



Australian Government

Department of Immigration and Border Protection

**Attachment A**

**DECISION RECORD**

**Request Details**

FOI Request FA 14/10/00063

File Number ADF2014/35710

**Scope of request**

*All details of the Save the Children contract for services rendered on Nauru Regional Processing Centres, and all performance reports provided by the organisation to the Department*

**Documents in scope**

1. Save the Children Australia Contract – 1 September 2014 – containing 98 folios.

**Authority to make decision**

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests to access documents or to amend or annotate departmental records.

**Information considered**

In reaching my decision, I have considered the following:

- The *Freedom of Information Act 1982*;
- Departmental files and/or documents (identified above); and
- The Australian Information Commissioner's guidelines relating to access to documents held by government.

**Reasons for decision**

I have considered the files within the scope of your request and applied exemptions in part or in full to documents as detailed in the Schedule of Documents. You should read the schedule in conjunction with the exemptions below.

**Deletion of exempt or irrelevant material under s.22 of the FOI Act**

Section 22(2) of the FOI Act provides that, where an agency reaches the view that a document contains exempt information or material that is irrelevant to the request **and** it is possible for the agency to prepare an edited copy of the document with the irrelevant or exempt material deleted, then the agency must prepare such a copy.

This edited copy must be provided to the applicant. Further, the decision maker must advise the applicant in writing that the edited copy of the document has been prepared and of the reason(s) for each of the deletions in the document (s.22(3) of the FOI Act).

Exempt material is deleted pursuant to s.22(1)(a)(i) and irrelevant material is deleted pursuant to s.22(1)(a)(ii) of the FOI Act.

On Tuesday 9 December 2014 you wrote to personal information to indicate that staff names were irrelevant to the scope of your request. I have deleted staff named under s.22(1)(a)(ii).

The attached Schedule of Documents identifies documents where material has either been deleted as exempt information under the FOI Act or deleted as irrelevant to the scope of the request.

#### **FREEDOM OF INFORMATION ACT 1982 - Section 47**

##### **Documents disclosing trade secrets or commercially valuable information**

The documents that I have identified as being exempt in part under section 47(1)(b) contain information that would disclose information concerning an organisation in respect of its commercially valuable information.

I have decided that the disclosure of this information would or could reasonably be expected to be destroyed or diminished if the information were disclosed.

After formally consulting with Save the Children Australia (SCA), they have advised that the disclosure of this information would, or could reasonably be expected to, unreasonably affect SCA in respect of its lawful business or commercial activities for the following reasons:

- a) SCA's negotiating position with third parties may be undermined as third parties may not be prepared to accept less favourable conditions with SCA; and*
- b) Competitors for similar services may gain an unfair commercial advantage over SCA if they are aware of the value of SCA's services.*

I am satisfied that release of this information would destroy or diminish commercially valuable information concerning SCA, therefore, I have exempted the information under s.47(1)(b) of the FOI Act.

#### **FREEDOM OF INFORMATION ACT 1982 - Section 47G**

##### **Public interest conditional exemptions—business**

The information that I have identified as being exempt under section 47G(1)(a) contain information that would disclose information concerning an organisation in respect of its lawful business, commercial or financial affairs.

I have decided that the disclosure of this information would or could reasonably be expected to, unreasonably affect the organisation in its lawful undertakings as there is an expectation that the department would securely maintain any information provided to it.

Having formed the view that release of the documents would or could reasonably be expected to unreasonably affect that organisation, I then considered whether the release would be contrary to the public interest.

I considered the following factors in favour of disclosure:

- applicants exercising rights under the FOI Act; and
- accountability of departmental procedures.

The arguments I have considered in favour of non-disclosure include:

- it is a core Government concern to maintain the integrity of the information it holds including information relating to the business, commercial and financial affairs of an organisation;
- the department is obliged to take action to prevent the unreasonable disclosure of information that may be of commercial or financial value to an organisation.

I have given greatest weight to the department's obligation to maintain the integrity of the information it holds. This would be contrary to the public interest.

I consider that disclosure of this information would be contrary to the public interest and it is therefore exempt from disclosure under section 47G(1)(a) of the FOI Act.

personal information

A large rectangular area of the document is redacted with a solid grey fill. The text "personal information" is printed in a small font above the top-left corner of this redacted area.

Authorised decision maker  
Freedom of Information Section  
Parliamentary & Executive Coordination Branch  
Department of Immigration and Border Protection  
Telephone 02 6264 4667  
Email [foi@immi.gov.au](mailto:foi@immi.gov.au)

23 January 2015



Australian Government

Department of Immigration and Border Protection

Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 14/10/00063  
File Number ADF2014/35710

1. Save the Children Australia contract – 1 September 2014

Folio	Description	Decision	Legislation
1 - 16		Release in Full	
17 - 19	Information that has commercial value to an organisation.  Information concerning an organisation in respect of its lawful business, commercial or financial affairs.	Exempt in Part	s.47(1)(b),  s.47G(1)(a)
20 - 22		Release in Full	
23 - 24	Information that has commercial value to an organisation.  Information concerning an organisation in respect of its lawful business, commercial or financial affairs.	Exempt in Part	s.47(1)(b),  s.47G(1)(a)
25		Release in Full	
26	Information that has commercial value to an organisation.  Information concerning an organisation in respect of its lawful business, commercial or financial affairs.	Exempt in Part	s.47(1)(b),  s.47G(1)(a)
27		Release in Full	
28	Irrelevant material includes a staff name.	Exempt in Part	s.22(1)(a)(ii)
29 - 34		Release in Full	
35	Irrelevant material includes a staff names.	Exempt in Part	s.22(1)(a)(ii)
36 - 54		Release in Full	
55 - 68	Information that has commercial value to an organisation.  Information concerning an organisation in respect of its lawful business, commercial or financial affairs.	Exempt in Part	s.47(1)(b),  s.47G(1)(a)
69		Release in Full	

people our business

70 - 72	Information that has commercial value to an organisation.  Information concerning an organisation in respect of its lawful business, commercial or financial affairs.	Exempt in Full	s.47(1)(b),  s.47G(1)(a)
73 - 81		Release in Full	
82 - 83	Information that has commercial value to an organisation.  Information concerning an organisation in respect of its lawful business, commercial or financial affairs.	Exempt in Part	s.47(1)(b),  s.47G(1)(a)
84 - 88		Release in Full	
89 - 93	Information that has commercial value to an organisation.  Information concerning an organisation in respect of its lawful business, commercial or financial affairs.	Exempt in Part	s.47(1)(b),  s.47G(1)(a)
94 - 98		Release in Full	

## Attachment C – Extract of relevant legislation

### 22 Access to edited copies with exempt or irrelevant matter deleted

#### *Scope*

- (1) This section applies if:
  - (a) an agency or Minister decides:
    - (i) to refuse to give access to an exempt document; or
    - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
  - (b) it is possible for the agency or Minister to prepare a copy (an *edited copy*) of the document, modified by deletions, ensuring that:
    - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
    - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
  - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
    - (i) the nature and extent of the modification; and
    - (ii) the resources available to modify the document; and
  - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

#### *Access to edited copy*

- (2) The agency or Minister must:
  - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
  - (b) give the applicant access to the edited copy.

#### *Notice to applicant*

- (3) The agency or Minister must give the applicant notice in writing:
  - (a) that the edited copy has been prepared; and
  - (b) of the grounds for the deletions; and
  - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

#### **47 Documents disclosing trade secrets or commercially valuable information**

- (1) A document is an exempt document if its disclosure under this Act would disclose:
  - (a) trade secrets; or
  - (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
- (2) Subsection (1) does not have effect in relation to a request by a person for access to a document:
  - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
  - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
  - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.

#### **47G Public interest conditional exemptions—business**

- (1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:
  - (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
  - (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.
- (2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.
- (3) Subsection (1) does not have effect in relation to a request by a person for access to a document:
  - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
  - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
  - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.
- (5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).



**CONTRACT**

IN RELATION TO THE PROVISION OF SERVICES IN REGIONAL  
PROCESSING COUNTRIES

Commonwealth of Australia represented by  
the Department of Immigration and Border Protection

Save the Children Australia (ACN 008 610 035)

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**CONTRACT**

IN RELATION TO THE PROVISION OF SERVICES IN REGIONAL PROCESSING COUNTRIES

**Date**

This Contract is made on 1 September 2014

**Parties**

This Contract is made between and binds the following parties:

1. The **Commonwealth of Australia**, acting through and represented by the Department of Immigration and Border Protection ABN 33 380 054 835 (the **Department**)
2. Save the Children Australia (ACN 008 610 035) (the **Service Provider**)

**Recitals**

The Department wishes to obtain the following services from the Service Provider:

- A. welfare and education services for Transferees in Regional Processing Countries (RPCs); and
- B. specialist support services for Transferee unaccompanied minors (UAMs) in RPCs.

**Operative Provisions****1. Definitions and interpretation****1.1. Definitions**

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

<b>Administrative Arrangements</b>	means the approved administrative arrangements between the Government of Nauru and the Government of Australia to support the implementation of the Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues (the "MOU"), dated 3 August 2013
<b>Australian Privacy Principle</b>	has the same meaning as it has in the <i>Privacy Act 1988</i> (Cth);
<b>Business Day</b>	means a weekday other than a public holiday in the place specified or, if no place is specified, in the Australian Capital Territory, Australia;
<b>Code of</b>	means the code of conduct provided by the Department to

<b>Conduct</b>	the Service Provider that outlines expectations and guidelines regarding the conduct of the Service Provider and its Personnel;
<b>Commencement Date</b>	means 1 September 2014;
<b>Commonwealth Material</b>	means any Material: <ul style="list-style-type: none"> <li>a. provided by the Department to the Service Provider for the purposes of this Contract; or</li> <li>b. derived at any time from the Material referred to in paragraph a;</li> </ul>
<b>Confidential Information (of the Service Provider)</b>	means information that is by its nature confidential and is described in Schedule 4;
<b>Contract Administrator</b>	means the person occupying the position of Assistant Secretary - Contract and Services Management Branch;
<b>Contract Authority</b>	means the person occupying the position of First Assistant Secretary - Detention Infrastructure and Services Division;
<b>Contract Material</b>	means any Material: <ul style="list-style-type: none"> <li>a. created for the purposes of this Contract;</li> <li>b. provided or required to be provided to the Department as part of the Services; or</li> <li>c. derived at any time from the Material referred to in paragraphs a or b;</li> </ul>
<b>Department</b>	means the Commonwealth of Australia as represented by any department, agency or authority of the Commonwealth which is from time to time responsible for administering this Contract;
<b>Department Operations Team Leader</b>	means the person (or delegate) appointed by the Department to perform the role of Department Operations Team Leader at the Site;
<b>Execution Date</b>	means the date on which the last of the parties executes this Contract;
<b>Excusable Performance Failure Event</b>	means any of the following events: <ul style="list-style-type: none"> <li>a. a fire, flood, earthquake, pandemic, elements of nature or other acts of God;</li> <li>b. war or other state of armed hostilities, national emergency, embargo or action by customs;</li> <li>c. unavailability of essential services such as electricity, gas or water for more than 48 hours;</li> </ul>

	<ul style="list-style-type: none"> <li>d. a restraint by any government agency in RPCs;</li> <li>e. any other event or occurrence beyond the control of the Service Provider,</li> </ul> <p>other than as a result of the acts or omissions of the Service Provider or its Personnel or any of its subcontractors, which prevents or delays the performance of this Contract by the Service Provider;</p>
<b>GST</b>	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
<b>Incident</b>	<p>means an activity which threatens, harms or impacts, or has the potential to threaten, harm or impact upon:</p> <ul style="list-style-type: none"> <li>a. the welfare of Transferees;</li> <li>b. the good order, safety or security of a Site;</li> <li>c. the success of escort/transfer activities; or</li> <li>d. immigration processing;</li> </ul>
<b>Information Officer</b>	means any of the information officers appointed under the <i>Australian Information Commissioner Act 2010</i> (Cth) when performing privacy functions as defined in that Act;
<b>Intellectual Property</b>	<p>includes:</p> <ul style="list-style-type: none"> <li>a. all copyright (including rights in relation to phonograms and broadcasts);</li> <li>b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and</li> <li>c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,</li> </ul> <p>but does not include:</p> <ul style="list-style-type: none"> <li>d. Moral Rights;</li> <li>e. the non-proprietary rights of performers; or</li> <li>f. rights in relation to Confidential Information;</li> </ul>
<b>Key Performance Measure</b>	means a Key Performance Measure in the Performance Management Framework;
<b>Key Personnel</b>	means the Service Provider Personnel specified under clause 5 as Key Personnel;
<b>Material</b>	means anything in relation to which Intellectual Property rights arise;
<b>Migration Act</b>	means the <i>Migration Act 1958</i> (Cth);
<b>Moral Rights</b>	means the following non-proprietary rights of authors of

	copyright Material:
	<ul style="list-style-type: none"> <li>a. the right of attribution of authorship;</li> <li>b. the right of integrity of authorship; and</li> <li>c. the right not to have authorship falsely attributed;</li> </ul>
<b>Official Information</b>	means any information developed, received or collected by or on behalf of the Department to which the Service Provider gains access under or in connection with this Contract and the terms of the Contract;
<b>Open Access Licence</b>	means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the material subject to certain restrictions. An Open Access Licence includes any Department or Australian Government open access licence and any Creative Commons Attribution licence (see <a href="http://creativecommons.org.au/learn-more/licences/">http://creativecommons.org.au/learn-more/licences/</a> );
<b>Pass Through Cost</b>	has the meaning given by Schedule 2 [Fees and Payment];
<b>Performance Management Framework</b>	means the Performance Management Framework developed in accordance with clause 4.4;
<b>Personal Information</b>	Has the same meaning as it has in the <i>Privacy Act 1988</i> (Cth);
<b>Personnel</b>	means: <ul style="list-style-type: none"> <li>a. in relation to the Service Provider - any natural person who is an officer, employee, agent or professional advisor of the Service Provider or of its subcontractors; and</li> <li>b. in relation to the Department - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent, contractor or professional advisor of the Commonwealth;</li> </ul>
<b>Regional Processing Country (RPC)</b>	is a country designated by the Minister for Immigration and Border Protection, acting under subsection 198AB(1) of the Migration Act as a RPC (including Nauru and Papua New Guinea);
<b>Schedule</b>	means the schedules to this Contract and includes the Schedules as amended or replaced from time to time by agreement in writing between the parties;
<b>Services</b>	means the services described in Schedule 1 [Statement of Requirement];
<b>Services Fee</b>	has the meaning given in Schedule 2 [Fees and Payment];
<b>Site</b>	means the site/s notified by the Department to the Service



	Provider in RPCs and includes any new sites established by the Department in RPCs;
<b>Term</b>	has the meaning given by clause 2.4;
<b>Transferee</b>	means a person transferred to RPCs; and
<b>WHS Law</b>	means all statutes, regulations, statutory instruments, subordinate legislation, codes of practice and standards (including those of the Commonwealth of Australia and of the location where the Services are being delivered) dealing with or relevant to health and safety in workplaces and of workers and others who may be affected by the carrying out of work and includes any approvals, permits, licences, directions or requirements of an authority exercising regulatory powers in respect of such matters.

- 1.1.2. In this Contract, unless the contrary intention appears:
- a. words importing a gender include any other gender;
  - b. words in the singular include the plural and words in the plural include the singular;
  - c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
  - d. words importing a person include a partnership and a body whether corporate or otherwise;
  - e. a reference to dollars is a reference to Australian dollars;
  - f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
  - g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
  - h. a reference to an Item is a reference to an Item in the Schedules;
  - i. the Schedules and any Attachments form part of this Contract;
  - j. if any conflict arises between the terms and conditions contained in the clauses of this Contract and any part of a Schedule (and Attachments if any), the terms and conditions of the clauses prevail;
  - k. if any conflict arises between any part of a Schedule and any part of an Attachment, the Schedule prevails; and
  - l. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

## 1.2. Guidance on construction of Contract

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

## 2. General

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### 2.1. Contract objectives

- 2.1.1. The primary objectives of this Contract are to:
  - a. provide open, accountable and transparent Services (identified in Schedule 1 [Statement of Requirement] to this Contract) to Transferees in RPCs (or Sites); and
  - b. provide Services that are the best available in the circumstances, and utilising facilities and Personnel on the Sites (but recognising any unavoidable limitations deriving from the circumstances of the Sites).

### 2.2. Cooperation and good faith

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

### 2.3. Memoranda of Understanding with RPCs

- 2.3.1. The Service Provider will use best endeavours to not permit any act or omission that causes or may cause the Commonwealth to be in breach of its Memorandum of Understanding with RPCs or (where relevant) with any related Administrative Arrangements (the Department will provide a copy of the relevant parts or sections in the related Administrative Arrangements to the Service Provider as soon as practicable after their creation).

### 2.4. Term

- 2.4.1. Subject to clause 2.4.2 this Contract commences on the Commencement Date and continues until the first to occur of:

- a. the Contract is terminated under clause 15; or
  - b. 31 October 2015.
- 2.4.2. The Department may extend the term of this Contract beyond the initial Term for one or more periods up to a total of six (6) months on the terms and conditions of this Contract then in effect, by providing in each case at least 30 days written notice to the Service Provider.
- 2.5. Commencement**
- 2.5.1. The Service Provider must commence the provision of Services on the Commencement Date.
- 2.6. New Sites**
- 2.6.1. Where a country is designated by the Minister for Immigration and Border Protection acting under subsection 198AB(1) of the Migration Act as a RPC, the Department may by written notice advise the Service Provider that it would like the Service Provider to provide services similar to the Services at a site in that RPC ('New Site').
- 2.6.2. Where the Department issues a notice under clause 2.6.1, at the discretion of the Service Provider, the parties will promptly meet to negotiate amendments to this Contract to provide for the provision of services at the New Site. In that case, the parties acknowledge that, to the extent possible, the negotiations will be on the basis that the terms and conditions in this Contract (including the Services and the fees) will apply to the provision of services at the New Site.
- 2.6.3. Once the negotiations have been finalised, the parties will vary this Contract to include the New Site as a Site and the services provided at the New Site will be Services under this Contract.

### **3. Services**

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- 3.1. Service obligations**
- 3.1.1. Schedule 1 [Statement of Requirement] of this Contract sets out the specific requirements for the Services to be performed at the Sites. The Department may request the Service Provider to provide other services on terms to be agreed. Once agreed, the parties will amend this Contract to include the other services and the other services will be Services for the purposes of this Contract.
- 3.1.2. In accordance with clause 3.3 the Service Provider is required to comply with all applicable laws. The requirements in Schedule 1 [Statement of Requirement] are to be read subject to that requirement.
- 3.1.3. The Service Provider agrees to:
- a. provide the Services and meet the requirements described in Schedule 1 [Statement of Requirement];
  - b. adopt relevant best practice, including any applicable Department, Commonwealth or industry standards and guidelines;

- c. implement and comply with the performance management framework described in Schedule 6 [Performance Management Framework]; and
- d. submit invoices, and any required supporting documents, in the manner specified in Item 8.1 of Schedule 2 or as otherwise specified by the Department.

### **3.2. Facilities and assistance**

- 3.2.1. The Department will provide the Service Provider with facilities and assistance specified in Item 9 of Schedule 2 and such other facilities and assistance as agreed between the parties from time to time.
- 3.2.2. The Service Provider acknowledges that:
  - a. it will be sharing some of the facilities referred to in clause 3.2.1 with other service providers and the Department Personnel; and
  - b. from time to time the Department may require the Service Provider to move out of part of the facilities or otherwise adjust the arrangements that apply to the access to the facilities or the assistance that is provided.
- 3.2.3. The Service Provider will cooperate with the other service providers and the Department in relation to the management and use of the facilities.

### **3.3. Compliance with laws**

- 3.3.1. The Service Provider must, in performing its obligations in this Contract, comply, and ensure compliance by all its Personnel, with:
  - a. all applicable laws, including those applicable in the respective RPC where the Site is located and those Australian laws that are applicable to the Services or the Site; and
  - b. all applicable Commonwealth policies as notified to the Service Provider from time to time.
- 3.3.2. The Service Provider may seek assistance from the Department in complying with clause 3.3.1, for example in respect of Personnel and subcontractor clearances, resources imports and the establishment of facilities and, without limiting the Service Provider's obligations in connection with the Contract, the Department will provide assistance to the extent it is reasonably able to do so.

### **3.4. Guardianship of unaccompanied children on Nauru**

- 3.4.1. The Service Provider acknowledges that Hon. David Adeang M.P. (Minister of Justice and Border Control) has, in accordance with Part 3, Section 15(5) of the Asylum Seekers (Regional Processing Centre) Act 2012 (the Act), delegated all powers and functions as guardian of all unaccompanied children who arrive in Nauru to specific Service Provider Personnel (**Delegated Personnel**) except insofar as they relate to:
  - a. the transfer or return or resettlement of an unaccompanied child to another country;

- b. the giving of consent for the marriage or adoption of a child;
  - c. the withholding or withdrawing of medical life support.
- 3.4.2. The Department acknowledges that, in specific circumstances, the Service Provider may undertake actions or omissions that exceed, contradict or potentially breach the terms and conditions in this Contract to ensure that Delegated Personnel can effectively exercise delegated powers and functions as guardian of all unaccompanied children who arrive in Nauru (in accordance with the Act).
- 3.4.3. Despite Clause 3.4.2, the Service Provider must:
- a. attempt, and use best endeavours, to ensure that the Delegated Personnel exercise the delegated powers and functions in a manner that aligns with, and does not exceed, contradict or potentially breach, the terms and conditions in the Contract;
  - b. provide reasonable notification to the Department if the Delegated Personnel identify a circumstance that requires them to exercise the delegated powers and functions in a manner that exceeds, contradicts or potentially breaches the terms and conditions in this Contract;
  - c. must attempt, and use best endeavours, to minimise and/or mitigate the extent that the Delegated Personnel's actions or omissions exceeds, contradicts or potentially breaches the terms and conditions in this Contract; and
  - d. must promptly provide a written (and fully substantiated) report to the Department that identifies the Service Provider's actions or omissions that exceed, contradict or potentially breach, the terms and conditions in the Contract.
- 3.4.4. The Department excludes all liability for loss, damage and claims (including personal injury, death, damage to tangible property, breach of confidentiality, security requirements and privacy obligations) to the Service Provider in relation to the Delegated Personnel's exercise of the delegated powers and functions in a manner that exceeds, contradicts or potentially breaches the terms and conditions in the Contract.

#### **4. Management and governance**

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##### **4.1. Project management**

- 4.1.1. The Service Provider must comply with any project management and governance arrangements as outlined in Schedule 1 [Statement of Requirement] and Schedule 7 [Governance] of this Contract.

##### **4.2. Department Personnel**

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

#### **4.3. Liaison with Contract Administrator**

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

#### **4.4. Performance management framework**

- 4.4.1. The parties have jointly developed and agreed to a Performance Management Framework consistent with the principles set out in Schedule 6 [Performance Management Framework Principles], which include:
- a. details of key deliverables and key performance measures;
  - b. processes and procedures for managing and responding to Excusable Performance Failure Events;
  - c. an abatement regime in respect of the level of performance achieved in the performance of the Services; and
  - d. details of the format, content and frequency of performance reports to be submitted in accordance with clause 4.5.
- 4.4.2. The parties will implement the Performance Management Framework from the Commencement Date.
- 4.4.3. The parties will periodically review the Performance Management Framework to ensure it remains current and relevant to this Contract and the overall operation and management of the Sites.

#### **4.5. Reports**

- 4.5.1. The Department will provide the Service Provider with the reporting template for use in reporting its performance of its obligations under this Contract and the operation and management of the Sites.
- 4.5.2. The Service Provider must submit performance reports in the provided performance report format on a monthly basis in accordance with the Performance Management Framework.

### **5. Service Provider Personnel**

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#### **5.1. Key Personnel**

- 5.1.1. The Service Provider will notify the Department from time to time of Key Personnel that have been retained in relation to the performance and management of the Services and the Service Provider's obligations under this Contract.
- 5.1.2. The Service Provider must ensure that each of the Key Personnel occupy the positions and provide the Services advised to the Department.

## 5.2. Replacement of Key Personnel

- 5.2.1. Where Key Personnel cease to work in respect of this Contract, the Service Provider must notify the Department immediately and must provide replacement Key Personnel acceptable to the Department at no additional charge and at the earliest opportunity.
- 5.2.2. If the Service Provider is unable to provide replacement Key Personnel acceptable to the Department within 10 Business Days of their ceasing work in respect of this Contract, the Department may, at its discretion, terminate this Contract or remove Services from scope in accordance with clause 15.

## 5.3. Removal of Key Personnel

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

## 5.4. Service Provider Personnel

- 5.4.1. The Service Provider must ensure that all Service Provider Personnel that are to carry out work or perform duties under this Contract have signed:
- a. Confidentiality Deed Poll substantially in the form of Schedule 2 [Confidentiality Deed]; and
  - b. Deed of Non-disclosure of Personal Information substantially in the form of Schedule 3 [Deed of Non-Disclosure Personal Information],
- prior to commencing work or performing duties under this Contract or within 2 days of the Execution Date.
- 5.4.2. The Service Provider, at its own cost, must ensure that all Service Provider Personnel who carry out work or perform duties under this Contract:
- a. are, and remain, of good character and good conduct;
  - b. are considered suitable by the Department having regard to any issues identified in an Australian Federal Police background check and brought to the attention of the Department;
  - c. have a current 'working with children' check or certificate from an Australian jurisdiction or equivalent from the Australian Federal Police or, in the case of any local Personnel, any similar check or certificate where practicable;
  - d. undergo induction, orientation and ongoing training that complies with the Department's requirements when commencing employment with the Service Provider or starting work in relation to the Services and during deployment, including training provided by other service providers;
  - e. are appropriately skilled, trained and qualified to provide the Services described in Schedule 1 [Statement of Requirement];

- f. are authorised, registered or licensed in accordance with any applicable regulatory requirements for the purposes of or incidental to the performance of the Services;
  - g. possess all relevant industry body, supplier, manufacturer accreditation or scheme memberships and professional association membership that might be reasonably expected of providers of the Services, and produce evidence of such authorisation, registration, license, accreditation or membership to the Department upon request at any time during the term of this Contract; and
  - h. will be subject to internal disciplinary processes.
- 5.4.3. The Service Provider will ensure that the personnel levels at the Sites are adequate to deliver the Services in accordance with this Contract.
- 5.5. Behaviour of Service Provider Personnel at the Sites**
- 5.5.1. The Service Provider must ensure that all Service Provider Personnel at a Site:
- a. are aware of, and comply with, the Code of Conduct at all times;
  - b. comply with the Department's policy on smoking and other work health and safety matters as declared from time to time by the Department; and
  - c. carry out their duties and behave in such a way as to maximise the seamless interface between the delivery of the Services and:
    - i. any other services provided by other service providers; and
    - ii. the day to day activities of the Department,
 so that services delivered by multiple service providers give the impression of being delivered by a single provider.
- 5.6. Illegal workers**
- 5.6.1. The Service Provider must ensure that its Service Provider Personnel do not include any illegal workers and must notify the Department immediately if it becomes aware of any of its Service Provider Personnel being an illegal worker.
- 5.6.2. For the purposes of clause 5.6.1, an illegal worker is a person who:
- a. has unlawfully entered and remains in Australia or a RPC;
  - b. has lawfully entered Australia or a RPC but remains in that country after his or her visa has expired; or
  - c. is working in breach of his or her visa conditions.
- 5.7. Removal of Service Provider Personnel**
- 5.7.1. The Department may, in its absolute discretion, give notice requiring the Service Provider to remove any Service Provider Personnel from work in respect of the Services. The Service Provider must promptly arrange for the removal of such Service Provider Personnel from work in respect of the Services and their



replacement with Personnel acceptable to the Department and at no additional cost to the Department.

## **6. Subcontractor arrangements**

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### **6.1. Approval of subcontracts**

- 6.1.1. The Service Provider must not enter into a subcontract without the prior written approval of the Department (such approval not to be unreasonably withheld or delayed) if the total fees of that subcontract equal or exceed s. 47(1)(b), s. 47G(1)(a)
- 6.1.2. The Service Provider will use best endeavours to notify the Department prior to entering into any proposed subcontract (regardless of value) that will or is likely to fall within the scope of or otherwise raise issues under the relevant Memorandum of Understanding with RPCs referred to in clause 2.3.

### **6.2. Extension of provisions to subcontractors and Personnel**

- 6.2.1. In this clause 6.2:

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

- 6.2.2. The Service Provider agrees to ensure that:
- a. its subcontractors and Personnel comply with all relevant Requirements; and
  - b. any contract entered into in connection with this Contract imposes all relevant Requirements on the other party.
- 6.2.3. The Service Provider agrees to exercise any rights it may have against any of its subcontractors, Personnel or third parties in connection with a Requirement in accordance with any direction by the Department.

### **6.3. Copies of subcontracts**

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

### **6.4. Service Provider liability and obligations**

- 6.4.1. The Department's approval of any subcontract does not relieve the Service Provider from any liability or obligation under this Contract.
- 6.4.2. The Service Provider will be liable to the Department for the acts, omissions, defaults and neglect of any subcontractor or any representative of the subcontractor engaged in the performance of the Services as fully as if they were the acts, omissions, defaults or neglect of the Service Provider.
- 6.4.3. The Service Provider remains responsible for ensuring that:

- a. the work performed by each subcontractor meets the requirements of this Contract; and
- b. no subcontractor further subcontracts any work valued at s. 47(1)(b), s. 47G(1)(a) where clause 6.1.2 applies without the prior written approval of the Department.

#### **6.5. Subcontractor warranty**

6.5.1. The Service Provider warrants that each subcontractor:

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

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

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

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

#### **6.7. Locally engaged subcontractors**

6.7.1. The parties intend that the Service Provider will seek to maximise local involvement in the delivery of the Services including engaging local entities as subcontractors. The parties recognise that it may not be possible for local entities or local Personnel to meet all of the Requirements of the Contract. The Service Provider will use its best endeavours to ensure that local Personnel meet the requirements of this Contract as much as possible. The terms on which local entities will be engaged will be agreed between the parties.

### **7. Document approval**

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#### **7.1. Plans**

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

#### **7.2. Review and approval of plans**

7.2.1. The Department will:

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

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

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

## **8. Payments**

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### **8.1. Fees**

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

### **8.2. Taxes, duties and government charges**

- 8.2.1. Except as provided by this clause 8.2, s. 47(1)(b), s. 47G(1)(a)
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- 8.2.2. Unless otherwise indicated, the fees and all other consideration for any supply made under this Contract is exclusive of any GST imposed on the supply.
- 8.2.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Contract, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 8.2.4. No party may claim or retain from the other party any amount in relation to a supply made under this Contract for which the first party can obtain an input tax credit or decreasing adjustment.

### **8.3. Currency**

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

## **9. Confidentiality of Official Information and security**

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### **9.1. Interpretation**

- 9.1.1. In this clause 9:

**Official** includes:

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

## 9.2. Confidentiality of Official Information

- 9.2.1. The Service Provider must not, without prior written authorisation of the Department, disclose any Official Information to any person (unless required to do so by law and only then by seeking confidentiality undertakings and/or other protection orders before providing any such disclosure(s). In the event that there are no such protections available, the Service Provider will notify the Department as soon as reasonably practicable, before any disclosure is made, in order to allow the Department to protect the confidentiality of the disclosure and information sought to be disclosed).
- 9.2.2. The Service Provider is authorised, subject to clause 9.3, to provide Official Information to those Personnel and subcontractors who require access for the purposes of this Contract.
- 9.2.3. The Service Provider agrees to secure all Official Information against loss and unauthorised access, use, modification or disclosure.

## 9.3. Other security obligations of Service Provider

- 9.3.1. The Service Provider agrees to comply with any security requirements notified by the Department from time to time.
- 9.3.2. The Service Provider agrees to implement security procedures to ensure that it meets its obligations under this clause 9 and will provide details of these procedures to the Department on request.

## 9.4. Management of Copies

- 9.4.1. In this clause 9.4:

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

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

## 10. Confidential Information of Service Provider

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### 10.1. Confidential Information not to be disclosed

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

## 10.2. Exceptions to obligations

- 10.2.1. The obligations of the Department under this clause 10 will not be taken to have been breached to the extent that Confidential Information:
- a. is disclosed by the Department to its Personnel solely in order to comply with its obligations, or to exercise its rights, under this Contract;
  - b. is disclosed by the Department to its internal management Personnel, solely to enable effective management or auditing of Contract-related activities;
  - c. is disclosed by the Department to the responsible Minister;
  - d. is disclosed by the Department in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
  - e. is shared by the Department within the Department's organisation, or with another Commonwealth Department, where this serves the Commonwealth's legitimate interests;
  - f. is authorised or required by law to be disclosed; or
  - g. is in the public domain otherwise than due to a breach of this clause 10.
- 10.2.2. Where the Department discloses Confidential Information to another person pursuant to clauses 10.2.1.a - 10.2.1.e, the Department will notify the receiving person that the information is confidential.
- 10.2.3. In the circumstances referred to in clauses 10.2.1.a, 10.2.1.b, and 10.2.1.e the Department agrees not to provide the information unless the receiving person agrees to keep the information confidential.

## 10.3. Period of confidentiality

- 10.3.1. The obligations under this clause 10 in relation to an Item of information described in Schedule 5 [Service Provider Confidential Information] continue for the period set out there in respect of that Item.

## 11. Intellectual Property

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### 11.1. Use of Commonwealth Material

- 11.1.1. The Department grants (or will procure) a royalty-free, non-exclusive licence for the Service Provider to use, reproduce and adapt Commonwealth Material provided to the Service Provider for the purposes of this Contract.
- 11.1.2. The Service Provider agrees to use the Commonwealth Material strictly in accordance with any direction from the Department.

### 11.2. Rights in Contract Material

- 11.2.1. Intellectual Property in all Contract Material vests or will vest in the Department.
- 11.2.2. Clause 11.2.1 does not affect the ownership of Intellectual Property in:
- a. any Commonwealth Material incorporated into Contract Material; or
  - b. any Service Provider Material.

- 11.2.3. The Service Provider grants to (or will procure for) the Department a perpetual, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, perform, distribute, communicate and exploit any existing Material referred to in clause 11.2.2.b incorporated into or that otherwise forms part of the Contract Material, for any purpose.
- 11.2.4. The Service Provider agrees that the licence granted in clause 11.2.3 includes a right for the Department to licence the existing Material in conjunction with the Contract Material to the public under an Open Access Licence.
- 11.2.5. The Service Provider agrees, on request by the Department, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 11.2.
- 11.2.6. The Service Provider warrants that:
- a. it is entitled; or
  - b. it will be entitled at the relevant time,
- to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause 11.2.

### 11.3. Moral Rights

#### 11.3.1. In this clause 11.3:

- Permitted Acts** means any of the following classes or types of acts or omissions:
- a. using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution or authorship;
  - b. supplementing the Contract Material with any other Material;
  - c. using the Contract Material in a different context to that originally envisaged;
  - d. releasing the Contract Material to the public under an Open Access Licence;
- but does not include false attribution of authorship.

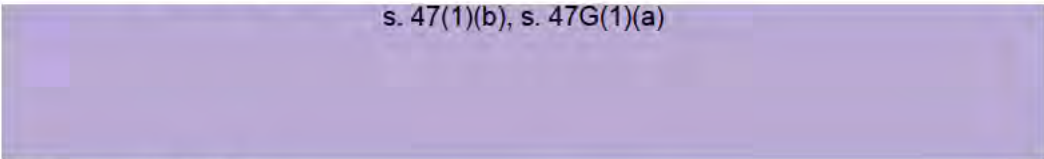
- 11.3.2. The Service Provider agrees:
- a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Department or any person claiming under or through the Department (whether occurring before or after the consent is given) and,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

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

**12. Indemnity and insurance**

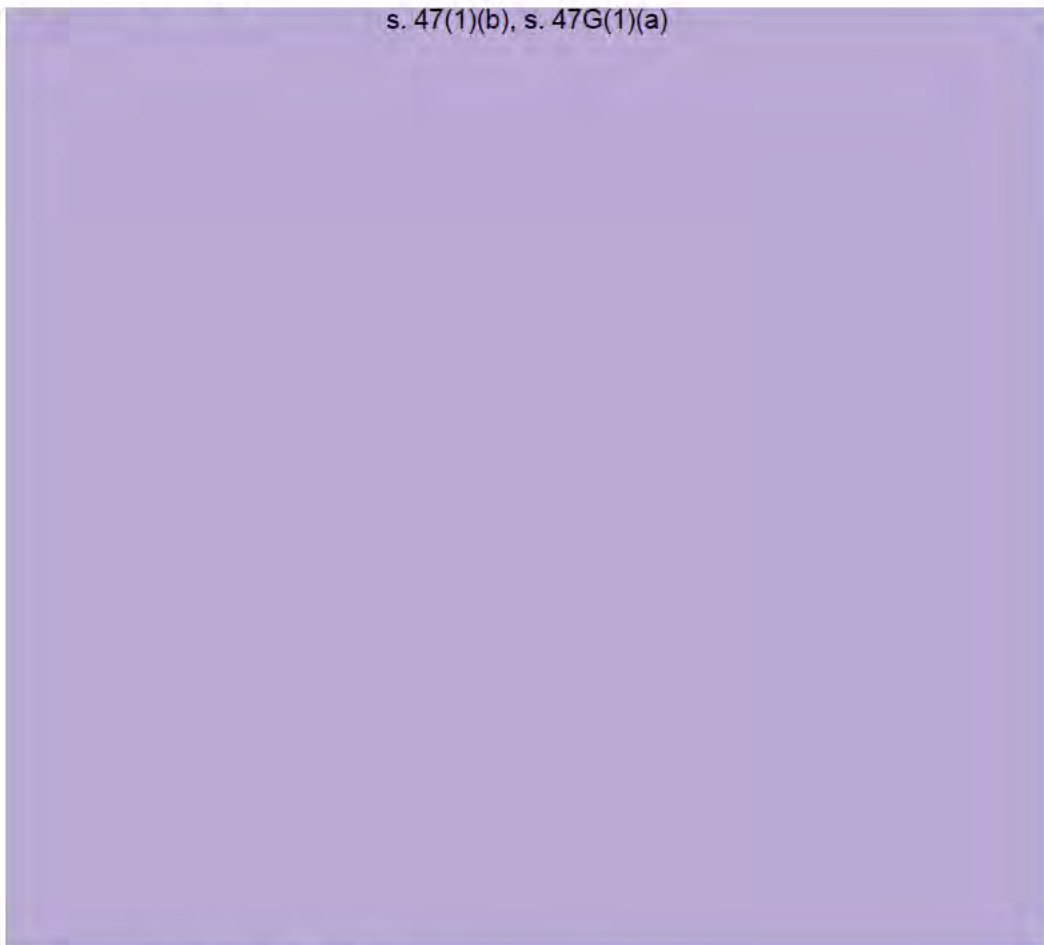
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s. 47(1)(b), s. 47G(1)(a)

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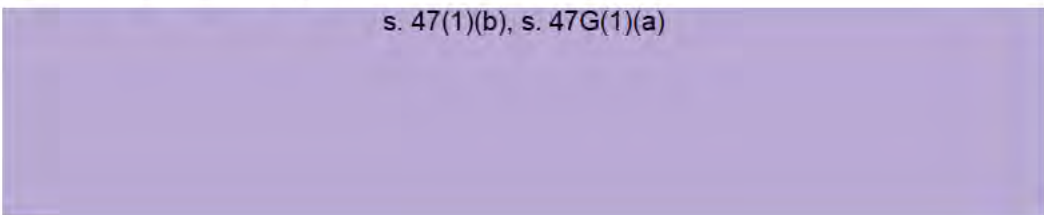
**12.2. Indemnity**

s. 47(1)(b), s. 47G(1)(a)

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**12.3. Limitation of Liability**

s. 47(1)(b), s. 47G(1)(a)

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Released by DIBP under the  
Freedom of Information Act 1982

s. 47(1)(b), s. 47G(1)(a)

**12.4. Insurance**

- 12.4.1. The Service Provider will be required, prior to the Execution Date, to effect and maintain insurance cover for the duration of this Contract as follows:
- a. workers compensation insurance, as required by law;
  - b. products liability insurance in the amount of s. 47(1)(b), s. 47G(1)(a)
  - c. public liability insurance in the amount of s. 47(1)(b), s. 47G(1)(a) to cover the Service Provider and its employees for their respective rights, interests and liabilities to the Department and third parties for loss or damage to any property and injury or death to any person arising from, or in connection with the provision of the Services by the Service Provider;
  - d. professional indemnity insurance for the amount of s. 47(1)(b), s. 47G(1)(a)
  - e. health and medical evacuation insurance for all Service Provider Personnel; and
  - f. compulsory third party motor vehicle insurance owned by the service provider in respect of registered vehicles used in the provision of the Services.
- 12.4.2. The Department may require the Service Provider to obtain additional insurance or higher levels of insurance. If this results in the Service Provider incurring an increased premium, the Department will reimburse the additional premium (without mark-up).

**13. Publicity, media and external relationship management**

**13.1. Publicity and media to be managed by the Department**

- 13.1.1. Any contact with or release to the media which specifically names the Department and/or is related to the provision of Services pursuant to this Contract is to be approved by the Department prior to any statement being made or material being released, which consent or approval must not be unreasonably withheld or delayed.
- 13.1.2. Any contact with or release to the media which specifically names the Service Provider is to be approved by the Service Provider prior to any statement being made or material being released, which consent or approval must not be unreasonably withheld or delayed.



13.1.3. A protocol regarding media releases has been agreed between the Department and the Service Provider and is attached at Schedule 8 [Communication Protocols].

**13.2. Service Provider not to make public statements**

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

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

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

- d. an individual Transferee;
- e. the processing of a claim for asylum for an individual or group of Transferees;
- f. the health or wellbeing of an individual or group of Transferees;
- g. the wellbeing of the relatives of a Transferee; or
- h. any other matter related to the provision of Services (pursuant to this Contract) to individual, or group of, Transferees,

other than:

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

13.2.2. The Department acknowledges that no right or obligation arising under this Contract will restrict, reduce or impede the Service Provider's (including its Personnel) rights as specified in the *Not-for-profit Sector Freedom to Advocate Act 2013* (Cth) (the NSFA Act).

13.2.3. Nothing in clause 13.2.2 limits or derogates from the Service Provider's obligations, arising under this Contract or otherwise, to not disclose confidential information as defined in the NSFA Act or personal information as defined in the *Privacy Act 1988* (Cth) or other legislative or regulatory requirement relating to privacy or personal information.

## **14. Dispute resolution**

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### **14.1. Procedure for dispute resolution**

- 14.1.1. The parties agree that a dispute arising under this Contract will be dealt with as follows:
- a. a party claiming that there is a dispute will give the other party a written notice setting out the nature of the dispute;
  - b. within 10 Business Days of the notice, the Contract Administrator and a senior representative of the Service Provider will meet and try to settle the dispute by direct negotiation between them;
  - c. if the parties are not able to resolve the dispute within a further 15 Business Days, the parties will refer the dispute to the Contract Authority and a more senior representative of the Service Provider who will meet and try to settle the dispute.
- 14.1.2. If the parties have been unable to resolve the dispute within 20 Business Days of the dispute being referred under clause 14.1.1.c:
- a. the parties may agree to refer the dispute to mediation on terms to be agreed between the parties at the time; or
  - b. where the parties do not agree to refer the dispute to mediation or where the dispute remains unresolved after 20 Business Days of the dispute being referred to mediation, either party may commence legal proceedings in relation to the dispute.
- 14.1.3. Each party will bear its own costs of complying with this clause 14.

### **14.2. Continued performance**

- 14.2.1. Despite the existence of a dispute, the Service Provider will (unless requested in writing by the Department not to do so) continue to perform the Services in accordance with the Contract to the extent possible.

### **14.3. Exemption**

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

## **15. Termination**

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### **15.1. Termination without default**

- 15.1.1. In addition to any right to terminate at law, the Department may by written notice at any time and in its absolute discretion:
- a. terminate this Contract, in which case at least s. 47(1)(b), s. 47G(1)(a) will be given; or

- b. reduce the scope of the Services, in which case the notice will unless specified otherwise by the Department in the notice take effect immediately.
- 15.1.2. The Service Provider agrees, on receipt of a notice issued under clause 15.1.1:
  - a. to stop or reduce work as specified in the notice;
  - b. to take all available steps to minimise loss resulting from that termination or reduction; and
  - c. to continue work on any part of the Services not affected by the notice.
- 15.1.3. In the event of termination under clause 15.1, the Department will be liable only:
  - a. to pay any fees relating to Services completed before the effective date of termination; and
  - b. to reimburse any expenses the Service Provider unavoidably incurs relating entirely to Services not covered under clause 15.1.3.a including for the avoidance of doubt any demobilisation costs reasonably incurred.
- 15.1.4. The Department will not be liable to pay amounts under clause 15.1.3.a and 15.1.3.b which would, added to any fees already paid to the Service Provider under this Contract, together exceed the fees set out in Schedule 2 [Fees and Payments].
- 15.1.5. In the event of a reduction in the scope of the Services under clause 15.1, the Department's liability to pay fees under clause 8 will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Services.
- 15.1.6. The Service Provider will not be entitled to compensation for loss of prospective profits.
- 15.2. Termination for default**
- 15.2.1. In addition to any right to terminate at law, if the Service Provider fails to perform any obligation under this Contract, the Department - if it considers that the failure is:
  - a. not capable of remedy – may, by notice, terminate this Contract immediately;
  - b. capable of remedy – may, by notice require that the failure be remedied within the time specified in the notice (being a reasonable period having regard to the circumstances of the failure) and, if not remedied within that time, may terminate this Contract immediately by giving a second notice.
- 15.2.2. The Department may also, by notice, terminate this Contract immediately (but without prejudice to any prior right of action or remedy which the Department has or may have) if the Service Provider:
  - a. being a corporation, comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001*, or an order has been made for the purpose of placing the corporation under external administration; or

- b. being an individual, becomes bankrupt or enters into a scheme of arrangement with creditors.

**15.3. Transition out**

- 15.3.1. If this Contract is terminated for any reason, the Service Provider must comply with any reasonable directions issued by the Department to achieve an orderly transition of the Services to the Department or an alternative provider. If this Contract is terminated in accordance with clause 15.1, the Department will reimburse (in accordance with clause 15.1.3(b)) any expenses the Service Provider unavoidably and reasonably incurs in the transition of the Services (subject to prior written approval by the Department). A transition out plan must be provided to the Department within six (6) months of the Commencement Date.

**16. Notices**

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**16.1. Format, addressing and delivery**

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

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

s. 22(1)(a)(ii), Head of Nauru Programs

Level 6, 250 Victoria Parade

East Melbourne

VIC, 3002

- 16.1.2. A notice is to be:

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

**16.2. When effective**

- 16.2.1. A notice is deemed to be effected:

- a. if delivered by hand - upon delivery to the relevant address;
- b. if sent by post - upon delivery to the relevant address;
- c. if transmitted electronically - upon actual receipt by the addressee.

- 16.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

## **17. General provisions**

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### **17.1. Excusable performance failure**

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

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

- 17.1.2. The Department will notify the Service Provider whether it accepts that an Excusable Performance Failure Event has occurred and the extent of its effect.

- 17.1.3. Where the Department accepts that an Excusable Performance Failure Event has occurred and the extent of its effect, subject to the Service Provider's compliance with its obligations under this clause, the Service Provider's obligations under this Contract and the relevant Key Performance Measures are suspended for so long as and to the extent they are affected by the Excusable Performance Failure Event (**Excusable Performance Failure Period**) and no failure or omission by the Service Provider to perform or meet a suspended obligation or Key Performance Measure during the Excusable Performance Failure Period will be a breach of this Contract or result in an abatement of fees under the Performance Management Framework.

- 17.1.4. During the Excusable Performance Failure Period, the Service Provider must:
- a. use its reasonable endeavours to remove, overcome or minimise the effects of that Excusable Performance Failure Event as quickly as possible;
  - b. continue providing the Services and complying with its obligations under this Contract and meeting the Key Performance Measures not affected by the Excusable Performance Failure Event;
  - c. implement and comply with the processes and procedures set out in the Performance Management Framework relating to the management of Excusable Performance Failure Events;
  - d. provide the Department Operations Team Leader with daily updates on the Excusable Performance Failure Event and its impact on the performance or meeting of any suspended obligations or Key Performance Measures; and
  - e. notify the Department in writing as soon as the Excusable Performance Failure Period ceases.

**17.2. Conflict of interest**

- 17.2.1. In this clause 17.1, **Conflict** means any matter, circumstance, interest, or activity affecting the Service Provider, its Personnel or subcontractors which may or may appear to impair the ability of the Service Provider to provide the Services to the Department diligently and independently.
- 17.2.2. The Service Provider warrants that, to the best of its knowledge after making diligent inquiry, at the Execution Date no Conflict exists or is likely to arise in the performance of the Services.
- 17.2.3. If, during the period of this Contract a Conflict arises, or appears likely to arise, the Service Provider agrees:
- a. to notify the Department immediately;
  - b. to make full disclosure of all relevant information relating to the Conflict; and
  - c. to take any steps the Department reasonably requires to resolve or otherwise deal with the Conflict.

**17.3. Work health and safety**

- 17.3.1. The Service Provider must at all times:
- a. comply with, and ensure that its Personnel and subcontractors comply with WHS Law in the provision of the Services;
  - b. co-operate and ensure its Personnel and subcontractors co-operate as required with the Department in the Service Provider's performance of its work health and safety obligations under WHS Law, including participating in any consultation and representation required by the Department;
  - c. prepare and provide any report required under the WHS Law to the Department;
  - d. comply with any direction or requirement of the Department in relation to work health and safety;
  - e. not permit any act or omission that causes or may cause the Department to be in breach of the WHS Law;
  - f. immediately notify the Department of any notifiable incident as defined in the WHS Law; and
  - g. immediately notify the Department of any circumstance which may give rise to a work health and safety risk or a failure by the Service Provider, its Personnel, subcontractors or the Department to comply with WHS Law.

**17.4. Privacy**

- 17.4.1. The Service Provider agrees, in providing the Services:
- a. not to do any act or engage in any practice which, if done or engaged in by the Department, would be a breach of an Australian Privacy Principle; and

- b. to comply with any directions, guidelines, determinations or recommendations specified by the Department, to the extent that they are consistent with the Australian Privacy Principles.
- 17.4.2. The Service Provider agrees to notify the Department immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 17.4.
- 17.5. Audit and access**
- 17.5.1. The Service Provider agrees:
  - a. to give the Contract Administrator, or any persons authorised in writing by the Contract Administrator, access to premises where the Services are being performed or where Official Resources are located; and
  - b. to permit those persons to inspect and take copies of any material relevant to the Services.
- 17.5.2. The rights referred to in clause 17.5.1 are subject to:
  - a. the Department providing reasonable prior notice;
  - b. the reasonable security procedures in place at the premises; and
  - c. if appropriate, execution of a deed of confidentiality by the persons to whom access is given.
- 17.5.3. The Auditor-General and Information Officer (including their delegates) are persons authorised for the purposes of this clause 17.5.
- 17.6. Access to documents**
- 17.6.1. In this clause 17.6, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).
- 17.6.2. The Service Provider acknowledges that this Contract is a Commonwealth contract.
- 17.6.3. Where the Department has received a request for access to a document created by, or in the possession of, the Service Provider or any subcontractor that relates to the performance of this Contract (and not to the entry into the Contract), the Department may at any time by written notice require the Service Provider to provide the document to the Department and the Service Provider must, at no additional cost to the Department, promptly comply with the notice.
- 17.6.4. The Service Provider must include in any subcontract relating to the performance of this Contract provisions that will enable the Service Provider to comply with its obligations under this clause 17.6.
- 17.7. Relationship of parties**
- 17.7.1. The Service Provider is not by virtue of this Contract an officer, employee, partner or agent of the Department, nor does the Service Provider have any power or authority to bind or represent the Department.

- 17.7.2. The Service Provider agrees:
- a. not to misrepresent its relationship with the Department; and
  - b. not to engage in any misleading or deceptive conduct in relation to the Services.
- 17.8. **Waiver**
- 17.8.1. A failure or delay by a party to exercise any right or remedy it holds under this Contract or at law does not operate as a waiver of that right.
- 17.8.2. A single or partial exercise by a party of any right or remedy it holds under this Contract or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.
- 17.9. **Variation**
- 17.9.1. The Department may, including in response to a suggestion from the Service Provider, request that the Service Provider develop a change proposal to address a proposed variation to the Contract. The Service Provider will prepare a contract change proposal, outlining the impact on the Contract of the proposed variation, including on Schedule 1 [Statement of Requirement] and Schedule 2 [Fees and Payments]. The parties will discuss any contract change proposal in a timely manner.
- 17.9.2. For the avoidance of doubt, this clause 17.9 will apply where there has been a change in any law or regulatory requirement that applies to the Services or this Contract where the change has a material impact on the provision of the Services or the performance of the obligations under this Contract and the change could not have been reasonably contemplated by an experienced service provider.
- 17.9.3. A variation of this Contract is binding only if agreed in writing and signed by the Parties.
- 17.10. **Assignment**
- The Service Provider may, in its absolute discretion, assign its rights to receivables under this Contract to the following third-party entity:
- National Australia Bank Limited (ABN 12 004 044 937)
- 17.11. **Survival**
- 17.11.1. Unless the contrary intention appears, the expiry or earlier termination of this Contract will not affect the continued operation of any provision relating to:
- a. confidentiality;
  - b. privacy;
  - c. intellectual property;
  - d. audit and access;
  - e. an indemnity;



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

**17.12. Applicable law**

- 17.12.1. This Contract is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.
- 17.12.2. The parties submit to the jurisdiction of the courts of that Territory.

**17.13. Step in Rights**

- 17.13.1. At any time if:
  - a. the Department is entitled under clause 15 to terminate this Contract; or
  - b. the Contract Administrator considers that circumstances exist which require the Department's intervention,

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

- 17.13.2. The Department's Step-in Right will continue until the circumstances giving rise to the Step-in Right have been rectified or cease to exist.
- 17.13.3. The Service Provider must cooperate with the Department during a step-in period including without limitation by ensuring compliance by the Service Provider and its Personnel with all directions given by the Department.
- 17.13.4. Nothing in this clause 17.13 obliges the Department to exercise the powers given under this clause 17.13.
- 17.13.5. The exercise of the powers under this clause is without prejudice to any other rights the Department may have to enforce or terminate this Contract.

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

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

Signature of delegate

Signature of witness and date signed

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

Name of delegate (print)

Name of witness (print)

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

Position of delegate (print)

29 AUGUST 2014  
Date of signature by delegate (print)

Executed by Save the Children Australia (ACN 008 610 035). The common seal of the Save the Children Australia (ACN 008 610 035) is affixed in the presence of:

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

Signature of Director CEO

Signature of Director/Secretary

s. 22(1)(a)(ii)  
Name of Director (print)

Name of Director/Secretary (print)

29<sup>th</sup> August 2014  
Date of signature by Director (print)

Date of signature by Director/Secretary (print)

Released by DIBP under the Freedom of Information Act 1982

## SCHEDULE 1 STATEMENT OF REQUIREMENT

### PART 1: NATURE OF THE SERVICES

#### 1. General background and nature of services

##### 1.1. Background

- 1.1.1. The Department has a requirement for the provision of Services, outlined in this Schedule, to Transferees at Sites on the RPCs. The Department has a key role in developing and implementing an appropriate and sustainable offshore processing model (Offshore Processing) as part of the regional solution to combat people smuggling (Operation Sovereign Borders). The model will support the government policy that all people arriving in Australia by boat will be transferred to a Regional Processing Country. This will include appropriate accommodation and services including enhanced medical facilities onsite.
- 1.1.2. The Department is working to design, develop and facilitate an efficient and effective model for infrastructure and services to support Offshore Processing both in the Manus Province, Papua New Guinea (PNG), and the Republic of Nauru (Nauru). The focus is on an end to end process, encompassing transfers, coordination and logistical services, governance, Site services, refugee determination assessment and review and outcomes, removals and returns and settlement in host countries. Host governments are responsible for in-country arrangements and operations with support being provided by the Australian government.
- 1.1.3. A key requirement for the Service Provider is achieving innovation and efficiency in service delivery and to enhance value for money for the Commonwealth.
- 1.1.4. The parameters within which Offshore Processing will operate include Australian and Host country legislation, Ministerial directions, Joint Agency Task Force (JATF) arrangements, Regional Resettlement Arrangement Memoranda of Understanding and Regional Resettlement Arrangement Administrative Arrangements. Australia's international obligations, such as the United Nations Refugee Convention and Convention on the Rights of a Child, also provide parameters.
- 1.1.5. The longer term objective is to support RPCs to manage and administer the suite of Offshore Processing activities with a view to them becoming increasingly independent in this regard.
- 1.1.6. Sites on RPCs accommodate individuals in accordance with the Minister's direction under section 198AD(5) of the Migration Act 1958 of 29 July 2013. At this stage, Manus accommodates Single Adult Males only whereas Nauru accommodates Single Adult Males, Families, Single Adult Females and UAMs. It is important that services are able to scale up and down in an effective and timely manner to meet forecasted requirements.
- 1.1.7. Offshore Processing is subject to significant scrutiny and the Service Provider is required to liaise with stakeholders and manage expectations effectively.
- 1.1.8. The Service Provider is required to provide services in a manner that is:

- a. adaptable to and readily accommodates changes in Commonwealth policy during the term of the Contract to ensure that the Services are delivered in accordance with Commonwealth policy;
- b. appropriate to the individual needs of each Transferee; and
- c. adaptable to and readily accommodates changes in Transferee numbers (which may significantly increase or decrease during the term of the Contract).

## **1.2. Provision of Services on Nauru**

- 1.2.1. The Service Provider must hold all necessary local Nauru company registration and accreditation requirements to be able to carry out business in Nauru.
- 1.2.2. The provision of Services to Transferees requires the Service Provider to take a collaborative approach with Australia and the local RPC government organisations and any other service providers engaged by the Department. In particular, an integrated approach will need to be taken around security, safety, Incident management and risk management.
- 1.2.3. The Service Provider is required to provide Services that are the best available in the circumstances, and utilising facilities and Personnel on the Sites and that as far as possible (but recognising any unavoidable limitations deriving from the circumstances of the Sites) is broadly comparable with services available within the Australian community.
- 1.2.4. The Service Provider is required to identify and explore training opportunities and provide employment opportunities to local people and to demonstrate that best efforts have been undertaken to engage local contractors to the maximum extent possible within the parameters of the services.

## **1.3. Stakeholder Management**

- 1.3.1. The Service Provider has significant stakeholder management and consultation requirements including with the Department and Nauruan government authorities. The Service Provider must adopt a collaborative approach to the complex stakeholder and governance issues.

## **1.4. Other Service Providers**

- 1.4.1. Other service providers will be engaged which may include an additional Transferee Welfare Support Service Provider, Garrison and Security Service Provider and a Health Service Provider. The Service Provider will work cooperatively with the other service providers in particular the Transferee Welfare Support Service Provider. Where an obligation is expressed as 'support' in this Statement of Work, this usually denotes that another service provider has primary responsibility for the relevant activity and the Service Provider must provide necessary support to that activity.
- 1.4.2. The Service Provider is required to cooperate with any other service providers appointed by the Department to ensure the integrated and efficient operation of the Site, and must provide such reasonable assistance to the Department, local

authorities and other service providers as the Department may reasonably request whether or not this is specifically stated in this Schedule.

#### **1.5. Offshore Processing Guidelines**

- 1.5.1. The Service Provider must, in collaboration with other relevant service providers develop Offshore Processing Centre Guidelines (OPC Guidelines). The Service Provider's contribution to the OPC Guidelines shall be limited to only such matters as are relevant to the scope of services being provided by the Service Provider under this Contract.
- 1.5.2. The Service Provider must provide a draft version of its contribution to the OPC Guidelines to the Department for review/approval.
- 1.5.3. The Service Provider must amend its draft section of the draft OPC Guidelines (as directed by the Department) and provide the amended/updated draft version to the Department for review/approval.
- 1.5.4. The Service Provider must not implement the OPC Guidelines until it receives prior written approval from the Department.
- 1.5.5. The Service Provider must ensure that its Personnel receive timely and adequate training and/or information about the OPC Guidelines.
- 1.5.6. The Service Provider must (in conjunction with other relevant service providers) complete a review of the OPC Guidelines upon each 12-month anniversary of the Execution Date of this Contract.

#### **1.6. Personnel and Structure**

- 1.6.1. The Service Provider is responsible for ensuring that the Personnel levels at each Site are adequate to deliver the Services.
- 1.6.2. The Service Provider must ensure that all Personnel:
  - a. are, and remain, of good character and good conduct;
  - b. have a current 'working with children' check or certificate, where required from an Australian jurisdiction or equivalent from the Australian Federal Police or, in the case of any local Personnel, where any similar check or certificate is required by local law taking into account the nature of their involvement in the Services, such check or certificate;
  - c. are considered suitable by the Department having regard to any issues identified in an Australian Federal Police background check and brought to the attention of the Department;
  - d. undergo induction and orientation training that is appropriate for Services required under this Contract when commencing employment with the Service Provider or starting work in relation to the Services;
  - e. are authorised, registered or licensed in accordance with any applicable regulatory requirements for the purposes of or incidental to the performance of the Services;

- f. possess all relevant industry body accreditation or scheme memberships and professional association membership that might be reasonably expected of providers of the Services, and produce evidence of such authorisation, registration, license, accreditation or membership to the Department upon request at any time during the term of this Agreement; and
  - g. will be subject to internal disciplinary processes.
- 1.6.3. The Service Provider will prepare an updated Personnel list and organisational structure chart in relation to its operations in relation to a Site under this Contract, on the request of the Department. The Service Provider will provide this list to the Department Operations Team Leader and each other service provider at the Site.
- 1.6.4. The Service Provider will develop and provide to the Department position descriptions for all position identified in the approved Service Delivery Team Structure.

## **PART 2: DESCRIPTION OF THE SERVICES**

### **2. General**

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#### **2.1. Context**

- 2.1.1. The Service Provider is required to provide services which relate to the welfare and engagement of Transferee Families with Children, Families without Children, Unaccompanied Minors (UAMs) and Single Adult Females.
- 2.1.2. In particular, the Service Provider will have primary responsibility for:
- a. the targeted delivery of education programs and activities to the various cohorts of Transferees;
  - b. engagement with Transferees to offer welfare and support including as part of reception, induction, transfer and discharge processes as well as behaviour management systems operating at the Site;
  - c. providing culturally respectful support to Transferees in relation to supervision, nutrition, health, recreation, and cultural needs and family relationships;
  - d. providing support to parents or guardians in caring for the needs of their children with an understanding that parents remain responsible for the health, safety and wellbeing of their children;
  - e. providing specialist support services to UAMs;
  - f. providing specialist services to families with infants including developmental reviews; and
  - g. providing independent observer services as required.
- 2.1.3. The Service Provider is required to:
- a. work cooperatively with the Department, other government agencies and other service providers to ensure integrated service delivery to Transferees;

- b. attend meetings wherever necessary or requested;
- c. maintain comprehensive records of all Services undertaken; and
- d. provide escort services to Transferees on authorised recreational and educational excursions out of the Site (but within Manus Island, Nauru, or the local area as the case may be).

## **2.2. Training and Support**

- 2.2.1. The Service Provider is required, on request from the Department, to provide training and other support to other service providers and their personnel in relation to the particular issues that need to be taken into account when dealing with children and UAMs.

## **2.3. Approach to the Services**

- 2.3.1. The Service Provider will be required to facilitate and encourage Transferees to access the Services provided by the Service Provider and the services provided by other service providers at the Site.
- 2.3.2. In performing the Services, the Service Provider will have regard both to the individual needs of Transferees and the needs of a family unit, and will aim to improve health and well-being outcomes for each Transferee. This will be undertaken in conjunction with other service providers.
- 2.3.3. In performing the Services, the Service Provider will, in conjunction with other service providers, seek to promote the well-being of Transferees and create an environment that supports security and safety at the Site.
- 2.3.4. The Service Provider will ensure that it and all its Personnel and subcontractors treat Transferees equitably and fairly, with dignity and respect.
- 2.3.5. The Service Provider is required to focus on the well-being of each Transferee and will facilitate visits from family, friends and support groups, while maintaining the safety of all Transferees.
- 2.3.6. The Service Provider will encourage interaction between Transferees where it considers it to be safe and appropriate.
- 2.3.7. The Service Provider will facilitate activities designed to enhance the ongoing emotional and mental health of each Transferee.

## **3. Programs and Activities**

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### **3.1. Overview**

- 3.1.1. The Service Provider is required to:
  - a. manage and deliver targeted structured and unstructured programs and activities designed to provide educational and recreational opportunities, and provide meaningful activities that are designed to enhance the mental health and well-being of Transferees;



- b. develop strategies to encourage Transferees to participate in programs and activities, but permit Transferees at the Site to determine their own level of participation and involvement;
  - c. ensure programs and activities cater for the diverse needs of Transferees and are targeted to engage the various cohorts;
  - d. consider feedback from Transferees when developing programs and activities;
  - e. in accordance with the procedures for the sourcing of equipment advised by the Department, support the garrison service provider to arrange the supply of equipment required to support the activities; and
  - f. ensure suitably qualified Service Provider Personnel are provided to support the activities.
- 3.1.1. The Service Provider will be required to develop a plan that sets out in detail the programs and activities that meet the requirements of this Statement of Work and the processes that will be used to monitor compliance with these requirements within 30 days of execution of the Contract, and updated on a quarterly basis. The Programmes and Activities Plan will include the following programme and activity programme areas:
- a. education programme;
  - b. recreation programme;
  - c. sporting programme; and
  - d. excursions.
- 3.1.2. The Service Provider must work collaboratively with other Service Providers to develop a schedule each month outlining the programs and activities to be delivered that meet the requirements of the Statement of Work.
- 3.1.3. The Service Provider will be required to provide a Programmes and Activities Schedule to the Department on a monthly basis, one month in advance, which outlines the consolidated programmes and activities available to Transferees.
- 3.2. Education Programme for Children**
- 3.2.1. The Service Provider is required to implement an education programme for Transferees who are children which incorporates an Australian based curriculum, with a particular focus on English as an additional language.
- 3.2.2. The Service Provider is required where possible to facilitate integration of Transferees who are children into the local school system in Nauru. The Service Provider is to take measures to address potential cultural conflicts in curriculum and put strategies in place to ensure the selected students and, where possible, Nauruan students are well prepared for the program.
- 3.2.3. The Service Provider is required to include UAMs in education programs within the Families compound, including where possible with the local community in

order to facilitate improved relations across groups and improve the mental health and wellbeing of UAMs.

- 3.2.4. The Service Provider is required to ensure adequate educational resources are available to Transferees and that resources are controlled and maintained in a manner which maximises the useful life of the resources.
- 3.2.5. The Service Provider is required to develop and update an Education Programme Plan and submit it to the Department within 6 weeks of the Execution date.
- 3.3. Education Programme for Adults**
- 3.3.1. The Service Provider will be required to develop and implement a robust education programme, which provides Transferees an opportunity to develop and learn a range of skills including English language skills.
- 3.3.2. The Service Provider is required to develop and update an Education Programme Plan and submit it to the Department within 6 weeks of the Execution date.
- 3.4. Recreation Programme**
- 3.4.1. The Service Provider is required to provide opportunities for Transferees to participate in structured and unstructured recreational activities within the RPC. This may include arts and crafts, chess, table tennis games and television.
- 3.4.2. The Service Provider is required to work collaboratively with other service providers to ensure adequate recreational equipment is available to Transferees and that equipment is controlled and maintained in a manner which maximises the useful life of the equipment.
- 3.4.3. The Service Provider is required to develop and update a Recreation Programme and submit it to the Department within 6 weeks of the Execution date.
- 3.5. Sporting Programme**
- 3.5.1. The Service Provider is required to provide opportunities for Transferees to participate in structured sporting activities both within and outside of the RPC. This may include soccer, cricket and volleyball.
- 3.5.2. The Service Provider is required to ensure adequate sporting equipment is available to Transferees and that equipment is controlled and maintained in a manner which maximises the useful life of the equipment.
- 3.5.3. The Service Provider is required to develop and update a Sporting Programme and submit it to the Department within 6 weeks of the Execution date.
- 3.6. Excursions**
- 3.6.1. The Service Provider is required to provide opportunities for Transferees to participate in structured excursions outside the Sites. This may include, but is not limited to, sporting tournaments, community activities and religious services.

3.6.2. The Service Provider must work in collaboration with other service providers and the host country community in developing a schedule of excursions and encourage community to participation.

3.6.3. The Service Provider is required to develop and update an Excursion Plan and submit it to the Department within 6 weeks of the Execution date.

### **3.7. Religious Activities and Cultural Liaison**

3.7.1. The Service Provider will acknowledge and support the ability of all Transferees to freely practice their religion of choice individually or communally in accordance with the OPC Guidelines subject to the overriding safety and security of Transferees.

3.7.2. The Service Provider will provide religious and cultural liaison services to Transferees to allow them to practice their religion of choice.

### **3.8. Individual Allowance Programme and Canteen**

3.8.1. The Service Provider is required to support the garrison service provider in the operation and management of the Individual Allowance Programme (IAP) for Transferees under its care in accordance with the OPC Guidelines.

3.8.2. The Service Provider will be required to record attendance for programmes and activities and notify the garrison service provider of the IAP points accrued by Transferees in its care.

3.8.3. The Service Provider will support the Garrison Service Provider in identifying appropriate items to be stocked in the canteen.

### **3.9. Gym**

3.9.1. The Service Provider will provide fair and equitable Transferee access to a gymnasium, where available.

3.9.2. The Service Provider is required to develop a procedure for the equitable use and access to the gymnasium for all Transferees.

3.9.3. The Service Provider is required to support other Service Providers in the maintenance and security of gymnasium equipment, including a daily records log of gymnasium equipment.

3.9.4. All personnel who supervise use of gymnasium facilities by Transferees are required to hold, or be working towards, an appropriate qualification.

## **4. Individual Management**

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### **4.1. General**

4.1.1. The Service Provider will be required to:

- a. promote and maintain an environment conducive to the health and welfare of Transferees where the needs of Transferees are identified and responded to openly and with integrity;

- b. work collaboratively with other service providers to establish processes to prevent Transferees being subjected to illegal and anti-social behaviour, and where such behaviour becomes apparent, to deal with the issues cooperatively with the local authorities, the Department and other service providers;
- c. promote a culture in which Personnel interact with Transferees on a regular basis in both formal and informal settings, developing trust and effective communication channels in undertaking their duties;
- d. where special needs or vulnerabilities are identified, raise the issues with all relevant services providers to make sure that the transferee receives the best level of support possible.
- e. take all reasonable steps to ensure all interaction between Personnel and Transferees is conducted in a culturally appropriate manner; and
- f. ensure all interaction between Personnel and Transferees is conducted in a professional manner.

#### **4.2. Interaction with Transferees**

4.2.1. The Service Provider is required to implement and support:

- a. policies and procedures at the Site that promote high levels of positive and culturally sensitive interaction between Personnel and Transferees to deliver a healthy environment and assist Transferees to achieve greater self-sufficiency over their daily routine in preparation for post-release;
- b. policies and procedures that set out the standards and qualities the Service Provider expects of its Personnel when they interact with Transferees, other service providers and stakeholders, including:
  - i. that Personnel will be required to clearly identify themselves when communicating with Transferees, other service providers and other stakeholders and wear a name badge and a uniform; and
  - ii. supporting Personnel to develop communication skills to interact and communicate with Transferees, other service providers and other stakeholders in a positive and effective manner.

4.2.2. The Service Provider must ensure that all Personnel:

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

- 4.2.3. The Service Provider must ensure that its Personnel do not provide any form of advice in relation to the visa status or other migration related matters of any Transferee. The Service Provider should also ensure that their Personnel are aware of government policies and that all communications with Transferees are consistent with these policies.
- 4.3. Specialist care for infants**
- 4.3.1. The Service Provider is required to provide specialist care to support the development and wellbeing of infants, including:
- a. Supporting parents of infants through the provisions of non - clinical prenatal and postnatal care;
  - b. Supporting parents to monitor the developmental milestones of infants; and
  - c. Using best endeavours to provide an intensive supported playscheme utilizing the available facilities and resources.
- 4.4. Specialist care for Unaccompanied Minors**
- 4.4.1. The Service Provider is required to provide specialist care and support services to UAMs, including;
- a. Identifying the needs of UAMs and working towards each Individual Management Plan;
  - b. Identifying any deterioration in mental health and referring to the appropriate Service Provider;
  - c. Motivating and encouraging UAMs to attend education and recreation activities;
  - d. Providing structured and unstructured activities which provide educational, recreational and personal development opportunities that also enhance the psychological and social wellbeing of UAMs;
  - e. Supporting UAMs to develop independent living skills; and
  - f. Providing transition support for UAMs as they approach 18 years of age.
- 4.5. Individual Management Plans**
- 4.5.1. The Service Provider is required to develop and implement Individual Management Plans for each Transferee in line with the OPC Guidelines.
- 4.5.2. The Service Provider is required to review these plans in line with the OPC Guidelines.
- 4.5.3. The Service Provider is required to ensure that each Individual Management Plan:
- a. identifies and tailors ongoing care and services required for the wellbeing of each Transferee; and
  - b. is a historical record of the care and services provided to Transferees.

#### **4.6. Case Management Training**

- 4.6.1. The Service Provider is required to develop and provide case management Personnel with appropriate training prior and during deployment to an RPC.
- 4.6.2. Case Management training must be implemented as soon as possible and finalised Case Management training material will be provided to the Department six weeks after Contract Execution for approval by the Department.

#### **4.7. Transferee Records**

- 4.7.1. The Service Provider is responsible for the development and management of Transferee Records. Other service providers will contribute information for inclusion in the Transferee Records.
- 4.7.2. The Service Provider is required to develop and implement a Transferee Records management system. The Service Provider and the Department will develop guidelines that set out in more detail the minimum requirements that are to be met by the Transferee Records management system ('Transferee Records Guidelines') including:
  - a. minimum categories of information to be recorded;
  - b. timeframes for updating Transferee Records;
  - c. reporting and data analysis, including frequency and format of standard reporting templates; and
  - d. format and processes for the transfer of data to the Department at regular intervals during the Term and at the expiration or termination of the Contract.
- 4.7.3. The Service Provider is required to ensure that all relevant information relating to a Transferee is recorded in the management system in a timely manner in accordance with the Transferee Records Guidelines to assist with Transferee welfare and management of the Site.
- 4.7.4. The Service Provider is required to, on request from the Department and otherwise in accordance with the Transferee Records Guidelines, promptly provide reports and other information from the Transferee Records management system.
- 4.7.5. The Service Provider acknowledges that all Transferee information is accessible by the Department at all times, at request by the Department.

#### **4.8. Referral of Transferee age and identity issues**

- 4.8.1. The Service Provider has a duty of care to immediately refer any doubts or concerns regarding a Transferee's age and/or identity to the Department.

#### **4.9. Health of Transferees**

- 4.9.1. The Service Provider must ensure that any Transferee who requests, or appears to be in need of medical attention, is referred for appropriate medical attention.
- 4.9.2. Where it appears that a Transferee requires emergency medical attention, the Service Provider is required to:

- a. immediately implement the Site's emergency response protocol advised by the Department and administer first aid to the Transferee until the service provider responsible for health services' personnel arrives; and
- b. inform the service provider responsible for health services of the Transferee's circumstances as soon as the initial response is complete.

**4.10. Transferees under the influence of drugs or alcohol**

**4.10.1. The Service Provider is required to:**

- a. ensure that a Transferee who appears to be under the influence of drugs or alcohol is supervised by Personnel until the Transferee appears to be no longer affected; and
- b. refer the Transferee for assessment by the Health service provider within 12 hours, unless emergency medical attention is required.

**4.11. Mental Health Awareness**

**4.11.1. The Service Provider must ensure all relevant Service Provider Personnel attend mental health awareness training as required by the Department.**

**4.12. Behavioural management of Transferees**

**4.12.1. The Service Provider is required to, in collaboration with other service providers, develop and implement a system of behavioural management strategies that aim to defuse tensions and conflicts amongst Transferees before they escalate or become serious or violent. The strategy must outline the steps which would be taken to de-escalate such situations.**

**4.12.2. The Service Provider is required to develop and implement processes, in cooperation with the Department and other local authorities and other service providers, for managing instances where Transferees are engaged in behaviour that is illegal, has breached the rules applicable at the Site or is anti-social in nature.**

**4.12.3. For the purposes of this clause anti-social behaviours may include:**

- a. bullying;
- b. verbal abuse;
- c. sexual and other forms of harassment;
- d. assault;
- e. family violence;
- f. malicious destruction of property; and
- g. possession of weapons or illegal drugs.

**4.12.4. Service Provider is required to:**

- a. communicate the Site policy on anti-social behaviour to all Transferees during the induction process; and

- b. prominently display the policy on anti-social behaviour in all relevant languages in the Site.
- 4.12.5. Where the Service Provider has identified, or suspects, that a Transferee has engaged in illegal, non-compliant or anti-social behaviour, the Service Provider will as soon as practicable inform the Department and the Operational and Maintenance Service Provider. The Service Provider will support the other service providers in recording details of and responses to instances of individual illegal, non-compliant or anti-social behaviour by Transferees and in completing Incident reports.
- 4.12.6. The Service Provider is required to support other Transferee Welfare Support Service Provider to ensure that Transferees identified as victims of anti-social behaviour are supported by Service Provider Personnel and other service providers, with relevant details recorded.
- 4.12.7. The Department will be responsible for involving the police or other authorities as required, except where reporting is mandatory under applicable law.
- 4.13. Management of Incidents**
- 4.13.1. The Service Provider is required to support other service providers in their management of Incidents.
- 4.13.2. The Service Provider must comply with any security and risk management processes and policies notified by the Department and otherwise manage risk in accordance with AS/NZS ISO 31000:2009 Risk management - Principles and guidelines.
- 4.14. Managed Accommodation**
- 4.14.1. The Service Provider is required to assist in the provision of Services at the Managed Accommodation as requested.
- 4.15. Complaints Management System**
- 4.15.1. The Service Provider is required to support other service providers is providing Transferees in their care access to a complaints procedure whereby issues of concern can be resolved effectively, fairly and efficiently.
- 4.15.2. Transferee complaints must be treated with confidentiality and integrity, and no Transferee will be prevented from providing their complaint to an external party.
- 4.15.3. The Service Provider is required to develop a complaints handling process, including:
  - a. promoting informal early rectification of issues;
  - b. referring complaints to relevant stakeholders; and
  - c. responding to complaints in accordance with the OPC Guidelines.



## **5. Reception, transfer and discharge of Transferees**

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### **5.1. General Responsibilities**

- 5.1.1. The Service Provider is required to support other service providers in their coordination and conduct of reception, transfer and discharge processes at the Site.
- 5.1.2. The Service Provider is required to:
- a. Support reception processes upon arrival of Transferees who will be in the care of the Service Provider at the Site;
  - b. Provide transfer processes to ready a Transferee for transfer to other locations, advised by the Department;
  - c. Provide discharge processes in a manner that promotes the Transferee's well-being, dignity and safety; and
  - d. Ensure that Transferees are regularly informed about what is happening to them in a language they understand through the use of interpreters if required.
- 5.1.3. When requested by the Department, the Service Provider must provide Independent Observer Services during the reception, transfer and discharge of Transferees.

### **5.2. Processing times**

- 5.2.1. The Service Provider is required to:
- a. Ensure Personnel are available to undertake reception, transfer and discharge activities at any time;
  - b. Commence the reception process, immediately after a Transferee arrives at the Site and complete the reception process within 12 hours of their arrival at the Site;
  - c. Commence the induction processes as soon as reasonably practicable after the Transferee's arrival at the Site and complete the induction processes within two (2) days of the Transferee arriving at the Site – the induction process includes providing information regarding how the Site operates and explaining relevant policies, procedures and roles;
  - d. Undertake transfer and discharge processing in accordance with timeframes determined by the department on a case by case basis; and
  - e. Undertake discharge processes immediately after the Service Provider is advised by the Department of a Transferee's release.

### **5.3. Reception**

- 5.3.1. The Service Provider is required to:
- a. Develop and implement a reception process and checklist;
  - b. Support the coordination of reception processes;

- c. Ensure that Personnel involved in the reception process are specifically trained to manage the reception process in a non-threatening and threat-reducing way, with a focus on the well-being of Transferees at all times;
  - d. Ensure that before new Transferees arrive at the Site other Transferees are informed of the new arrival/s;
  - e. Record skills of Transferees;
- 5.3.2. The reception process will include providing clear information to Transferees regarding their right to complain and the process to be followed.
- 5.4. Transferee health induction assessment**
- 5.4.1. The Service Provider is required to provide all necessary support to enable each Transferee to undergo a health induction assessment during the reception process in conjunction with other Service Providers.
- 5.4.2. Where a Transferee undergoes a health induction assessment, the Service Provider may request a summary of relevant and non-confidential health information about the Transferee from the health Service Provider for the Transferee Record, as soon as practicable. The health Service Provider will make a determination on what information is considered confidential.
- 5.5. Bedding, Clothing, Footwear and Toiletries**
- 5.5.1. The Service provider is required to support the garrison service provider in ensuring that each Transferee is allocated with the following items during the reception process:
- a. a bed and bedding that is clean and fit for purpose;
  - b. freshly laundered linen that is in good condition and suited to the local climate;
  - c. where required, clothing and footwear that is new, suited to the local climate and the Transferee's cultural needs;
  - d. a starter pack of toiletries that includes:
    - i. soap, shampoo and conditioner;
    - ii. toothbrush and toothpaste;
    - iii. hairbrush or comb;
    - iv. deodorant, moisturiser and talcum powder;
    - v. sanitary items (for female Transferees)
    - vi. razor and shaving cream (if required on a one for one basis);
    - vii. nail clippers; and
    - viii. sunscreen and insect repellent.
- 5.5.2. The Service Provider is required to support the garrison service provider to identify the requirement to replenish bedding, clothing, footwear and as required

or to enable these items to be purchased by IAP points in accordance with OPC Guidelines.

**5.6. Arrival phone call**

5.6.1. As part of the induction process, the Service Provider must advise Transferees that they may make a telephone call to advise family, friends or other support network of their arrival at the Site. The Service Provider is required to facilitate this phone call.

**5.7. Transfer**

- 5.7.1. When notified by the Department, the Service Provider is required to support and prepare Transferees for transfer including:
- a. providing briefing notes for the next party that will take the Transferee into its care that outline any known management or behavioural issues relevant to the Transferee;
  - b. ensuring that medications and other essential items are prepared, in consultation with the health Service Provider;
  - c. ensuring that all hard copy Transferee Records are provided to the escort for transfer to the same destination as the Transferee;
  - d. cooperating with the Department and any other stakeholders involved in the transfer process.

**6. Communications Management**

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**6.1. Access to communication services**

- 6.1.1. The Service Provider is required to provide management and supervision of access to and use of the communications services by Transferees.
- 6.1.2. The Service Provider is required to inform Transferees that their access to communication services may be recorded and/or monitored for security purposes.

**6.2. Television and other media**

- 6.2.1. The Service Provider is required to, where available, facilitate access to free-to-air television and other broadcast services, covering news, current affairs and other content that the Service Provider or other service providers may recommend to promote the well-being of Transferees.
- 6.2.2. Where practicable the Service Provider must ensure that television and other media is appropriate for the viewing audience.

**7. Independent Observer Services**

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**7.1. Independent Observer Services to UAMs**

- 7.1.1. The Service Provider is required to provide Independent Observer Services to UAMs as requested.

- 7.1.2. Independent Observers will attend interviews and meetings as agreed between the Department and the Service Provider. The Independent Observer will be required to provide physical, social and emotional care to support the wellbeing of UAMs who are Transferees throughout the interview process.
- 7.1.3. Where possible the Department will provide the Service Provider 2 days notice of the need for an Independent Observer to attend an interview.
- 7.1.4. On the same day as requested, the Service Provider will provide the Department with confirmation that an Independent Observer will attend for the required period.
- 7.1.5. The Service Provider will then work with the Department to develop a mutually acceptable schedule.
- 7.1.6. If the Service Provider is unable to provide same-day confirmation, the Service Provider will advise the Department of any difficulties with providing an Independent Observer for the requested period.
- 7.1.7. Independent Observers will have to ensure that the Department's and other agencies' treatment of UAMs during immigration and other interviews and processes is fair, appropriate and reasonable. An Independent Observer will be required for processes such as:
- a. Reception;
  - b. Entry interviews;
  - c. Interviews with the Police;
  - d. Intelligence interviews;
  - e. Interviews directly concerning their immigration status;
  - f. Identity and age determination processes;
  - g. Discharge; and
  - h. Returns and removals processes.
- 7.1.8. Independent observers will accompany other minors (including accompanied minors) to a formal interview in the event that their parents are unavailable.
- 7.1.9. The Independent Observer will remain with the UAM for the duration of the interview.
- 7.1.10. The Independent Observer has no casework, legal advocacy, or investigative responsibilities.
- 7.1.11. The Department may request particular Personnel act as an Independent Observer in specific instances. In such circumstances, the request for particular Personnel is to ensure the safety and well-being of the Transferee, Service Provider and the Department.
- 7.1.12. UAMs are given the option of refusing the presence of an Independent Observer. The Service Provider must comply with such requests.
- 7.1.13. Independent Observers are required to:

- a. Observe the conduct of the interview/examination/assessment and the demeanour and presentation of the UAM; and
  - b. Draw to the attention of the interviewer any concerns about the emotional and physical state of the UAM during the interview process.
- 7.1.14. The Independent Observer will ensure each interview is adequately explained to, and understood by, the UAM.
- 7.1.15. The Independent Observer will provide a reassuring and friendly presence for the UAM during the interview process.
- 7.1.16. The Independent Observer will be attentive to non-verbal cues of the UAM that indicate a need to take a break during the interview.
- 7.1.17. The Independent Observer will be able to recognize signs that the UAM may benefit from trauma counselling and promptly relay such information to the Department.
- 7.1.18. The Independent Observer will also ensure that the UAM is delivered back into safe care at the conclusion of the interview process.
- 7.1.19. Post interview, the Independent Observer will promptly report any concerns regarding the process to the Department through the appropriate communication protocols determined by the Department, including in accordance with the governance and reporting requirements under this Contract.
- 7.1.20. The Service Provider is required to develop and provide to the Department for approval a process for communicating any concerns regarding the process identified while undertaking Independent Observers Services to the Department within 6 weeks of the Execution Date.
- 7.1.21. The Service Provider must maintain comprehensive records of all Independent Observer services provided.
- 7.1.22. The Service Provider is required to provide Independent Observers on a ratio of 1:1 (Transferee: Independent Observer).
- 7.1.23. An Independent Observer is generally not required during routine processes that are in the UAMs best interests. This includes:
  - a. Health related processes (such as medical appointments); and
  - b. Facilitation of phone calls.
- 7.1.24. Consideration must be given to the continued use of an Independent Observer for a UAM who has recently turned 18 years of age. For example, where an Independent Observer has been working with a UAM who turns 18 years of age before the process is complete, consideration must be given to continuing to provide that person access to the Independent Observer, particularly in cases where there may be concerns regarding the UAMs level of maturity or understanding of processes.

## **8. Work Health and Safety**

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### **8.1. General**

- 8.1.1. The Service Provider is required to:
- a. develop and implement a work health and safety plan in consultation with other service providers and the Department;
  - b. comply with all applicable laws for occupational/work health and safety which include for the avoidance of doubt the Work Health and Safety Act 2011 (Cth), regulations and codes of practice as well as any applicable local laws and where there is any conflict in the applicable laws, comply with the highest standard; and
  - c. participate, with other service providers, in any work health and safety committee established to oversee compliance with work/occupational health and safety requirements for the Site as a whole.

### **8.2. Safety precautions in performing the Services**

- 8.2.1. The Service Provider is required to take all reasonable steps to ensure all people within the Site observe all the work/occupational health and safety rules for that Site, including rules applicable to:
- a. the storage, transport, and use of materials; and
  - b. safe work processes and the incorporation of any safety precautions.
- 8.2.2. The Service Provider is required to provide appropriate employee assistance programs for all Service Provider Personnel, taking into account the nature of the Personnel's involvement in the Services. The Service Provider will ensure that all relevant Service Provider Personnel are aware of and have access to these programs at all times, particularly while working at a Site and after any deployment.
- 8.2.3. The Service Provider is required to ensure its subcontractors provide appropriate employee assistance programs for all Service Provider Personnel, taking into account the nature of the Personnel's involvement in the Services. The Service Provider will ensure that all relevant Service Provider Personnel are aware of and have access to these programs at all times, particularly while working at a Site and after any deployment.

## SCHEDULE 2 FEES AND PAYMENT

### 1. Service Fee

#### 1.1. Elements of the Service Fee

- 1.1.1. The Service Fee for the Services will comprise the following elements which are described further below:
- a. a Corporate Overhead Fee;
  - b. a Service Delivery Fee;
  - c. Pass-Through Costs (without mark-up); and
  - d. Payments under the cost reduction and incentive framework.
- 1.1.2. The Service Provider is not entitled to any other payments in relation to the delivery of the Services.

#### 1.2. Exchange Rate

- 1.2.1. Conversion of currency will be at the rate published on the Reserve Bank of Australia website on the date the invoice or closest business day if the date of the invoice is a bank holiday or weekend.

#### 1.3. Performance Linked Fee

- 1.3.1. The Performance Linked Fee comprises the total financial amount put at risk by the Service Provider for any Financial Abatement for Performance Failures for which the Service Provider may be liable under Schedule 6, Part 9.2 in any month.
- 1.3.2. The maximum Performance Linked Fee put at risk for each month is <sup>s. 47(1)(b), s.</sup> of the total corporate overhead fee and the service delivery fee.
- 1.3.3. If the number of transferees fluctuates between bands throughout the course of the month on a Site, for which the Service Provider is determined to be liable under the Contract for any Financial Abatement for Performance Failures, the Performance Linked Fee for that month will be calculated on a pro-rata basis based on the number of calendar days in that month as relevant to each Site.
- 1.3.4. The Service Provider acknowledges that the Department may withhold part of the Performance Linked Fee in accordance with the Performance Management Framework.

### 2. Corporate Overhead Fee

s. 47(1)(b), s. 47G(1)(a)


s. 47(1)(b), s. 47G(1)(a)



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s. 47(1)(b), s. 47G(1)(a)



**3. Service Delivery Fee**

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**3.1. Calculation of Service Delivery Fee**


- 3.1.1. The Service Delivery Fee, calculated daily, will apply:
- a. on a per transferee basis;
  - b. for the service delivery for each group of transferees; and
  - c. be linked to capacity bands based on the average number of transferees under the Service Provider's care during the fortnight.

s. 47(1)(b), s. 47G(1)(a)



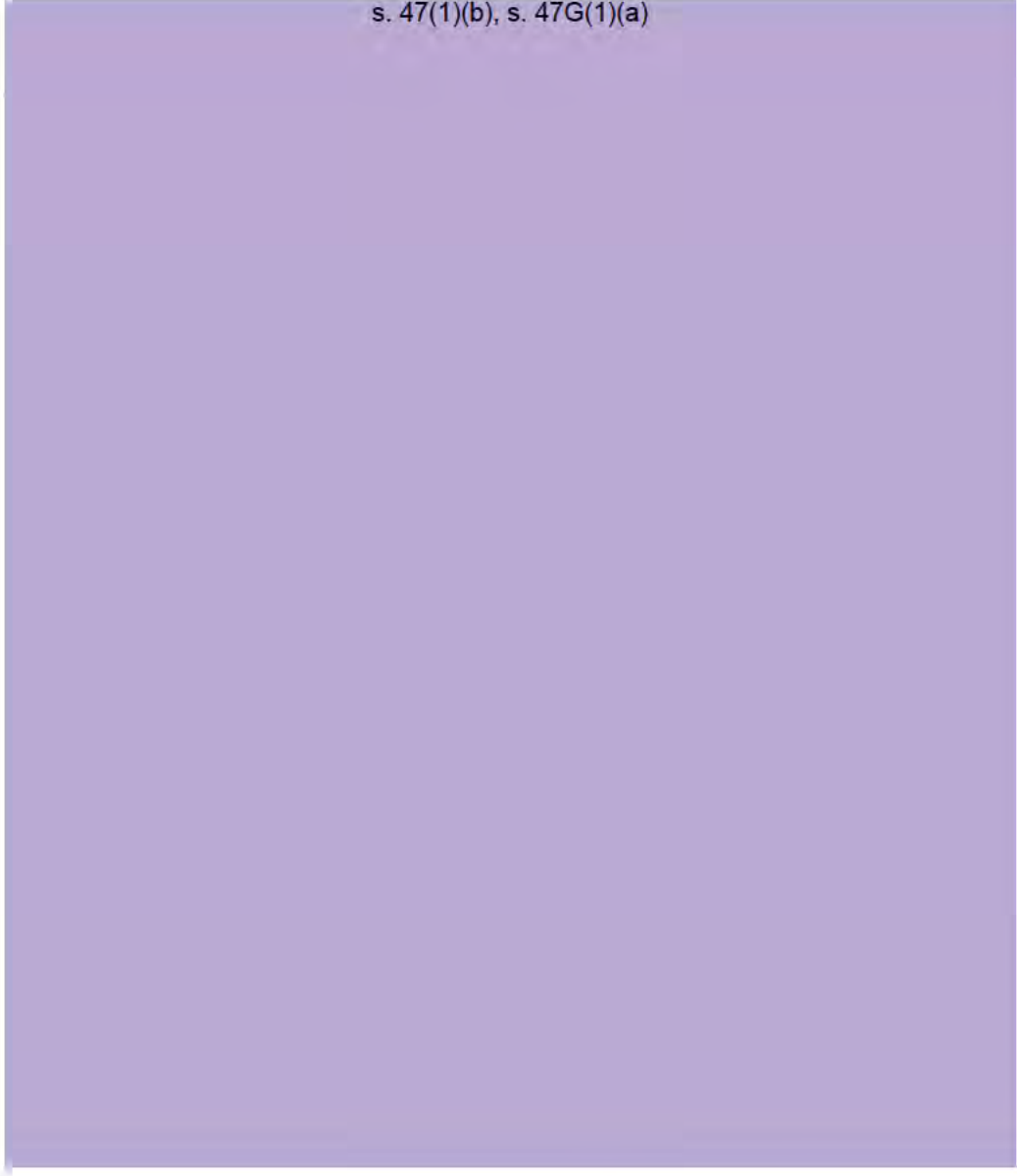
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s. 47(1)(b), s. 47G(1)(a)




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s. 47(1)(b), s. 47G(1)(a)




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s. 47(1)(b), s. 47G(1)(a)



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s. 47(1)(b), s. 47G(1)(a)



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- 3.1.2. The average number of transferees to be applied will be calculated as the sum of the daily number of transferees per group divided by the number of days in the invoicing period. Where the daily number of transferees moves between capacity bands, the average number of transferees should be calculated giving regard to how many days during the month the number of transferees was within that band
- 3.1.3. The Service Delivery Fee comprises s. 47(1)(b), s. 47G(1)(a)
- 3.1.4. If the number of transferees moves between capacity bands throughout the course of the month, the relevant capacity band will be applied on a pro-rata basis based on the number of calendar days in that month.
- 3.1.5. The Deployment allowance is based on the number of staff included in the Service Delivery fee, charged at a rate of s. 47(1)(b), s. 47G(1)(a), payable from the date of departure to date of return to Australia. The Deployment allowance should be invoiced as incurred, and is not to exceed the relevant pro-rata of the amounts detailed in the above tables.
- 3.1.6. The Service Provider will credit the Service Delivery Fee to adjust for any unfilled service delivery positions in the month that would otherwise have been invoiced to the Department using the pro-rata (or per transferee) approach outlined above.

#### **4. Transition-In Fees**

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- 4.1.1. No Transition-In Fees apply to this Contract.

#### **5. Pass-Through Costs**

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##### **5.1. Approval of Pass-Through Costs**

- 5.1.1. The Department will reimburse reasonable substantiated costs incurred by the Service Provider that are not covered by the Corporate Overhead Fee or the Service Delivery Fee in relation to the following:


s. 47(1)(b), s. 47G(1)(a)

s. 47(1)(b), s.  
47G(1)(a)

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s. 47(1)(b), s. 47G(1)(a)



**6. Additional Services**

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- 6.1.1. The Department may (from time to time) request the Service Provider to provide additional or out-of-scope services (i.e. services not currently specified in the

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Statement of Work). Hourly rates for labour for the Service Provider Personnel to undertake the additional or out-of-scope services are specified s. 47(1)(b), s.

s. 47(1)(b), s. 47G(1)(a)

**7. Cost Reduction Incentive Framework**

s. 47(1)(b), s. 47G(1)(a)

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s. 47(1)(b), s. 47G(1)(a)



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s. 47(1)(b), s. 47G(1)(a)

## **8. Payment Arrangements**

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### **8.1. Invoices**

- 8.1.1. The Corporate Overhead and Service Delivery Fee will be invoiced and submitted as soon as possible and in any event no more than four weeks after the last working day of each fortnight and be paid by the Department fortnightly in arrears within 14 days of receipt by the Department of a correctly rendered invoice.
- 8.1.2. Approved Pass Through Costs should be submitted as soon as possible after the last working day of each month and be paid by the Department monthly in arrears within 21 days of receipt by the Department of a correctly rendered invoice.
- 8.1.3. Unless otherwise agreed, any payments under this Contract will be made by electronic transfer directly to a nominated bank account. Payments will be net of payment reductions for abatement for which the Service Provider is liable under the Agreement.
- 8.1.4. To facilitate the application of financial abatements under the Performance Management Framework, the Service Provider may be requested to raise a credit. Payment of outstanding invoices may be withheld until the required credit note is provided.
- 8.1.5. An invoice must:
- a. meet Australian Taxation Office requirements of a tax invoice as required by GST Law;
  - b. be accurate;
  - c. meet the requirements of the Public Governance, Performance and Accountability Act 2013;
  - d. provide disclosure of the basis of all components of the Services Fee charged to the Department (including relevant calculations); and
  - e. provide full substantiation for any Pass-Through Costs claimed by the Service Provider.

8.1.6. An invoice will not be considered correctly rendered until the end of the relevant service period.

**8.2. Disputes about invoices**

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

- a. may withhold payment of any part of the Service Delivery Fee or Pass-Through Costs that are in dispute until the dispute is resolved;
- b. must notify the Service Provider in writing (within 30 days of receipt of the invoice) of the reasons for disputing the remainder of the invoice; and
- c. will pay the undisputed part of the invoice in accordance with this Contract.

**8.3. Incorrect Invoices**

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

**9. Facilities and other assistance**

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**9.1. Facilities**

9.1.1. The Department will provide the Service Provider with access to the following facilities for the purposes of providing the Services under this Contract:

- a. accommodation for Service Provider Personnel;
- b. access to office space;
- c. transport; and
- d. on-site medical facilities.


9.1.2. The Service Provider acknowledges that other Service Providers and Department personnel will also be accessing and using these facilities as part of the operation and management of the Site. The Service Provider will refer any issues regarding access to or use of the facilities to the Department Operations Team Leader for resolution.

**9.2. Other assistance**

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

- a. subsidised meals for Personnel in accordance with Department policy; and
- b. safety and security for Personnel while at a Regional Processing Centre.

s. 47(1)(b), s. 47G(1)(a)



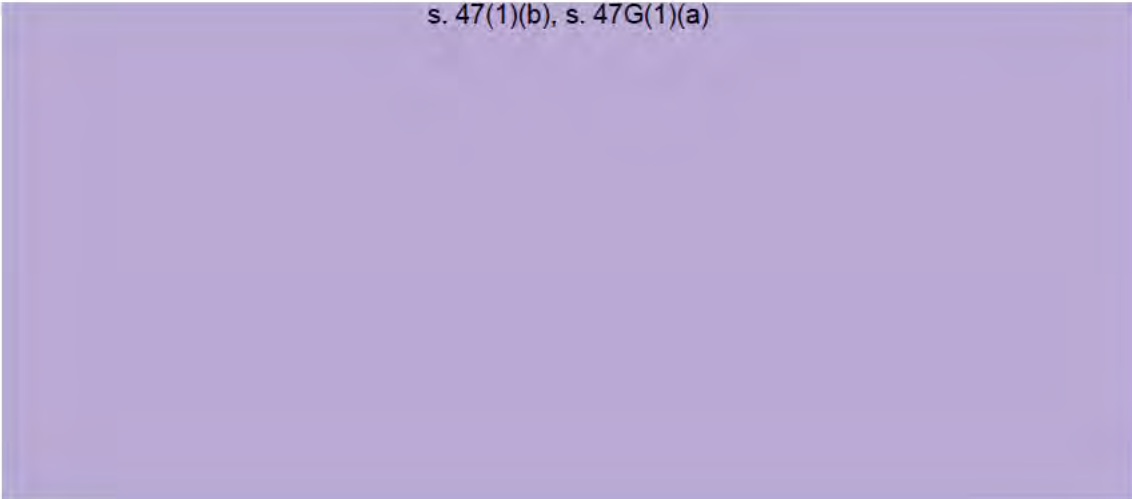
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s. 47(1)(b), s. 47G(1)(a)



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*Freedom of Information Act 1982*

s. 47(1)(b), s. 47G(1)(a)



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### SCHEDULE 3 CONFIDENTIALITY DEED

**THIS DEED POLL** is made the [...] day of [...] 2014 in favour of the **COMMONWEALTH OF AUSTRALIA** represented by the Department of Immigration and Border Protection (**the Department**)

BY [...] (**the Confidant**)

#### RECITALS

A The Department and [...] (**Service Provider**) have entered into a Contract under which the Service Provider will provide the Services to the Department.

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

C. The Confidant will be performing Services.

#### THE CONFIDANT DECLARES AS FOLLOWS:

##### 1. INTERPRETATION

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

**Contract** means the Contract between the Department and the Service Provider for the provision of Services on RPCs.

**Department Confidential Information** means information that:

- a. is by its nature confidential;
- b. is designated by the Department or any law as confidential; or
- c. the Confidant knows or ought to know is confidential;  
and includes to the extent that it is confidential:
- d. information comprised in or relating to any Intellectual Property of the Department;
- e. information relating to contractors or suppliers to the Department; and
- f. information relating to Department Data,  
but does not include information which:
- g. is or becomes public knowledge other than by breach of the Contract or any other confidentiality obligation; or
- h. has been independently developed or acquired by the Confidant as established by written evidence.

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

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

**Services** means the Services specified in the Contract.

## 2. NON DISCLOSURE

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

## 3. RESTRICTION ON USE

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

## 4. CRIMES ACT

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

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

## 5. DELIVERY UP OF DOCUMENTS

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

## 6. CONFLICT OF INTEREST

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

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

## 7. SURVIVAL OF OBLIGATIONS

7.1. The obligations in this Deed are perpetual.

## 8. INDEMNITY

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

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

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

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

**Executed as a Deed**

**SIGNED, SEALED and DELIVERED** by

**[Confidant]** in the presence of:

Signature of Recipient

Signature of witness

Name

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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#### SCHEDULE 4 DEED OF NON-DISCLOSURE PERSONAL INFORMATION

THIS DEED POLL is made the [...] day of [...] 2014 in favour of the COMMONWEALTH OF AUSTRALIA represented by the Department of Immigration and Border Protection (the Department)

BY [...] (the Confidant)

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

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

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

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

**Executed as a Deed**

**SIGNED, SEALED and DELIVERED** by

**[Confidant]** in the presence of:

\_\_\_\_\_

Signature of Recipient

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name

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**SCHEDULE 5 SERVICE PROVIDER CONFIDENTIAL INFORMATION**

(a) Information contained in Contract:

<b>Item</b>	<b>Period of Confidentiality</b>
Daily rates	3 years
Pricing tables and methodology	Indefinite

(b) Information obtained or generated in performing Contract:

<b>Item</b>	<b>Period of Confidentiality</b>
N/A	N/A





## **SCHEDULE 6 PERFORMANCE MANAGEMENT FRAMEWORK PRINCIPLES**

### **1. Introduction to the Performance Management Framework**

#### **1.1. Overview**

1.1.1. The Performance Management Framework (the Framework) describes the performance assessment process and outlines Key Performance Indicators that are expected of the Service Provider. The Framework has been designed to assist the Department in monitoring and evaluating the performance of the Service Provider against its contractual requirements and the Department's expected outcomes.

1.1.2. The Framework requires a collaborative approach between the Department and the Service Provider. The performance assessment process is risk based, and focuses primarily on performance against the responsibilities of the Service Provider as described in the Statement of Work. Successful performance by the Service Provider is expected to be achieved through quality service delivery, addressing identified risks and providing the Department with evidence of performance.

#### **1.2. Individual Service Provider Report Instruction Manual**

1.2.1. The Individual Service Provider Report (ISPR) Instruction Manual will be provided by the Department to the Service Provider. The manual sets out the format, content and timing for the monthly performance reporting. The Department will provide the Service Provider with the ISPR Template that is used to record the results of the monthly performance assessment.

### **2. Key commercial principles of the Framework**

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

a. Financial abatement

Poor performance against KPIs may result in the Service Provider's monthly Performance Linked Fee being abated. The level of abatement will depend on Risk Ratings assigned to the KPIs and the Frequency of Occurrence of performance failures. The monthly Performance Linked Fee at risk is defined in clause 1.3 of Schedule 2.

b. Cost savings incentive

If the Service Provider undertakes continuous improvements that achieve cost efficiencies for the benefit of the Department under Schedule 2, clause 7.2 'Reduction of indicative total Pass-Through Costs', the related Pass Through Cost savings will be shared between the Department and the Service Provider on a s. 47(1)(b), s. 47(1)(c) basis respectively.

c. Innovation bonus

If the Service Provider identifies and implements new or changed processes that have the potential to improve performance and lead to cost savings for the benefit of the Department under Schedule 2, clause 7.1 'Reduction of Corporate Overhead Fee and Service Delivery Fee', the Service Provider will be entitled to receive a share of  $\frac{5.471(10)}{100}$  of the proposed cost savings, if the innovation is successfully implemented.

d. Repeat underperformance

Consistent poor performance against the KPIs may ultimately lead to termination of the Service Provider's Contract.

### 3. Key elements of the Framework

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3.1.1. The Framework applies to the Service Provider's performance at all Sites.

3.1.2. The Framework includes the following key elements:

- a. Key Performance Indicators (KPIs) and KPI Outcomes: The Service Provider's performance is assessed against KPIs. The KPIs represent the critical areas or service lines that frame the Department's expected outcomes. The performance assessment is designed to measure the extent to which the Service Provider's performance has contributed to the achievement of the Department's KPI Outcomes.
- b. Contract Responsibilities: The Service Provider's performance for each KPI is assessed against Contract Responsibilities (CRs) that reflect the services set out in the Statement of Work.
- c. Risk Ratings: The performance framework adopts a risk based approach that focuses on the Service Provider's CRs. At the commencement of each quarter, the Service Provider is required to rate its risk of non-compliance for each identified CR. The Service Provider and the Department will jointly agree on the Risk Ratings.
- d. Performance Measures: The Performance Measures define the method of assessing, either quantitatively or qualitatively, how the Service Provider has performed against its CRs and is evidenced by data recorded by the Service Provider. The result of the Performance Measure provides an evidence basis for Performance Ratings and for financial Abatements for underperformance, if applicable.
- e. Performance Ratings: On a monthly basis the Service Provider is required to assess its performance against the CRs and assign a Performance Rating. The ratings are defined as: exceptional, exceeds expectations, meets expectations, improvement needed or unsatisfactory. A rating of Improvement needed or Unsatisfactory indicates there has been a Performance Failure. The Performance Rating will be informed by the results of the Performance Measures.
- f. Abatement regime: In order to manage underperformance and non-compliance with CRs, the Framework adopts an abatement regime for

identified Performance Failures. The level of abatement is determined by both the Risk Rating assigned to Performance Failures and the Frequency of Occurrence of the Performance Failure. In a reporting period where abatement is applicable, a financial Abatement linked to the applicable percentage of the monthly Performance Linked Fee may be applied.

- g. Incentives for innovation: If the Service Provider submits an innovative, cost savings proposal that is agreed to by the Department, the Service Provider will be rewarded with an Innovation Bonus. If the Service Provider identifies Pass Through Cost savings, these savings will be shared between the Department and the Service Provider.
- h. Performance reporting: The Service Provider is required to report on its performance to the Department by submitting an ISPR. The ISPR is a monthly report on the Service Provider's Risk Ratings, performance against Contract Responsibilities (CRs) and abatements for Performance Failures (if applicable). The ISPR is to be completed in accordance with instructions set out in the ISPR Instruction Manual provided by the Department and utilise the ISPR Template attached to the ISPR Instruction Manual.

#### 4. Key Performance Indicators

- 4.1.1. The Service Provider's performance is assessed against the CRs, which are aligned under the Departments framework of Key Performance Indicators (KPIs). The KPIs represent critical areas or service lines that frame the Department's expected outcomes. The KPIs and the associated expected outcomes are summarised in Table 1:

Table 1 KPI areas and KPI Outcomes

KPI areas and service lines	KPI Outcomes
Welfare	The cultural, spiritual, social, mental and emotional wellbeing of transferees and transferee community is maintained and positively influenced by service provider involvement where practical.
Care	The physical wellbeing of transferees and the overall transferee community is maintained and positively influenced by service provider involvement.
Security	The safety, integrity and good order of the facility, its people and its operations are maintained.
Health and Medical	N/A to this Contract.

KPI areas and service lines	KPI Outcomes
Education and recreation	Transferees are given the opportunity to access education services, achieving reasonable education and training outcomes to accepted professional standards.
Counselling	N/A to this Contract.
Interpreters	N/A to this Contract.
Logistics, Reporting and Support	The efficient, effective and economical operation of the centre is maintained. Performance reports are completed accurately and submitted in a timely manner.
Strategic and Relationships	The Service Provider takes a collaborative and integrated approach to the provision of services, will be effective in managing complex stakeholder and governance issues, and builds long term relationships with the Department and other service providers. The Service Provider drives continuous improvements in service delivery and actively puts forward innovative, value for money proposals that are for the benefit of Transferees and the Department.

## **5. Contract Responsibilities**

5.1.1. The Service Provider's performance for each KPI will be assessed through the use of Contract Responsibilities (CRs) that reflect the services set out in the Statement of Work. The CRs are identified and defined in the ISPR Template.

## **6. Risk assessment**

### **6.1. Risk of non-compliance of Contract Responsibilities**

6.1.1. The Department and the Service Provider have agreed on the CRs to be included in the Service Providers ISPR.

6.1.2. On commencement of the contract the Department and the Service Provider will agree on the Service Provider's risk of non-compliance against each identified CR, that is provide a Risk Rating against each CR. Risk Ratings are defined as either; Extreme, High, Medium, Minor or Low as explained in the ISPR Instruction Manual. The Service Provider is required to record its Risk Ratings in the ISPR Template.

- 6.1.3. For each CR the Service Provider is required to detail its risk mitigation strategies setting out the controls and procedures it has in place to mitigate the risks.
- 6.1.4. At the commencement of each quarter following the Execution Date, the Service Provider is required to review, and if necessary update the Risk Ratings and submit them to the Department for approval. The Risk Ratings that were agreed and recorded in the ISPR Template for the previous quarter will remain in place until the updated Risk Ratings have been jointly agreed by Department and the Service Provider.
- 6.1.5. The Risk Ratings agreed at the commencement of each quarter are to be submitted to the Department's National Office for approval. The final decision on a Risk Rating rests with the Department's National Office.

## **7. Performance Measures**

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- 7.1.1. Performance Measures (PMs) measure the Service Provider's performance against its CRs and are used to inform Performance Ratings. The PMs provide a benchmark of expected performance standards.
- 7.1.2. The Service Provider's performance against each CR is either quantitatively or qualitatively assessed using the PMs described in the ISPR Template, as agreed between the Department and the Service Provider. The result of this performance assessment, referred to as the Performance Measure Result, is to be supported by data recorded by the Service Provider and provides an evidence base to support the Performance Rating
- 7.1.3. The PMs will be jointly reviewed by the Department and the Service Provider on a six-monthly basis. The purpose of the review will be to examine the effectiveness and practicality of the PMs. If certain PMs are found to be ineffective or are unable to be accurately measured as described in the definition of the PM, the Department and the Service Provider may agree to amend the PMs. The updated PMs will be approved by the Department and the ISPR Template updated accordingly.

## **8. Performance Ratings**

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- 8.1.1. As part of the Framework's Monthly Performance Reporting process, the Service Provider is required to assess its performance against the CRs and assign a Performance Rating. The Service Provider is required to inform its Performance Rating by reference to the quantitative and qualitative results of the Performance Measure Results. The Performance Rating definitions are summarised in Table 2 below.

Table 2: Performance Rating definitions

Performance Rating	Definition
Exceptional (5)	Performance far exceeded expectations due to exceptionally high quality of work performed in all essential areas of responsibility, resulting in an overall quality of work that was excellent
Exceeds expectations (4)	Performance consistently exceeded expectations in all essential areas of responsibility and the quality of work overall was good.
Meets expectations (3)	Performance consistently met expectations in all essential areas of responsibility and the quality of work overall was satisfactory
Improvement needed (2)	Performance did not consistently meet expectations – performance failed to meet expectations in one or more essential areas of responsibility and/or one or more of the most critical goals were not met.
Unsatisfactory (1)	Performance was consistently below expectations in most essential areas of responsibility and/or reasonable progress toward critical goals was not made. Significant improvement is needed in one or more important areas.

## 8.2. Performance Failures

- 8.2.1. Performance Ratings of either a 2 (Improvement needed) or 1 (Unsatisfactory) are considered to be Performance Failures.
- 8.2.2. Performance Failures are subject to either financial Abatement and/or additional reporting through submission of Action Plans, as described under the Abatement regime at section 9 below.

## 8.3. Performance Rating Disputes

- 8.3.1. Performance Rating disputes between the Service Provider and the Department should be dealt with in the manner described in the ISPR Instruction Manual.

## 8.4. Excusable Performance Failure Event

- 8.4.1. An Excusable Performance Failure Event (EPF) is a circumstance or event which the Department recognises as being beyond the reasonable control of the Service Provider. EPFs are defined in clause 1.1.1 of the Contract.
- 8.4.2. An EPF may be requested by the Service Provider to excuse instances where a Performance Failure has occurred. If the Service Provider is seeking EPF relief,

the Service Provider is required to notify the Department within three (3) business days of identification of the EPF and subsequently make a submission to the Department for consideration within five (5) business days of identification of the relevant EPF.

- 8.4.3. The process and format for making EPF submissions and the timeframe for approval by the Department is described in the ISPR Instruction Manual attached to this Schedule.

## **9. Abatement Regime**

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- 9.1.1. Where a Performance Rating of either 1 (Unsatisfactory) or 2 (Improvement needed) has been assigned to a CR, that is, a Performance Failure has occurred, the Service Provider may incur a financial Abatement and/or be required to provide additional reports to the Department as described below.

### **9.2. Financial Abatements for Performance Failures**

- 9.2.1. Performance deductions (financial Abatements) may be applied in respect of the Service Provider's Performance Failures. The financial Abatement is in the form of a percentage deduction of the Service Provider's monthly Performance Linked Fee for the Sites. The Performance Linked Fee is defined in clause 1.3 of Schedule 2 Fees and Payment.

- 9.2.2. The percentage level of Abatement is dependent on:

- a. the Risk Rating assigned to the CR for which a Performance Failure has occurred and;
- b. the Frequency of Occurrence of the Performance Failure.

### **9.3. Frequency of Occurrence of Performance Failures**

- 9.3.1. The Frequency of Occurrence of Performance Failures, together with the Risk Ratings, will determine whether a financial Abatement is to be: applied immediately or; a percentage of the monthly Performance Linked Fee withheld or; nil financial abatement is to be applied.

- 9.3.2. The Performance Failure Frequency of Occurrence is defined as:

- a. A first occurrence of a Performance Failure is referred to as an Initial Failure; a second occurrence of a Performance Failure is referred to as a Secondary Failure; and a third occurrence of a Performance Failure is referred to as a Third Failure.
- b. For a Performance Failure to become a Secondary or Third Failure, the same Performance Failure must have occurred in two or three consecutive reporting periods. For example, a Performance Failure occurring in July and August would constitute a Secondary Failure. A Performance Failure occurring in July, August and September would constitute a Third Failure. If a Performance Failure occurs in July and then again in September, it would not constitute a Secondary Failure, but would be considered an Initial Failure.



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

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

9.4.1. Based on the Risk Rating assigned to the Performance Failure and the Frequency of Occurrence, a tiered approach to financial Abatement is applied.

9.4.2. Where there has been a Performance Failure and the Risk Rating is:

- a. Extreme, a financial Abatement will be applied immediately (i.e. on invoicing at the end of the relevant Monthly Reporting period) regardless of the Frequency of Occurrence.
- b. High or Medium, a percentage of the monthly Performance Linked Fee will be withheld until the Department approves that the Performance Failure has been rectified/addressed, unless the Frequency of Occurrence is a Secondary or Third Failure in which case immediate financial Abatement will apply.
- c. Minor or Low, no financial abatement will apply unless the Frequency of Occurrence is a Secondary Failure in which case a percentage of the monthly Performance Linked Fee will be withheld until rectified, or Third Failure in which case immediate financial Abatement will apply.

9.4.3. Table 3 summarises the tiered approach to applying financial Abatements to the Service Provider's monthly Performance Linked Fee.

s. 47(1)(b), s. 47G(1)(a)

s. 47(1)(b), s. 47G(1)(a)

**9.5. Withholding financial Abatements**

- 9.5.1. In Table 3, where an asterisk (\*) appears next to 'yes' in the "Financial Abatement applicable" column, the corresponding financial Abatement will be withheld from the Service Provider (Withholding financial Abatement). The amount withheld will be released upon the Department approving that the Performance Failure has been rectified/addressed.

**9.6. Action Plans to address Performance Failures**

- 9.6.1. For each Performance Failure that is reported as part of the Monthly Performance Reporting, the Service Provider is to prepare an Action Plan. The Action Plan is required to outline the activities that the Service Provider will undertake to address the issues that led to the Performance Failure and include a timeframe for the implementation of a rectification strategy. The format of the Action Plan is set out in the ISPR Instruction Manual attached to this Schedule.

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9.6.2. Where a Performance Failure has occurred in relation to a CR with an Extreme or High Risk Rating, an Action Plan is to be submitted to the Department within 48 hours of the Performance Failure being identified.

**9.7. Example scenarios**

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

**9.8. Calculation of financial Abatement**

s. 47(1)(b), s. 47G(1)(a)



s. 47(1)(b), s. 47G(1)(a)

**10. Performance and efficiency incentive**

- 10.1.1. The Department expects that the Service Provider will, at least, meet performance expectations across all KPI areas as a whole (that is, KPIs 1 to 9 inclusive), and across all Sites.
- 10.1.2. To encourage the Service Provider to actively seek continuous improvements in service delivery that have the effect of achieving cost efficiencies for the benefit of Department, any Pass Through Cost savings that are identified and implemented by the Service Provider may be shared between the Department and the Service Provider on a   basis respectively and will be payable under the terms outlined in Schedule 2.

**11. Strategic and relationship KPI – Qualitative survey**

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**11.1. Qualitative survey**

- 11.1.1. The extent to which the Service Provider has contributed to a collaborative relationship with the Department and other service providers, and has delivered a culture of continuous improvement, may be assessed based on the results of the qualitative survey for the Strategic and Relationship KPI (KPI 9).
- 11.1.2. The Department may conduct a quarterly survey questionnaire (completed by selected Department representatives) to assess the Service Provider's performance against KPI 9. The quarterly survey questions will be included in the ISPR Template.
- 11.1.3. The Department may qualitatively assess the Service Provider's performance against each survey and assign a Performance Rating. The average of the Performance Ratings for all survey questions may be recorded in the ISPR Template.

## **12. Innovation Bonus**

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- 12.1.1. The Department expects that the Service Provider will drive continuous improvements in service delivery and actively put forward innovative, value for money proposals that identify performance improvements and/or cost savings for the benefit of Department.
- 12.1.2. Where the Service Provider proposes to implement a new or changed service or system/procedure which has the effect of leading to cost savings for the benefit of the Department, the Service Provider may submit an Innovation Application (IA) to the Department. The Innovation Application should detail the nature of the innovation and incorporate a business case which demonstrates how it will benefit the Department.
- 12.1.3. An Innovation Bonus of  $\frac{5-471109}{100}$  of the Department's cost savings as set out in the IA will be shared with the Service Provider under the terms outlined in Schedule 2.

## **13. Management of underperformance in KPIs**

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- 13.1.1. The Department may exercise the following options at its discretion to manage underperformance of KPIs:
- 13.1.2. If at any time the Service Provider has received three consecutive Performance Failures, then:
- a. The Department may require the Service Provider to submit a Rectification Plan with respect to the Performance Failures. The content and format of a Rectification Plan is set out in the ISPR Instruction Manual.
  - b. If performance is not fully rectified in accordance with the Rectification Plan and within the agreed timeframe, then the Department may terminate the Service Provider's Contract.

## **14. Performance Framework Reporting**

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- 14.1.1. The Monthly Performance Reporting process involves the Service Provider submitting the following reports to the Department (collectively referred to as the Monthly Performance Reports) for each Site.
- a. An Individual Service Provider Report (ISPR) in accordance with the format and content described in the ISPR Instruction Manual. The ISPR should be submitted to the Department within 10 business days of the end of the relevant reporting month.
  - b. Action Plans for Performance Failures (if applicable).
  - c. EPF submissions (if applicable).
- 14.1.2. The Service Provider and the Department will collaboratively agree on the Service Provider's performance results as set out in the ISPR and discuss Performance Failures resolved through Action Plans or Excusable Performance Failure (EPF) submissions.

- 14.1.3. The submission of timely, accurate and good quality Monthly Performance Reports is subject to performance assessment as defined in the ISPR Template.

**15. Audits of Monthly Performance Reports**

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- 15.1.1. The Department may periodically conduct audits of the Service Provider's compliance with its performance obligations under the Performance Management Framework, including the Service Provider's:
- a. Monitoring, measuring or reporting against any Performance Measure, for the purpose of verifying the derivation and calculation of any measure
  - b. Implementation of an Action Plan.
- 15.1.2. The audit may involve:
- a. Cross-checking and verification of data produced by the Service Provider
  - b. Site visits to any or all of the Sites; and
  - c. Interviews with key persons

## **SCHEDULE 7 GOVERNANCE**

### **1. Governance arrangements**

#### **1.1. General**

##### **1.1.1. This part:**

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

#### **1.2. Governance framework**

- 1.2.1. The Service Provider is required to comply with the governance framework developed by the Department, which may change from time to time.
- 1.2.2. The Service Provider is required to cooperate with the Department by actively participating in committees and meetings that have been (or will be) established. The Department will notify the Service Provider in writing of any changes to governance arrangements.
- 1.2.3. The Service Provider is required to cooperate with the Department, other service providers, and stakeholders, to meet the needs of Transferees and assist the Department to meet its obligations.
- 1.2.4. The Service Provider may be required to attend, but is not limited to, the following local management meetings:
  - a. daily morning meetings with the Department and other service providers;
  - b. Transferee consultative committee meetings with Transferees, other service providers and the Department;
  - c. weekly Individual and Behavioural Management Committee meetings with the Department and other service providers to review Transferee Individual Management Plans, Behavioural Management Plans and to identify Transferees at risk;
  - d. Work Health and Safety (WHS) Committee meetings with the Department and other service providers to review WHS concerns at a Site;
  - e. weekly Departmental review meetings with the Department and other service providers to review performance and service delivery at a Site;
  - f. Site Security Committee meetings with the Department and other service providers to review security arrangements; and

- g. monthly Site level board meetings with the Department and other service providers to review the effectiveness of governance arrangements, risks and issues affecting the Sites.

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

- 1.2.5. The Service Provider is required to participate in, and action agreed items resulting from all meetings, consultative committees and forums at the request of the Department.
- 1.2.6. In certain situations, and particularly at the local management level of governance, the Service Provider may be required to chair and lead a meeting.
- 1.2.7. The Service Provider is required to provide updates, reports and briefings for meetings, consultative committees and forums at the request of the Department. These meetings may be held at the Department's National office in Canberra and the frequency will be agreed between the parties.
- 1.2.8. The Service Provider with the Department, relevant RPC government and communities will be required to:
  - a. participate in and contribute to regular meetings with community leaders; and
  - b. develop and maintain good working relationships with key community members.

The Department will take a lead role in the development and implementation of any community consultations or meetings.



## SCHEDULE 8 COMMUNICATION PROTOCOLS

1. The Department will take the lead in any comment with the media on operational matters involving the provision of services or activities in Nauru and/or PNG. In circumstances where the issue specifically relates to the Service Provider and its business reputation and/or the management and credentials of its staff, the Department agrees that the Service Provider may respond to the extent necessary for the Service Provider to address these issues, however in such circumstance the Service Provider will consult with the Department on its proposed response.
2. Each party to recognise concerns of the other in relation to adverse and inaccurate media reporting.
3. The Department always first contact point for any media contact and responding to media enquiries. the Department is available to the Service Provider 24 hours a day, 365 days a year to work collaboratively on management of issues, through its media enquiries line, +61 2 6264 2244.
4. When media enquiries come in – the Department communications deals with them but liaises with the Service Provider (if the issue directly involves the Service Provider).
5. The Department recognises that the Service Provider has a legitimate concern about reputational risk and being able to defend itself against unfair and inaccurate media comment and during dealings with its stakeholders. the Service Provider will inform the Department ahead of public comment on such matters.
6. the Service Provider recognises that the Department has a legitimate concern to ensure it has the lead role in coordinating responses to the media in respect of issues affecting the Immigration and Border Protection Portfolio.
7. The Department acknowledges the Service Provider may have philosophical differences with some aspects of government policy, and that espousing its values may be a matter for public record.
8. The Service Provider equally respects that operational grievances in performing the contracted services (if they arise) should be raised in an appropriate private forum and not canvassed through the media.
9. The Service Provider agrees not to make a public statement or release information which might reasonably be expected to detrimentally affect an asylum seeker.
10. The Service Provider will bring to attention of the Department any media reporting which it considers to be inaccurate or prejudicial. the Department and the Service Provider will discuss and agree in good faith an appropriate response.

11. The Department and the Service Provider agree to provide, by way of information, media responses developed that mention the other party. The exception is when the Service Provider is speaking in its advocacy role, where it agrees such advocacy will not divulge or pass commentary on the contracted services it provides.