid, ordinary posted letter within Australia, upon the expiry of the second business day after the date on which it is sent;
- (b) in the case of a pre-paid, ordinary posted letter outside Australia, upon the expiry of the fifth business day after the date on which it is sent;
- (c) in the case of facsimile, at the time the machine on which it has been sent records that it has been transmitted successfully; and
- (d) in the case of email, when it is delivered to a system from which the addressee can retrieve it.

44. Interpretation

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

- (a) capitalised terms have the meaning ascribed to them in Schedule 2 (Definitions);
- (b) a word suggesting a gender includes all genders;
- (c) a singular word includes the plural, and vice versa;
- (d) headings are for convenience only, and do not affect interpretation;
- (e) the word person includes any type of entity or body of persons (including a body politic), whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
- (f) a reference to an amount in dollars, \$AUD or \$AU is to that amount in Australian dollars;
- (g) a reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as, from time to time, amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) 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;
- (h) a section is to a section in a Schedule or an Annexure of or to this Contract as varied from time to time;
- (i) any body is:
 - (i) if that body is replaced by another organisation, deemed to refer to that organisation; and
 - (ii) 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;
- (j) 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;
- (k) a person holding an office in Serco or the Contractor includes any person from time to time holding, occupying or performing the duties of that office; and

- (l) an office in Serco or the Contractor 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;
- (m) 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;
- (n) a Party to this Contract or any other document or arrangement includes that Party's permitted substitute or a permitted assign of that Party;
- (o) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing; and
- (p) the word agreement includes an undertaking or other binding arrangement or understanding, whether or not in writing.

44.2 Precedence of documents

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

- (i) the Main Terms and Conditions;
- (ii) All Schedules, Annexures and Attachments
- (iii) provisions of documents incorporated by express reference in this agreement, including any State and/or Commonwealth policy documents,

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

Execution page

SIGNED by P. Mahoney as
authorised representative for **Serco**
Australia Pty Limited in the presence of:

H. Prout
Signature of witness

HARISH PROUT
Name of witness (block letters)

62 RAMSGATE AVE, BONDI BEACH, NSW
Address of witness

CHARTERED ACCOUNTANT
Occupation of witness

Date: 31 / 1 / 2011

SIGNED by JOHN McMEULAN as
authorised representative for the
Contractor in the presence of:

J. Rogers
Signature of witness

JOHN ROGERS
Name of witness (block letters)

360 ELIZABETH ST, MELBOURNE
Address of witness

NATIONAL OPS MANAGER
Occupation of witness

Date: 17 Dec 2010

P. Mahoney
By executing this agreement the signatory warrants that the signatory is duly authorised to execute this agreement on behalf of Serco Australia Pty Ltd.

J. Rogers
By executing this agreement the signatory warrants that the signatory is duly authorised to execute this agreement on behalf of the Contractor.

1. Scope of Works

The service provided under this contract is the provision of qualified security staff who will contribute to the maintenance of security at various Department facilities around the country. Wilson Security staff will be required to implement the Immigration Detention Values in the performance of their duties.

1.1 Staff Qualifications

All staff supplied under this agreement are required to have and to provide evidence of the following qualifications to Serco prior to the commencement at site;

- (a.) a right to work in Australia
- (b.) a minimum Certificate II in Security Operations,
- (c.) a current AFP check,
- (d.) a current Working with Children check (as applicable on a state by state basis),
- (e.) a current security licence as applicable on a state to state basis, and
- (f.) a DIAC approved induction course.
- (g.) a current driving licence, before any Serco vehicle to be used

All qualifications are to be to be maintained by the undertaking of appropriate training and obtaining the relevant qualifications.

1.2 Engagement of illegal workers prohibited

- (a.) For the purposes of this Clause 1.2, an "illegal worker" is a person who is an Unlawful Non-Citizen, or a Non-Citizen who is performing work in breach of a Visa Work Condition, and the following definitions also apply:
 - (i) "Contractor" will, where the context so admits, include the officers, employees, volunteers, bailees, agents and authorised subcontractors of the Contractor; and
 - (ii) "Non-Citizen" has the same meaning as under the Migration Act 1958; and
 - (iii) "Unlawful Non-Citizen" has the same meaning as under the Migration Act 1958; and
 - (iv) "Visa Work Condition" means a condition of a visa restricting the work that the Non-Citizen may do in Australia,
and a reference to the Migration Act 1958 is a reference to that Act as amended or replaced from time to time.
- (b.) The Contractor must ensure that each person referred under this Contract would not, in doing the work for which they are referred, be an illegal worker.
- (c.) The Contractor must remove, or cause to be removed, any illegal worker from any involvement in the carrying out of the Services and

arrange for their replacement at no cost and immediately upon becoming aware of the involvement of the illegal worker.

- (d.) For the avoidance of doubt, compliance with the Contractor's obligations under this Clause 1.1 will not constitute a force majeure event, give rise to an entitlement to claim any delay or otherwise excuse the Contractor from compliance with its obligations under this Contract.
- (e.) When requested in writing, the Contractor will provide evidence within 14 days that it has taken all reasonable steps to ensure that it has complied and is complying with its obligations under this Clause 1.1.
- (f.) The Contractor may check the entitlement to work in Australia at www.immi.gov.au/evo

1.3 Induction

Induction training is to be delivered by suitably qualified staff from a Registered Training Organisation (RTO).

1.4 Priorities for Service Delivery

The priorities for Service delivery are identical at each site and for each Service, as detailed in the Statement of Works contained in the main contract, but can be summarised as follows.

- (a.) To conform to Department Operational Updates and the Manager's Rules of the Detention Centre, to assist and support the Manager in their delivery of services and to obey all lawful instructions.
- (b.) To pay special attention to duty under the Migrations Act 1958.
- (c.) To fulfil the duties outlined in the Position Description

1.5 Example of Services to be Delivered

- (a.) Welfare
 - (i) Respond to and assist in resolving problems decisively, professionally and non-confrontationally
 - (ii) Inform the Centre Manager promptly of any abuse or impropriety brought to your attention
 - (iii) Notify the Health Care Contractor team of any concern about the physical or mental health of a client
 - (iv) Treat clients with dignity, integrity and equality
 - (v) Treat clients in a manner that encourages self-respect, a sense of personal responsibility and tolerance towards others
- (b.) Logistics
 - (i) Maintain smooth running of area of assigned responsibility
 - (ii) Supervise entry and exit of people from area of assigned responsibility
- (c.) Maintain paperwork
 - (i) Keep logs and reports up to date
- (d.) Safety and Security
 - (i) Maintain a safe, secure working and living environment for all who work and live within the Centre

- (ii) Maintain all security protocols, processes and procedures relevant to the operation of the Centre
- (iii) Manage and monitor area of assigned responsibility on a daily roster basis (i.e. vehicle checks, perimeter patrols etc)
- (iv) Account for and audit equipment
- (v) Carry out risk assessments under the Health & Safety umbrella, on an ongoing basis, in area of assigned responsibility
- (vi) Remain alert and attentive at all times

2. Service Standards

The staff provided under this contract are to maintain an appropriate level of professionalism and be well turned out at all times.

2.1 The staff provided by the Contractor are to;

- (a.) provide the Services in a manner equalling or exceeding the standard expected of a professional contractor experienced and qualified in the performance of the Services or services of a similar kind to the Services;
- (b.) be authorised, registered or licensed in accordance with the requirements of any regulatory requirements for the purposes of or incidental to the performance of the Services;
- (c.) comply with the time-frame for the performance of the Services specified by Serco from time to time;
- (d.) satisfy the mutually agreed KPIs or as otherwise specified by Serco from time to time; and
- (e.) provide any information Serco's may reasonably require and comply with any reasonable request made by Serco's Representative.

Schedule 2

Definitions

In this agreement:

Defined terms used in this Contract and not otherwise defined in this Schedule 2 have the meanings ascribed to them in the Head Contract.

“Business Day” means a day other than Saturday, Sunday or a public holiday anywhere in Australia.

“Claim” means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

“Commencement Date” means the date from which the Contractor commences to provide the Services under this Agreement;

“Commonwealth” means the Commonwealth of Australia;

“Confidential Information” means all information:

- of Serco; or
- in relation to which Serco owes an obligation of confidentiality,
- relating to the business, technology, financial or other affairs of Serco or a third party which:
 - is by its nature confidential;
 - is designated by Serco as confidential; or
 - the Contractor knows or ought to know is confidential,
 - other than Excluded Information.

“Contractor” means the provider of services or goods under this contract.

“Control” of a corporation means having:

- more than 19.9% of the votes eligible to be cast in the election of directors or any similar matter; or
- the right to appoint or remove directors (or members of a governing body having functions similar to a board of directors) or any similar matter representing more than 19.9% of the votes exercisable by all the directors (or persons having similar functions); or
- an interest of more than 49.9% in any category of the profits, distributions or net liquidation proceeds of that corporation.

“Details” means Part 1 of this agreement.

“Documents” means data, information and other documents (including electronic documents).

“Employee” or **“Employees”** means one or more natural persons engaged to perform work under this Agreement and includes natural persons engaged under a personal contract;

“Excluded Information” means information which:

- is in or becomes part of the public domain other than through breach of this agreement or breach of an obligation of confidence owed to the owner of the information;
- the disclosing party can prove by contemporaneous written documentation was already known to it at the time of disclosure (unless that knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- the recipient acquires from another source entitled to disclose it.

“Force Majeure Event” means any circumstance or event beyond the reasonable control of the party affected (but, in the case of the Contractor, does not include a failure to perform, or delay in performing, by a subcontractor unless that failure or delay was due to a circumstance or event beyond the subcontractor's reasonable control).

“GST” has the same meaning as in the *GST Law*.

“GST Law” means the *A New Tax System (Goods and Services Tax) Act 1999*.

“Head Contract” means the contract between Serco and the Department of Immigration and Citizenship (DIAC) for the provision of services at Immigration Detention Centres.

“Input Tax Credit” has the same meaning as in the *GST Law*.

“Insolvent” means being an insolvent under administration or insolvent (each as defined in the *Corporations Act 2001*) or having a controller (as defined in the *Corporations Act 2001*) appointed, or being in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or being otherwise unable to pay debts when they fall due or having something with the same or similar effect happen under the laws of any jurisdiction.

“Intellectual Property” means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered and unregistered designs, circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields.

“Key Performance Indicators” means the key performance indicators set out in Schedule 4.

“Material” includes documents, equipment, software, goods, information and data stored by any means.

“Moral Rights” means the right of attribution, the right against false attribution and the right of integrity of authorship as defined in the *Copyright Act 1968 (Cth)*.

“Manager” means the nominated Serco representative as advised to the Contractor from time to time.

“Party” or **“Parties”** means a party or the parties to this Agreement and includes their successors and permitted assigns;

“Serco Documents” means all *Documents* owned by, or licensed to, Serco, provided to the Contractor by or on behalf of Serco, or otherwise obtained by the Contractor.

“Services” means all those services or activities which are identified in Schedule A to this Agreement or otherwise required to be performed or provided by the Contractor pursuant to this Agreement;

“Schedule of Rates” means the Schedule of Rates agreed between the Parties and set out in Part 1 of this agreement;

“Serco Centre Manager” means the Serco designated manager of the Immigration Detention Centre located in which the Contractor provides Service in accordance with the Statement of Work in this Agreement;

“Statement of Work” or **“SOW”** means the statement of work in Schedule A to this Agreement, which details the Services to be provided by the Contractor pursuant to this Agreement;

“Taxable Supply” has the meaning attributed in the GST Act; and

“Term” means the term of this Agreement as specified in Item C of the Recitals.

“Tax Invoice” has the same meaning as in the *GST Law*.

“Third Party Material” means *Material* owned by a third party that is provided to Serco as part of the *Deliverables*.

Schedule 3

Insurances

The Contractor must effect and maintain or cause to be effected and maintained under one or more policies of insurance (without requiring any risk to be double insured):

- (a) public and products liability insurance, written on an occurrence basis, with a limit of indemnity of at least \$50,000,000 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 12 month policy period, and which covers:
 - (i) the Contractor's liability and the liability of its employees (including to Serco); 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 Contractor and its employees;in respect of:
 - (iii) loss of, damage to, or loss of use of any real or personal property (including the Facilities, Department Assets, Loose Assets, Department Material and other Department or Client property in the care, custody or control of the Contractor to the extent not insured under the insurance referred to at section (f) below); and
 - (iv) the bodily injury of, disease or illness (including mental illness) to, or death of, any person (except employees of the Contractor);arising out of or in connection with the Contractor's negligent performance of any Services for 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) and, without limitation arising out of or in connection with the Contractor's delivery of People in Detention to any aircraft for transportation;
- (b) workers' compensation insurance which insures any injury, damage, expense, loss or liability suffered or incurred by any person engaged in work by the Contractor 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 section (i) above, for employer's liability at common law;
 - (iii) in each State or Territory where the Contractor's employees normally reside or where their contract of employment was made;
- (c) professional indemnity or errors and omissions insurance:
 - (i) which covers the liability the Contractor and its employees or consultants 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; and
 - (iii) with a limit of indemnity of at least \$20,000,000 in respect of each claim and in the aggregate for all claims in any one 12 month policy period, and with one automatic right of reinstatement;
- (d) except to the extent insured under the industrial special risks policy or public liability policy effected, or caused to be effected, by the Contractor in compliance with this Contract, motor vehicle insurance for not less than \$20,000,000 for each and every occurrence which covers:

- (i) third party property damage arising from the use of any plant and equipment or vehicles (registered or unregistered) used in respect of the performance of the Services pursuant to this Contract; and
 - (ii) the personal injury of, disease or illness (including mental illness) to, or death of, any person arising from the use of any unregistered plant and equipment or vehicles used in respect of the performance of the Services pursuant to this Contract;
- (e) compulsory third party motor vehicle insurance in respect of all registered vehicles used in the performance of any Services or this Contract as required by Law; and

