



Australian Government
Department of Immigration and Citizenship

File ref: ADF2012/26558

Ref: O 1720 OG

s22(1)(a)(ii)

Head of Humanitarian Emergency Response (Acting)
 Save the Children Australia

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

**Letter of Intent – Department of Immigration and Citizenship and Save the Children
 Australia - Manus Island PNG Regional Processing Centre Service Delivery**

Thank you for your attendance at the PNG service provider workshop in Brisbane on Thursday 11 October 2013.

Further to our discussions, the department is pleased to invite Save the Children Australia (Save the Children) to work with the Department to put in place the Support Services at the Regional Processing Centre on Manus Island PNG.

Subject to further negotiations between the Parties, the department intends to enter into a formal Heads of Agreement which details the required Support Services. This Letter of Intent (LOI) is only intended to enable Save the Children to commence the Support Services, pending the Heads of Agreement.

The department confirms, pending the Heads of Agreement, that the range of Services it is seeking from Save the Children will include (but strictly not be limited to) the following:

- the targeted delivery of programs and activities to suit the cohort;
- engagement with the cohort to offer client welfare and support;
- teaching staff to deliver appropriate education programs;
- multilingual staff to engage directly with the client cohort;
- Independent Observers; and
- to provide escort services to unaccompanied minors, children and families

It is noted that planning and pre-deployment activity has commenced to ensure Save the Children are ready to receive the first transfer of clients.

A comprehensive schedule of Support Service requirements will be included in the Heads of Agreement.

people our business

6 Chan Street Belconnen ACT 2617

PO Box 25 BELCONNEN ACT 2616 • Telephone: 02 6264 1111 • Fax: 02 6225 6970 • www.immi.gov.au

Released by Department of Home Affairs
 under the Freedom of Information Act 1982

The duration of this LOI is strictly 30 days after the date that the LOI is executed by both parties, or unless the department enters into a Heads of Agreement with Save the Children prior to expiration of the 30 day period. The department retains an absolute discretion to extend the duration of this LOI by one (1) additional period of 30 days (the Option Period) which immediately commences (if exercised by the department) upon the expiration of the initial 30 day term. The department will provide written notification to Save the Children not less than 5 days prior to the expiry date of this LOI.

The department agrees, until such time as the Heads of Agreement is entered into by the parties to pay Save the Children reasonable costs for the preparation and provision of the Support Services on a monthly basis in accordance with the schedule of rates below and based on the scope described above. On this basis, the department acknowledges that Save the Children will need to prepare for the provision of services, including:

- recruiting and retaining appropriate staff;
- conducting site reviews as appropriate; and
- incurring transition-in costs.

For those allowances and disbursements which are not covered by the above schedule of rates, the parties agree that the department will reimburse Save the Children for the direct out-of-pocket costs. The department requires Save the Children to provide notification and cost-estimates, and receive the department's approval for the anticipated reimbursable costs, prior to expenditure and/or commitment of such allowances and disbursements.

Save the Children agrees to provide supporting receipts and tax invoice(s) to substantiate all such disbursements and allowances, which will form part of the monthly invoice to be approved and paid by the department.

Save the Children agrees to issue the department with an invoice for the Support Services provided of each month and the department will consider the invoice and pay the approved amount of that invoice (as determined by the department) within 30 days in arrears.

Importantly, as Save the Children will be part of a team of service providers supporting clients at Manus Island the department requires your commitment to work in a co-operative and collaborative approach with all other service providers.

I look forward to working with you as we progress this important work.

Yours sincerely

s22(1)(a)(ii)

Mrs Tracy Mackey
A/g First Assistant Secretary
Detention Infrastructure and Services Division

s22(1)(a)(ii)

12 October 2012

HEADS OF AGREEMENT

IN RELATION TO THE PROVISION OF SERVICES ON MANUS ISLAND
(PAPUA NEW GUINEA)

Commonwealth of Australia represented by the Department of Immigration
and Citizenship

Save The Children Australia Ltd (ACN 008 610 035 ABN 99 008 610 035)

Save the Children Australia
Heads of Agreement for provision of services on Manus Island (PNG)

Released by Department of Home Affairs
under the *Freedom of Information Act 1982*

1.	Definitions and interpretation	2
1.1.	Definitions	2
1.2.	Guidance on construction of Agreement	6
2.	General	6
2.1.	Purpose	6
2.2.	Agreement objectives	6
2.3.	Cooperation and good faith	7
2.4.	Papua New Guinea Memoranda of Understanding	7
2.5.	Term	7
2.6.	Transition-in	7
2.7.	New Contract	8
3.	Services	8
3.1.	Service obligations	8
3.2.	Facilities and assistance	9
3.3.	Compliance with laws	9
3.4.	Compliance with Fair Work Principles	9
4.	Management and governance	10
4.1.	Project management	10
4.2.	Department Personnel	10
4.3.	Liaison with Contract Administrator	11
5.	Service Provider Personnel	11
5.1.	Key Personnel	11
5.2.	Replacement of Key Personnel	11
5.3.	Removal of Key Personnel	12
5.4.	Requirements for Service Provider Personnel	12
5.5.	Behaviour of Service Provider Personnel at the Sites	13
5.6.	Illegal workers	13
5.7.	Removal of Service Provider Personnel	13
6.	Subcontractor arrangements	14
6.1.	Approval of subcontracts	14
6.2.	Extension of provisions to subcontractors and Personnel	14
6.3.	Copies of subcontracts	14
6.4.	Service Provider liability and obligations	14
6.5.	Subcontractor warranty	15
6.6.	Service Provider to be the Department's sole point of contact	15
6.7.	Locally engaged subcontractors and Personnel	15
7.	Payments	15
7.1.	Fees	15
7.2.	Taxes, duties and government charges	16
7.3.	Currency	16

8.	Confidentiality of Official Information and security	16
8.1.	Interpretation	16
8.2.	Confidentiality of Official Information	16
8.3.	Other security obligations of Service Provider	17
9.	Confidential Information of Service Provider	17
9.1.	Confidential Information not to be disclosed	17
9.2.	Exceptions to obligations	17
9.3.	Period of confidentiality	18
10.	Intellectual Property	18
10.1.	Use of Commonwealth Material	18
10.2.	Rights in Agreement Material	18
10.3.	Moral Rights	19
11.	Indemnity and insurance	19
11.1.	Proportionate liability regimes excluded	19
11.2.	Indemnity	19
11.3.	Limitation of liability	20
11.4.	Insurance	20
12.	Publicity, media and external relationship management	21
12.1.	Publicity and media to be managed by the Department	21
12.2.	Protection of Transferee privacy - Service Provider not to make public statements	21
13.	Dispute resolution	22
13.1.	Procedure for dispute resolution	22
13.2.	Continued performance	23
13.3.	Exemption	23
14.	Termination	23
14.1.	Termination without default	23
14.2.	Termination for default	24
14.3.	Transition out	24
15.	Notices	24
15.1.	Format, addressing and delivery	24
15.2.	When effective	25
16.	General provisions	25
16.1.	Conflict of interests	25
16.2.	Work health and safety	26
16.3.	Privacy	26
16.4.	Audit and access	26
16.5.	Access to documents	27
16.6.	Relationship of parties	27
16.7.	Waiver	28
16.8.	Variation	28

16.9.	Assignment	28
16.10.	Survival	28
16.11.	Applicable law	28
Schedule 1	Statement of Work	29
Schedule 2	Fees and Payment	40
Schedule 3	Deed of Confidentiality and Non-Disclosure	49
Schedule 4	Service Provider Confidential Information	54

CONTRACT**IN RELATION TO THE PROVISION OF SERVICES ON MANUS ISLAND (PNG) AND NAURU****Date**

This Agreement is made on 17 ~~March~~ ^{April} 2013.

Parties

This Agreement is made between and binds the following parties:

1. **Commonwealth of Australia**, acting through and represented by the Department of Immigration and Citizenship ABN 33 380 054 835 (the Department)
2. **Save The Children Australia** ACN 008 610 035 ABN 99 008 610 035 (the Service Provider)

Recitals

This Agreement is made in the following context:

- A. The Department wished to obtain care and support services for people expected to be transferred to a Regional Processing Country - Manus Island Papua New Guinea (PNG) (Transferees), in particular Transferees who are under the age of 18, including children with families and unaccompanied minors from s33(a)(iii) [REDACTED].
- B. The Department has asked the Service Provider to provide these services as a matter of urgency to the Department in respect of Transferees and other persons nominated by the Department on Manus Island (PNG) on the terms of this Heads of Agreement (this Agreement).
- C. s33(a)(iii) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Operative Provisions

1. Definitions and interpretation

1.1. Definitions

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

Agreement	means any Material:
Material	<ul style="list-style-type: none"> a. created for the purposes of this Agreement; or b. derived at any time from the Material referred to in paragraph a;
Business Day	means a weekday other than a public holiday in the place specified or, if no place is specified, in the Australian Capital 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 10 October 2012;
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 Agreement; 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 includes any material specifically described in Schedule 4;
Contract Administrator	means the person appointed by the Department Secretary to perform the duties of Contract Administrator and includes any person from time to time acting in that position, with notices to be marked to attention of Assistant Secretary, Detention Services Management, PO Box 25, Belconnen ACT 2616;
Contract Authority	means the person occupying the position of First Assistant Secretary, Detention Infrastructure and Services Division;
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 Agreement;

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;
Execution Date	means the date on which the last of the parties executes this Agreement;
GST	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
Incident	means an activity which threatens, harms or impacts, or has the potential to threaten, harm or impact upon: <ul style="list-style-type: none"> a. the welfare of Transferees; b. the good order, safety or security of a Site; c. the success of escort/transfer activities; or d. immigration processing;
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);
Intellectual Property	includes: <ul style="list-style-type: none"> a. all copyright (including rights in relation to phonograms and broadcasts); b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include: <ul style="list-style-type: none"> d. Moral Rights; e. the non-proprietary rights of performers; or f. rights in relation to Confidential Information;
Key Personnel	means the Service Provider Personnel notified to the Department in accordance with clause 5 as Key Personnel who will be the principal Service Provider Personnel involved in the performance of the Services;
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;
New Contract	has the meaning given in Recital C;
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 Agreement and the terms of the Agreement;
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];
Personal Information	has the same meaning as it has in the <i>Privacy Act 1988</i> (Cth);
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;
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 Agreement and includes the Schedules as amended or replaced from time to time by agreement in writing between the parties;
Service Delivery Team	means those Service Provider Personnel as agreed by the Department and set out in Attachment 2 of Schedule 2 [Fees and Payments] who shall deliver the Services at the Site;
Service Provider Material	means any Material owned by or licensed to the Service Provider at the date of this Agreement or which is developed independently of this Agreement which is provided or required to be provided to the Department as

	part of the Services;
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 Manus Island (PNG) and where another site is established on Manus Island, will also include reference to that site;
Term	has the meaning given by clause 2.5;
Transferee	means a person transferred to a Regional Processing Country; and
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 Agreement, 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 Agreement;
- j. if any conflict arises between the terms and conditions contained in the clauses of this Agreement 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 Agreement

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

2. General

2.1. Purpose

- 2.1.1. The purpose of this Agreement is to:
 - a. implement the Services on and from the Commencement Date;
 - b. set out the terms on which those Services must be provided; and
 - c. establish a process for finalising the New Contract, intended to take effect from 8 weeks after the Execution Date.
- 2.1.2. Subject to the specific requirements of this Agreement, the Services must be provided on the terms of this Agreement.

2.2. Agreement objectives

- 2.2.1. The primary objectives of this Agreement are to:
 - a. provide open, accountable and transparent care and support services to Transferees at the Sites;
 - b. provide Transferees with a standard and range of care and support that is the best available in the circumstances, utilising facilities and personnel on the Sites and that as far as possible (but recognising any unavoidable limitations deriving from the circumstances of the Sites) is broadly comparable with similar services available within the Australian community; and
 - c. provide that care through the Services identified in Schedule 1 [Statement of Work] to this Agreement.

2.3. Cooperation and good faith

- 2.3.1. The parties intend to conduct themselves and perform this Agreement 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 Agreement.

2.4. Papua New Guinea Memoranda of Understanding

- 2.4.1. The Service Provider agrees not to permit any act or omission that causes or is likely to cause the Commonwealth to be in breach of its Memorandum of Understanding with Papua New Guinea (a copy of which has been provided to the Service Provider) or with the related administrative measures once a copy has been provided by the Department to the Service Provider.

2.5. Term

- 2.5.1. Subject to clause 2.5.2, this Agreement commences on the Commencement Date and continues until the first to occur of:
- a. the New Contract commences;
 - b. the Agreement is terminated under clause 14; or
 - c. 6 months after the Commencement Date.
- 2.5.2. The Department may notify the Service Provider that it wishes to extend the term of this Agreement beyond the initial Term for one or more periods up to a total of 12 months on the terms and conditions of this Agreement then in effect, by providing in each case at least 30 Business Days written notice to the Service Provider. The Service Provider must notify the Department within 10 Business Days whether it agrees to the extension of the Agreement and if the Service Provider does not notify the Department by the end of the tenth Business Day it will be deemed to have agreed to the extension of the Agreement. If the Service Provider notifies the Department that it does not agree to the extension of the Agreement, the Agreement will terminate 60 days after the date of the notice.
- 2.6. Transition-in**
- 2.6.1. The Service Provider must commence the provision of Services at the Site on Manus Island (PNG) promptly on the Commencement Date.
- 2.6.2. The Service Provider will perform all activities required to ensure that as soon as possible after the Commencement Date and, in any event by no later than 6 weeks after the Commencement Date, ("Transition-in Period") it is providing all the Services in accordance with the requirements of and otherwise complying with its obligations under this Agreement.
- 2.6.3. The Department acknowledges that during the Transition-in Period, the Service Provider will be using its best endeavours to ensure it is complying with all its obligations under this Agreement.

2.7. New Contract

2.7.1. The Parties have entered into this Agreement to cover the interim period while a more detailed contract is negotiated. The Service Provider agrees to enter negotiations for a New Contract on the following basis:

- a. the Department will provide a draft of the proposed New Contract for comment by the Service Provider and the Service Provider must provide comment and any information requested within the timeframe agreed by the parties; and
- b. the parties must use all reasonable endeavours to finalise and execute the New Contract within 8 weeks of the Execution Date.

2.7.2. If the New Contract is not signed by both parties on or before 8 weeks after the Execution Date (or such other date as agreed by the parties), the Department may:

- a. require the Service Provider to attend focussed negotiations for a period of up to 4 weeks, including ensuring the availability of Personnel able to make decisions on negotiation issues, in Canberra; or
- b. terminate this Agreement in accordance with clause 14.1.

2.7.3. The New Contract is intended to include:

- a. terms and conditions that are no less favourable to either party than this Agreement;
- b. more detailed provisions dealing with termination by the parties;
- c. a more detailed description of the services (with no intended reduction in the scope or rates) and provide for, if required by the Department, similar services to be delivered on the Republic of Nauru;
- d. payment arrangements; and
- e. a performance management framework that includes performance standards for the Services and incentives and abatements in respect of the level of performance achieved in the performance of the Services.

3. Services

3.1. Service obligations

3.1.1. Schedule 1 [Statement of Work] of this Agreement sets out the specific requirements for the Services to be performed at the Sites. The Department may request the Service Provider to provide other services on terms to be agreed, including fees. Once agreed, the parties will amend this Agreement to include the other services and the other services will be Services for the purposes of this Agreement.

- 3.1.2. The Service Provider agrees to:
- a. provide the Services and meet the requirements described in Schedule 1 [Statement of Work];
 - b. comply with relevant industry standards and any Department or Commonwealth policies or guidelines, provided such policies or guidelines are provided to the Service Provider by the Department; and
 - c. submit invoices, and any required supporting documents, in the manner set out in this Agreement.

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 [Fees and Payment] 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.
- 3.2.3. The Service Provider will cooperate with the other service providers and the Department in relation to the management and use of the facilities.

3.3. Compliance with laws

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

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 Agreement.

4.3.2. The Service Provider may raise any issues relevant to the Contract and the provision of the Services with the Contract Administrator. The parties will discuss any issues raised in a cooperative manner.

4.3.3. Where this Agreement is extended pursuant to clause 2.5.2, if any reasonable concerns of the Service Provider are not able to be resolved by cooperative discussion by the parties pursuant to clause 4.3.2, the Service Provider may terminate this Agreement by giving 60 days written notice to the Department or, where the remainder of the extended term is less than 60 days, by advising the Department that the Service Provider will not agree to renew this Agreement at the expiry of the current extended term. For the avoidance of doubt, this clause shall not limit any right at law of either party.

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 to be involved in the performance and management of the Services and the Service Provider's obligations under this Agreement.

5.1.2. The Service Provider must ensure that each of the Key Personnel occupy the position 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 Agreement, 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 practical 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 Agreement, the Department may, at its discretion, terminate this Agreement in accordance with clause 14.2 or remove Services from scope in

accordance with clause 14.1. The Department must not unreasonably refuse to accept any replacement Key Personnel proposed by the Service Provider.

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 Department must provide to the Service Provider reasons that explain why it is seeking removal of the Key Personnel. 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. Requirements for Service Provider Personnel

- 5.4.1. The Service Provider must, at its own cost, ensure that all Service Provider Personnel who carry out work or perform duties under this Agreement:
- 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 notified to the Service Provider 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 in accordance with the requirements of 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 and accreditation or scheme memberships and professional association membership that might be reasonably expected of persons performing the Services, and produce evidence of such authorisation, registration, license, accreditation or membership to the Department upon request at any time during the term of this Agreement; and
 - h. will be subject to internal disciplinary processes.
- 5.4.2. The Service Provider must ensure that all Service Provider Personnel that are to carry out work or perform duties under this Agreement have signed a Deed of Confidentiality and Non-disclosure of Personal Information substantially in the

form of Schedule 3 [Deed of Confidentiality and Non-Disclosure], prior to commencing work or performing duties under this Agreement or within 2 days of the Execution Date.

- 5.4.3. The Service Provider will ensure that sufficient numbers of Service Provider Personnel are present at the Sites to enable the Service Provider to deliver the Services in accordance with this Agreement.

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 facilitate the smooth 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 Papua New Guinea;
 - b. has lawfully entered Australia or Papua New Guinea 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 Department must provide to the Service Provider reasons that explain why it is seeking removal of the Service Provider Personnel. 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 AUD\$5,000 (excluding GST).

6.1.2. The Service Provider acknowledges that the Department may consult with the Government of Papua New Guinea in relation to any proposed subcontracts in relation to Services being provided on Manus Island (PNG).

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 Agreement.

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 Agreement includes obligations on the other party that are equivalent to all relevant Requirements.

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 reasonable 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 Agreement.

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 Agreement; and
 - b. no subcontractor further subcontracts any work valued at AUD \$5000 (excluding GST) or more without the prior written approval of the Department.
- 6.5. **Subcontractor warranty**
- 6.5.1. The Service Provider warrants that each subcontractor:
- a. is suitable to carry out the work under the subcontract and is accredited or qualified in accordance with relevant laws, Australian Standards and Commonwealth requirements; and
 - b. will exercise the standard of skill, care and diligence that would be expected of an expert professional provider of services similar to the Services being provided by the subcontractor.
- 6.6. **Service Provider to be the Department's sole point of contact**
- 6.6.1. The Service Provider acknowledges that the Department may, in its absolute discretion, contact any subcontractor directly as and when required in order to obtain information regarding the Services provided by that subcontractor.
- 6.6.2. Except as provided in clause 6.6.1, the Service Provider will be the Department's sole point of contact regarding the Services, including with respect to payment.
- 6.7. **Locally engaged subcontractors and Personnel**
- 6.7.1. The parties intend that the Service Provider will seek to maximise local involvement in the delivery of Services including engaging local entities as subcontractors. The parties recognise that it may not be possible for local entities or local Personnel to meet all of the requirements of the Agreement. The Service Provider will use its best endeavours to ensure that local Personnel meet the requirements of this Agreement as much as possible. The terms on which local entities will be engaged as subcontractors will be agreed between the parties.

7. Payments

7.1. Fees

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

7.2. Taxes, duties and government charges

- 7.2.1. Except as provided by this clause 7.2, the Service Provider agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.
- 7.2.2. Unless otherwise indicated, the fees and all other consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.
- 7.2.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Agreement, 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.
- 7.2.4. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.
- 7.2.5. The Department will reimburse to the Service Provider any fringe benefit tax incurred by the Service Provider in relation to the payment of per diem allowances to volunteers (see Schedule 2 [Fees and Payments]). For the avoidance of doubt no mark up will be applied.

7.3. Currency

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

8. Confidentiality of Official Information and security

8.1. Interpretation

- 8.1.1. In this clause 8:

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;

8.2. Confidentiality of Official Information

- 8.2.1. 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).
- 8.2.2. The Service Provider is authorised, subject to clause 8.3, to provide Official Information to those Personnel and subcontractors who require access for the purposes of this Agreement.

- 8.2.3. The Service Provider agrees to secure all Official Information against loss and unauthorised access, use, modification or disclosure.

8.3. Other security obligations of Service Provider

- 8.3.1. The Service Provider agrees to comply with any security requirements notified by the Department from time to time.
- 8.3.2. The Service Provider agrees to implement security procedures to ensure that it meets its obligations under this clause 8 and will provide details of these procedures to the Department on request.

9. Confidential Information of Service Provider

9.1. Confidential Information not to be disclosed

- 9.1.1. Subject to clause 9.2 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.

9.2. Exceptions to obligations

- 9.2.1. The obligations of the Department under this clause 9 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 Agreement;
 - 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 9.
- 9.2.2. Where the Department discloses Confidential Information to another person pursuant to clauses 9.2.1.a - 9.2.1.e, the Department will notify the receiving person that the information is confidential.
- 9.2.3. In the circumstances referred to in clauses 9.2.1.a, 9.2.1.b, and 9.2.1.e the Department agrees not to provide the information unless the receiving person agrees to keep the information confidential.

9.3. Period of confidentiality

- 9.3.1. The obligations under this clause 9 in relation to an Item of information described in Schedule 4 [Service Provider Confidential Information] continue for the period set out there in respect of that Item.

10. Intellectual Property

10.1. Use of Commonwealth Material

- 10.1.1. 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 Agreement.
- 10.1.2. The Service Provider agrees to use the Commonwealth Material strictly in accordance with any direction from the Department.

10.2. Rights in Agreement Material

- 10.2.1. Intellectual Property in all Agreement Material vests or will vest in the Department.
- 10.2.2. Clause 10.2.1 does not affect the ownership of Intellectual Property in:
- a. any Commonwealth Material incorporated into Agreement Material; or
 - b. any Service Provider Material.
- 10.2.3. 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 and communicate Service Provider Material for Commonwealth purposes.
- 10.2.4. If the Department wishes to license the Service Provider Material in conjunction with the Agreement Material to the public under an Open Access Licence it must request the Service Provider's consent, which the Service Provider will not unreasonably refuse.
- 10.2.5. 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 10.2.
- 10.2.6. 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 Agreement Material and the Service Provider Material in the manner provided for in this clause 10.2.

10.3. Moral Rights

10.3.1. In this clause 10.3:

- 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 Agreement Material, with or without attribution or authorship;
 - b. supplementing the Agreement Material with any other Material;
 - c. using the Agreement Material in a different context to that originally envisaged;
 - d. releasing the Agreement Material to the public under an Open Access Licence;
- but does not include false attribution of authorship.

10.3.2. 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.

10.3.3. This clause 10.3 does not apply to any Commonwealth Material incorporated in the Agreement Material.

11. Indemnity and insurance

11.1. Proportionate liability regimes excluded

11.1.1. To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Service Provider under or in connection with this Agreement.

11.2. Indemnity

11.2.1. The Service Provider indemnifies the Department from and against any:

- a. cost or liability;
- b. loss or expense incurred by the Department in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Department,

arising from:

- c. loss or damage to any real or personal property, including property of the Department;
- d. personal injury, disease, illness or death of any person; or
- e. infringement of any third party's Intellectual Property rights,

arising as a result of any breach of this Agreement or any negligent act or omission, fraudulent, criminal actions, or wilful default of the Service Provider in connection with this Agreement.

11.2.2. The Service Provider's liability to indemnify the Department under clause 11.2.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of the Department or its Personnel, or any other contractor or service provider to the Department, contributed to the relevant cost, liability, loss, damage or expense.

11.2.3. The right of the Department to be indemnified under this clause 11.2 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Department is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

11.3. Limitation of liability

11.3.1. The Service Provider's maximum aggregate liability arising under or in connection with this Agreement is limited to the aggregate of the total fees paid or payable to the Service Provider under this Agreement at the date the claim arose.

11.3.2. Clause 11.3.1 does not apply in relation to liability relating to:

- a. personal injury (including sickness and death);
- b. breach of another person's intellectual property rights;
- c. damage to or the loss of the property of a person other than the Department; or
- d. wilful misconduct, fraudulent or criminal actions of the Service Provider or its Personnel.

11.4. Insurance

11.4.1. The Service Provider must maintain insurance cover for the duration of this Agreement as follows:

- a. workers compensation insurance, as required by law;
- b. public liability insurance in the amount of \$20 million (per occurrence), 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;

- c. professional indemnity insurance for the amount of \$5 million (in respect of any single occurrence and in the aggregate);
- d. health and medical evacuation insurance for all Service Provider Personnel; and
- e. compulsory third party motor vehicle insurance in respect of any registered vehicles owned by the Service Provider used in the provision of the Services.

- 11.4.2. 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. Publicity, media and external relationship management

12.1. Publicity and media to be managed by the Department

- 12.1.1. The Department has, in consultation with the Service Provider and other service providers, developed media and stakeholder engagement protocols. The parties will implement these protocols.
- 12.1.2. The Service Provider acknowledges and agrees that the Department has an interest in the management of publicity and media and agrees to provide advice to the Department prior to the release of information, comment or opinion, including to the Service Provider's stakeholders or other external parties, that is either directly or indirectly related to this Agreement 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.
- 12.1.3. Any contact with or release to the media by the Department 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.

12.2. Protection of Transferee privacy - Service Provider not to make public statements

- 12.2.1. 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; or

- c. publish, distribute or otherwise make available any information or material to third parties,

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

- d. an individual Transferee;
- e. the processing of a claim for asylum for an individual or group of Transferees;
- f. the health or wellbeing of an individual or group of Transferees; or
- g. the wellbeing of the relatives of a Transferee;

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 Agreement or comply with the law; or
- j. as may be otherwise specifically authorised in writing by the Department.

13. Dispute resolution

13.1. Procedure for dispute resolution

- 13.1.1. The parties agree that a dispute arising under this Agreement 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.
- 13.1.2. If the parties have been unable to resolve the dispute within 20 Business Days of the dispute being referred under clause 13.1.1.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.

13.1.3. Each party will bear its own costs of complying with this clause 13.

13.2. Continued performance

13.2.1. 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.

13.3. Exemption

13.3.1. This clause 13 does not apply to:

- a. action by the Department under or purportedly under clause 14; or
- b. legal proceedings by either party seeking urgent interlocutory relief.

14. Termination

14.1. Termination without default

14.1.1. In addition to any right to terminate at law, the Department may by 4 weeks written notice and in its absolute discretion terminate this Agreement or reduce the scope of the Services immediately.

14.1.2. The Service Provider agrees, on receipt of a notice of termination:

- a. to stop or reduce work as specified in the notice;
- b. to take all reasonable 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.

14.1.3. In the event of termination under clause 14.1, the Department will be liable only:

- a. to pay any fees relating to Services performed before the effective date of termination; and
- b. to reimburse any expenses the Service Provider unavoidably incurs as a result of such termination not covered under clause 14.1.3.a, provided the Service Provider takes reasonable steps to mitigate any such expenses.

14.1.4. The Department will not be liable to pay amounts under clause 14.1.3.b which would exceed the value of the Corporate Overhead Fee as set out in Schedule 2 [Fees and Payment] for the remainder of the Term had the Agreement not been terminated.

14.1.5. In the event of a reduction in the scope of the Services under clause 14.1, the Department's liability to pay fees under clause 7 will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Services.

14.1.6. The Service Provider will not be entitled to compensation for loss of prospective profits.

- 14.1.7. For the avoidance of doubt, this clause 14.1 includes but is not limited to the Department notifying the Service Provider that it is to cease providing Services at a particular Site or in a particular Regional Processing Country.

14.2. Termination for default

- 14.2.1. In addition to any right to terminate at law, if the Service Provider fails to perform any obligation under this Agreement, the Department - if it considers that the failure is:
- a. not capable of remedy – may, by notice, terminate this Agreement 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 Agreement immediately by giving a second notice.
- 14.2.2. The Department may also, by notice, terminate this Agreement 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* (Cth), 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.

14.3. Transition out

- 14.3.1. If this Agreement is terminated or reduced in scope for any reason, the Service Provider must at the request of the Department comply with any reasonable directions issued by the Department to achieve an orderly transition of services similar to the Services to the Department or an alternative provider. Where the termination or reduction in scope is pursuant to clause 14.1, the Department will meet the Service Provider's approved and reasonable costs of complying with this clause.

15. Notices

15.1. Format, addressing and delivery

- 15.1.1. A notice under this Agreement 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

s22(1)(a)(ii)

Head of Humanitarian Emergency Response (Acting)
Save the Children Australia

s22(1)(a)(ii)

or as otherwise notified by the Service Provider

- 15.1.2. A notice is to be:
 - a. signed by the person giving the notice and delivered by hand;
 - 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.

15.2. When effective

- 15.2.1. 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.
- 15.2.2. 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.

16. General provisions

16.1. Conflict of interests

- 16.1.1. In this clause 16.1, **Conflict** means any matter, circumstance, interest, or activity affecting the Service Provider, its Personnel or subcontractors which may or may reasonably appear to impair the ability of the Service Provider to provide the Services to the Department diligently and independently.
- 16.1.2. 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.
- 16.1.3. If, during the period of this Agreement 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.

16.2. Work health and safety

16.2.1. 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.

16.3. Privacy

16.3.1. 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.

16.3.2. 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 16.3.

16.4. Audit and access

16.4.1. 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.

16.4.2. The rights referred to in clause 16.4.1 are subject to:

- a. the Department providing reasonable prior notice;
- b. the reasonable security procedures in place at the premises;
- c. if reasonably requested by the Service Provider, execution of a deed of confidentiality by the persons to whom access is given; and
- d. payment of reasonable substantiated costs incurred by the Service Provider in complying with this clause provided that the Service Provider seeks prior approval of those costs.

16.4.3. The Auditor-General and Information Officer (including their delegates) are persons authorised for the purposes of this clause 16.4.

16.5. Access to documents

16.5.1. In this clause 16.5, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).

16.5.2. The Service Provider acknowledges that this Agreement is a Commonwealth contract.

16.5.3. 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 Agreement (and not to the entry into the Agreement), 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. The Department will pay reasonable substantiated costs incurred by the Service Provider in complying with this clause provided that the Service Provider seeks prior approval of those costs.

16.5.4. The Service Provider must include in any subcontract relating to the performance of this Agreement provisions that will enable the Service Provider to comply with its obligations under this clause 16.5.

16.6. Relationship of parties

16.6.1. The Service Provider is not by virtue of this Agreement 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.

- 16.6.2. 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.
- 16.7. Waiver**
- 16.7.1. A failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right.
- 16.7.2. A single or partial exercise by a party of any right or remedy it holds under this Agreement or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.
- 16.8. Variation**
- 16.8.1. A variation of this Agreement is binding only if agreed in writing and signed by the parties.
- 16.9. Assignment**
- 16.9.1. The Service Provider cannot assign its obligations, and agrees not to assign its rights, under this Agreement without the Department's prior written approval.
- 16.10. Survival**
- 16.10.1. Unless the contrary intention appears, the expiry or earlier termination of this Agreement will not affect the continued operation of any provision relating to:
- a. confidentiality;
 - b. privacy;
 - c. audit and access;
 - d. an indemnity;
- or any other provision which expressly or by implication from its nature is intended to continue.
- 16.11. Applicable law**
- 16.11.1. This Agreement 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.
- 16.11.2. 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 Manus Island (PNG).
- 1.1.2. Manus Island, part of the Manus Province, is an island in northern Papua New Guinea (PNG) and is the largest of the Admiralty Islands. The population is approximately 43,000. Manus Island is covered by tropical rain forest with temperatures typically varying from 24 to 32 degrees and has no dry season. Manus Island uses the currency of PNG, the Kina. The main industries on Manus Island are coconut production and sea cucumber fishing.
- 1.1.3. s33(a)(iii) [REDACTED]
- 1.1.4. s33(a)(iii) [REDACTED] 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 PNG nationals and the management of high risk Transferees will need to be considered once the Department develops a position on these issues.
- ##### **1.2. Other service providers**
- 1.2.1. Other service providers will be engaged which may include an additional Transferee Welfare Support Service Provider, Operational and Maintenance Service Provider and a Health Service Provider. The Service Provider will work cooperatively with the other service providers in particular the Transferee Welfare Support Service Provider. Where an obligation is expressed as 'support' in this Statement of Work, this usually denotes that another service provider has primary responsibility for the relevant activity and the Service Provider must provide necessary support to that activity.
- 1.2.2. The Service Provider must cooperate with any other service providers appointed by the Department to ensure the integrated and efficient operation of the Site, and must provide such reasonable assistance to the Department, local

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

PART 2 - DESCRIPTION OF THE SERVICES

2. General

2.1. Context

- 2.1.1. The Service Provider has been engaged to provide services which primarily relate to the welfare and engagement of Transferees who are under the age of 18, including children with families or unaccompanied minors.
- 2.1.2. In particular, the Service Provider will have primary responsibility for:
- a. the targeted delivery of programs and activities to this cohort of Transferees, with an awareness that adolescents over the age of 16 may choose not to accept support;
 - b. provide support to parents or guardians in caring for the needs of their children with an understanding that parents remain responsible for the health, safety and wellbeing of their children;
 - c. engagement with the cohort to offer welfare and support including as part of reception, induction, transfer and discharge processes as well as behaviour management systems operating at the Site;
 - d. provide independent observer services; and
 - e. to provide escort services to children and, subject to parental or guardian consent, children with families on authorised recreational and educational excursions out of the Site (but within Manus Island).

2.2. Training and support

- 2.2.1. The Service Provider must on request from the Department provide training and other support to other service providers and their personnel in relation to the particular issues that need to be taken into account when dealing with Transferees who are under the age of 18, including children with families and unaccompanied minors. This training will include training in relation to sexual health requirements.

2.3. Independent Observer Services

- 2.3.1. The Service Provider must provide Independent Observer Services to Transferees as outlined below and further detailed in Attachment 1 to this Schedule.
- 2.3.2. Independent Observers will attend interviews and meetings as agreed to between the Department and the Service Provider. The Independent Observer will provide pastoral or physical care to the Transferee throughout the interview process.

- 2.3.3. An Independent Observer is required for processes such as reception and formal interviews, in order to provide pastoral or physical care of the Transferee throughout the interview process.
- 2.3.4. The Independent Observer has no casework, legal advocacy, or investigative responsibilities.
- 2.3.5. The Department may request particular Personnel act as an Independent Observer in specific instances. In such circumstances, the request for particular Personnel is to ensure the safety and well-being of the Transferee, Service Provider and the Department.
- 2.3.6. The Service Provider must provide Independent Observers on a ratio of 1:1 (Transferee : Independent Observer).

2.4. Approach to the Services

- 2.4.1. The Service Provider must facilitate and encourage Transferees to access the Services provided by the Service Provider.
- 2.4.2. In performing the Services, the Service Provider will have regard to 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.
- 2.4.3. In performing the Services, the Service Provider will, in conjunction with other service providers, seek to promote the well-being of Transferees and create an environment that supports security and safety at the Site.
- 2.4.4. The Service Provider must ensure that it and all its Personnel and subcontractors treat Transferees equitably and fairly, with dignity and respect.
- 2.4.5. The Service Provider must have regard to the well-being of each Transferee and will facilitate visits from family, friends and support groups, while maintaining the safety of all Transferees.
- 2.4.6. The Service Provider will encourage interaction between Transferees where it considers it to be safe and appropriate.
- 2.4.7. The Service Provider will facilitate activities designed to enhance the ongoing emotional and mental health of each Transferee.

2.5. Personnel and structure

- 2.5.1. The Service Provider will prepare an updated personnel list and organisational structure chart in relation to its operations in relation to the Site under this Agreement, promptly as and when its Personnel and or structure change and at least on a monthly basis. The Service Provider will provide this list to the Department Operations Team Leader and each other service provider.

3. Programs and activities

3.1. Overview

- 3.1.1. The Service Provider must work with the lead Transferee Welfare Support Service Provider to:
- a. develop, manage and deliver structured and unstructured programs and activities designed to provide educational and recreational opportunities, and provide meaningful activities that are designed to enhance the mental health and well-being of Transferees;
 - b. develop strategies to encourage Transferees to participate in programs and activities, but permit Transferees at the Site to determine their own level of participation and involvement;
 - c. ensure programs and activities cater for the diverse needs of Transferees;
 - d. consider feedback from Transferees when developing programs and activities;
 - e. in accordance with the procedures for the sourcing of equipment advised by the Department, arrange for the supply of equipment required to support the activities; and
 - f. ensure suitably qualified Service Provider Personnel are provided to support the activities.
- 3.1.2. The Service Provider will develop a plan that sets out in more detail the programs and activities that meet the requirements of this Statement of Work and the processes that will be used to monitor compliance with these requirements.

3.2. Religious activities

- 3.2.1. The Service Provider acknowledges and will support the ability of all Transferees to freely practice their religion of choice individually or communally.

3.3. Reception, transfer and discharge of Transferees

- 3.3.1. The Service Provider will support other service providers in their coordination and conduct of reception, transfer and discharge processes at the Site.

4. Individual management

4.1. Individual management plans

- 4.1.1. The Service Provider will contribute to and support the development and implementation of individual management plans for Transferees.

4.2. Transferee records

- 4.2.1. The Service Provider will update and manage Transferee records as they relate to matters for which the Service Provider is responsible under this Statement of Work.
- 4.2.2. The Service Provider will use the Transferee management system that applies at the Site. The Service Provider must ensure that all relevant information relating to a Transferee is recorded in this system in a timely manner to assist with Transferee welfare and management of the Site.

4.3. Referral of Transferee identity issues

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

4.4. Health of Transferees

- 4.4.1. The Service Provider must ensure that any Transferee who requests, or appears to be in need of medical attention, is referred for appropriate medical attention.
- 4.4.2. Where it appears that a Transferee requires emergency medical attention, the Service Provider must:
 - a. immediately implement the Site's emergency response protocol advised by the Department and administer first aid to the Transferee until the service provider responsible for health services' personnel arrives; and
 - b. inform the service provider responsible for health services of the Transferee's circumstances as soon as the initial response is complete.

4.5. Transferees under the influence of drugs or alcohol

- 4.5.1. The Service Provider will:
 - a. ensure that a Transferee who appears to the Service Provider to be under the influence of drugs or alcohol is supervised by Service Provider Personnel until the Transferee no longer appears to be affected; and
 - b. refer the Transferee for assessment by the service provider responsible for health services within 12 hours, unless emergency medical attention is required in which case paragraph 4.4.2 will apply.

4.6. Mental health awareness

- 4.6.1. The Service Provider must ensure all relevant Service Provider Personnel attend mental health awareness training as required by the Department, including training provided by other service providers.

4.7. Behavioural management of Transferees

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

4.8. Illegal and anti-social behaviour

- 4.8.1. The Service Provider must develop and implement processes, in cooperation with the Department and other local authorities and other service providers, for managing instances where Transferees are engaged in behaviour that is illegal, has breached the rules applicable at the Site or is anti-social in nature.
- 4.8.2. 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.
- 4.8.3. The Service Provider must:
- a. communicate the Site policy on anti-social behaviour to all Transferees during the induction process; and
 - b. prominently display the policy on anti-social behaviour in all relevant languages in the Site.
- 4.8.4. Where the Service Provider has identified, or suspects, that a Transferee has engaged in illegal, non-compliant or antisocial behaviour, the Service Provider must as soon as practicable inform the Department and the Operational and Maintenance Service Provider. The Service Provider must support the other service providers in recording details of and responses to instances of individual illegal, non-compliant or antisocial behaviour by Transferees and in completing Incident reports.
- 4.8.5. The Service Provider must support the Transferee Welfare Support Service Provider to ensure that Transferees identified as victims of anti-social behaviour are supported by Service Provider Personnel and other service providers, with relevant details recorded.
- 4.8.6. The Department will be responsible for involving the police or other authorities as required, except where reporting is mandatory under applicable law.

4.9. Management of Incidents

- 4.9.1. The Service Provider will support other service providers in their management of Incidents.

5. Work health and safety

5.1. General

- 5.1.1. 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 *Work Health and Safety Act 2011* (Cth), regulations and codes of practice as well as any applicable local laws and where there is any conflict in the applicable laws, comply with the highest standard; and
 - c. participate, with other service providers, in any work health and safety committee established to oversee compliance with work/occupational health and safety requirements for the Site as a whole.
- 5.1.2. An interim work health and safety plan must be in place within 14 days of the Execution Date. A more detailed work health and safety plan must be developed and approved by the Department within 6 weeks of the Execution Date.

5.2. Safety precautions in performing the Services

- 5.2.1. 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.
- 5.2.2. The Service Provider must, and must ensure its subcontractors, provide appropriate employee assistance programs for all Service Provider Personnel, taking into account the nature of the Personnel's involvement in the Services. The Service Provider must ensure that all relevant Service Provider Personnel are aware of and have access to these programs at all times, particularly while working at a Site and after any deployment.

PART 3 - GOVERNANCE ARRANGEMENTS

6. Outline

- 6.1.1. This Part:
- a. outlines the Department's governance framework to support the effective delivery of Services under the Agreement; 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.

7. Governance framework

7.1. General

- 7.1.1. The Department's governance framework has been developed to support the effective delivery of services under this Agreement. 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
- 7.1.2. 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, including where requested by the Department acting as the Chair of a committee or meeting.
- 7.1.3. 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.

7.2. Cooperation, collaboration and meetings

- 7.2.1. 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.

- 7.2.2. 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.

- 7.2.3. The Service Provider must participate in, and action agreed items resulting from all meetings, consultative committees and forums at the request of the Department.
- 7.2.4. In certain situations, and particularly at the delivery level of governance, the Department may require the Service Provider to chair and lead these initiatives.
- 7.2.5. The Service Provider must provide updates, reports and briefings for meetings, consultative committees and forums at the request of the Department.
- 7.2.6. The Service Provider with the Department, PNG government and Manus Island 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.

Attachment 1: Independent Observer Services

Set out below is a more detailed description of Independent Observer Services

1	Scheduling interviews	Where possible the Department will provide the Service Provider 5 working days notice of the need for an Independent Observer to attend an interview.
2	Confirmation	<p>On the same day as requested, the Service Provider will provide the Department with confirmation that an Independent Observer will attend for the required period.</p> <p>If the Service Provider is unable to provide same-day confirmation, the Service Provider will advise the Department of any difficulties with providing Independent Observer for the requested period.</p> <p>The Service Provider will then work with the Department to develop a mutually acceptable schedule.</p>
3	Attend interviews	The Independent Observer is required to attend for the entirety of the interview.
4	Role during interview	<p>The Independent Observer is to observe the interaction between the interpreter and the Transferee, and advise the interviewer of any concerns.</p> <p>The Independent Observer is to observe the conduct of the interview /examination / assessment and the demeanour and presentation of the Transferee; and to draw to the attention of the interviewer any concerns about the emotional and physical state of the Transferee.</p> <p>The Independent Observer is to provide a reassuring and friendly presence for the Transferee.</p> <p>The Independent Observer is to ensure each process is adequately explained and understood by the Transferee.</p> <p>The Independent Observer is to be attentive to</p>

		<p>non-verbal cues of the Transferee that indicates a need to take a break.</p> <p>The Independent Observer is to be attentive to signs that the Transferee may benefit from trauma counselling and provide this advice to the Department.</p>
5	Concluding interview	<p>The Independent Observer must ensure:</p> <ul style="list-style-type: none"> i. the Transferee is debriefed and that their questions are answered prior to conclusion of the interview; and ii. that the Transferee is handed back into safe care
6	Follow-up	<p>After the interview, the Independent Observer must report any concerns regarding the process to the Department through the communication protocols established and agreed to between the Department and the Service Provider</p>
7	Records	<p>The Service Provider is to maintain comprehensive records for all Independent Observer Services that are provided.</p>

SCHEDULE 2 FEES AND PAYMENT

1. Services Fee

1.1. Elements of the Service Fee

1.1.1. The Services 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.

1.1.2. In addition, the Service Provider may claim certain pass through costs incurred in accordance with this Schedule. The Service Provider is not entitled to any other payments in relation to the delivery of the Services.

1.2. Exchange rate adjustment

1.2.1. Where relevant, the exchange rate to be used is 1Kina = A\$0.46. If there is a variation of more than 10% in the exchange rate, either party may seek a review of this exchange rate or any elements of the Services Fee that have been calculated using this exchange rate.

2. Corporate Overhead Fee

2.1.1. The Corporate Overhead Fee is s47 per week exclusive of GST.

2.1.2. The Corporate Overhead Fee covers all management and other activities associated with the provision of all Services under this Agreement at all Sites and takes account of the cost of business and management systems and support as well as insurance costs, including:

- a. Management oversight
- b. Dedicated project management unit
- c. Technical advisers
- d. Occupational Health and Safety support including policies and procedures
- e. IT support
- f. Reporting
- g. Briefing the Department in relation to its management of media
- h. Audit and compliance
- i. Insurance.

2.1.3. Where any Service Provider Personnel who are not members of the Service Delivery Team are required to travel off-shore in connection with this Agreement,

the deployment and other allowances set out in paragraph 3.1.5 of this Schedule 2 will be payable for those Personnel, in addition to the Corporate Overhead Fee.

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.
- 3.1.2. The Service Delivery Team Fee consists of daily charges and deployment & other allowances.
- 3.1.3. Daily charges are calculated using the daily rates set out in Attachment 1 to this Schedule 2, applied to the activities set out in paragraph 3.1.4 below. The anticipated Service Delivery Team structure is attached at Attachment 2 to this Schedule 2.
- 3.1.4. Daily charges will be payable in relation to the following activities:
- a. working days on the Site; and
 - b. pre-deployment activities, such as induction and briefings, training and medical assessments and travelling to the Site - periods to be agreed with the Department in relation to particular categories of Personnel but in any event up to a maximum of 10 days for an initial deployment and 5 days for a subsequent deployment; and
 - c. post-deployment activities, such as debriefings and medicals and travelling from the Site - periods to be agreed with the Department in relation to particular categories of Personnel but in any event up to a maximum of 5 days for an initial deployment and 3 days for a subsequent deployment.
- In addition, where Personnel are deployed for a period of 14 consecutive days or longer, the daily rate will be payable in relation to annual leave for Personnel pro rata based on 5 days annual leave for each 30 days deployed.
- 3.1.5. In addition to the daily rate, the following allowances will be paid:
- a. deployment allowance - payable from date of departure to date of return to Australia - at the rate specified in Attachment 1 to this Schedule 2 (such rate to be adjusted to match any change in the equivalent rates payable to the Department's employees during the term of this Agreement); and
 - b. on-shore per diems - meal allowances in accordance with Department policy for attendance at meetings, visa renewal trips, briefings and debriefings at on-shore staging locations.
- 3.1.6. Daily charges as set out in paragraph 3.1.3 and deployment & other allowances as set out in paragraph 3.1.5 will also be charged for Service Provider Personnel who are not members of the Service Delivery Team for specific activities undertaken off-shore and attendance at briefing/debriefing days which are in

addition to the activities anticipated to be performed under the Corporate Overhead Fee and where the costs of such personnel are not already fully recovered within the Corporate Overhead Fee.

3.2. Changes in number of Personnel

- 3.2.1. The Service Provider has indicated the anticipated initial number of roles for each of the relevant personnel for the Service Delivery Team in the Attachment 2 to this Schedule 2. The parties agree that these personnel numbers may become subject to change (either as the contract life matures and workloads become more known, and / or as further Sites may be nominated).
- 3.2.2. Either party may by written notice advise the other party that it considers it appropriate that the number of personnel required for any Service Delivery Team positions set out in Attachment 2 to this Schedule 2 be adjusted. The party issuing the notice will provide details of the suggested number and classifications of the proposed change, together with reasons for the suggested change. The parties will discuss any suggested change. Where:
- a. an increase has been suggested, the Department will notify the Service Provider within 5 business days whether the increase has been approved or rejected, and where the Department has not notified the Service Provider within 5 business days, the request will be deemed to have been rejected by the Department; and
 - b. a decrease has been suggested, the Department will advise the Service Provider within 10 business days that the decrease is to be implemented on a date determined by the Department, that date to be at least 20 business days from the date of the initial notice advising of the proposed change.

3.3. Rates for locally engaged staff

- 3.3.1. Labour rates for locally engaged staff must be consistent with local law and practice for the relevant Site. The calculation of such rates to be agreed by both parties.

4. Pass-through costs and pass through costs fee

4.1. Approval of all pass-through costs

- 4.1.1. Subject to paragraph 4.1.2 below, the Department will reimburse reasonable substantiated costs incurred by the Service Provider that are not covered by the Corporate Overhead Fee or the Service Delivery Team Fee ("**Pass-Through Costs**"). Pass-Through Costs may include, without limitation:
- a. Travel costs (including flights, travel/transit meals not covered by allowances, airport transfer and visa renewal travel). The Service Provider will, subject to availability at time of booking, seek to obtain the cheapest fully flexible fares for travel on-shore and off-shore using QANTAS, Virgin Australia and/or Air Niugini;

- b. Medical costs (including vaccinations, medications/medical kit, consultations and any other health prevention costs);
 - c. Accommodation (which is not provided free of charge on-site by the Department, any transit or meeting accommodation either in PNG or Australia). The Service Provider will use the Airways Hotel for transit accommodation in Port Moresby, except where there is no availability in which case a comparable hotel which meets organisational safety and security requirements will be used;
 - d. Pre-deployment training costs (including Briefing and First Aid if required);
 - e. Post-deployment de-briefing costs (including hosting debriefings in a designated staging location); and
 - f. Other non-staff procurement, including program, information technology and other equipment required to ensure that the Service Provider is able to deliver agreed services and ensure that staff have a sufficient level of comfort during deployment.
- 4.1.2. The Pass-Through Costs described in paragraph 4.1.1 a to e shall be subject to a maximum aggregate limit (with a 10% tolerance) to be agreed in advance by both parties such that the aggregate expenditure under paragraph 4.1.1 a to e for each defined 4 week period shall not exceed the 4 week monetary limit. The parties will develop an approval procedure to set each 4 week limit prior to costs being incurred by the Service Provider.
- 4.1.3. The Pass-Through Costs described in paragraph 4.1.1 (f) require approval in advance of expenditure. The Parties will develop a joint management and approval procedure in respect of these costs, and the Service Provider will use reasonable endeavours to ensure such purchases are made by the Department using the Department's procurement service providers.
- 4.1.4. In addition, the Department will pay a single amount of \$47 to cover all personal clothing and other personal equipment for all Personnel suitable for the environmental and living conditions at the Site. Other than this amount, the Service Provider will not be entitled to recover and will not claim any costs associated with these items.
- 4.2. Pass through costs fee**
- 4.2.1. A pass through cost fee of 0% will be applied to costs approved by the Department as Pass-Through Costs.
- 4.3. Equipment procured by the Service Provider**
- 4.3.1. Unless otherwise agreed by the parties, where the Department has paid for it as a Pass-Through Cost, the Department shall own all title in and to any equipment procured by the Service Provider in connection with this Agreement.

5. Payment arrangements

5.1. Invoices

5.1.1. The Service Fee, including any approved Pass-Through Costs, will be invoiced and submitted fortnightly in arrears and will be paid by the Department within 30 days of receipt by the Department of a correctly rendered invoice. Unless otherwise agreed, any payments under this Agreement 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* (Cth);
- 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.

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;
- b. must notify the Service Provider in writing (within 30 days of receipt of the invoice) of the reasons for disputing the remainder of the invoice; and
- c. will pay the undisputed part of the invoice in accordance with this Agreement.

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 connection with this Agreement. 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 Agreement:
- a. accommodation for Service Provider Personnel;
 - b. access to office space;
 - c. transport on Manus Island; and
 - d. on-Site medical facilities.
- 6.1.2. The Service Provider acknowledges that other service provider and Department Personnel will also be accessing and using these facilities as part of the operation and management of a 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 guidelines issued by the Department; and
 - b. safety and security for Personnel while on Manus Island.

Attachment 1 - Service Delivery Team Rates & Allowances

s47



Deployment & Other Allowances

Allowance Type	Description	Amount in AUD
Off-shore deployment allowance / Per Diem	Payable from date of departure to date of return (inclusive) to home or alternate on-shore location. Not payable for rest and recuperation or on-shore travel	\$208.80 per day
On-shore Per Diem	Allowance for the purchase of meals and incidentals for meetings, visa	In accordance with Department Non-Senior

	renewal trips, and for briefings/debriefings in on-shore staging locations.	Executive Service rates. The current allowance table to be provided by the Department at the commencement of this Agreement and on each occurrence of a change
--	---	--

Attachment 2 - Service Delivery Team structure

s47



SCHEDULE 3 DEED OF CONFIDENTIALITY AND NON-DISCLOSURE

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 Save the Children Australia Ltd (**Service Provider**) have entered into an Agreement 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 involved in the performance of the 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 Agreement, and in particular, the following terms have the following meaning:

Agreement means the Agreement between the Department and the Service Provider for the provision of Services at the Sites.

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 Agreement 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.

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion which the Confidant has gained access to or acquired through the Confidant's involvement in the performance of the Services.

Services means the Services specified in the Agreement.

2. NON DISCLOSURE

2.1. The Confidant understands that in the course of performing duties in relation to an Agreement for the Services, the Confidant may have access to:

- a. Department Confidential Information; or
- b. Personal Information.

2.2. Subject to **clause 3** of this Deed, the Confidant must not copy, reproduce or disclose any Department Confidential Information or Personal 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 and Personal Information only for the purpose of performing the Services. In particular the Confidant must not access, use, modify, disclose or retain any Department Confidential Information or Personal Information except for the purpose of performing the Services. The Confidant agrees to treat all Departmental Confidential Information and 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 Agreement or notified by the Department.

3.2. The Confidant agrees, with respect to all Personal Information, to:

- a. not do any act, or engage in any practice that would breach:

- i. the Services Provider's obligations under the Agreement 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 Agreement, 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 Agreement 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 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 Agreement, 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.

3.3. The Confidant agrees that its obligations under this Deed and to perform duties in relation to the Agreement:

- 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.

3.4. The Confidant acknowledges that failure by it to comply with the obligations under this clause 3 may result in the Service Provider or the Department taking action against the Confidant (including, without limitation, disciplinary action).

4. CRIMES ACT

4.1. 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 Agreement 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.

4.2. 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".

4.3. 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 Agreement (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 Confidant will, immediately upon request of the Department, which may be made at any time and without notice, either orally or in writing, deliver to the Department of all documents in the possession or control of the Confidant which contain Department Confidential Information or Personal 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.

Executed as a Deed

SIGNED, SEALED and DELIVERED by

[Confidant] in the presence of:

Signature of Recipient

Signature of witness

Name

SCHEDULE 4 SERVICE PROVIDER CONFIDENTIAL INFORMATION

(a) Information contained in Agreement:

Item	Period of Confidentiality
Daily rates	3 years
Pricing tables and methodology	Indefinite
Any addresses or other personal information or contact details of any Service Provider Personnel or facilities.	Indefinite

(b) Information obtained or generated in performing Agreement:

Item	Period of Confidentiality
-------------	----------------------------------

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

s22(1)(a)(ii)

Signature of delegate

PAUL WINDSON

Name of delegate (print)

As FAS DISD

Position of delegate (print)

17. 4. 2013

Executed by Save The Children
Australia Ltd ACN 008 610 035 ABN
99 008 610 035 by its duly authorised
representative:

s22(1)(a)(ii)

Signature of authorised representative

SUZANNE DVORAK

Name of authorised representative
(print)

CEO

Position of authorised representative
(print)

s22(1)(a)(ii)

Signature of witness

s22(1)(a)(ii)

Name of witness (print)

s22(1)(a)(ii)

Signature of witness

s22(1)(a)(ii)

Name of witness (print)