



Australian Government

Department of Immigration and Border Protection

Attachment A

DECISION RECORD

Request Details

FOI Request FA14/02/01059

File Number ADF2014/6510

Scope of request

"Specifically I request the Department's contract or contracts with Transfield Services for the provision of services on Manus Island and Nauru."

Documents in scope

1. Electronic record of the Transfield contract containing 94 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 document (identified above);
- The Australian Information Commissioner's guidelines relating to access to documents held by government;
- The department's FOI handbook

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.

Section 22 - Deletion of exempt matter or irrelevant material

(1) *Where:*

(a) *an agency or Minister decides:*

- (i) *not to grant a request for access to a document on the ground that it is an exempt document; or*
- (ii) *that to grant a request for access to a document would disclose information that would reasonably be regarded as irrelevant to that request; and*

(b) *it is possible for the agency or Minister to make a copy of the document with such deletions that the copy:*

- (i) *would not be an exempt document; and*
- (ii) *would not disclose such information; and*

people our business

- (c) *it is reasonably practicable for the agency or Minister, having regard to the nature and extent of the work involved in deciding on and making those deletions and the resources available for that work, to make such a copy; the agency or Minister shall, unless it is apparent from the request or as a result of consultation by the agency or Minister with the applicant, that the applicant would not wish to have access to such a copy, make, and grant access to, such a copy.*

I have used the power set out in section 22 to delete exempt material. In my opinion, documents which I have deleted in part contain information that is exempt under sections 47(1)(b) or 47F(1) of the FOI Act. Justification for the exemptions is set out in the following paragraphs.

24A Requests may be refused if documents cannot be found, do not exist or have not been received

Document lost or non-existent

- (1) *An agency or Minister may refuse a request for access to a document if:*
- (a) all reasonable steps have been taken to find the document; and*
 - (b) the agency or Minister is satisfied that the document:*
 - (i) is in the agency's or Minister's possession but cannot be found; or*
 - (ii) does not exist.*

Document not received as required by contract

- (2) *An agency may refuse a request for access to a document if:*
- (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and*
 - (b) the agency has not received the document; and*
 - (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.*

You have sought access to documents relating to Transfield Services provisioning services on Nauru and Manus Island.

At the time of your FOI request (24 February 2014) there was a contract in existence for Transfield Services to provide services on Nauru however during this period the department had a concurrent contract with G4S for the provision of services on Manus Island.

I have conducted a search for the document you seek with the responsible business area (Offshore Service Delivery Section) whom provided a response advising the only document within scope of this request is the document referenced in this decision as an electronic copy of the Transfield contract (containing 94 folios). The reasons for this outcome are on the basis the department has a separate contract for the provision of service on Manus Island in which Transfield Services are not a party to.

On the basis of the searches I conducted to locate the document you seek and the response received from the responsible business area, I'm satisfied a document relating to a contract involving Transfeild Services for the provision of services on Manus Island does not exist (24A(1)(b)(ii)).

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 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 or a State or by a local government authority.*

I've determined that information within the documents which I am exempting pursuant to Section 47(1)(b) is information which holds a significant commercial value that could reasonably be expected to be diminished if the information were disclosed.

The department seeks the information provided by Transfield Services to fulfil its obligations under the *Migration Act 1958*. The information has been supplied on the expectation that it will only be used for the purposes for which it was supplied and would be treated as confidential.

The commercial information is not known outside of Transfield Services and/or the department. If such information were to be disclosed, Transfield Services' competitors would be likely to use the information to gain a competitive advantage against Transfield Services for the purposes of similar contracts with the Commonwealth or other entities, which would diminish the value of the information.

During formal consultation with Transfield services they have advised that the value of the information that is subject to this exemption would be diminished if disclosed, considering the context and nature of the information and its ability to be utilised by industry competitors.

I consider that if a competitor was given an opportunity to peruse parts of the contract, specifically the parts that contain commercially valuable information, those businesses would utilise that information to the fullest extent within the industry. This could reasonably be expected to result in its value being diminished.

The information being exempt specifies specific dollar values, specific time frames and/or specific details in which are unique to this particular contract. This decision has taken into consideration all publically available contractual information involving this department which

is able to be perused by the community when it comes to discharging functions that Transfield Services is contracted to provide. In taking such information into consideration I find that all of what is exempt under Section 47(1)(b) for this decision to be unique information that Transfield Services' competitors would find advantageous due to the specifics of the information.

In accordance with the FOI Act and Office of the Australian Information Commissioner's Guidelines, I consider that the information provided by Transfield Services has a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

Section 47F – Public interest conditional exemptions – personal privacy

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person)*
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters*
 - (a) the extent to which the information is well known.*
 - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;*
 - (c) the availability of the information from publicly accessible sources;*
 - (d) any other matters that the agency or Minister considers relevant.*

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

The documents that are exempt in part, under section 47F(1) of the FOI Act contain personal information of Transfield Services employees. The department has taken measures to withhold Transfield Services' employee names and signatures to protect the individual(s) right to privacy.

The information itself identifies non-government employees within Transfield Services which were provided for the purposes of signing the Transfield Services contract, this information was provided on the basis it would be kept confidential as the information is not well known or accessible from publically available sources. The folio itself provides details that Transfield Services have signed the contract which provides context to the information being exempt.

Having formed the view that the documents are of a kind to which section 47F(1) does apply, I am required to consider whether disclosure of the documents would be contrary to the public interest.

I have considered:

Arguments in favour of the disclosure of the documents include:

- a person having a general right of access to any material held by the government;
- there is a general public interest in making information held by the Government accessible to the public;

Arguments that against disclosure of the documents include:

- it is a core Government concern to maintain the integrity of the information it holds and in the maintaining of an individual's privacy

The information contained within the identified documents wholly relates to a person other than you whom is a non-government employee. The department is obliged to take action to prevent the unreasonable disclosure of an individual's personal information and I have given this the greatest weight. There is no current public interest in determining the actual names and signatures of representatives within Transfield Services which are displayed within a signed government contract.

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

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12 May 2014



Australian Government

Department of Immigration and Border Protection

Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA14/02/01059

File Number ADF2014/6510

1. Departmental File: Electronic record of the Transfield contract containing 94 folios

| Folio | Description | Decision | Legislation |
|-------|--|------------------|-------------|
| 1-16 | | Released in full | |
| 17-18 | Dollar amounts surrounding subcontracts, liability and obligations | Exempt in part | S47(1)(b) |
| 19 | | Released in full | |
| 20 | Information detailing dollar amounts and obligations surrounding taxes, duties and government charges | Exempt in part | S47(1)(b) |
| 21-23 | | Released in full | |
| 24-26 | Indemnity, insurance details (including dollar amounts) and performance securities amounts surrounding contractual obligations | Exempt in part | S47(1)(b) |
| 27 | | Released in full | |
| 28 | Specified time frame for termination | Exempt in part | S47(1)(b) |
| 29-72 | | Released in full | |
| 73-76 | Details of Service Delivery fees, Corporate Overhead fees, specifics surrounding hourly rates and pass through costs | Exempt in part | S47(1)(b) |
| 77 | | Released in full | |
| 78-79 | Hourly rates for specific service delivery positions | Exempt in full | S47(1)(b) |
| 80-90 | | Released in full | |
| 91 | Percentage amounts of the abatement regime | Exempt in part | S47(1)(b) |
| 92 | | Released in full | |
| 93 | Third party names and signatures | Exempt in part | S47F(1) |
| 94 | | Released in full | |

CONTRACT

IN RELATION TO THE PROVISION OF SERVICES ON NAURU

Commonwealth of Australia represented by the Department of Immigration
and Citizenship

Transfield Services (Australia) Pty Limited
ABN 11 093 114 553 ACN 093 114 553

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CONTRACT

IN RELATION TO THE PROVISION OF SERVICES ON NAURU

Date

This Contract is made on January 2013.

1 February 2013

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 Citizenship ABN 33 380 054 835 (the Department)
2. **Transfield Services (Australia) Pty Limited** ABN 11 093 114 553
Level 10, 110 Pacific Highway North Sydney NSW 2060 (the Service Provider)

Recitals

This Contract is made in the following context:

- A. The Department wishes to obtain operational and maintenance services for the people being transferred to a Regional Processing Country in the Republic of Nauru (Transferees).
- B. The Department and the Service Provider entered into a Heads of Agreement for the provision of interim operational and maintenance services for people being transferred to a Regional Processing Country, the Republic of Nauru from September 2012 (Transferees).
- C. The Department requires the Service Provider to continue to provide services to Transferees and other persons nominated by the Department on Nauru.
- D. The parties have agreed that this Contract will replace the Heads of Agreement with effect from the Commencement Date from that date the Service Provider will provide the Services on the Terms of this Contract.

Operative Provisions

1. Definitions and interpretation

1.1. Definitions

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

Business Day means a weekday other than a public holiday in the place specified or, if no place is specified, in the Australian Capital

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| | Territory, Australia; |
| Code of Conduct | means the code of conduct provided by the Department to the Service Provider that outlines expectations and guidelines regarding the conduct of the Service Provider and its Personnel; |
| Commencement Date | means the date this Contract is executed ; |
| Commonwealth Material | means any Material: <ul style="list-style-type: none"> a. provided by the Department to the Service Provider for the purposes of this Contract; or b. derived at any time from the Material referred to in paragraph a; |
| Confidential Information (of the Service Provider) | means information that is by its nature confidential and is described in Schedule 5; |
| Contract Administrator | means the person appointed by the Department Secretary to perform the duties of Contract Administrator and includes anyone acting in that position from time to time as notified to the Service Provider in writing; |
| Contract Authority | means the person occupying the position of First Assistant Secretary, Detention Infrastructure and Services Division; |
| Contract Material | means any Material: <ul style="list-style-type: none"> a. created for the purposes of this Contract; b. provided or required to be provided to the Department as part of the Services; or c. derived at any time from the Material referred to in paragraphs a or b; |
| Department | 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; |
| Department Operations Team Leader | means the person (or delegate) appointed by the Department to perform the role of Department Operations Team Leader at the Site; |
| Excluded Items | means items that may not be brought to the Site under an applicable law or policy issued by the Department; |
| Excusable Performance Failure Event | means any of the following events: <ul style="list-style-type: none"> a. a fire, flood, earthquake, pandemic, elements of nature or other acts of God; b. war or other state of armed hostilities, national |

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| | <p>emergency, embargo or action by customs;</p> <p>c. unavailability of essential services such as electricity, gas or water for more than 48 hours;</p> <p>d. a restraint by any government agency in a Regional Processing Country;</p> <p>e. any other event or occurrence beyond the control of the Service Provider,</p> <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> |
| GST | has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth); |
| Incident | <p>means an activity which threatens, harms or impacts, or has the potential to threaten, harm or impact upon:</p> <p>a. the welfare of Transferees;</p> <p>b. the good order, safety or security of a Site;</p> <p>c. the success of escort/transfer activities; or</p> <p>d. immigration processing;</p> |
| Information Officer | 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; |
| Information Privacy Principle | has the same meaning as it has in the <i>Privacy Act 1988</i> (Cth); |
| In Trust Property | means property of a Transferee that is stored by the Service Provider; |
| Intellectual Property | <p>includes:</p> <p>a. all copyright (including rights in relation to phonograms and broadcasts);</p> <p>b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and</p> <p>c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,</p> <p>but does not include:</p> <p>d. Moral Rights;</p> <p>e. the non-proprietary rights of performers; or</p> <p>f. rights in relation to Confidential Information;</p> |

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| Key Performance Measure | means a Key Performance Measure in the Performance Management Framework; |
| Key Personnel | means the Service Provider Personnel specified under clause 4.4 as Key Personnel; |
| Maintenance | means work that maintains the functionality to applicable performance specifications (or where there are no specifications, to reasonable, safe operating standards) of the Site and includes preventative maintenance, repairs, replacement of lost or damaged items, refurbishment and restoration of work; |
| Material | means any thing in relation to which Intellectual Property rights arise; |
| Migration Act | means the <i>Migration Act 1958</i> (Cth); |
| Moral Rights | means the following non-proprietary rights of authors of copyright Material: <ul style="list-style-type: none"> a. the right of attribution of authorship; b. the right of integrity of authorship; and c. the right not to have authorship falsely attributed; |
| National Code of Practice for the Construction Industry | means the National Code of Practice for the Construction Industry 1997, a copy of which can be downloaded from www.deewr.gov.au/building ; |
| Official Information | 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; |
| Open Access Licence | 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 http://creativecommons.org.au/learn-more/licences); |
| Pass Through Cost | has the meaning given by Schedule 2 [Fees and Payment]; |
| Performance Management Framework | means the Performance Management Framework developed in accordance with clause 4.4; |
| Personnel | means: <ul style="list-style-type: none"> 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

- b. in relation to the Department - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the Commonwealth;

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| Regional Processing Country | means a country designated by the Minister for Immigration and Citizenship, acting under subsection 198AB(1) of the Migration Act as a regional processing country; |
| Schedule | 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; |
| Services | means the services described in Schedule 1 [Statement of Work]; |
| Services Fee | has the meaning given in Schedule 2 [Fees and Payment]; |
| Site | means the site notified by the Department to the Service Provider on the Republic of Nauru and where another site is established on Nauru, will also include reference to that other site; |
| Term | has the meaning given by clause 2.4; and |
| Transferee | means a person transferred to a Regional Processing Country, in relation to this Contract being the Republic of Nauru. |
| WHS Law | 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

2.1. Contract objectives

- 2.1.1. The primary objectives of this Contract are to:
 - a. provide open, accountable and transparent Services to Transferees on Nauru;
 - b. provide Transferees with a standard and range of operational and maintenance services that is the best available in the circumstances, and utilising facilities and personnel on the Republic of Nauru and that as far as possible (but recognising any unavoidable limitations deriving from the circumstances of Nauru) is broadly comparable with services available within the Australian community; and

- c. provide the Services identified in Schedule 1 [Statement of Work] to this Contract.

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. Nauru Memorandum of Understanding

- 2.3.1. The Service Provider agrees not to permit any act or omission that causes or may cause the Commonwealth to be in breach of its Memorandum of Understanding with the Republic of Nauru or with the related Administrative Arrangements (a copy of which will be provided by the Department to the Service Provider).

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 14; or
 - b. 12 months after the Commencement Date.
- 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 12 months on the terms and conditions of this Contract then in effect, by providing in each case at least 90 days written notice to the Service Provider.

2.5. Transition-in

- 2.5.1. The Service Provider acknowledges that it has been at the Site since September 2012 and has completed its transition-in process.
- 2.5.2. The Service Provider must commence the provision of Services in accordance with all the requirements of this Contract from the Commencement Date.

3. Services

3.1. Service obligations

3.1.1. Schedule 1 [Statement of Work] of this Contract sets out the specific requirements for the Services to be performed on the Republic of Nauru. 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 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 Work];
- b. adopt relevant best practice, including any applicable Department, Commonwealth or industry standards and guidelines;
- c. once agreed, 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 5 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 6 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.

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 Republic of Nauru 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. Compliance with Fair Work Principles

3.4.1. The Service Provider must comply, and as far as practicable must ensure its subcontractors comply, with all relevant requirements of the Fair Work Principles as set out in the Fair Work Principles User Guide (available at <http://www.deewr.gov.au/WorkplaceRelations/Policies/FairWorkPrinciples/Documents/FWPUUserGuide.pdf> including by:

- a. complying with all applicable workplace relations, occupational health and safety and workers' compensation laws;
- b. informing the Department of any adverse court or tribunal decision for a breach of workplace relations law, occupational health and safety laws or workers' compensation laws made against it during the term of this Contract and any remedial action it has taken, or proposes to take, as a result of the decision;
- c. providing the Department any information the Department reasonably requires to confirm that the Service Provider (and any subcontractor) is complying with the Fair Work Principles; and
- d. participating in all compliance activities associated with its legal obligations, including those arising under the Fair Work Principles. Compliance activities may include responding to requests for information and/or audits undertaken by the Commonwealth, its nominees and/or relevant regulators.

3.4.2. Compliance with the Fair Work Principles shall not relieve the Service Provider from its responsibility to comply with its other obligations under this Contract.

3.4.3. If the Service Provider does not comply with the Fair Work Principles, without prejudice to any rights that would otherwise accrue to the Department, the Department or any other Commonwealth Department, shall be entitled to publish details of the Service Provider's failure to comply (including the Service Provider's name) and to otherwise provide those details to other Commonwealth agencies.

3.4.4. As far as practicable, the Service Provider must:

- a. not use a subcontractor in relation to this Contract where the subcontractor would be precluded from contracting directly with the Department under the requirements of the Fair Work Principles; and
- b. ensure that all subcontracts impose obligations on subcontractors equivalent to the obligations specified in clauses 3.4.1 to 3.4.4.

4. Management and governance

4.1. Project management

- 4.1.1. The Service Provider must comply with the project management and governance arrangements as outlined in Schedule 1 [Statement of Work] 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 will jointly develop and agree a Performance Management Framework as soon as possible after, and in any event within 8 weeks of, the Commencement Date. The Performance Management Framework will be consistent with the principles set out in Schedule 6 [Performance Management Framework Principles] and will 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. Once the Performance Management Framework has been developed and agreed, the parties will implement the Performance Management Framework.

- 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 Service Provider must as part of the Performance Management Framework and in collaboration with other service providers develop a draft performance report format to be used to report on its performance of its obligations under this Contract and the operation and management of the Sites.
- 4.5.2. The draft performance report format must address the issues set out in Schedule 6 and must be submitted to the Department for approval within 6 weeks of the Commencement Date.
- 4.5.3. Once agreed, the Service Provider must develop and submit performance reports in the agreed performance report format:
- a. on a monthly basis; or
 - b. once the Performance Management Framework has been agreed, in accordance with the Performance Management Framework.

5. Service Provider Personnel

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 14.

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 3 (Confidentiality Deed); and
- b. Deed of Non-disclosure of Personal Information substantially in the form of Schedule 4 (Deed of Non-disclosure of Personal Information),

prior to commencing work or performing duties under this Contract or within 2 days of the Commencement Date.

- 5.4.2. The Service Provider must ensure that all Service Provider Personnel:

- 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 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 Work];
- 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.

5.5. 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 occupational 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 the Republic of Nauru;
 - b. has lawfully entered Australia or the Republic of Nauru 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

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)**
- 6.1.2. The Service Provider must 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 Memorandum of Understanding with the Republic of Nauru 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. 47(1)(b)** 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;
- b. where applicable, meets the requirements of the National Code of Practice for the Construction Industry; and
- c. will exercise the standard of skill, care and diligence that would be expected of an expert professional provider of services similar to the Services being provided by the subcontractor.

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 engage some local entities as subcontractors. The parties recognise that it may not be possible for local entities to meet all of the Requirements. The terms on which local entities will be engaged will be agreed between the parties.

7. Document approval

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 Work].

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

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 Payment].

8.2. Taxes, duties and government charges

- 8.2.1. Except as provided by this clause 8.2, **s. 47(1)(b)**

s. 47(1)(b)

- 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

9.1. Interpretation

- 9.1.1. In this clause 9:

Official Resources includes:

- 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 will not, without prior written authorisation of the Department, disclose any Official Information to any person (unless required to do so by law).
- 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

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 continue for the period set out there in respect of that Item.

11. Intellectual Property

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 Material in existence at the Commencement Date and specified below
- None
- 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

S. 47(1)(b)

12.2. Indemnity

S. 47(1)(b)

12.3. **Limitation of liability**

s. 47(1)(b)

12.4. **Insurance**

12.4.1. The Service Provider will be required, prior to the Commencement 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)
- c. public liability insurance in the amount of s. 47(1)(b) 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. 47(1)(b)
- e. health and medical evacuation insurance for all Service Provider Personnel; and
- f. compulsory third party motor vehicle insurance 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).

12.5. Performance securities

- 12.5.1. The Service Provider will be required to provide, within 3 Business Days of the Commencement Date, financial security **S. 47(1)(b)**
- 12.5.2. The financial security must be unconditional, from a financial institution acceptable to the Department and in a form approved by the Department. The financial security must have an expiry date at least 6 months after the expiration of the initial Term. In the event the Contract is extended, the financial security must be extended or replaced with a new financial security with an expiry date at least 6 months after expiration of the extended Term.
- 12.5.3. The financial security will be exercisable by the Commonwealth for either or both of the following:
- a. to obtain compensation for loss suffered in the event that the Service Provider fails to perform the Contract, including upon termination of the Contract; or
 - b. to recover any amounts due to the Department in relation to the Contract.

13. Publicity, media and external relationship management

13.1. Publicity and media to be managed by the Department

- 13.1.1. The Service Provider acknowledges and agrees that the Department will have management and control of:
- a. all publicity, dealings with, inquiries from, comments to or other matters related to the media that are directly or indirectly related to this Contract including, without limitation, regarding the Department and any matter related to the Services, any Transferees, or the relationship or issues between the Service Provider and the Department; and
 - b. the relationship and dealings with stakeholders and external parties (including industry groups, special interest or lobby groups, and the community), except to the extent that such contact has been approved by the Department in writing.
- 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.

13.2. 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. the Department, its Personnel or its subcontractors (whether specifically referred to or not);
- e. the Services;
- f. the relationship between the parties; or
- g. any other matter directly or indirectly related to this Contract,

other than:

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

14. Dispute resolution

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 notice setting out the nature of the dispute;
- b. within 5 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

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)** 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 Payment].

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.

16. Notices

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:

Executive General Manager - Property & Asset Services Aust and NZ
Transfield Services (Australia) Pty Ltd
Level 10, 110 Pacific Highway
North Sydney, NSW, 2060

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

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 Commencement 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 Information 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 Information 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 Work] and Schedule 2 [Fees and Payment]. 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. Any variation must be agreed in writing and signed by both parties.

17.10. Assignment

- 17.10.1. The Service Provider cannot assign its obligations, and agrees not to assign its rights, under this Contract without the Department's prior written approval.

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.

SCHEDULE 1 STATEMENT OF WORK

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 and staff at the Site on Nauru.
- 1.1.2. Nauru is part of the Republic of Nauru that is part of Micronesia in the South Pacific. The population is approximately 12,000. The climate in Nauru is generally hot and humid consistently throughout the year. The currency on Nauru is the Australian Dollar. The main industry on Nauru is phosphate mining.
- 1.1.3. It is expected that the temporary facilities will accommodate up to 600 Transferees. It is also expected that two permanent sites will be constructed. The first one will, when complete, accommodate a maximum of 900 Transferees and the second one will accommodate another 600 Transferees.
- 1.1.4. The provision of Services to Transferees will require the provider to take a collaborative approach with Australia and the Nauru 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 and risk management.
- 1.1.5. The Regional Processing Centres are low security and allow a certain level of freedom for Transferees. Engagement with the local community will be encouraged. Transferees employment within local communities, Transferee relationships with Nauru nationals and the management of high risk Transferees will need to be considered once the Department develops a position on these issues.

1.2. Nature of the Services

- 1.2.1. The Service Provider has been engaged to provide Services which primarily relate to operational and maintenance requirements at the Site.
- 1.2.2. Where this statement of work or the Contract requires the Service Provider to comply with an Australian law or standard and the relevant activity when conducted in Australia is regulated by state law, the relevant state law will be taken to be the law of New South Wales.
- 1.2.3. The Service Provider must provide Transferees with a standard and range of operational and maintenance services that is the best available in the circumstances, and utilising facilities and personnel on the Republic of Nauru, and that as far as possible (but recognising any unavoidable limitations deriving

from the circumstances of Nauru) is broadly comparable with services available within the Australian community.

1.3. Service Provider Personnel

- 1.3.1. The Service Provider will ensure that the Personnel levels at the Site are adequate to deliver the Services.
- 1.3.2. The Service Provider must engage with the local community to employ local personnel or subcontract local businesses who meet the requirements of this Statement of Work. Where local capacity exists the Service Provider will utilise this capacity as far as possible.

1.4. Other service providers

- 1.4.1. Other service providers will be engaged including a Transferee Welfare Support Service Provider and a Health Service Provider. The Service Provider will work cooperatively with the other service providers. 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 such as transport, security or information.
- 1.4.2. The Service Provider must cooperate with any other service providers appointed by the Department to ensure the integrated and efficient carrying on of the operations of the Site, and must provide such reasonable assistance to the Department, local authorities and other services providers as the Department may reasonably request whether or not this is specifically stated in this Schedule.

1.5. Time for development of plans, procedures and arrangements

- 1.5.1. Where this Statement of Work refers to the development of a plan, arrangement or procedure, unless otherwise stated here or agreed by the parties, it is to be developed, approved and then implemented as soon as possible, and implementation should start no later than 6 weeks from the Commencement Date.

1.6. Stakeholder management

- 1.6.1. The Service Provider will have significant stakeholder management and consultation requirements including with the Department and Republic of Nauru government authorities. The Service Provider must adopt a collaborative approach to the complex stakeholder and governance issues.
- 1.6.2. The Service Provider will be required to work closely with the Centre Administrator appointed by the Government of the Republic of Nauru.

PART 2: TRANSFEEE SERVICES

2. General

- 2.1.1. The Service Provider must provide and assist with a range of Transferees Services at the Site, and facilitate and encourage Transferees to access these Services.
- 2.1.2. All service delivery decisions taken by the Service Provider will take account of the individual needs of Transferees, and will aim to improve health and well being outcomes for each Transferee. This will be undertaken in conjunction with other service providers.
- 2.1.3. The Service Provider will, in conjunction with other service providers, provide a range of Services to promote the well-being of Transferees and create an environment that supports security and safety at the Site.
- 2.1.4. The Service Provider must take reasonable steps to ensure that it and all its Personnel and subcontractors treat Transferees equitably and fairly, with dignity and respect.
- 2.1.5. The Service Provider must focus on the well-being of each Transferee and will make every effort to ensure visits from family, friends and support groups are facilitated, while maintaining safety of all Transferees.
- 2.1.6. The Service Provider will encourage interaction between Transferees where safe and appropriate.
- 2.1.7. The Service Provider will facilitate activities in conjunction with other service providers, to enhance the ongoing emotional and mental health of each Transferee.

3. Communication management

3.1. Access to communication services

- 3.1.1. The Service Provider will ensure Transferees have access to communication services where available, including:
 - a. telephones - in the Transferee area
 - b. computers and printers - for Transferees to perform functions such as word processing, spreadsheets, internet and email for their private use and for the preparation of documents related to their immigration outcome;
 - c. internet services - and ensure appropriate filtering software and other measures as necessary are in place, in accordance with Departmental requirements, to control and limit access at the Site by Transferees to:
 - i. pornographic and other prohibited sites, containing or promoting illegal acts;

- ii. personal software;
- iii. file transfer protocol sites, software or data; and
- iv. prohibited sites in foreign languages.
- d. television and other media - with services covering news, current affairs and other content that the Service Provider or other service providers may recommend to promote the well-being for Transferees; and
- e. mail services.

3.2. Management of access

- 3.2.1. The Service Provider will support other service providers in their management and supervision of access to and use of the communications services by Transferees.
- 3.2.2. Unless otherwise directed by the Department, the Service Provider may allow a Transferee to retain their mobile phone within a Site, provided that the handset does not have a recording capability (either audio or visual).
- 3.2.3. The Service Provider must inform Transferees that their access to communication services may be recorded and/or monitored for security purposes.

3.3. Access and use of mail services and facsimiles

- 3.3.1. The Service Provider must:
 - a. register all received mail and facsimiles which are addressed to a Transferee; and
 - b. ensure mail does not contain prohibited goods.

The welfare and support services provider will be responsible for distributing mail and facsimiles to Transferees.

- 3.3.2. Postage costs for mail sent by Transferees will be at the Transferee's expense except when a Transferee does not have the means to pay for postage, in which case the Service Provider must refer to Department instructions.

3.4. Television and other media

- 3.4.1. The Service Provider must, 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 for Transferees.

4. Programs and activities

4.1. Overview

- 4.1.1. The Service Provider will provide support to the Transferee Welfare Support Service Provider to deliver programs and activities through the provision of transport and equipment.

4.2. Families with children

- 4.2.1. The Service Provider will provide support to the Transferee Welfare Support Service Provider to support families with children to understand and exercise parental responsibility while accommodated at the Site.

4.3. Religious activities

- 4.3.1. The Service Provider will provide support for religious activities including transport and appropriate equipment.

4.4. Complaints

- 4.4.1. The Service Provider will comply with the complaints handling process, including:
- a. promoting informal early rectification of issues;
 - b. referring complaints to the Transferee Welfare Support service provider responsible for managing complaints; and
 - c. responding in a timely manner to the Transferee Welfare Support service provider where a complaint relates to the Service Provider.

4.5. Private interview rooms

- 4.5.1. The Service Provider will:
- a. where possible, facilitate Transferee contact in a private interview room with the Australian and the Nauruan government officials and representatives; and
 - b. where possible, facilitate contact in a private interview room with any other visitor approved by the Department.

5. Reception, transfer and discharge of Transferees

5.1. General responsibilities

- 5.1.1. The Service Provider will work with the Transferee Welfare Support Service Provider to coordinate reception, transfer and discharge processes at the Site. The Service Provider must:
- a. conduct reception processes upon the arrival of Transferees 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 well-being of Transferees, their 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 provided by other service providers if required.

5.2. Processing times

5.2.1. The Service Provider must:

- a. ensure Service Provider Personnel are available to undertake reception, transfer and discharge activities at any time;
- b. have capacity to undertake these processes simultaneously, noting the temporary nature of the facilities at the Commencement Date;
- c. 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;
- d. commence the induction processes as soon as reasonably practicable after the Transferee's arrival at the Site and complete the induction processes within two 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;
- e. undertake transfer and discharge processes in accordance with timeframes determined by the Department on a case by case basis; and
- f. undertake discharge processes where a Transferee is being released immediately after the Service Provider is advised by the Department of the Transferee's release.

5.3. Reception

5.3.1. The Service Provider must:

- a. develop and implement a reception process and checklist;
- b. review, update and, if necessary, reissue identification cards to Transferees;
- c. ensure the reception process is coordinated with the Department and the other service providers;
- d. ensure that Service Provider 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; and
- e. ensure that before new Transferees arrive at the Site, culturally appropriate food is available and other Transferees at the Site are informed of the new arrival/s.

5.4. Transferee health induction assessment

- 5.4.1. The Service Provider will provide all necessary support to enable each Transferee to undergo a health induction assessment during the reception process in conjunction with the other service providers.

5.5. Bedding, clothing and footwear

- 5.5.1. Subject to availability the Service Provider must ensure each Transferee is allocated with the following items during the reception process:
- a. bedding that is clean and fit for purpose;
 - b. freshly laundered linen that is in good condition and suited to the local climate; and
 - c. where required, clothing and footwear that is new, suited to the local climate and the Transferee's cultural needs; and
 - d. is allocated with a starter pack of toiletries during the Reception process, 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);
 - vii. nail clippers; and
 - viii. sunscreen and insect repellent.

- 5.5.2. Bedding, clothing and footwear is to be replenished as required.

5.6. Arrival phone call

- 5.6.1. As part of the induction process, Transferees will be offered the ability to make a telephone call. The purpose of the telephone call is for the Transferee to advise family, friends or other support networks of their arrival at the Site. The Service Provider will provide support arrangements for the arrival phone call.

5.7. Transferees security risk assessment

- 5.7.1. During the reception process, the Service Provider must conduct a Transferee security risk assessment for each Transferee, which includes an examination of any previous risk assessments and information about the Transferee that might be provided by the Department or other government agencies.

5.7.2. The Service Provider may:

- a. use a Department provided Transferees security risk assessment framework; or
- b. develop and use an alternative framework, providing it has been developed in accordance with the ASNZS 4360:2004 Standard for Risk Management and has been approved by the Department.

5.7.3. The Service Provider must:

- a. review the security risk assessment for each Transferee at the Site monthly;
- b. re-assess the Transferee's security risk assessment after the Transferee has been involved in any disturbance or received information that may adversely impact on their disposition; and
- c. consider the Transferee's security risk assessment when developing individual management plans and provide information to the relevant service provider when they are conducting accommodation placement reviews.

5.8. Transferee record

5.8.1. Transferee records will be maintained by another service provider. The Service Provider will support the creation and updating of a Transferee record for each Transferee under its care for example by providing necessary information for inclusion in Transferee records and must otherwise comply with Departmental record keeping requirements.

5.9. Induction

5.9.1. The Service Provider will support the induction briefing by providing information relevant to accommodation in the Site including:

- a. a description of facilities and services that are available;
- b. the roles and responsibilities of the Department and Service Provider Personnel, including personnel from other service providers;
- c. how to communicate with Service Provider Personnel;
- d. information on Transferees committees and how to be involved;
- e. photographs of key Service Provider Personnel;
- f. which items are not permitted at the Site and why;
- g. other relevant information as determined by the Service Provider or as notified by the Department.

5.10. Induction booklet

5.10.1. The Service Provider will provide all necessary information to the service provider responsible for the induction booklet.

5.11. Placement review

5.11.1. The Service Provider will:

- a. notify the Department, where the Service Provider believes that existing placement is inappropriate for the Transferee and include reasons why they formed this view; and
- b. support the recording of accommodation details for Transferees.

5.12. Transfer

5.12.1. When notified by the Department, the Service Provider will support preparation by Transferees for their transfer and must:

- a. support preparation of briefing notes for the next party that will take the Transferee into their care that outline any known management or behavioural issues relevant to the Transferee;
- b. ensure that the Transferees security risk assessment has been reviewed and updated;
- c. ensure that medications and other essential items are prepared;
- d. ensure that all personal Property of Transferees is transferred with the Transferee and the Transferee signs agreeing as such;
- e. ensure that all hard copy Transferee records are provided to the escort for transfer to the same destination as the Transferee;
- f. take all reasonable steps to ensure that the Transferee has been provided with clothing that is appropriate for the journey and the destination climate; and
- g. co-operate with the Department and any other service providers involved in the Transfer process.

5.13. Discharge

5.13.1. When notified by the Department, the Service Provider will support preparation for discharge of a Transferee from the Site including:

- a. confirming that the identity of the Transferee matches that in the Department's documentation;
- b. take all reasonable steps to ensure the Transferee has been provided with clothing appropriate to the journey and destination climate;
- c. ensure all personal belongings are returned to the Transferee on discharge, or the Transferee's escort if required by Departmental policy.

5.14. Discharge for return

5.14.1. When notified by the Department that a Transferee is being returned, the Service Provider must:

- a. update the Transferee's security risk assessment before they travel and complete the Service Provider assessment of a Transferee for aviation travel;
- b. organise packing and weighing of the property of Transferees; and
- c. assist the Department and any other service providers to facilitate the return.

6. Individual management

6.1. General

6.1.1. The Service Provider will in cooperation with all service providers:

- 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. 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 Service Provider 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. take all reasonable steps to ensure all interaction between Service Provider Personnel and Transferees is conducted in a culturally appropriate manner; and
- e. ensure all interaction between Service Provider Personnel and Transferees is conducted in a professional manner.

6.2. Interaction with Transferees

6.2.1. The Service Provider will implement and support:

- a. policies and procedures at the Site that promote high levels of positive and culturally sensitive interaction between Service Provider 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 Service Provider Personnel when they interact with Transferees and other stakeholders, including :
 - a. Service Provider Personnel must clearly identify themselves when communicating with Transferees and other stakeholders and wear a name badge; and

- i. support Service Provider Personnel to develop communication skills to interact and communicate with Transferees and other stakeholders in a positive and effective manner.

6.2.2. The Service Provider must ensure that all Service Provider Personnel:

- a. read, sign and understand the Code of Conduct 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 and advise the Department.

6.2.3. The Service Provider must ensure that it, and Service Provider Personnel, do not provide any form of advice in relation to the visa status or other migration related matters of any Transferee.

6.3. Individual management plans

6.3.1. The Service Provider will contribute to the development and implementation of individual management plans.

6.4. Provision of Services to people under the age of 18

6.4.1. The Service Provider must, in addition to the Services outlined elsewhere in this schedule, take all reasonable steps to ensure that the best interests of any child/children are taken into account when performing or delivering Services involving children.

6.5. Referral of Transferee identity issues

6.5.1. The Service Provider must immediately refer any doubts or concerns regarding a Transferee's identity to the Department.

6.5.2. Where the Service Provider identifies that a Transferee that claimed to be 18 or over, is under 18, the Service Provider must manage that Transferee in accordance with any Department instructions.

6.6. Health of Transferees

6.6.1. 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.

6.6.2. Where it appears that a Transferee requires emergency medical attention, the Service Provider must:

- a. provide first aid;
- b. seek emergency medical attention for the Transferee immediately, including arranging for transport of the Transferee to the nominated medical facility at the Department's cost;
- c. inform the service provider responsible for health services of the Transferee's condition as soon as the initial response is complete; and
- d. inform the Department of the Transferee's condition as soon as the initial response is complete.

6.7. Transferees under the influence of drugs or alcohol

6.7.1. The Service Provider will :

- a. ensure that a Transferee who appears to be under the influence of drugs or alcohol is supervised by Service Provider 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 in which case paragraph 6.6.2 above will apply.

6.8. Mental health awareness

6.8.1. The Service Provider must ensure all relevant Service Provider Personnel attend mental health awareness training provided by the Department.

6.9. Behavioural management of Transferees

6.9.1. The Service Provider must, with input from other service providers where appropriate, develop and implement a system of Transferees behavioural management strategies that aim to defuse tensions and conflicts before they escalate or become serious or violent. The strategy must outline the steps taken to effect de-escalation.

6.10. Illegal and anti-social behaviour

6.10.1. The Service Provider must develop and implement processes, in cooperation with the Department, 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.

6.10.2. For the purposes of this clause undesirable behaviours may include:

- a. bullying;
- b. verbal abuse;
- c. sexual or other forms of harassment;
- d. assault;

- e. malicious destruction of property; and
 - f. possession of weapons or illegal drugs.
- 6.10.3. The Service Provider must work with the Transferee Welfare Support Provider to communicate the Site policy on anti-social behaviour to all Transferees during the induction process.
- 6.10.4. Where the Service Provider has identified, or suspects, that a Transferee has engaged in illegal, non-compliant or antisocial behaviour, the Service Provider must immediately inform the Department and other relevant service providers with recommendations for:
- a. dealing with the perpetrator(s);
 - b. preventing recurrence.
 - c. The Service Provider must record details of and responses to known or suspected instances of individual illegal, non-compliant or antisocial behaviour by Transferees.
 - d. The Service Provider must take all reasonable steps 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.

The Department will be responsible for involving the police or other authorities as required, except where reporting is mandatory under the law.

7. Property of Transferees

7.1. General

- 7.1.1. The Service Provider will develop and implement a procedure to:
- a. inform Transferees of the procedures for management of their property; and
 - b. manage the secure storage of:
 - i. all property of Transferees provided voluntarily by the Transferee for storage; and
 - ii. all Excluded Items.

7.2. Storage of and access to In Trust Property of Transferees

- 7.2.1. The Service Provider will develop and implement a procedure to:
- a. securely and separately store In Trust Property of Transferees;
 - b. document all In Trust Property of the Transferee;
 - c. provide Transferees with a receipt for all In Trust Property that is to be stored by the Service Provider;

- d. provide Transferees with access to their In Trust Property, while ensuring they do not have access to Excluded Items ; and
- e. maintain a register to record all access to the secure store and ensure that all access is monitored.

7.3. Recording of property of Transferees

7.3.1. The Service Provider must in accordance with Departmental guidelines:

- a. record all property of Transferees in the Transferee's presence;
- b. record all property retained by a Transferee while in the Site;
- c. record all In Trust Property;
- d. record all illegal and Excluded Items which have been removed and held in trust; and
- e. provide a receipt to the Transferee.

7.4. Returning In Trust Property

7.4.1. The Service Provider must:

- a. provide the opportunity for Transferees to inspect their In Trust Property on discharge; and
- b. provide the opportunity for the Transferee to sign a statement indicating their satisfaction or otherwise with the items returned and their condition.

7.5. Lost, stolen or damaged property of Transferees in the care of the Service Provider

7.5.1. Where In Trust Property is lost, stolen or damaged, the Service Provider must reimburse, at its own cost, the Transferee for the commercial replacement value of the property.

7.5.2. Subject to the above, the Service Provider is not responsible for any property retained by the Transferee at the Site that is lost, stolen or damaged.

7.5.3. The Service Provider is responsible for costs associated with any property retained by the Transferee in the Site that is lost, stolen or damaged where that loss, theft or damage is caused by any act, omission or neglect on the part of the Service Provider or Service Provider Personnel.

7.6. Excluded Items

7.6.1. The Service Provider must advise Transferees what items are Excluded Items in accordance with any Department policies and procedures notified to the Service Provider. The Service Provider must notify the Department Operations Team Leader if an Excluded Item is observed at the Site or in the possession of a Transferee that has not been surrendered.

7.6.2. Where a Transferee surrenders an Excluded Item, the Service Provider must:

- a. hold the Excluded Item as In Trust Property
- b. record the Excluded Item;
- c. securely store the Excluded Item;
- d. return all Excluded Items that the Transferee may legally possess to the person immediately upon release; and
- e. provide all Excluded Items that the Transferee may legally possess to an escorting officer where required by Departmental policy.

7.7. Illegal items

7.7.1. The Service Provider must notify the Department Operations Team Leader if an illegal item is observed at the Site or in the possession of a Transferee that has not been surrendered.

7.7.2. Where a Transferee surrenders an illegal item, the Service Provider must:

- a. hold the illegal item as In Trust Property
- b. ensure the illegal item does not pose an ongoing safety risk to the Site or any persons at the Site;
- c. notify the Department and local authorities in accordance with the Incident management reporting requirements issued by the Department;
- d. record all identifying details concerning the illegal items; and
- e. securely store the illegal item in a manner that protects the integrity of any evidence until custody of the Illegal Item can be transferred to the relevant authority.

PART 3 - MANAGEMENT AND MAINTENANCE OF ASSETS AND THE SITE

8. Assets

8.1. General

- 8.1.1. The parties intend that the Service Provider will be responsible for a range of maintenance and asset management tasks. During the Term of the Contract, unless additional requirements are notified by the Department, the Service Provider's responsibilities in relation to assets are to:
- a. manage assets at the Site and operate and maintain the assets in a manner that ensures to the greatest extent possible that they achieve their design life and the incidence of emergency and breakdown repairs is minimised having regard to the condition in which the assets were on the Commencement Date and the local conditions such as exposure to weather and proximity to the ocean;
 - b. ensure that the assets are always safe to use and comply with all applicable laws and Australian standards (or are withdrawn from use if they are not);
 - c. procure and manage loose assets (such as sports equipment, books, kitchen utensils, DVDs) to ensure they meet the amenity requirements of the Transferees and as agreed with the Department;
 - d. only dispose of, or write-off, an asset that is owned or paid for by the Department with the prior written approval of the Department; and
 - e. provide details of all new, replacement and written off assets to the Department.

The Service Provider is not responsible for project management of capital works at the Site.

8.2. Service Provider and Department assets

- 8.2.1. The Service Provider must provide all assets required by the Service Provider to perform its obligations under this Contract that are not otherwise provided by the Department. Assets required to perform the Services on the Republic of Nauru will be at the Department's expense subject to the requirements of Schedule 2. The Department will not be responsible for costs associated with any assets used by the Service Provider in Australia or for assets used in Nauru in relation to activities of the type covered by the Corporate Overhead Fee.
- 8.2.2. The Service Provider must label its own assets located on Nauru to enable the parties to distinguish between the Service Provider's assets and other assets.
- 8.2.3. Where the Department provides or pays for an asset at the Site (including as a Pass Through Cost), the asset will remain or become the property of the Department.

- 8.2.4. The assets provided by the Department will include a fleet of vehicles. The fleet profile will be determined by the Department having regard to population at the Site, the environment of the Site and its surrounds, maintenance and Personnel requirements.

8.3. Asset register

- 8.3.1. The Service Provider will work with the Department and other service providers to set up a system for identifying and managing assets at the Site to operate under the Contract to be recorded in an Asset Management Register.

8.4. Maintenance of assets, infrastructure and grounds

- 8.4.1. The Department acknowledges that the Service Provider is responsible for management and maintenance of assets and infrastructure. The parties agree that the Department is responsible for accepting and commissioning all infrastructure. The Department will ensure that technical manuals and information are available for use at the Site and the Service Provider has received the associated operations, maintenance and safety training inductions and information.

- 8.4.2. The Service Provider must maintain assets and infrastructure to provide a safe, secure and healthy environment, including:

- a. planning, scheduling and performing maintenance; and
- b. planning, scheduling and performing modifications where approved by the Department.

- 8.4.3. The Service Provider must manage and maintain all grounds including landscaping, planting and horticultural services and built infrastructure (such as roads, stormwater, drains and fences) to ensure the amenity of the Site is maintained in accordance with local community standards and sound environmental management practices.

- 8.4.4. A maintenance management plan will be developed by the Service Provider for assets and infrastructure at the temporary Site in accordance with clause 1.5 of this Schedule 1. The maintenance management plan will set out arrangements for the Service Provider to maintain all assets at the temporary Site including all building, fittings, plant and equipment, vehicles, engineering services, grounds and infrastructure elements, taking account of the condition in which the assets were on the Commencement Date and the local conditions such as exposure to weather and proximity to the ocean. The maintenance plan will address all maintenance activities, including inspection, testing and servicing. The Service Provider will be responsible for implementing and managing that plan.

- 8.4.5. When directed by the Department, the Service Provider will develop a maintenance management plan for the permanent Site for approval. This maintenance management plan will set out arrangements for the Service Provider to maintain all assets at the permanent Site including all buildings,

fittings, plant and equipment, vehicles, engineering services, grounds and infrastructure elements, to preserve their functionality and value ,by conducting maintenance activities that include all inspection, testing and servicing. The maintenance management plan will also address the integration and management of relevant third party arrangements, including any manufacturer or builder warranties or defects liability obligations, that may apply to the assets.

- 8.4.6. Once the maintenance management plan has been approved, the Service Provider will be responsible for implementing and managing maintenance in accordance with that plan.

8.5. Emergency and breakdown repairs

- 8.5.1. The Service Provider must:

- a. repair all Site service breakdowns as soon as possible; and
- b. record all details related to each defect, fault or damage and subsequent action taken in response to emergency breakdowns.

8.6. Alternative arrangements during Maintenance

- 8.6.1. In the event that an asset is defective or has to be taken out of service for Maintenance, the Service Provider must:

- a. make reasonable alternative arrangements to maintain security, work/occupational health and safety and environmental standards until the asset is returned to service; and
- b. notify the Department of the alternative arrangements and any impact these arrangements may have on provision of the Services.

8.7. Damage by Transferees

- 8.7.1. If Transferees damage assets, the Service Provider must:

- a. repair or replace the assets as requested by the Department;
- b. notify the Department Operations Team Leader; and
- c. record the cost of repairing or replacing assets damaged by Transferees as a separate item.

8.8. Security systems

- 8.8.1. The Service Provider must, in accordance with arrangements notified by the Department, maintain and test security systems at the Site to ensure the security systems remain functional at all times.

8.9. Emergency systems and services

- 8.9.1. The Service Provider must maintain and test emergency installed systems processes and equipment at the Site in accordance with applicable law,

emergency services recommended procedures, manufacturer's instructions and any other requirements notified by the Department.

8.9.2. For the purposes of this section emergency systems include:

- a. fire fighting systems including suitably qualified Personnel;
- b. alarm systems;
- c. safety and emergency signage;
- d. systems for managing power outages, in particular standby diesel generators and uninterrupted power supplies; and
- e. first aid equipment.

8.10. Work practices

8.10.1. The Service Provider must:

- a. ensure all Maintenance work practices are compatible with the Site; and
- b. where Maintenance or modifications are conducted at the Site:
 - a. maintain safety in the Site;
 - b. as far as is reasonably practicable, organise for Maintenance or modifications to be done during Business Hours (this requirement does not apply to repairs to critical systems);
- c. ensure tools are controlled at all times and remain inaccessible to Transferees; and
- d. ensure all Service Provider Personnel abide by any conditions of entry to the Site.

8.10.2. The Service Provider must provide interested Transferees with the ability to participate in gardening activities, and where this occurs the Service Provider must:

- a. as far as reasonably practicable, ensure that all Maintenance tools are controlled by Service Provider Personnel in accordance with a documented control of tools procedure;
- b. closely supervise Transferees during any gardening activities;
- c. develop and implement specific induction procedures to be delivered to Transferees participating in gardening activities; and
- d. satisfy any specific Department requirements regarding the use of tools.

8.11. Communication about maintenance and modifications

8.11.1. The Service Provider must as far as reasonably practicable:

- a. ensure all people affected by any Maintenance work or modifications being undertaken at a Site are aware of the nature and extent of the activity; and

- b. communicate details of actions required to maintain safety such as:
- a. prevention of unauthorised access to areas under Maintenance, repair or modification;
 - i. erecting barriers and signage in accordance with the requirements of all relevant work health and safety laws and Australian Standards; and
 - ii. notifying Transferees and other people affected of any alternative arrangements and the duration that they may be in place.

9. Cleaning services

9.1. General

- 9.1.1. The Service Provider is responsible for all routine and non-routine cleaning of the Site to ensure the safety, hygiene and well-being of Transferees, and all other people at the Site.
- 9.1.2. The Service Provider will develop a cleaning services plan.
- 9.1.3. Cleaning includes cleaning of all infrastructure (including temporary arrangements such as tents) that forms part of the Site including areas occupied by the Department, other government agencies and other service providers.
- 9.1.4. The Service Provider must conduct all cleaning services in accordance with Commonwealth Work Health and Safety legislation.
- 9.1.5. The Service Provider must undertake routine and non-routine cleaning at the Site, such cleaning must:
 - a. meet the detailed requirements as agreed with the Department;
 - b. in accordance with Commonwealth Work Health and Safety legislation requirements including codes of practice
- 9.1.6. The Service Provider must implement within 14 days of the Commencement Date cleaning comment books in appropriate locations throughout the Site, which includes:
 - a. the cleaning schedule for each area;
 - b. a section for 'last cleaned' entry by cleaning Service Provider Personnel; and
 - c. details to allow for a quick assessment of cleaning effectiveness and conformance to the cleaning schedule.

9.2. Cleaning services plan

- 9.2.1. The parties intend that the Service Provider will develop a cleaning services plan in accordance with clause 1.5.1 of this Schedule 1.

9.3. Non-routine cleaning

9.3.1. The Service Provider must ensure there are Service Provider Personnel available at all times to respond to non-routine cleaning requirements, which may be required after:

- a. accidents;
- b. equipment malfunction; and
- c. incidents.

9.3.2. The Service Provider must ensure that training is provided to Service Provider Personnel to ensure that where an emergency cleaning requirement cannot be met by the available cleaning Personnel, contingency plans are enacted to reduce the potential impact on Transferees.

9.4. Cleaning accommodation

9.4.1. The Service Provider is responsible for cleaning all accommodation on the Site, including accommodation occupied by Department, Service Provider and other service provider personnel.

9.4.2. In addition, the Service Provider must clean accommodation occupied by Transferees in the following circumstances:

- a. before a Transferee, or group of Transferees, occupies the accommodation;
- b. after a Transferee, or group of Transferees, vacates the accommodation; and
- c. when it is necessary, especially for Transferees who may not be able to clean their accommodation themselves.

9.4.3. Where non-routine cleaning of occupied Transferee accommodation is required, the Service Provider must gain the consent of the Transferee prior to conducting the cleaning.

9.5. Provision of cleaning equipment to Transferees

The Service Provider must ensure cleaning equipment is available to Transferees to enable them to self clean their accommodation if appropriate subject to availability.

9.6. Minimise disturbance to Transferees and exposure to hazards

9.6.1. The Service Provider must minimise disturbance to Transferees, and must not expose Transferees or any other person to hazards caused by cleaning activities, including:

- a. coordinating cleaning schedules with the daily routine of Transferees;
- b. placing warning signs where cleaning operations may create a hazard; and

- c. preventing Transferees from accessing areas that are being cleaned or treated.

9.7. Cleaning equipment and chemicals

The Service Provider must take all reasonable steps to ensure all equipment and chemicals used by the Service Provider for cleaning are safe, suitable for purpose, environmentally friendly, including biodegradable, and stored securely when not in use subject to access to secure storage facilities.

10. Environmental management

10.1. Environmental management principles

- 10.1.1. The Service Provider must develop environmental management principles for the Site in accordance with clause 1.5.1 of this Schedule 1 to manage energy consumption, the use of natural resources, waste disposal, and vermin and pest control that include:
 - a. objectives for environmental management;
 - b. a risk assessment of the environmental impacts of the individual Site operations;
 - c. measures to manage energy consumption, the use of natural resources, waste disposal and pest control;
 - d. procedures and documentation for the implementation, development, review and continuous improvement of the environmental management principles;
 - e. a self assessment program; and
 - f. a process for independent annual auditing of the environmental management principles.

10.2. Energy and water

- 10.2.1. The Service Provider must implement any reasonable and cost-effective measures to minimise energy and water use in the Site, including:
 - a. identifying and correcting any wasteful operation or practices;
 - b. conducting routine Maintenance of systems to achieve peak operational efficiency;
 - c. promoting the responsible use of energy, natural resources and water to Transferees and Service Provider Personnel to acknowledge the local conditions; and
 - d. complying with any applicable local water restrictions or other water saving measures notified by the Department.
- 10.2.2. The Service Provider is responsible for ensuring sufficient supplies of water at the Site and for carting water to the Site.

10.3. Waste management

- 10.3.1. The Service Provider will work with the Department to implement cost effective measures to manage, in accordance with all applicable laws, disposal of:
- a. general liquid, sanitary and solid waste;
 - b. non-serviceable or unused fixtures, fittings and equipment (such as white goods, mattresses, and fluorescent light tubes);
 - c. hazardous materials and hazardous waste;
 - d. garden waste; and
 - e. when undertaking disposals, seek to maximise recycling and, where applicable, composting of waste.
- 10.3.2. Waste management practices must acknowledge the surroundings and local conditions.

10.4. Vermin and pest control

- 10.4.1. The Service Provider must develop and implement a vermin and pest control plan in accordance with clause 1.5.1 of this Schedule 1, that:
- a. is based on Australian Pest Controllers Association best practice;
 - b. is compliant with all applicable Law; and
 - c. includes measures that must be taken to prevent or eradicate vermin or pest infestations (including mosquitoes, vector, fleas, bed bugs, poisonous animals such as snakes and spiders, rats, mice and other rodents), such as:
 - a. environmental and habitat measures to disrupt breeding and life-cycles;
 - i. low level chemical measures such as localised dusting and misting; and
 - ii. the scope of the measures to be implemented and the frequency.

10.5. Disruption and health implications of vermin or pest control activities

- 10.5.1. The Service Provider must, to the extent possible having regard to the available infrastructure and facilities, avoid exposing any person to hazards caused by vermin and pest control activities and must minimise disturbance to Transferees caused by vermin and pest control activities by implementing measures including:
- a. coordinating vermin and pest control activities with the daily routine of Transferees;
 - b. preventing Transferees from accessing areas that are being treated with hazardous chemicals; and
 - c. consulting with the Department before commencing any pest or vermin control activities that will significantly disrupt daily activities in a Site.

11. Work health and safety

11.1. General

11.1.1. The Service Provider must:

- 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 Commonwealth Work Health and Safety Act, regulations and codes of practice as well as any applicable local laws and where there is any conflict, comply with the highest standard;
- 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.

11.1.2. The Service Provider must comply with the interim work health and safety plan until the more detailed work health and safety plan has been developed and approved in accordance with clause 7.2 of the Contract.

11.2. Safety precautions in performing the Services

11.2.1. The Service Provider must 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.

11.2.2. The Service Provider must provide appropriate employment assistance programs for all Service Provider Personnel. The Service Provider must ensure that all 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.

11.3. Use of hazardous substances and chemicals

11.3.1. The Service Provider must take all reasonable steps and work with the other service providers to ensure that:

- a. Transferees, Visitors, Service Provider Personnel, Service Provider subcontractors, Department Personnel and contractors are not exposed to hazardous chemicals; and
- b. the material safety data sheets of all chemicals used in the delivery of Services are readily available in case of emergency to be available within 28 days of the Commencement Date.

11.3.2. For the purposes of this section, hazardous chemicals has the meaning given in the Commonwealth Work Health and Safety legislation.

12. Management of emergencies

12.1. General

12.1.1. The Service Provider must:

- a. subject to clause 2.2.1(b) of the Contract, operate and maintain the Site as a safe and secure environment for people to live and work in; and
- b. comply with all applicable Laws (which may include both Nauruan and Australian laws) and Australian Standards for the control and management of emergencies.

12.1.2. The Service Provider must comply with the interim emergency plans approved by the Department (that includes the Service Provider's procedures for managing and responding to all emergencies) for the Site, to ensure the safety and security at the Site of all Transferees, visitors, Personnel of all service providers and Department Personnel until the more detailed plan has been developed and approved in accordance with clause 7.2 of the Contract.

12.2. Compliance with Australian and Standards

12.2.1. The Service Provider must comply with all applicable Australian Standards including Australian Standard 3745: Emergency Control Organisation and Procedures for Buildings, Structures and Workplaces and any update to that standard.

12.3. Emergency control organisation

12.3.1. The Service Provider must, develop and implement in conjunction with the Department Operations Team Leader and other service providers, establish an emergency control organisation (Emergency Control Organisation**) at the Site which will be responsible for:**

- a. implementing emergency procedures as prescribed in the emergency plan and procedures;
- b. ensuring that all Service Provider Personnel within their area of responsibility are trained for their role in an emergency;
- c. reporting any matters likely to affect the viability of the emergency plan and procedures;
- d. checking on the effectiveness of emergency systems and equipment; and
- e. controlling emergency situations until the appropriate emergency service arrives to take control, at which time, the Emergency Control Organisation will work in conjunction with that service.

12.3.2. The Emergency Control Organisation must meet quarterly and after any emergency.

12.4. Emergency exercises

- 12.4.1. The Service Provider must in conjunction with other service providers:
- a. conduct all emergency exercises required by law or as directed by the Department Operations Team Leader at the Site; and
 - b. maintain records of all emergency exercises conducted.

12.5. Access to the Site

- 12.5.1. The Service Provider must at all times, with or without notice, provide access to any part of the Site to Department Personnel, the Commonwealth and Immigration Ombudsman, the Australian Human Rights Commission, the Auditor-General and the Privacy Commissioner and members of the Council for Immigration Services and Status Resolution.
- 12.5.2. Subject to their compliance with any applicable security requirements, the Service Provider must facilitate access to the Site by representatives of those government agencies who have entered into Memoranda of Understanding with the Department, in order to enable them to provide the Services referred to therein.
- 12.5.3. The Service Provider must not knowingly provide access to the Site for media visits except with the approval of the Department and in accordance with the procedures and conditions specified by the Department.

PART 4 TRANSPORT AND ESCORT

13. Arrangements transport and escort

13.1. General

- 13.1.1. The Service Provider must:
- a. supply transport and escort services for the Site;
 - b. transport and escort Transferees and their property in accordance with the Department's requests, where the transport is voluntary or due to medical evacuation;
 - c. transport Transferees for the purposes of programs and activities;
 - d. transport via a shuttle bus service for Transferees and Personnel including Personnel of the Department and other service providers, to points of interest within a reasonable vicinity of the Site; and
 - e. transport staff, including staff of the Department and other service providers, to and from staff accommodation facilities for the commencement and end of each shift.
- 13.1.2. Transport and escort tasks conducted by the Service Provider may include:
- a. transferring Transferees to off-site programs and activities;

- b. transferring Transferees to local appointments;

13.2. Delivery of transport and escort Services

13.2.1. The Service Provider must:

- a. deliver transport and escort services in a manner that takes into account the Department's requirements, the needs and wellbeing of Transferees, integrity of other service providers and contingency situations and related risks;
- b. operate appropriate vehicles and inclusions, including communication devices;
- c. provide appropriately trained Service Provider Personnel to undertake the services;
- d. where the transport and escort is for a voluntary return, ensure the Transferee being transported is the person nominated in the transport request before the task commences;
- e. ensure that Transferees are aware of where they are going and the expected time of departure and arrival;
- f. provide all meals, beverages and medications for the transport and escort task, which are appropriate for the Transferee.

13.2.2. Modes of transport applicable for transport could be by air, by sea, or vehicle.

13.3. Vehicles

13.3.1. The Service Provider must:

- a. provide vehicles in types and quantities of vehicles suitable for transporting Transferees and Personnel of the Department and other service providers;
- b. ensure all vehicles:
 - a. comply with applicable laws for passenger transport vehicles;
 - i. are clean and tidy;
 - ii. are appropriate to the number of Transferees being transported; and
 - iii. carry the appropriate equipment, such as a first-aid kit and fire extinguisher.

PART 5 - SECURITY SERVICES

14. Delivery of security services

14.1. Scope of services

- 14.1.1. The Site needs to provide a safe and secure environment for Transferees, Service Provider Personnel, Department Personnel and all other people at the

Site, ensuring that each individual's human rights, dignity and well-being is preserved.

- 14.1.2. The Service Provider must deliver structured security services at the Site that are consistent with the goals of the Site, enable the Service Provider to manage routine events at the Site and respond promptly and flexibly to any Incident.
- 14.1.3. The Department will provide infrastructure at the Site including a perimeter fence, lighting towers and a boom gate.
- 14.1.4. The approach to safety and security must be unobtrusive and ensure that the needs of Transferees are met. The approach and procedures should emphasise communication and interaction strategies that address potential or actual risks before they escalate and effect their de-escalation.

14.2. Integrity of the Site

- 14.2.1. The Service Provider:
 - a. must take reasonable steps to ensure Transferees behave at all times in accordance with relevant provisions of the visa granted to them by the Republic of Nauru ; and
 - b. immediately notify relevant authorities and the Department if a Transferee does not return to the Site at a time required by local authorities.

14.3. Safety and security plan

- 14.3.1. The Service Provider must comply with the interim safety and security plan.
- 14.3.2. The Service Provider must develop a more detailed safety and security plan that will:
 - a. be based on AS/NZS ISO 31000:2009 Risk management – Principles and guidelines;
 - b. include details of:
 - a. how the Service Provider plans to implement the security services contained in this Schedule; and
 - i. how the Services will be delivered in accordance with the Philosophy contained in this Schedule.

14.4. Service Provider Personnel

- 14.4.1. The Service Provider must provide trained Service Provider Personnel to:
 - a. deliver security services unobtrusively, 24 hours a day and seven days a week at the Site;
 - b. respond effectively to unforeseen Incidents while treating Transferees with dignity and respect; and

- c. engage with Transferees and other stakeholders to detect possible Incidents before they occur.

14.5. Training of Service Provider Personnel providing security services

- 14.5.1. Service Provider Personnel are responsible for:
 - a. collecting biometric information;
 - b. operating surveillance systems; and
 - c. must have completed a training course developed by a Level IV accredited trainer in security operations prior to commencing work at the Site.
- 14.5.2. The Service Provider must implement arrangements for refresher training of relevant Personnel.

14.6. Safety and security information obligation

- 14.6.1. The Service Provider must:
 - a. gather and record safety and security information to inform the development of the Site and Transferees security risk assessments and maintain the safety and security of the Site; and
 - b. gather and store safety and security information in accordance with the record keeping obligations, including privacy and confidentiality obligations, set out in the Contract.
- 14.6.2. Safety and security information includes information to be provided by other service providers and covers amongst other things:
 - a. unusual occurrences;
 - b. information received from a Transferee;
 - c. a Transferee or group of Transferees, acting unusually or out of character;
 - d. Incident Reports;
 - e. trends in Incidents; and
 - f. relevant information received from any source.

14.7. Site security risk assessment

- 14.7.1. The Service Provider must comply with the interim security risk assessment for the Site.
- 14.7.2. The Service Provider will develop a more detailed security risk assessment which accords with AS 4360 Risk Management Standard. In developing the security risk assessment, the Service Provider must take account of:
 - a. the number and risk profile of the Transferees at the Site;

- b. the overall security situation (including any information that might be made available by the Department, other government agencies or other sources), including:
 - a. visits;
 - i. arrivals and departures of Transferees;
 - ii. protests and rallies;
 - iii. special events;
 - iv. significant dates; and
 - v. availability of and response times for emergency services; and
 - c. the condition and arrangement of built infrastructure and associated technology including any temporary arrangements for new construction or facilities maintenance.

14.7.3. The Service Provider must review the Site security risk assessment as requested by the Department or following any significant Incident. The Service Provider and the Department will agree on timeframes for periodic review of the assessment.

14.7.4. The Service Provider must provide the Department with a copy of the then current security risk assessment, in the form requested by the Department, within five Business Days of any Department request.

14.7.5. The Service Provider must make available to the Department copies of all Security audits conducted, at the completion of the audit or report, including any operational responses to issues raised in the findings of these audits.

14.8. Rostering of security Personnel

14.8.1. The Service Provider must:

- a. ensure daily rosters of Service Provider Personnel for the Site provide a reasonable number of Service Provider Personnel with the skills, experience and fitness required to manage the security environment in a manner that addresses identified risks in the security risk assessment; and
- b. provide the Department with rostering arrangements at the commencement of each alternate business week for the coming fortnight.

14.9. Communication of safety and security requirements

14.9.1. The Service Provider must communicate Site safety and security requirements to all people on site (including Transferees, Service Provider Personnel, Department Personnel, and visitors). This communication must:

- a. contain only information required by the target audience;
- b. encourage compliance with the Site safety and security rules;
- c. be in a language and form understood by the target audience; and

- d. accommodate people with special needs, such as illiteracy or visual impairment.

14.9.2. The Service Provider must ensure Transferees and other people in the Site are aware of contingency plans for the Site.

15. Entry control

15.1. General

15.1.1. The Service Provider must facilitate controlled and efficient access to the Site by all persons (including Service Provider Personnel, visitors, personnel from other government agencies, Department Personnel, contractors and Transferees), vehicles and goods in an efficient manner.

15.1.2. The Service Provider must ensure that all visitors to the Site are treated with dignity and respect throughout the entry process.

15.2. Identification

15.2.1. The Service Provider must develop and implement a system to identify all people seeking access to the Site and provide a visual means of readily identifying all people while they remain on the Site, including:

- a. confirming access rights and escort requirements;
- b. creating and issuing identification passes; and
- c. discreetly monitor movement and location of all people on the Site.

15.3. Access to controlled areas

15.3.1. The Service Provider must develop and implement systems to manage access to controlled areas within the Site, including implementing a strict control regime for access keys and locks and static guarding where required. Controlled areas are:

- a. secure storage areas;
- b. administration areas;
- c. hazardous materials stores;
- d. medical facilities;
- e. control room;
- f. tool and vehicle stores;
- g. plant and equipment; and
- h. other areas designated by the Department or the Service Provider as controlled areas.

15.4. Operations logs

15.4.1. The Service Provider must:

- a. maintain operations logs at the Site as needed to record the date, time and location for all security related events and actions taken, and constitute an official record of activities and events within the Site;
- b. ensure operations logs provide a comprehensive and accurate account of all Site operations;
- c. inform the Department Operations Team Leader of the range, intent and scope of operations logs in use, and must advise any changes; and
- d. provide operations logs as soon as is reasonably practicable to the Department Operations Team Leader upon receiving a written request.

15.5. Digital records

15.5.1. The Service Provider must digitally record an audio and visual record of all instances where there is any Incident where the Service Provider, acting reasonably, knows that the Department or local authorities may require evidence of the actions Service Provider Personnel.

15.5.2. Where such recordings have been made, the Service Provider must within one hour of producing the recording:

- a. make an unedited copy of the recording;
- b. label the original and copy of the recording with the date and time of the recording and the names of people who appear in the recording; and
- c. provide the original recording to the Department.

15.6. Incidents

15.6.1. The Service Provider must:

- a. take all reasonable steps to manage all Incidents to ensure the safety and welfare of Transferees and other people at the Sites;
- b. seek to resolve all Incidents using negotiation and other de-escalation techniques; and
- c. restore safety and security in the Site as quickly as possible.

15.7. Checks to verify all Transferees are present and safe

15.7.1. The Service Provider must in conjunction with other service providers verify that all Transferees are present and safe in the Site at least twice each day at times which take account of any curfew arrangements.

15.7.2. The check conducted by the Service Provider must be conducted in a manner that respects the cultural, religious, gender and privacy needs of Transferees.

15.7.3. Service Provider Personnel undertaking checks need to be skilled in identifying Transferees who may be unwell or not coping, including in circumstances where the Transferee may be attempting to hide a problem.

15.7.4. The Service Provider must immediately report to the Department Operations Team Leader any concerns about a Transferee's safety, well-being and security.

15.8. Searches

15.8.1. The Service Provider must only conduct searches within the Site:

- a. with the prior approval of the Department; or
- b. on request of the Department.

15.9. Visitor escorts

15.9.1. The Service Provider will ensure that:

- a. visitors to the Site who are assessed by the Service Provider as requiring a Visitor escort are accompanied by Service Provider Personnel at all times; and
- b. visitor escorts are conducted as discreetly as possible, allowing for private conversations between Transferees and Visitors.

15.10. Perimeter security

15.10.1. The Service Provider must ensure that the security of the perimeter of the Site is maintained at all times in accordance with Departmental policies and procedures as notified from time to time by the Department.

15.11. Contingency plans and procedures

15.11.1. The Service Provider must:

- a. develop and implement an interim contingency plan for the Site with 7 days of the Commencement Date for approval by the Department, that details the control arrangements, communications, and other processes and procedures required for the Service Provider to maintain the safety and security of Transferees and other people who may be in the Site at the time;
- b. a more detailed plan is to be developed in accordance with clause 1.5.1 of this Schedule 1. The contingency plan will address a range of plausible contingencies, will be developed and maintained in accordance with ASNZS 3745 and will include:
 - a. procedures for notifying the Department and other service providers that the contingency plan is in effect;
 - b. coordination procedures with the Department and other service providers and other authorities;

- c. processes for communicating emergency procedures to Transferees, Service Provider Personnel and all other people at the Site to ensure they understand the emergency procedures;
- d. plans and arrangements for applicable emergency services (such as ambulance services, fire services, police services, utilities and nominated contractors) to access and move through the Site;
- e. procedures which apply to a variety of emergency situations (to include evacuation where warranted); and
- f. frequency of emergency drills and tests.

15.12. Safety and security exercises

- 15.12.1. The Service Provider must in conjunction with other service providers:
- a. implement a Department approved schedule of quarterly safety and security exercises to test security and Incident response capabilities for Personnel of all service providers; and
 - b. at the conclusion of each safety security exercise, provide a written report to the Department on the outcomes from the exercise including any proposals for continuous improvement.

PART 6 - CATERING

16. Catering

16.1. Nutritional and Food Safety

- 16.1.1. The Service Provider must:
- a. ensure Transferees are provided with access to food and beverages that are sufficient in quantity, offer variety, are nutritious, culturally appropriate, dietary specific (where required);
 - b. ensure compliance with all applicable health and food safety regulations.

16.2. Quantity of food and beverages

The Service Provider must provide food and beverages in quantities that are at least 10% more at lunch times and 10% more at dinner times than the quantities identified in the Dietary Guidelines for Australian Adults published by the National Health and Medical Research Council.

16.3. Halal arrangements

- 16.3.1. The Service Provider must ensure that food prepared for Transferees of Islamic faith is Halal, including:
- a. sourcing produce certified as Halal by a recognised Halal food certification organisation; and

- b. preventing any cross-contamination between Halal food and preparation areas and any other food and preparation areas.

16.4. Self-service snacks

The Service Provider must provide self-service snacks and refreshments that are available to Transferees at all times.

16.5. Individual Allowance Program and Canteen

16.5.1. The Service Provider will support the welfare and support service provider in the operation and management of the Individual Allowance Program and the canteen on the Site as set out in the guidelines issued by the Department from time to time.

16.5.2. The Service Provider will be responsible for managing all procurement associated with the operation of the canteen.

16.6. Transport of food and beverages

16.6.1. The Service Provider must :

- a. to the extent reasonably possible considering the logistic supply routes comply with all applicable laws as well as Food Safety Standards Australia and New Zealand requirements applying to the transport of food and beverages at all times; and
- b. clean and maintain hot boxes and eskies used to transport food and beverages.

16.7. Cleaning of food preparation and service areas

16.7.1. The Service Provider must keep all food transportation, storage preparation, service, dining and waste storage areas (including designated self-catering and barbeque areas) and equipment clean and hygienic in accordance with:

- a. Food Safety Standards Australia and New Zealand;
- b. Food Safety Standards applicable on Nauru
- c. any applicable manufacturer's or suppliers specifications for cleaning and catering equipment.

16.7.2. The Service Provider must ensure that sufficient Service Provider Personnel are employed on each shift to allow for efficient cleaning of all food transportation, storage, preparation, service, dining and waste storage areas and equipment.

16.7.3. The Service Provider must organise periodic inspections of all catering facilities to ensure standards are maintained.

16.8. Catering

- 16.8.1. Service Provider Personnel responsible for managing catering at the Site must:
- hold at least a Certificate III in Hospitality (Kitchen Operations) or equivalent; and
 - have acquired at least three years experience in managing a commercial kitchen.
- 16.8.2. All other catering Personnel engaged by the Service Provider for the preparation of food and beverages must hold at least a Certificate II in Hospitality (Kitchen Operations) or equivalent.
- 16.8.3. All staff engaged by the Service Provider for the serving of food and beverages must hold at least a Certificate II in Hospitality, or, have relevant work experience and be supervised by a person holding a Certificate II in Hospitality other than Transferees who volunteer to assist.

16.9. Display of signage

- 16.9.1. The Service Provider must develop and implement within 21 days of the Commencement Date a document that contains instructions for the cleaning and maintenance of hygiene and safety in food preparation and designated self-catering areas in accordance with any Department instructions. Once developed the document must be displayed prominently.

16.10. Dining room

- 16.10.1. The Service Provider must:
- provide lunch and dinner in a designated dining room (where a dining room exists in the Site);
 - provide breakfast and snacks in a designated common area;
 - except where agreed with the Department, open the dining area for lunch – between 1230 and 1400 and dinner – between 1830 and 2000; and
 - open the dining area to serve meals to Transferees of the Islamic faith before dawn and after sunset during Ramadan.

16.11. Late Arrivals

- 16.11.1. The Service Provider must provide a meal and beverage, within one hour to the Transferees who arrive at a Site between 1830 and 0600.

PART 7 - GOVERNANCE ARRANGEMENTS

17. Outline

- 17.1.1. This Part:

- a. outlines the Department's governance framework to support the effective delivery of Services under the Contract; 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 will be in place at a site level, and a national level, including the committees and joint initiatives the Service Provider will be required to participate in.

18. Governance framework

18.1. General

- 18.1.1. The Department's governance framework has been developed to support the effective delivery of services under this Contract. A key feature of the governance framework is two distinct layers of governance to provide clear pathways to raise, discuss, respond to, and resolve issues:
- a. senior management - to address issues at the strategic/tactical level; and
 - b. local management - to address issues at the delivery levels
- 18.1.2. The Service Provider must cooperate with the Department by actively participating in committees and meetings that have been (or are being) established across both levels of governance.
- 18.1.3. The Service Provider must cooperate with the Department, other service providers, and stakeholders, to meet the needs of Transferees and assist the Department to meet its obligations.

18.2. Cooperation, collaboration and meetings

- 18.2.1. The Service Provider must attend the high level monthly strategic/tactical level meetings with the Department senior management as follows:
- a. as an individual service provider every two to three months as required by the Department; and
 - b. in a joined-up forum with the Department and representatives of other service providers every six months or as otherwise required by the Department.

Unless otherwise advised by the Department, senior management meetings will be held in Canberra.

- 18.2.2. The Service Provider must attend the following local management meetings:
- a. morning meeting (daily) with the Department and other service providers;
 - b. consultative committee (monthly) with Transferees, other service providers and the Department;

- c. weekly Department and prevention committee review with the Department and other service providers to identify Transferees at risk; and
- d. facility level board (monthly) with the Department and other service providers reviewing the effectiveness of governance arrangements, risks and issues affecting the facility.

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

- 18.2.3. The Service Provider must participate in, and action agreed items resulting from all meetings, consultative committees and forums at the request of the Department.
- 18.2.4. In certain situations, and particularly at the local management level of governance, the Service Provider may be required to chair and lead a meeting.
- 18.2.5. The Service Provider must provide updates, reports and briefings for meetings, consultative committees and forums at the request of the Department.
- 18.2.6. The Service Provider with the Department, Nauruan government and Nauru communities must :
 - a. participate in and contribute to regular meetings with community leaders; and
 - b. develop and maintain good working relationships with key community members.

PART 8 - LOGISTICS

19. Logistics

- 19.1.1. The Service Provider will work cooperatively with the Department, local authorities and other service providers to ensure that logistics are completed in a timely manner.
- 19.1.2. If requested by the Department, the Service Provider will develop a logistics plan that sets out in more detail the logistics arrangements that will apply at the Site. Once approved, the Service Provider will comply with and implement the plan.

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 Team Fee
- c. a Pass-Through Cost Fee to be applied to certain costs that may be claimed as pass through costs.

1.1.2. In addition, the Service Provider may claim certain Pass-Through Costs.

1.1.3. The Service Provider is not entitled to any other payments in relation to the delivery of the Services.

1.1.4.

s. 47(1)(b)

2. Corporate Overhead Fee

2.1.1. The Corporate Overhead Fee s. 47(1)(b)

2.1.2. The corporate overhead fee includes the following:

s. 47(1)(b)

s. 47(1)(b)

3. Service Delivery Team Fee

3.1. Calculation of Service Delivery Team Fee

- 3.1.1. The Service Delivery Team Fee will apply to the Service Delivery Team. The Service Delivery Team comprises:
- a. Service Provider Personnel on Nauru providing the Services; and
 - b. where the Department agrees that some of the Services can be provided from Australia, those personnel agreed by the Department to be part of the Service Delivery Team.
- 3.1.2. The Service Delivery Team Fee will be calculated by reference to the approved number and classification of Personnel and the rates set out in Attachment A .
- 3.1.3. The hourly rates will be payable in relation to:

s. 47(1)(b)

- 3.1.4. Without limiting clause 3.1.1 of this Schedule, the parties recognise that the number of Transferees and Site requirements will vary from time to time. The parties will agree a roster on a fortnightly basis that will set the level of resourcing and the number of working hours required for the period of the roster (including any pre- and post-deployment activities) and the rates set out in Attachment A will be used to calculate the Service Delivery Team Fee.
- 3.1.5. Regardless of the number of Transferees at the Site, the Service Provider must not claim a component of the Service Delivery Team Fee for a position unless a person has been deployed or engaged for deployment to the Site in relation to that position and that person is not already covered by some other part of the fees. The Service Delivery Team does not include any management personnel covered by the Corporate Overhead Fee.

- 3.1.6. The Service Delivery Team Fee is calculated using the rates set out in Attachment A. s. 47(1)(b)

s. 47(1)(b)

3.2. Rates for locally engaged staff

- 3.2.1. Labour rates for locally engaged staff must be consistent with local law and practice for the relevant Site and will be subject to a mark up to be agreed to account for management, supervision, contingency, profit and shift work.

4. Pass-through costs and pass through costs fee

4.1. Approval of Pass-through costs

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

s. 47(1)(b)

- 4.1.2. The following limitations apply in relation to Pass-Through Costs:

s. 47(1)(b)

- 4.1.3.

s. 47(1)(b)

- 4.1.4. The parties will develop a joint procedure for the management, approval and reporting of all procurement and Pass-Through Costs. All Pass-Through Costs must:

- a. be approved by the Department in advance in writing; and
- b. be claimed within 6 months of the date on which the relevant goods or services are provided to the Service Provider, with no Pass-Through Costs able to be claimed more than 120 days after the expiration or earlier termination of the Contract.

4.2. Pass-Through Cost Fee

- 4.2.1. A mark up of **S. 47(1)(b)**
S. 47(1)(b)

5. Payment arrangements

5.1. Invoices

- 5.1.1. The Service Fee and the approved Pass-Through Costs will be invoiced and submitted as soon as possible and in any event no more than 3 Business Days after the last working day of each month and be paid by the Department monthly in arrears within 30 days of receipt by the Department of a correctly rendered invoice. Unless otherwise agreed, any payments under this Contract will be made by electronic transfer directly to a nominated bank account.

- 5.1.2. 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 Financial Management and Accountability Act 1997;
- 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 and include confirmation that the Pass-Through Costs are properly recoverable (including compliance with paragraph 4.1.4 above).

5.2. Disputes about invoices

- 5.2.1. 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 Services Fee or any Pass-Through Costs that are in dispute until the dispute is resolved; and
 - b. must notify the Service Provider in writing (within 30 days of receipt of the invoice) of the reasons for disputing the remainder of the invoice.

5.3. Incorrect Invoices

- 5.3.1. 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.

6. Facilities and other assistance

6.1. Facilities

- 6.1.1. 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 on Nauru.
- 6.1.2. 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.
- ### **6.2. Other assistance**
- 6.2.1. The Service Provider will be provided with the following assistance:
- a. subsidised meals for Personnel in accordance with Department policy.

s. 47(1)(b)

s. 47(1)(b)

SCHEDULE 3 CONFIDENTIALITY DEED

THIS DEED POLL is made the day of 2013 in favour of the **COMMONWEALTH OF AUSTRALIA** represented by the Department of Immigration and Citizenship (**the Department**)

BY (**the Confidant**)

RECITALS

A The Department and Transfield Services (Australia) Pty Limited (**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 Nauru .

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

Drafting Note: *Signature block appropriate to the nature of the Confidant to be used.*

SIGNED, SEALED and DELIVERED by

[Confidant] in the presence of:

Signature of Recipient

Signature of witness

Name

THE COMMON SEAL of *[Confidant]*, the
fixing of which was witnessed by:

Signature of director

Signature of director/secretary

Name

Name

SCHEDULE 4 DEED OF NON-DISCLOSURE PERSONAL INFORMATION

THIS DEED POLL is made the _____ day of _____ 2013

in favour of the COMMONWEALTH OF AUSTRALIA represented by the Department of Immigration and Citizenship (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 Transfield Services (Australia) Pty Limited (**Service Provider**) (**Contract**) for the services on Nauru, 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 Information Privacy Principles set out in the *Privacy Act 1988* (Cth) (**Privacy Act**) if done or engaged in by the Department;
 - b. implement all reasonable measures to assist the Department in meeting the obligations under the Privacy Act concerning the security, use and disclosure of information to which the Department is subject in respect of that Personal Information;
 - c. co-operate with any reasonable demands or enquiries made by the Commonwealth Privacy Commissioner;
 - d. not disclose such Personal Information without the written authority of the Department except in the course of, and for the purpose of, performing the Contract, and it will immediately notify the Department where it becomes aware that a disclosure of such information may be required by law;
 - e. ensure that any person who has an access level which would enable that person to obtain access to any information in respect of which the

Department has obligations under the Privacy Act is made aware of, and undertakes in writing, to observe the provisions of this Deed;

- f. take all reasonable measures to ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only 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. inform any person, on his or her request, in writing of the content of any provision of the Contract that is inconsistent with an approved privacy code binding the Service Provider or a National Privacy Principle as set out in the Privacy Act, in accordance with the Service Provider's obligations under section 95C of the Privacy Act;
- 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 National Privacy Principles in the *Privacy Act 1988* (Cth) or any privacy codes or privacy principles contained in, authorised by or registered under any law, take priority to the fullest extent permitted by applicable law; and
 - b. to the extent not so inconsistent, are in addition to any obligations the Confidant may have under the *Privacy Act 1988* (Cth) or any privacy codes or privacy principles contained in, authorised by or registered under any law.
5. The Confidant acknowledges that failure by it to comply with the obligations under the Privacy Act in accordance with paragraph 3 may result in the 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

THE COMMON SEAL of
[Confidant], the fixing of which
was witnessed by:

Signature of director

Signature of director/secretary

Name

Name

SCHEDULE 5 SERVICE PROVIDER CONFIDENTIAL INFORMATION

(a) Information contained in Contract:

| Item | Period of Confidentiality |
|--|----------------------------------|
| The individual components of the Service Fee | Duration of the Contract |
| The liability limitation arrangements | Duration of the Contract |

(b) Information obtained or generated in performing Contract:

| Item | Period of Confidentiality |
|---|----------------------------------|
| The individual components of the Service Fee | Duration of the Contract |
| Information regarding Performance Framework such as KPIs, performance against KPIs and abatements | Duration of the Contract |

SCHEDULE 6 PERFORMANCE MANAGEMENT FRAMEWORK PRINCIPLES

1. Joined Up Approach

- 1.1.1. Fundamental to the successful delivery of services to Transferees located at the Sites is a requirement to foster productive working relationships with all other service providers providing services at sites on Regional Processing Countries.
- 1.1.2. The Service Provider is required to engage effectively and positively with local communities and ensure that operational aspects of the Sites are appropriately supported.

2. The Framework

2.1. General

- 2.1.1. The Performance Management Framework will ensure the provision of the Services and the management of performance under this Contract aligns with the vision and outcomes of Transferee and community well-being. This is represented in the diagram below as a Performance Pyramid incorporating the following:

- 1. Program Vision
- 2. Program Outcomes
- 3. Key Deliverables (Performance Indicators)
- 4. Key Performance Measures.

These four levels highlight the different levels of offshore performance measures and have been developed to monitor, analyse, review and implement the Department's core Transferee, operational and strategic objectives in a single framework.

- 2.1.2. The Service Provider must comply with all processes and timeframes specified in
 - a. The Performance Management Framework; and
 - b. Any related documents as agreed between the parties.

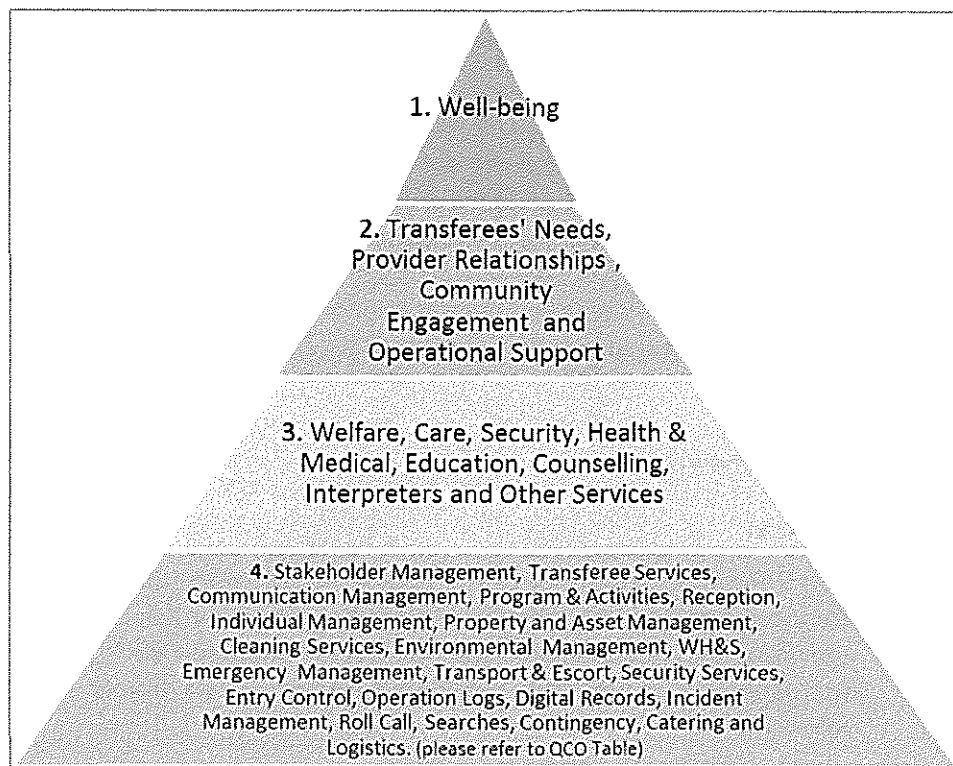


Diagram 1: Performance Pyramid

2.1.3. Level One, the Program Vision, represents the 'Well-being' of the Transferees within a Site on a Regional Processing Country. The well-being of Transferees in a Site is a priority for the Department and the Service Provider. This will be heavily scrutinised in terms of Performance Measurement.

2.1.4. Level Two, Program Outcomes, comprise of:

- Transferees' needs
- Provider relationships; and
- Community engagement and operational support.

It is imperative that the Service Provider acknowledges and addresses the needs of Transferees and fosters productive relationships with all other service providers working in Regional Processing Countries. The Service Provider is expected to engage effectively and positively with local communities and ensure that operational aspects of the Sites are supported.

2.1.5. Level Three, being the Key Performance Indicators represent the eight key areas that frame the Department's expected key deliverables. These areas cover the full scope of services on Site across all service providers.

- 2.1.6. Level Four represents the specific Key Performance Measures which will be used to measure the success of the programs core objectives. These measures will be specific to each Service Provider and will cover the full scope of services deliverable under each contract. These measures will be developed jointly with the Service Provider within eight weeks of the Execution Date.

2.2. Reporting

- 2.2.1. The Service Provider must work collaboratively with the other service providers to prepare a single Joint Performance Report for the Site.

- 2.2.2. The Joint Performance Report must be delivered to the Department monthly within 10 Business Days of the end of each month. The Report will provide an overview of the operations in the Site.

- 2.2.3. The Report will be prepared in accordance with the agreed template and will include sections dealing with:

- a. Performance against the Key Performance Measures
- b. Areas of poor performance
- c. Areas of achievement
- d. Quality Transferee and community outcomes

2.3. Incentive Regime

- 2.3.1. The Incentive Regime will be implemented at each Site once the Site is in a business-as-usual operating mode as agreed between the Department and the Service Provider.

- 2.3.2. The incentive regime will make use of both financial and non-financial incentives to encourage providers to set their performance goals beyond the minimum expectations of the contract and focus on the key outcomes for transferees.

2.4. Abatement Regime

- 2.4.1. The Abatement Regime will be implemented at each Site once the Site is in a business-as-usual operating mode as agreed between the Department and the Service Provider.

- 2.4.2. The abatement regime to be implemented will include:

- a. a three 'tiered system' – not financially penalising poor performance in the first instance; and
- b. withholding a percentage of **s. 47(1)(b)** in months where abatement is applicable and in the event of continuous failure.

- 2.4.3. The 'three tiered system' for abatements will be implemented as follows:

- a. An initial failure of a metric – no financial abatement would apply to an area of performance monitoring, however there is an obligation to increase the level and frequency of reporting requirements and a process for the identification of issues / failures on key deliverables
- b. Subsequent failure of the metric – there is no financial abatement however the failure results in increased observations and monitoring by the Department to determine preventative / corrective action
- c. A third failure of the same metric or a failure of any significant metric – a financial abatement is applied in accordance with a methodology yet to be determined.


2.4.4. There will be some situations in which the first and second tier of the three tier system will not apply. This relates to performance failures that DIAC considers 'significant' in terms of not complying against performance measures. Immediate financial abatement will apply in the first instance in the following circumstances:

- a. Breaches of hygiene standards
- b. Breaches of client accountability
- c. Incidents of preventative injury
- d. Others as determined by DIAC (based on an assessment of risk)

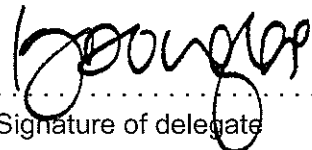
3. Excusable Performance Failure

- 3.1.1. The Contract includes provisions dealing with Excusable Performance Failure Events. The Service Provider must comply with the requirements of these provisions.
- 3.1.2. The Service Provider must develop as part of the Performance Management Framework, processes and procedures that will be implemented in the event of a Excusable Performance Failure Event in order to remove, overcome or minimise the effects of that Excusable Performance Failure Event as quickly as possible and that, to the maximum extent possible, the Program Vision, Program Outcomes and Key Performance Indicators continue to be met during the Excusable Performance Failure Period ('Response Processes'). Successful implementation of these Response Processes will be reflected in a least one Key Performance Measure.
- 3.1.3. During the Excusable Performance Failure Period, some of the Key Performance Measures may be suspended. However, the Service Provider's performance against the remaining Key Performance Measures, in particular the Key Performance Measure(s) dealing with implementation of the Response Processes, will continue to be measured and failure to meet any Key Performance Measures that have not been suspended could result in an abatement.

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


Signature of witness

Mark Painting
Name of witness (print)


Signature of delegate

KENNETH DOUGLAS
Name of delegate (print)
FIRST ASSISTANT SECRETARY
DETENTION INFRASTRUCTURE
& SERVICES DIVISION
Position of delegate (print)

Executed by Transfield Services (Australia) Pty Limited
ACN 093 114 553 by its duly authorised representative:

s. 47F(1)
Signature or witness

s. 47F(1)
Name of witness (print)

s. 47F(1)
Signature of authorised representative

s. 47F(1)
Name of authorised representative (print)

s. 47F(1)
Position of authorised representative (print)

