

AGREEMENT

BETWEEN

COMMONWEALTH OF AUSTRALIA ('the Commonwealth'), represented by the
DEPARTMENT OF IMMIGRATION AND CITIZENSHIP ('Department' / 'DIAC')

AND

Gillian Calvert, (ABN) 20 467 681 150, s47F

RECITALS:

- A. The Commonwealth requires the provision of certain services to the Department as specified in *Clause 3* of the Contract.
- B. The Contractor has fully informed itself on all aspects of the work required to be performed.
- C. The Commonwealth had agreed to accept the Contractor's offer to provide the Services on 19 April 2011 upon the terms and conditions contained in this Contract.
- D. The Commonwealth and the Contractor upon the commencement of this Contract identify and accept the relevant terms and conditions for the provision of the Services retrospectively and prospectively.

THE PARTIES AGREE as follows:

1. Purchase Order Number

The Purchase Order Number for this Contract is: _____

[insert Purchase Order Number]

2. Interpretation

Approved Subcontractor

means:

- (a) a subcontractor specified in *Clause 6.2* at the Contract Commencement Date who is approved by DIAC to provide Services under this Contract;

Commonwealth Contract

- (a) the Commonwealth or an agency/department is, or was, a party to the contract;
- (b) under the contract, services are, or were, to be provided:
 - (i) by another party;

- (ii) for or on behalf of an agency; and
- (iii) to a person who is not the Commonwealth or an agency (that is, to the public).

Confidential Information

in relation to a Party, means information that is by its nature confidential; and

- a. is designated by a Party as confidential; or
- b. the receiving Party knows or ought reasonably to know is confidential;

and includes the information described in *Clause 15* but does not include information which is or becomes public knowledge other than by breach of the Agreement or any other confidentiality obligations or is independently developed without reference to the other Party's Confidential Information;

Contract Material

means the Deliverables that are created in performance of the Services under or otherwise in connection with this Contract;

Deliverables

means any documents, goods, equipment, software, information and data stored by any means which are to be provided to DIAC under this Contract, including any deliverables specified in *Clause 3.3*;

Existing Intellectual Property

means Intellectual Property rights that are:

- a. in existence at the Contract Commencement Date, or are subsequently developed, or acquired by, or licensed to the Contractor, other than as a result of the performance of the Services, and
- b. incorporated into the Contract Material or otherwise required by DIAC in order to use the Contract Material;

Intellectual Property

includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

Party or Parties

means a party or parties to this Contract;

Personnel

means a party's officers, employees, agents, contractor staff or professional advisers engaged in, or in relation to, the performance or

	management of this Contract;
Project Officer	means the person occupying the position set out in <i>Clause 23.1</i> or as notified by DIAC in writing from time to time;
Services	means the services described in <i>Clause 3</i> and includes the provision of Deliverables;
Specified Personnel	means a person specified in <i>Clause 6.1</i> as being a person required to perform all or part of the Services; and
Third Party Interest	means any legal or equitable right, interest, power or remedy in favour of any person other than the Commonwealth or the Contractor in connection with this Contract including, without limitation, any right of possession, receivership, control or power of sale and any mortgage, charge, security or other interest.

3. Provision of Services

3.1. Contract commencement date, Term of this Contract

- (a) This Contract starts on the date that it is executed by the Department and continues until 30 June 2012 unless terminated earlier in accordance with this Contract or extended for a further period of 5 days by the written agreement of the Parties, in the form of a Deed of Variation (refer to 3.1(b) below);
- (b) The Commonwealth may extend the term of this Contract for a further period of 5 days, at the rate of ^{s47} [redacted] incl. GST per day as specified in Clause 7.1.4, by giving the Contractor notice in writing before the end of the current Contract period, of the Commonwealth's intention to extend the Contract; and
- (c) Any Extension in accordance with this Clause 3.1 takes effect from the end of the then current Contract period.

3.2. Description of Services

The Services to be provided are as follows:

s47E(d)



s47E(d)

3.3. Deliverables

3.3.1. The Deliverables to be provided are:

- (a) paper on the possible creation of an independent office of Immigration Guardian;
- (b) written expert advice as requested on proposed departmental projects and reforms to enhance the care of unaccompanied minors who come under the Minister's guardianship responsibilities;
- (c) written expert advice as requested on the development and implementation of the Refugee Youth Support Pilot project;
- (d) written expert/general advice in relation to the Services as and when requested by the Department; and

Timeframe for Deliverables

3.3.2. The Contractor must deliver the Deliverables no later than fourteen (14) days from the date of receipt by the Contractor of Department's request for Services (unless otherwise agreed in writing between the parties).

Obligations of the Contractor

3.3.3. The Contractor agrees to

- (a) perform the Services as specified in *Clause 3.2* and to the satisfaction of DIAC;
- (b) comply with the time-frame for the performance of the Services as specified in *Clause 3.3*; and
- (c) submit invoices, and any supporting documents, in the manner specified in *Clause 7.1.1*.

3.3.4. The Contractor declares that at the time of entering into this Contract it does not have a judicial decision against it (not including decisions under appeal) relating to employee entitlements and that it has not paid that claim.

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under the Freedom of Information Act 1982

3.4. Request for ad-hoc Services

- (a) The Department will make any ad hoc request for Services to the Contractor in writing (including email).
- (b) Unless otherwise agreed in writing between the parties, the time frame for the provision of the requested Services will be fourteen (14) working days from the date of receipt by the Contractor of the request for Services.
- (c) The Department will request any amendments to the Contractor's draft Deliverable within ten (10) working days upon receipt of the draft Deliverable.
- (d) The Contractor will review the required amendments, finalise the draft Deliverable and resubmit the Deliverable to the Department within seven (7) working days, unless otherwise agreed in writing between the parties, upon receipt of the amendment notification from the Department.

4. Standards and Specifications

- 4.1. The Services must conform to the following standards:

N/A

- 4.2. The Contractor will provide the Services in accordance with the standard of skill, care and diligence expected of an expert professional provider of similar services.

5. NOT USED

6. Specified Personnel, Approved Subcontractors

6.1. Specified Personnel

- 6.1.1. The following people are Specified Personnel for the purposes of this Contract:

Gillian Calvert

- 6.1.2. The Contractor will ensure that the Services are provided by the Specified Personnel or otherwise as agreed to in writing by DIAC.

6.2. Approved Subcontractors

- 6.2.1. The Contractor may subcontract all or part of the Services to any Approved Subcontractor. Where DIAC consents to the Contractor subcontracting part or all of the Services, the Contractor remains responsible for the Services notwithstanding that the Services have been subcontracted.

- 6.2.2. The Contractor will make available, on request, details of all Approved Subcontractors performing all or part of the Services.

- 6.2.3. The following subcontractors are Approved Subcontractors, authorised by DIAC to perform all or part of the Services.

Nil

- 6.2.4. The Contractor agrees and will inform the Approved Subcontractors that the Approved Subcontractors' participation in performing all or part of the Services may be publicly disclosed.

7. Fees and Expenses

7.1. Fees

- 7.1.1. The Contractor may submit a correctly rendered invoice (refer to *Clause 8*) to the Department on the final day of each month subject to providing the Services (as provided within the particular month) in accordance with the Contract and to the satisfaction of the Department.
- 7.1.2. Upon receipt by DIAC of a correctly rendered invoice DIAC will pay the Contractor within 30 days the fees and expenses set out in Clause 7.1.3. If the 30 days period ends on a day that is not a business day, payment will be made on the next business day.

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- 7.1.5. Fees to be paid by the Department to the Contractor are **GST inclusive** (i.e. amounts paid by the Department in accordance with this Clause 7.1 includes Goods and Services Tax (GST) for supplies made under this Contract which are taxable supplies within the meaning of A New Tax System (Goods and Services Tax) Act 1999 (the GST Act).

7.2. Expenses

- 7.2.1. The Department will cover travel costs, including air fares, taxi fares, meals, accommodation and incidental expenses where the Contractor is required to travel at the Department's request. The travel rate amount for each destination will be consistent with the Department's rate of travel for Non-SES officers.
- 7.2.2. The Department will be responsible for organising the Contractor's air travel and accommodation and will utilise the services of the Department's current travel provider. All air travel will be sourced by the Department's travel provider in keeping with the Department's policy of obtaining the lowest logical airfare.
- 7.2.3. The Contractor is responsible for organising taxis, meals and incidentals for its personnel involved in delivering the Services, and will then invoice the Department for the costs. The Department will pay accommodation and meal costs up to the Department's rate for Non-SES officers.

7.3. Late Payment of Fees and Expenses

- 7.3.1. If DIAC fails to pay to the Contractor an amount payable by it under this Contract by the day it is due for payment and payable, DIAC agrees to pay simple interest on the unpaid amount at the General Interest Charge Rate calculated in respect of each day from the day

after the amount was due up to and including the day that payment is made in accordance with the formula set out in this clause. Interest is only payable by DIAC when the amount of interest exceeds A\$10 and the Contractor has issued a correctly rendered invoice in relation to the interest.

7.3.2. For the purposes of this *Clause 7.3*:

- (a) 'General Interest Charge Rate' means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* on the day payment is due, expressed as a decimal rate per day; and
- (b) 'The day that payment is made' is the day when DIAC's system generates a payment request into the banking system for payment to the Contractor.

Formula for Calculating Interest Payable by DIAC:

$$SI = UA \times GIC \times D$$

Where:

SI = simple interest amount;

UA = the unpaid amount;

GIC = General Interest Charge daily rate; and

D = the number of days from the day after payment was due up to and including the day that payment is made.

8. Invoicing Requirements

An invoice will be correctly rendered if it:

- a. is correctly addressed;
- b. identifies the Purchase Order number specified in *Clause 1*;
- c. outlines the Services provided;
- d. is properly payable under the Contract;
- e. identifies the amount claimed;
- f. is a tax invoice for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* and related legislation where applicable;
- g. is correctly calculated;
- h. where explanation is necessary, is accompanied by documentation substantiating the amount claimed; and

9. Insurance

- 9.1. The Contractor must, for as long as any obligations remain in connection with this Contract, effect and maintain the following insurance for all the Contractor's obligations under this Contract, including those which survive the expiration or termination of this Contract:
- a. Professional indemnity insurance to the value of no less than \$5 M per claim made, and in the aggregate;
 - b. Public liability insurance to the value of no less than \$10M per occurrence; and
 - c. Worker's compensation insurance.
- 9.2. The Contractor will upon request, provide proof of insurance acceptable to DIAC.

10. Delivery

- 10.1. The Contractor will perform the Services (including the provision of Deliverables) in accordance with this Contract.
- 10.2. The Contractor will liaise with the Project Officer, provide any information the Project Officer may reasonably require and comply with any reasonable request made by the Project Officer.

11. Commonwealth Material and Intellectual Property Rights

11.1. Commonwealth Material

All material provided by DIAC to the Contractor for the purposes of providing the Services ("**Commonwealth Material**") remains the property of the Commonwealth and must be returned to the Commonwealth on expiration or earlier termination of this Contract. DIAC may, by notice in writing, require the Contractor to deliver Commonwealth Material to it, within the timeframe specified in the notice. The Commonwealth grants to the Contractor a royalty-free, non-exclusive licence to use, reproduce and adapt Commonwealth Material for the purposes of this Contract and in accordance with any conditions, restrictions or directions notified by DIAC in writing from time to time.

11.2. Contract Material

Ownership of Intellectual Property in all Contract Material vests in the Commonwealth on its creation. The Contractor will ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Contract.

11.3. Existing Intellectual Property

Clause 11.2 does not affect the ownership of any Existing Intellectual Property, but the Contractor grants to DIAC, or will secure the grant to DIAC from the owner of any Existing Intellectual Property, a permanent, irrevocable, royalty-free, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt, publish, communicate to the public and exploit any such Existing Intellectual Property for the purposes of this Contract and in conjunction with the Contract Material.

12. Moral Rights

12.1. Warranty

12.1.1. The Contractor warrants or undertakes that it has or will obtain from each author of all copyright works comprised in the Deliverables ("Works") an enforceable, irrevocable, perpetual and unconditional written consent in favour of the Contractor and the Commonwealth, and any subsequent owner or licensee of the Works, to do, or allow the doing of, any act or omission which, but for the consent, may infringe any Moral Right within the meaning of the *Copyright Act 1968* (Cth).

12.1.2. The consent referred to in *Clause 12.1.1* must be provided to DIAC as and when required but does not include the author's right not to have authorship falsely attributed.

13. Security Requirements

13.1. Interpretation

The following terms have the meaning specified in the Australian Government Protective Security Policy Framework as amended from time to time: Official Information, Security Classified Information, Security Breach, Security Incident and Security Violation.

13.2. Contractor's Obligations

The Contractor agrees to:

- a. participate, and provide full co-operation, in security reviews of the security procedures implemented, on an annual basis or as otherwise notified by DIAC;
- b. promptly report any Security Incidents, including Security Violations and Security Breaches, including steps taken by the Contractor to address these;
- c. comply with the security procedures and requirements, (including the requirement to remedy Security Incidents, Security Violations and Security Breaches), as notified by DIAC under this Contract from time to time;
- d. comply with the Australian Government Protective Security Policy Framework as amended from time to time;
- e. use information held or controlled by it in connection with this Contract only for the authorised purposes for which it was collected;
- f. ensure that the Commonwealth Material is not accessible by any means by unauthorised persons, is protected against loss, use or modification;
- g. not transfer Security Classified Information outside Australia, or allow persons outside Australia to have access to it, without prior approval of DIAC;
- h. abide by any restrictions to accessing Security Classified Information and obtain any required security clearances as required; and
- i. ensure that its Specified Personnel meet all of the obligations of this clause.

13.3. Third Party Interests

The Contractor:

- a. warrants that, at the date of entering this Contract, no third party has any Third Party Interest in connection with Security Classified Information that relates to this Contract, in favour of a third party, that have not been disclosed in writing to the Commonwealth; and
- b. agrees that it will not at any time create, or arrange with a third party to create, any Third Party Interest in favour of a third party, without prior approval from DIAC.

14. Protection of Personal Information

14.1. Application of clause

This clause applies only where the Contractor deals with personal information when, and for the purpose of, providing Services under this Contract.

14.2. Obligations of Contractor

The Contractor agrees in respect of the provision of Services under this Contract to:

- a. use Personal Information held or controlled by it in connection with this Contract only for the authorised purposes for which it was collected;
- b. take all reasonable measures to ensure that Personal Information in its possession or control in connection with this Contract is protected against loss and unauthorised access, use, modification or disclosure;
- c. comply with and not act or engage in a practice that would breach the Information Privacy Principles if that act was done or that practice engaged in by an agency as defined in the *Privacy Act 1988*;
- d. comply with the National Privacy Principles contained in the *Privacy Act 1988* or Approved Code provisions to the extent that the content of those principles apply to the activities the Contractor is undertaking under this Contract;
- e. cooperate with any reasonable demands or inquiries made by the Project Officer on the basis of the exercise of the functions of the Privacy Commissioner under the *Privacy Act 1988* including, but not limited to, a request from the Project Officer to comply with a guideline concerning the handling of Personal Information and Sensitive Information;
- f. ensure that any person who has access to any Personal Information or Sensitive Information is made aware of, and undertakes in writing, to observe the Information Privacy Principles, National Privacy Principles or Approved Code provisions and any other obligations in this Clause;
- g. comply as far as practicable with any policy guidelines laid down by DIAC or issued by the Privacy Commissioner from time to time relating to the handling of Personal Information; and
- h. comply with any direction of the Project Officer to observe any recommendation of the Privacy Commissioner relating to any acts or practices of the Contractor that the Privacy Commissioner considers breaches the obligations of this Clause.

14.3. General Provisions

- 14.3.1.** The Contractor agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause, including the requirement in relation to subcontracts.

14.3.2. The Contractor agrees to indemnify the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the obligations of the Contractor under this *Clause 14.3*, or a subcontractor under the subcontract provisions referred to in *Clause 6*.

14.3.3. In this *Clause 14.3*, the terms 'agency', 'approved privacy code' (APC), 'health information' and 'Information Privacy Principles' (IPPs), 'National Privacy Principles' (NPPs), 'personal information' and 'sensitive information' have the same meaning as they have in section 6 of the *Privacy Act 1988*.

14.3.4. The provisions of this *Clause 14* survive termination or expiration of this Contract.

15. Confidential Information

15.1. Subject to *Clauses 15.2* and *15.3* a Party must not, without the prior written consent of the other Party, use or disclose any Confidential Information of the other Party. In giving written consent to use or disclose the Confidential Information, a Party may impose such reasonable conditions as it sees fit. The Commonwealth may require the Contractor's employees or Approved Subcontractors to give a written undertaking in a form reasonably required by the Commonwealth relating to the use and non-disclosure of the Commonwealth's Confidential Information. The Contractor agrees to promptly arrange for all such undertakings to be given.

15.2. A Party will not be in breach of this *Clause 15* if it discloses Confidential Information which is required in order to discharge an obligation under this Contract or is otherwise authorised or required by law to be disclosed. Without limiting the foregoing, the Contractor acknowledges the Commonwealth has broad reporting obligations and consents to the Commonwealth disclosing information to such third parties including Commonwealth Ministers, Ministerial advisers, Parliamentary Committees, the Auditor General, and under the *Freedom of Information Act 1982*.

15.3. The Contractor further acknowledges the Commonwealth's obligation to publish the price and certain other summary details of its contracts through AusTender at www.contracts.gov.au. Certain information may be treated as confidential subject to the Contractor asserting such a claim and the Commonwealth being satisfied that the information meets specified criteria.

15.4. The Contractor has requested and the Commonwealth has agreed to treat the information contained in the table below as commercially sensitive and confidential.

Description of Commercially Sensitive Information	Period of Confidentiality
N/A	

This *Clause 15* survives the termination or expiration of this Agreement.

16. Access to Premises

16.1. The Contractor will allow:

- a. the Project Officer;
- b. the Australian National Audit Office;

- c. the Ombudsman's Office; and
- d. other persons authorised by the Project Officer,

to access the Contractor's premises at all reasonable times and to inspect and copy all relevant documentation and records, however stored, in the Contractor's possession or control, for purposes associated with this Contract or any review of performance under this Contract.

The rights referred to in *Clause 16.1* are subject to:

- a. the provision of reasonable prior notice to the Contractor;
- b. compliance with the Contractor's reasonable security procedures;
- c. each Party bearing its own cost arising out of or in connection with any access or inspection; and
- d. if appropriate, execution of a Deed of Confidentiality relating to non-disclosure of the Contractor's Confidential Information.

16.2. The Contractor will ensure that any subcontract entered into for the purposes of this Contract contains an equivalent clause granting the rights specified in this *Clause 16*.

16.3. *Clauses 16.1 and 16.2* apply for the term of this Contract and for a period of six (6) years from the date of expiration or termination of this Contract.

17. Conflict of Interest

17.1. The Contractor warrants that, at the date of entering into this Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract. If, during the term of this Contract, a conflict or risk of conflict of interest arises, the Contractor undertakes to notify DIAC immediately in writing of that conflict or risk.

18. Termination or Reduction for Convenience

18.1. DIAC may at any time, by written notice, terminate this Contract or reduce the scope of the Services immediately. Upon receipt of such notice the Contractor will cease or reduce work according to the requirements of the notice and will immediately do everything possible to mitigate consequential losses and to protect Commonwealth Material and Contract Material.

18.2. In that event, the Contractor may submit a claim for compensation and DIAC will pay to the Contractor such sums as are fair and reasonable in respect of any loss sustained by the Contractor in unavoidable consequence of the termination provided that:

- a. the Contractor will not be entitled to compensation for loss of prospective profits;
- b. the Contractor must substantiate the claims for compensation to the satisfaction of DIAC; and
- c. DIAC will not be liable to pay any sum which, in addition to any amounts paid or due or becoming due to the Contractor under this Contract, would together exceed the fees ordinarily payable by DIAC for the Services under this Contract.

19. Termination for Default

19.1. Termination

DIAC may, without prejudice to any other rights and remedies it has, terminate this Contract at any time by giving written notice to the Contractor if the Contractor:

- a. fails to deliver the Services by the date required by this Contract;
- b. is in breach of any material term of this Contract;
- c. being an individual, commits an act of bankruptcy, becomes bankrupt or executes a Deed of Assignment or Deed of Arrangement under Part 10 of the *Bankruptcy Act* 1966 as amended;
- d. being a corporation, in respect of which a liquidator or provisional liquidator is appointed;
- e. being a corporation, in respect of whose property a receiver or a receiver and manager is appointed;
- f. fails to:
 - i. commence performance of this Contract or to proceed at a rate of progress that ensures the due and proper completion of this Contract; or
 - ii. take action to remedy a breach of another obligation under this Contract and does not commence to remedy that breach within seven (7) days of being given notice by DIAC requiring the Contractor to remedy the breach, or does not completely remedy the breach within 30 days of being given that notice; or
- g. assigns its rights otherwise than in accordance with the requirements of this Contract.

20. Indemnity

20.1. General Indemnity

The Contractor must at all times hold DIAC, its officers, employees and agents harmless from and against all losses, damages and expenses (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by DIAC arising out of or in connection with:

- a. any act or omission by the Contractor or its Personnel in connection with this Contract;
- b. any breach by the Contractor of its obligations under this Contract;
- c. any unauthorised use or disclosure by the Contractor, its Personnel, or subcontractors of Personal Information held or controlled in connection with this Contract; or
- d. any action or claim brought by a third party for alleged infringement of Intellectual Property Rights, by reason of DIAC's receipt or use of the Deliverables.

20.2. Acts of DIAC

The indemnity in *Clause 20.1* will be reduced proportionately to the extent that any negligent act or omission of DIAC contributed to the relevant loss or liability.

20.3. Survival

Clause 20 will survive six (6) years from the expiration or termination of this Contract.

21. General Conditions

- 21.1. The Contractor must not novate or assign any part of this Contract without the prior written approval of DIAC.
- 21.2. This Contract does not create a relationship of employment, agency or partnership between the Contractor and DIAC.
- 21.3. No agreement or understanding varying or extending this Contract will be legally binding on the Contractor or DIAC unless it is in writing and signed by both Parties, in the form of a Deed of Variation.
- 21.4. The Contractor agrees to comply with all materially relevant laws.
- 21.5. The Contractor will ensure that any subcontract entered into for the purposes of this Contract contains equivalent clauses granting the disclosure rights specified in *Clause 15*, the compliance with materially relevant laws in *Clause 21.4* and *Clause 21.6*.
- 21.6. The provisions of *Clause 15* and *Clause 21.5* survive the termination or expiration of this Contract.
- 21.7. A waiver by a Party of any breach or any condition or provision of this Contract is not a waiver of any other or subsequent breach.
- 21.8. All notices must be forwarded to the addresses specified in *Clause 23*. A notice, request or other communication will be deemed to be received:
 - a. if delivered by hand, upon delivery;
 - b. if sent by pre-paid ordinary post within Australia, upon the expiration of two (2) business days after the date on which it was sent;
 - c. if sent by facsimile, on the business day next following the day of dispatch providing that the sender receives an "OK" code in respect of the transmission and is not notified by the recipient by close of business of the next business day following the day of dispatch that the transmission was illegible; and
 - d. if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.
- 21.9. This Contract will be governed by and construed in accordance with the laws in the Australian Capital Territory.

22. Engagement of Illegal Workers prohibited

- 22.1. For the purposes of this *Clause 22*, an "illegal worker" is a person who is an Unlawful Non-Citizen, or a Non-Citizen who is performing work in breach of a Visa Work Condition, and the following definitions also apply:
 - a. "Contractor" will, where the context so admits, include the officers, employees, volunteers, bailees, agents and Approved Subcontractors of the Contractor; and
 - b. "Non-Citizen" has the same meaning as under the *Migration Act 1958*;
 - c. "Unlawful Non-Citizen" has the same meaning as under the *Migration Act 1958*; and

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d. "Visa Work Condition" means a condition of a visa restricting the work that the Non-Citizen may do in Australia,

and a reference to the *Migration Act 1958* is a reference to that Act as amended or replaced from time to time.

22.2. The Contractor must ensure that no employee or independent contractor, including those engaged by any subcontractors, is an illegal worker.

22.3. The Contractor must make compliance by any subcontractors with the provisions of this *Clause 22* a condition of any subcontract.

22.4. The Contractor must remove, or cause to be removed, any illegal worker from any involvement in the carrying out of the Services and arrange for their replacement at no cost and immediately upon becoming aware of the involvement of the illegal worker.

22.5. For the avoidance of doubt, compliance with the Contractor's obligations under this *Clause 22* will not constitute a force majeure event, give rise to an entitlement to claim any delay or otherwise excuse the Contractor from compliance with its obligations under this Contract.

22.6. When requested in writing, the Contractor will provide evidence within 14 days that it has taken all reasonable steps to ensure that it has complied and is complying with its obligations under this *Clause 22*.

22.7. Contractors may check their entitlement to work in Australia at www.immi.gov.au/evo

23. Project Officer and Address for Notices

23.1. Project Officer

The person holding the title or performing the duties of Director, Guardianship Policy section, currently ^{s22(1)(a)(ii)} [REDACTED] will be the Project Officer with responsibility for supervision of the Services on behalf of DIAC and authority to issue and receive any written notification under this Contract.

23.2. Address for Notices (DIAC)

The Contractor must send all notices to DIAC under or otherwise in connection with this Contract to the Project Officer at the following address:

^{s22(1)(a)(ii)} [REDACTED]

**Director, Guardianship Policy
Department of Immigration and Citizenship
PO Box 25
Belconnen ACT 2616**

23.3. Address for Notices (Contractor)

DIAC will send all notices to the Contractor under or otherwise in connection with this Contract to the following address:

23.3.1. (Contractor's address for notices)

Ms Gillian Calvert AO

^{s47F} [REDACTED]

SIGNED for and on behalf of the

COMMONWEALTH OF AUSTRALIA

By

Kate Pope
FAS Community Programs & Children Division
Department of Immigration and Citizenship

s22(1)(a)(ii)

Signature

4 / 5 / 2012
Date

in the presence of

s22(1)(a)(ii)

Signature

s22(1)(a)(ii)

Please print name

4 / 5 / 2012
Date

SIGNED for and on behalf of

Gillian Calvert

By

GILLIAN CALVERT
(Contractor/Director's name)

s47F

Contractor/Director's Signature

30 / 4 / 2012
Date

in the presence of

s47F

Signature

s47F

30 / 4 / 2012
Date



Commonwealth of Australia

Standard Form Contract

Parties

Name **Commonwealth of Australia as represented by
Department of Immigration and Border Protection**

ABN: 33 380 054 835

Address 5 Constitution Ave, Canberra City, 2601

Contract name **Commonwealth**

Name **Ms Gillian Calvert**

ABN: 20 467 681 150

Address

s47F

Contract name **Supplier**

A. Background

- A.1 The Commonwealth requires the provision of the Goods and/or Services.
- A.2 The Supplier has fully informed itself on all aspects of the Commonwealth's requirements and has:
- (i) submitted an offer; and
 - (ii) represented that it has the requisite skills and experience to meet those requirements.
- A.3 The Commonwealth has agreed to engage the Supplier, and the Supplier has agreed to be engaged, to provide the Goods and/or Services on the terms and conditions of this Contract.

B. This Contract

- B.1. **Goods and/or Services:** The Supplier agrees to provide the Goods and/or Services to the Commonwealth and the Commonwealth agrees to purchase the Goods and/or Services in accordance with the terms of this Contract.
- B.2. **Contract Documents:** This Contract comprises:
- (a) the Special Conditions (if any);
 - (b) this document including the Statement of Requirement;
 - (c) The *Commonwealth General Conditions of Contract* in the form they appeared at 9:00 am (local Canberra time) on the date of this Contract; and
 - (d) *Annex 1 – Supplier's Offer* (if any).
- If there is any ambiguity or inconsistency between the documents comprising the Contract, the document appearing higher in the list will have precedence to the extent of the ambiguity or inconsistency.
- B.3. **Special Conditions:** The Supplier must comply with the Special Conditions (if any).
- B.4. **Definitions:** Some terms are given special meanings in clause 2.39 of the *Commonwealth General Conditions of Contract*. Where a term is defined in the *Commonwealth General Conditions of Contract*, that term has the same meaning in each of the documents comprising this Contract, unless when read in context; it appears that a different meaning is intended.

Statement of Requirement

1.1 Term

- 1.1.1 The Parties have entered into this Contract on 9 December 2015 and the Contract will terminate on 12 February 2016.
- 1.1.2 The Commonwealth may extend the term of the contract for a further period of 30 days, by giving the contractor notice in writing before the end of the current contract period of the Commonwealth's intention to extend the contract.

1.2 The Goods and/or Services

- 1.2.1 The Department has a requirement for the development of a family model best practice design for Immigration Detention Facilities.
- 1.2.2 The Supplier is engaged to undertake the following activities, in consultation with Departmental staff and service providers, within the specified timeframes:
 - i. Identify how a child protection and wellbeing model could be implemented in the Melbourne Immigration Transit Accommodation (MITA) centre with a view to:
 - developing a family centre model that is best practice in provision of services to children and their families in Immigration Detention;
 - promulgating the model to other sites where children are placed;
 - implementing a social worker model where the model allows for a specialist practice on the child wellbeing pathway (vs their immigration pathway);
 - considering the role of service providers and the Department in the model;
 - considering the relationship requirements with State child welfare authorities;
 - ii. review how child protection concerns or incidents are reported and responded to including the involvement of the relevant local authorities;
 - iii. consider what preventative strategies could be implemented, including the range of positive protective factors drawing on contemporary best practice approaches and noting the culturally and linguistically diverse backgrounds of the families at the MITA;
 - iv. provide interim findings to the First Assistant Secretary of the Children, Community and Settlement Services Division; and
 - v. consolidate findings and develop a package of specific, practical recommendations, noting the Australian Government's existing policy parameters for the detention of unlawful non-citizens.
- 1.2.3 The Supplier will liaise regularly with the Assistant Secretary of Child Protection and Wellbeing Branch to provide iterative updates.

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1.3 Timing and delivery date(s)

Goods and/or Services are to be delivered as specified in the following table:

Key Deliverables	Date
Present to First Assistant Secretary on interim findings	30 January 2015
Final recommendation report submitted	12 February 2016
Consulting services	9 December 2015 to 12 February 2015

1.4 Delivery location and instructions

Delivery Address and Instructions for Goods and/or Services	Not Applicable
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1.5 Specified Personnel

The Specified Personnel are:

Name	Position	Role
Ms Gillian Calvert AO	Independent Child Protection Expert	Deliver the statement of requirement

1.6 Security Requirements

1.6.1 The Supplier agrees to:

- i. comply with the security procedures and requirements, (including the requirement to remedy Security Incidents, Security Violations and Security Breaches), as notified by DIBP under this Contract from time to time;
- ii. use information held or controlled by it in connection with this Contract only for the authorised purposes for which it was collected;
- iii. ensure that the Commonwealth Material is not accessible by any means by unauthorised persons, is protected against loss, use or modification;
- iv. not transfer Security Classified Information outside Australia, or allow persons outside Australia to have access to it, without prior approval of DIBP; and
- v. abide by any restrictions to accessing Security Classified Information and obtain any required security clearances as required.

1.7 Contract Price and payment

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1.8 Intellectual Property

- 1.8.1 All Intellectual Property Rights in all Goods and/or Services and Material vests or will vest in the Department immediately on its creation.
- 1.8.2 The Supplier grants to (or must procure for) the Commonwealth a permanent, irrevocable, royalty free, worldwide, non-exclusive licence (including a right to sublicense) to use, modify, adapt, reproduce, distribute, communicate and exploit the Auxiliary Material.
- 1.8.3 Auxiliary Material means material (other than contract material and Commonwealth material) which is made available by the Supplier for the purposes of the Contract on or following the Commencement Date, including any existing Supplier material, third party material, and other material.
- 1.8.4 The Supplier warrants that the provision of the Goods and/or Services, including Materials in accordance with the Contract will not infringe any third party's Intellectual Property Rights.

1.9 Contract Managers and Addresses for Notices

The Commonwealth's Contract Manager:

Name/position title: s22(1)(a)(ii) Director, Children Community and Settlement Services Division

Postal Address: PO Box 25, Belconnen, 2616

Telephone: s22(1)(a)(ii)

Mobile: s22(1)(a)(ii)

Email Address: s22(1)(a)(ii)

The Supplier's Contract Manager:

Name/position title: Ms Gillian Calvert AO

Postal Address: s47F

Mobile: s47F

Email Address: s47F

Both Contract Managers will be responsible for the general liaison and accepting and issuing any written notices under this Contract.

1.10 Address for Invoices

Name/position title: The person occupying the position of Director, Children Community and Settlement Services Division currently s22(1)(a)(ii)

Postal Address: PO Box 25, Belconnen, 2616

Email Address: s22(1)(a)(ii)

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Special Conditions of Contract

1. Work Health and Safety

The Supplier must, in providing the Services, eliminate or alternatively minimise risk to health and safety so far as is reasonably practicable.

2. Engagement of Illegal Workers prohibited

2.1. Illegal Worker means a non-citizen who:

- (a) does not hold a valid visa and who performs Work in Australia; or
- (b) holds a valid visa and who performs Work in Australia in breach of a visa condition that:
 - (i) prohibits him or her from working in Australia; or
 - (ii) restricts the Work that he or she may perform in Australia.

2.2. Work means any work, whether for reward or otherwise.

For more information refer to the "Employing Legal Workers Guide" available at:
<http://www.border.gov.au/Busi/Empl/Empl/employing-legal-workers/legal-workers-a-guide-for-employers>.

2.3. The Supplier must not engage Illegal Workers in any capacity to carry out any Work under or in connection with this Contract and must notify the Commonwealth immediately if it becomes aware of the involvement of an Illegal Worker in such Work.

2.4. The Supplier must remove, or cause to be removed, any Illegal Worker from any involvement in performing its Obligations under this Contract (including if engaged by a Subcontractor) and arrange for their replacement at no cost to the Commonwealth and immediately upon becoming aware of the involvement of the Illegal Worker.

2.5. If requested in writing by the Commonwealth, the Supplier must provide evidence within 14 days that it has taken all reasonable steps to ensure that it has complied and is complying with its Obligations in respect of Illegal Workers.

3. Immigration and Border Protection Workers

3.1. The Supplier acknowledges that it, and its employees, contractors and subcontractor personnel, may be Immigration and Border Protection workers under the *Australian Border Force Act 2015* (Cth), and if so, must comply with:

- (a) requirements and directions that may be issued under Part 5 of the *Australian Border Force Act 2015* (Cth) relating to alcohol and drug tests;
- (b) secrecy and disclosure provisions in Part 6 of the *Australian Border Force Act 2015* (Cth);
- (c) directions given by the Secretary or the Australian Border Force Commissioner to Immigration and Border Protection workers from time to time, which may include directions about security clearances, drugs and alcohol, mandatory reporting and professional standards;
- (d) any other obligations under the *Australian Border Force Act 2015* (Cth); and

- (e) policies issued by the Department of Immigration and Border Protection to Immigration and Border Protection workers, as applicable.
- 3.2. If the Supplier, or its employees, contractors or subcontractor personnel who are Immigration and Border Protection workers breach any of their obligations under the *Australian Border Force Act 2015* (Cth) or applicable policies, the Commonwealth may, by written notice and in its absolute discretion:
- (a) require that the Supplier immediately cease the involvement of specified employees, contractors or subcontractor personnel in the performance of the Services; or
 - (b) immediately terminate this Contract;
- without liability and at no additional cost to the Commonwealth.

The Supplier acknowledges that the Commonwealth's rights under this clause are in addition to the rights of the Secretary and the Australian Border Force Commissioner under section 57 of the *Australian Border Force Act 2015* (Cth). Any termination of this Contract under section 57 is also a valid termination under the terms and conditions of this Contract.

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Signing Page

EXECUTED as an Agreement

Signed for and on behalf of the
Commonwealth of Australia as
represented by the Department of
Immigration and Border Protection
ABN 33 380 054 835 by its duly authorised
delegate in the presence of

s22(1)(a)(ii) [Redacted]
Signature of witness

s22(1)(a)(ii) [Redacted]
Name of witness (print)

s22(1)(a)(ii) [Redacted]
Signature of delegate

Claire Reennfeldt
Name of delegate (print)

AS Child Protection
Position of delegate (print)

11-2-2016
ON: [insert date]

Executed by Ms Gillian Calvert in the
presence of

s47F [Redacted]
Signature of witness

s47F [Redacted]
Name of witness (print)

10.2.2016

s47F [Redacted]
Signature of Supplier

GILLIAN CALVERT
Name of Supplier (print)

10.2.2016
ON: [insert date]

Commonwealth General Conditions of Contract (GCOC)

- 1.1. Provision of Goods and/or Services:** The Supplier must provide the Goods and/or Services to the Commonwealth at the delivery location on the delivery date and in accordance with any instructions for the delivery of the Goods and/or Services specified in writing. The Supplier must promptly notify the Commonwealth if the Supplier becomes aware that it will be unable to provide all or part of the Goods and/or Services by the relevant delivery date and advise the Commonwealth as to when it will be able to do so.

Any Services must be provided to the standard that would be expected of an experienced and professional supplier of similar services and any other standard specified in the Statement of Requirement.

Any Goods must be delivered free from all Encumbrances and must meet any standard specified in the Statement of Requirement. Unless otherwise stated. Goods must be new and unused.

- 1.2. Acceptance:** The Commonwealth may accept or reject the relevant Goods and/or Services within 14 days after delivery of the Goods and/or Services to the delivery location. If the Commonwealth does not notify the Supplier of acceptance or rejection within the 14 day period, the Commonwealth will be taken to have accepted the Goods and/or Services on the expiry of the 14 day period. The Commonwealth may reject the Goods and/or Services where the Goods and/or Services do not comply with the requirements of the Contract, including any acceptance tests specified in the Special Conditions. If the Commonwealth rejects the Goods and/or Services the Commonwealth may:

- (a) require the Supplier to repair or modify the Goods and/or Services, within a period determined by the Commonwealth, at the Supplier's cost, so that the Goods and/or Services meet the requirements of the Contract; or
- (b) require the Supplier to provide, at the Supplier's cost, replacement Goods and/or Services which meet the requirements of the Contract, within a period determined by the Commonwealth; or
- (c) terminate the Contract in accordance with the Termination clause of the GCOC.

In any case, and at the Commonwealth's request, the Supplier must, at its own cost, promptly remove any rejected Goods and/or Services from the Commonwealth's premises. Replacement, repaired or modified Goods and/or Services are subject to acceptance under this clause 2.2. The Supplier will refund all payments related to the rejected Goods and/or Services unless replacement or repaired Goods and/or Services are accepted by the Commonwealth.

- 1.3. Title and Risk:** Title to the Goods and/or Services transfers to the Commonwealth upon their acceptance by the Commonwealth in accordance with the Acceptance clause of the GCOC. The risk of any loss or damage to the Goods and/or Services remains with the Supplier until their delivery to the Commonwealth at the delivery location.

- 1.4. Invoice:** The Supplier must submit a correctly rendered invoice to the Commonwealth. An invoice is correctly rendered if:

- (a) it is correctly addressed and calculated in accordance with the Contract;
- (b) it relates only to Goods and/or Services that have been accepted by the Commonwealth in accordance with the Acceptance clause of the GCOC;
- (c) it is for an amount which, together with all previously correctly rendered invoices, does not exceed the Contract Price;
- (d) it includes any purchase order number, and the name and phone number of the Contract Manager; and
- (e) it is a valid tax invoice in accordance with the GST Act.

Approval and payment of an amount of an invoice is not evidence of the value of the obligations performed by the Supplier, an admission of liability or evidence the obligations under the Contract have been completed satisfactorily, but is payment on account only.

The Supplier must promptly provide to the Commonwealth such supporting documentation and other evidence reasonably required by the Commonwealth to substantiate performance of the Contract by the Supplier.

- 1.5. Payment:** The Commonwealth must pay the invoiced amount to the Supplier within 30 days after receiving a correctly rendered invoice or if this 30 day period ends on a day that is not a business day, payment is due on the next business day. The last day of this

Commonwealth General Conditions of Contract (GCOC)

period is referred to as the "due date".

- 1.6. Payment of Interest:** If the Commonwealth fails to make a payment by the due date, then provided that the Supplier is a Small Business and the amount of interest calculated under this clause exceeds A\$10, the Commonwealth will pay interest on payments to the Supplier made after the due date as follows:

- (a) for payments made between 1 day and up to 30 days after the due date, the Commonwealth will pay the interest calculated under this clause only if the Supplier issues a correctly rendered invoice under clause 2.4 for that interest; and
- (b) for payments made more than 30 days after the due date, the Commonwealth will pay interest calculated under this clause together with payment of the unpaid amount.

Interest payable under this clause will be simple interest on the unpaid amount, calculated using the formula available at:

<http://www.finance.gov.au/resource-management/spending/pay-on-time-policy/>

- 1.7. Price Basis:** The Contract Price is the maximum price payable for the Goods and/or Services and is inclusive of all GST and all taxes, duties (including any customs duty) and government charges imposed or levied in Australia or overseas.

The Commonwealth is not required to pay any amount in excess of the Contract Price including, without limitation, the cost of any packaging, marking, handling, freight and delivery, insurance and any other applicable costs and charges.

- 1.8. Offset:** If the Supplier owes any amount to the Commonwealth in connection with the Contract, the Commonwealth may set off that amount, or part of it, against its obligation to pay any correctly rendered invoice.

- 1.9. Quality Assurance:** Upon request by the Commonwealth, the Supplier must provide the Commonwealth and its nominees with access to the Supplier's premises to undertake quality audits and quality surveillance as defined in the relevant Australian Quality Standards of the Supplier's quality system and/or the production processes related to the Goods and/or Services.

- 1.10. Insurance:** The Supplier must obtain and maintain such insurances and on such terms and conditions as a prudent supplier, providing goods and/or services similar to the Goods and/or Services, would procure and maintain and if requested, must provide the Commonwealth with evidence the insurances

remain in force.

- 1.11. Indemnity:** The Supplier indemnifies the Commonwealth, its officers, employees and contractors against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), compensation or expense arising out of or in any way in connection with:

- (a) a default or any unlawful, wilful or negligent act or omission on the part of the Supplier, its officers, employees, agents or subcontractors; or
- (b) any action, claim, dispute, suit or proceeding brought by any third party in respect of any use, infringement or alleged infringement of that third party's Intellectual Property Rights or Moral Rights;

in connection with the Goods and/or Services.

The Supplier's liability to indemnify the Commonwealth under paragraph (a) is reduced to the extent that any wilful default or, unlawful, or negligent act or omission of the Commonwealth, its officers, employees or contractors contributed to the liability, loss, damage, cost, compensation or expense.

The Commonwealth holds the benefit of this indemnity on trust for its officers, employees and contractors.

- 1.12. Approvals and Compliance:** The Supplier must obtain and maintain any licences or other approvals required for the lawful provision of the Goods and/or Services and arrange any necessary customs entry for the Goods and/or Services. The Supplier must comply with and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in the State, Territory or other jurisdictions in which any part of the Contract is to be carried out and all Commonwealth laws and policies relevant to the Goods and/or Services.

- 1.13. Conflict of Interest:** The Supplier warrants that no conflicts of interest exists, or is anticipated, relevant to the performance of its obligations under the Contract. If a conflict of that kind arises, the Supplier must notify the Commonwealth immediately. The Commonwealth may decide in its absolute discretion, without limiting its other rights under the Contract, that the Supplier may continue to provide the Goods and/or Services under the Contract.

- 1.14. Warranties:** The Supplier must procure that the Commonwealth receives all relevant third

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Commonwealth General Conditions of Contract (GCOC)

party warranties in respect of Goods and/or Services.

If the Supplier is a manufacturer, the Supplier must provide the Commonwealth with all standard manufacturer's warranties in respect of the Goods and/or Services it has manufactured.

- 1.15. Access to Supplier's Premises:** The Supplier agrees to give the Commonwealth, or its nominee, all assistance reasonably requested for any purpose associated with this Contract or any review of the Supplier's performance under the Contract. This will include, but is not limited to, access to premises, material and personnel associated with the Goods and/or Services and the Contract.
- 1.16. Criminal Code Acknowledgement:** The Supplier acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the *Criminal Code Act 1995*. The Supplier must ensure that any subcontractor engaged in connection with the Contract acknowledges the information contained in this clause.
- 1.17. Waiver:** If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.
- 1.18. Variation:** No agreement or understanding varying or extending the Contract, including in particular the scope of the Goods and/or Services, is legally binding upon either party unless in writing and agreed by both parties.
- 1.19. Security and Safety:** When accessing any Commonwealth place, area or facility, the Supplier must comply with any security and safety requirements notified to the Supplier by the Commonwealth or of which the Supplier is, or should reasonably be, aware. The Supplier must ensure that its officers, employees, agents and subcontractors are aware of, and comply with, such security and safety requirements.
- The Supplier must ensure that any material and property (including security-related devices and clearances) provided by the Commonwealth for the purposes of the Contract is protected at all times from unauthorised access, use by a third party, misuse, damage and destruction and returned as directed by the Commonwealth.
- 1.20. Conduct at Agency Premises:** The Supplier must, when using Commonwealth provided premises or facilities, comply with all reasonable directions of the Commonwealth, and act consistently with the behaviours set out in section 13 of the *Public Service Act 1999*.
- 1.21. Supplier not to make representations:** The Supplier must not represent itself, and must ensure that its officers, employees, agents or subcontractors do not represent themselves, as being an officer, employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth. The Contract does not create a relationship of employment, agency or partnership between the parties.
- 1.22. Privacy Requirement:** The Supplier agrees to comply and ensure that its officers, employees, agents and subcontractors comply with the *Privacy Act 1988* (Cth) and do (or refrain from doing) anything required to ensure that the Commonwealth is able to comply with its obligations under that Act.
- The Supplier will immediately notify the Commonwealth if the Supplier becomes aware of a breach or possible breach of any of its obligations under this clause 2.21.
- 1.23. Confidential Information:** The Supplier agrees not to disclose to any person, other than the Commonwealth, any confidential information relating to the Contract or the Goods and/or Services, without the prior written approval of the Commonwealth. This obligation will not be breached where the Supplier is required by law or a Stock Exchange to disclose the relevant information.
- At any time, the Commonwealth may require the Supplier to arrange for its employees, agents or subcontractors to give a written undertaking relating to non-disclosure of the Commonwealth's confidential information in the form acceptable to the Commonwealth.
- The Commonwealth is not bound to keep any information in connection with the Contract confidential except to the extent it has agreed in writing to keep specified information confidential. The Commonwealth will not be in breach of any confidentiality agreement where the Commonwealth is required by Parliament to disclose the information.
- 1.24. Record Keeping:** The Supplier must maintain proper business and accounting records relating to the supply of the Goods and/or Services and allow the Commonwealth or its authorised representative to inspect those records when requested. The Supplier will provide any assistance and information required should the Australian National Audit Office wish to conduct an audit of the Supplier's accounts and records.

Commonwealth General Conditions of Contract (GCOC)

1.25. Freedom of Information (FOI) Act 1982

Requirements: Where the Commonwealth has received an FOI request for access to a document created by, or in the possession of the Supplier or its subcontractors that relates to the Contract and is required to be provided under the FOI Act, the Supplier must promptly provide the document to the Commonwealth, on request, at no cost.

1.26. Commonwealth Records and Archives Act 1983 Requirements:

The Supplier must not transfer, or permit the transfer of, custody or the ownership of any Commonwealth record (as defined in the *Archives Act 1983* (Cth)) without the prior written consent of the Commonwealth.

1.27. Moral Rights: To the extent permitted by laws and for the benefit of the Commonwealth, the Supplier consents, and must use its best endeavours to procure that each author of Material consents in writing, to the use by the Commonwealth of Material, even if the use may otherwise be an infringement of their Moral Rights.

1.28. Notices: Any notice or communication under the Contract will be effective if it is in writing, from one Contract Manager and delivered to the other Contract Manager, at the postal address, or email address, or facsimile number set out in the Statement of Requirement.

1.29. Assignment: The Supplier must not assign any of its rights under the Contract without the prior written consent of the Commonwealth.

1.30. Specified Personnel: The Supplier must ensure that the Specified Personnel provide the Goods and/or Services and are not replaced without the prior consent of the Commonwealth.

At the Commonwealth's request, the Supplier, at no additional cost to the Commonwealth, must promptly replace any Specified Personnel that the Commonwealth reasonably considers should be replaced with personnel acceptable to the Commonwealth.

1.31. Subcontracting: Subcontracting the whole or part of the Supplier's obligations under the Contract will not relieve the Supplier from any of its obligations under the Contract.

The Supplier must make available to the Commonwealth the details of all subcontractors engaged to provide the Goods and/or Services under the Contract. The Supplier acknowledges that the Commonwealth is required to disclose such information.

The Supplier must ensure that any subcontract entered into by the Supplier for the purpose of fulfilling its obligations under the Contract imposes on the subcontractor the same obligations that the Supplier has under the Contract (including this requirement in relation to subcontracts).

1.32. Termination: The Commonwealth may terminate the Contract in whole or in part if:

- (a) the Supplier does not deliver all of the Goods and/or Services to the delivery location by the relevant delivery date, or notifies the Commonwealth that it will be unable to deliver the Goods and/or Services to the delivery location by the relevant delivery date;
- (b) the Commonwealth rejects any of the Goods and/or Services in accordance with the Acceptance clause of the GCOC;
- (c) the Supplier breaches the Contract and the breach is not capable of remedy;
- (d) the Supplier does not remedy a breach of the Contract which is capable of remedy within the period specified by the Commonwealth in a notice of default issued to the Supplier; or
- (e) the Supplier:
 - (i) is unable to pay all its debts when they become due;
 - (ii) if incorporated – has a liquidator, administrator or equivalent appointment under legislation other than the Corporations Act 2001 appointed to it; or
 - (iii) if an individual – becomes bankrupt or enters into an arrangement under Part IX or Part X of the Bankruptcy Act 1966.

1.33. Termination or Reduction for Convenience:

In addition to any other rights it has under the Contract, the Commonwealth, acting in good faith, may at any time terminate the Contract or reduce the scope or quantity of the Goods and/or Services by notifying the Supplier in writing. If the Commonwealth issues such a notice, the Supplier must stop or reduce work in accordance with the notice; comply with any directions given by the Commonwealth; and mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination or reduction in scope.

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Commonwealth General Conditions of Contract (GCOC)

Where the Contract is terminated under this clause, the Commonwealth will be liable for payments to the Supplier only for Goods and/or Services accepted in accordance with the Acceptance Clause in the GCOC, before the effective date of termination (to a maximum of the Contract Price less any payments already made), and any reasonable costs incurred by the Supplier that are directly attributable to the termination, if the Supplier substantiates these amounts to the satisfaction of the Commonwealth.

The Supplier will be entitled to profits for the proportion of the Goods and/or Services accepted before the effective date of termination but will not be entitled to profit anticipated on any part of the Contract that is terminated or subject to a reduction in scope.

2.34. Survival: Clauses 1.10, 1.21, 1.22, 1.23, 1.24, 1.25 and 1.26 of the GCOC and clause 1.8 [Intellectual Property] of the Statement of Requirement, survive termination or expiry of the Contract.

- 2.35. Dispute Resolution:** For any dispute arising under the Contract:
- (a) both Contract Managers will try to settle the dispute by direct negotiation;
 - (b) if unresolved, the Contract Manager claiming that there is a dispute will give the other Contract Manager a notice setting out the details of the dispute;
 - (c) within five business days, each Contract Manager will nominate a senior representative, not having prior direct involvement in the dispute;
 - (d) the senior representatives will try to settle the dispute by direct negotiation; and
 - (e) failing settlement within a further 10 business days, either the Commonwealth or the Supplier may commence legal proceedings.

The Commonwealth and the Supplier will each bear its own costs for dispute resolution.

Despite the existence of a dispute, the Supplier will (unless requested in writing by the Commonwealth not to do so) continue its performance under the Contract.

The procedure for dispute resolution does not apply to action relating to termination or to legal proceedings for urgent interlocutory relief.

2.36. Compliance with Laws: The Supplier must ensure that it and all subcontractors comply with all relevant laws in connection with the

Contract and all of its obligations under Australian tax laws.

2.37. Applicable Law: The laws of the Australian Capital Territory apply to the Contract.

2.38. Entire Agreement: The Contract represents the parties' entire agreement in relation to the subject matter and supersedes all tendered offers (except to the extent they are incorporated into the Contract in writing) and prior representations, communications, agreements, statements and understandings, whether oral or in writing.

2.39. Definitions: In the Contract:
"Commonwealth" means the Commonwealth of Australia as represented by the agency named in the Statement of Requirement.

"Contract Manager" means the contract manager specified in the Statement of Requirement.

"Contract" means the contract as described in clause B.2 of the Standard Form Contract into which the GCOC is incorporated.

"Contract Price" means the total contract price specified in the Statement of Requirement, including any GST component payable, but for the purposes of the Payment clause of the GCOC only, does not include any simple interest payable on late payments.

"Encumbrance" means a security interest as defined in section 12 of the *Personal Property Securities Act 2009* (Cth).

"General Interest Charge Rate" means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* on the day payment is due, expressed as a decimal rate per day.

"Goods and/or Services" means:

- (a) the Goods, Services, or Goods and Services specified in the Statement of Requirement; and
- (b) all such incidental Goods and Services that are reasonably required to achieve the purposes of the Commonwealth as specified in the Statement of Requirement.

"GST" means a Commonwealth goods and services tax imposed by the *GST Act*.

"GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"Intellectual Property Rights" means all intellectual property rights which may subsist in Australia or elsewhere, whether or not they are registered or capable of being registered.

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Commonwealth General Conditions of Contract (GCOC)

"Material" means any material brought into existence as a part of, or for the purpose of producing the Goods and/or Services, and includes but is not limited to documents, equipment, information or data stored by any means.

"Moral Rights" means the right of attribution of authorship of work, the right not to have authorship of work falsely attributed and the right of integrity of authorship as defined in the *Copyright Act 1968* (Cth).

"Small Business" has the meaning set out in Resource Management Guide No. 417 available at:

<http://www.finance.gov.au/resource-management/spending/pay-on-time-policy/>

"Special Conditions" means the special conditions attached to the Statement of Requirement by the Commonwealth (if any).

"Specified Personnel" means the personnel specified in the Contract to provide the Goods and/or Services.

"Statement of Requirement" means the Statement of Requirement set out in the Contract.

"Supplier" means the supplier specified in the section of the Contract entitled "Parties".

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Commonwealth of Australia

Commonwealth Contract - for Labour Hire Services
Reference No: 1700361

Customer

Customer Name Department of Immigration and Border Protection
Customer ABN 33 380 054 835
Address PO Box 25
Belconnen ACT 2616

Supplier

Supplier Name Ms Gillian Calvert
Supplier ABN 20 467 681 150
Address s47F [REDACTED]

Statement of Work

C.A.1 Key Events and Dates

This Contract commences on the Contract Start Date and continues for the Contract Term unless:

- (a) it is terminated earlier; or
- (b) if a Contract Extension Option is set out in the table, the Customer exercises the Contract Extension Option, in which case this Contract will continue until the end of the extended time (unless it is terminated earlier).

Event	Date
Contract Start Date	5 April 2017
Contract Term	This Contract will commence on 5 April 2017 and will terminate on 31 May 2017.
Contract Extension Option	<p>The Customer may extend the Contract for a period of up to 12 months in the aggregate.</p> <p>When seeking to extend this contract, timeframes for each extension option will vary to suit working requirements at the time of extension, however, the total contract term will not exceed 12 months.</p>

C.A.2 The Requirement

The Department of the Prime Minister and Cabinet (PM&C) is leading a multi-agency taskforce looking at women's and children's safety. The Supplier has been appointed as a Special Advisor to provide advice on these issues. The role of the Special Advisor is to work with the Response Team on the development of options and provide advice to the Expert Panel (the Panel) and Steering Committee. From time to time, the Special Advisor may also be requested to provide advice to the Ministers Group and perform other tasks as required.

Special Advisors will be responsible for providing advice, including on how to:

- secure the safety and welfare of women and children who are experiencing, or at risk of, sexual abuse or violence; and
- establish a sound basis for future prosecutions, including changes to laws and efforts to preserve/identify possible evidence.

This may include, but is not limited to, advising on:

- initial actions needed to safeguard women and children;
- essential therapeutic interventions or services/supports needed for women and children; and
- any communications strategy required to support interventions.

This advice will focus on ensuring consistency in approach between the response interventions and longer term reforms, to achieve the sustainable change on Norfolk Island that supports a holistic child and family safeguarding structure, in which effective child protection and wellbeing systems can operate.

C.A.2 (a) Standards

The Supplier must ensure that any goods and services provided under this Contract comply with all applicable Australian standards (or in its absence an international standard) including any requirements or standards specified in this Statement of Work. If requested by the Customer, the Supplier must enable the Customer, or an independent assessor, to conduct periodic audits to confirm compliance with all applicable

Australian or international standards, including, but not limited to, those specified in this Statement of Work. This clause C.A.2(a) survives termination or expiry of this Contract.

C.A.2 (b) Security Requirements

No Additional Security Requirements

C.A.2 (c) Workplace Health and Safety

Throughout the Contract period, the Customer and the Supplier will proactively identify and cooperate to manage any Workplace Health and Safety issues that may arise.

C.A.2 (d) Delivery and Acceptance

Where the Customer rejects any Labour Hire Services under Clause C.C.11 [*Delivery and Acceptance*] the Customer will specify a timeframe in which the Supplier is required to rectify deficiencies, at the Supplier's cost, so that the Labour Hire Services meet the requirements of the Contract. The Supplier must comply with any such requirement. Rectified Labour Hire Services are subject to acceptance under Clause C.C.11 [*Delivery and Acceptance*].

The Supplier will refund all payments related to the rejected Labour Hire Services unless the relevant Labour Hire Services are rectified and accepted by the Customer.

If the Supplier is unable to meet the Customer's timeframe, the Customer may terminate the Contract in accordance with Clause C.C.16 [*Termination for Cause*].

C.A.2 (e) Facilities and Assistance Provided by the Customer

Not Applicable

C.A.2 (f) Customer Material

The Department of the Prime Minister and Cabinet will provide all the contextual information and documentation required by the Panel to conduct the implementation review.

C.A.3 Contract Price

The Supplier must provide a logbook of days which will be used in conjunction with the below table. The Supplier may vary working hours/days to suit project requirements.

The maximum Contract Price inclusive of 9.5% superannuation, GST and all taxes and charges will not exceed ^{s47} Daily rates are set out below.

Variable Fees and Charges

The Supplier must provide a logbook of hours which will be used in conjunction with the below table.



For the purposes of this contract, a week shall be the period from 12.00am Sunday AEST through 11.59pm Saturday AEST.

Where the Customer is obliged under the Superannuation Guarantee (Administration) Act 1992 (Cth) (the SG Act) to make superannuation contributions on behalf of the Supplier. The Customer will pay amounts due under the SG Act, at the current superannuation guarantee rate on the service fees excluding GST, into the SG Act compliant fund nominated by the Supplier set out in the **Contract Annex 1 –**

Supplementary Information.

Travel

Where the supplier is required to travel in relation to this contract, the Prime Minister and Cabinet Response Team will make bookings on behalf of the supplier and will cover all travel and accommodation costs of the supplier. Supplier travel will be booked in business class where available.

C.A.3 (a) Payment Schedule

If the Supplier incurs any of the variable costs, the Customer will reimburse the Supplier at cost (exclusive of GST) on submission of a Correctly Rendered Invoice and production of satisfactory evidence in accordance with Clause C.C.17 [Supplier Payment].

C.A.3 (b) Pricing for Extension Period

As per rate at C.A.3.

C.A.4 Contract Managers and Addresses for Notices

Contract Managers are responsible for issuing or accepting any written Notices under the Contract and are the contact points for general liaison.

C.A.4 (a) The Customer's Contract Manager:

The person occupying the position of:

Currently: Assistant Secretary, Child Wellbeing Branch

Postal Address: PO Box 25
Belconnen ACT 2616

Telephone: s22(1)(a)(ii)

Email Address:

C.A.4 (b) Address for Invoices:

Addressee Name: David Norris

Position Title: Assistant Secretary

Postal Address: PO Box 25
Belconnen ACT 2616

Email Address: s22(1)(a)(ii)

Telephone:

C.A.4 (c) The Supplier's Contract Manager:

Name: Gillian Calvert

Postal Address: s47F

Telephone:

Email Address:

C.A.5 Specified Personnel

Position/Role	Name
Specialist	Gillian Calvert

C.A.6 Subcontractors

The Supplier must not subcontract the requirement at clause C.A.2.

Additional Contract Terms

C.B.1 Intellectual Property

The Supplier grants the Commonwealth a non-exclusive, irrevocable, perpetual, worldwide, fee-free licence (including a right to sublicense) to use, modify, adapt and publish the Goods and/or Services and any Material and any adaptation of the Goods and/or Services or any Material for any purpose other than commercial exploitation, to the extent that Material embodies any of the Supplier's Intellectual Property Rights.

The Supplier warrants that it owns all Intellectual Property Rights necessary to grant this licence, provide the Goods and/or Services and Material to the Commonwealth and to allow the Commonwealth to use the Goods and/or Services for their usual purpose and in the manner contemplated by the Statement of Requirement.

The Supplier warrants that the provision of the Goods and/or Services in accordance with the Contract will not infringe any third party's Intellectual Property Rights.

Pre-Existing Intellectual Property of the Supplier

Not Applicable

C.B.2 Confidential Information of the Supplier

Not Applicable

C.B.3 Interest on Late Payments

If the Customer fails to make a payment to the Supplier by the business day it is due and the amount of interest payable under this clause exceeds \$10, the Customer will pay the unpaid amount plus interest on the unpaid amount.

Interest payable under this clause will be simple interest calculated in respect of each calendar day from the day after the amount was due and payable, up to and including the day that the Customer effects payment, calculated using the General Interest Charge Rate formula available at the Australian Taxation Office website.

C.B.4 Illegal Workers

C.B.4.1 Illegal Worker means a non-citizen who:

- (a) does not hold a valid visa and who performs Work in Australia; or
- (b) holds a valid visa and who performs Work in Australia in breach of a visa condition that:
 - (i) prohibits him or her from working in Australia; or
 - (ii) restricts the Work that he or she may perform in Australia.

C.B.4.2 Work means any work, whether for reward or otherwise.

For more information refer to the "Employing Legal Workers Guide" available at:
<http://www.border.gov.au/Busi/Empl/Empl/employing-legal-workers/legal-workers-a-guide-for-employers>.

C.B.4.3 The Supplier must not engage Illegal Workers in any capacity to carry out any Work under or in connection with this Contract and must Notify the Customer immediately it becomes aware of the involvement of an Illegal Worker in such Work.

- C.B.4.4 The Supplier must remove, or cause to be removed, any Illegal Worker from any involvement in performing its Obligations under this Contract (including if engaged by a Subcontractor) and arrange for their replacement at no cost to the Customer and immediately upon becoming aware of the involvement of the Illegal Worker.
- C.B.4.5 If requested in writing by the Customer, the Supplier must provide evidence within 14 days that it has taken all reasonable steps to ensure that it has complied and is complying with its Obligations in respect of Illegal Workers.

C.B.5 Immigration and Border Protection Workers

- C.B.5.1 The Supplier acknowledges that it, and its employees, contractors and subcontractor personnel, may be Immigration and Border Protection workers under the Australian Border Force Act 2015 (Cth), and if so, must comply with:
- (a) requirements and directions that may be issued under Part 5 of the Australian Border Force Act 2015 (Cth) relating to alcohol and drug tests;
 - (b) secrecy and disclosure provisions in Part 6 of the Australian Border Force Act 2015 (Cth);
 - (c) directions given by the Secretary or the Australian Border Force Commissioner to Immigration and Border Protection workers from time to time, which may include directions about security clearances, drugs and alcohol, mandatory reporting and professional standards;
 - (d) any other obligations under the Australian Border Force Act 2015 (Cth); and
 - (e) Customer policies issued by the Department of Immigration and Border Protection to Immigration and Border Protection workers, as applicable.
- C.B.5.2 If the Supplier, or its employees, contractors or subcontractor personnel who are Immigration and Border Protection workers breach any of their obligations under the Australian Border Force Act 2015 (Cth) or applicable Customer policies, the Customer may, by written notice and in its absolute discretion:
- (a) require that the Supplier immediately cease the involvement of specified employees, contractors or subcontractor personnel in the performance of the Services; or
 - (b) immediately terminate this Contract;
- without liability and at no additional cost to the Customer.
- C.B.5.3 The Customer's rights under this clause are in addition to the rights of the Secretary and the Australian Border Force Commissioner under section 57 of the Australian Border Force Act 2015 (Cth). Any termination of this Contract under section 57 is also a valid termination under the terms and conditions of this Contract.

C.B.6 Subcontracting

- C.B.6.1 The Supplier must not subcontract the requirement.

Contract Annex 1 – Supplementary Information

Superannuation

Fund Name:

s47F

Fund ABN:

s47F

Fund Member Name:

s47F

Fund Address:

s47F

Contact Number of Fund:

s47F

Contributor Name:

Department of Immigration and Border Protection

Contract Annex 2 – Private Interest Declaration

CONFLICT OF INTEREST DECLARATION

FULL NAME

GILLIAN

S47F

CALVERT

Please answer the following questions by circling the reply that applies to your personal circumstances. If you answer "yes" to any question, please provide details in writing. Please note that answering "yes" to any question does not necessarily preclude you from being appointed. Your response will be treated as confidential and will only be used for purposes connected with this proposed appointment.

1. Do you have any disclosable criminal convictions, i.e. convictions as an adult that form part of your criminal history other than those protected by the Spent Convictions Scheme (see Part VIIC of the <i>Crimes Act 1914</i>)?	Yes/ <u>No</u>
2. Are you, or have you been, the respondent or defendant in any civil or criminal court action (including as a company director or other office holder)?	Yes/ <u>No</u>
3. (a) Have you ever been declared bankrupt, entered into a debt agreement under Part IX of the <i>Bankruptcy Act 1996</i> (the Bankruptcy Act) or entered into a personal insolvency agreement under Part X of the Bankruptcy Act?	Yes/ <u>No</u>
(b) If you are in a partnership, have any of your partners ever been declared bankrupt, entered into a debt agreement under Part IX of the Bankruptcy Act or entered into a personal insolvency agreement under Part X of the Bankruptcy Act?	Yes/ <u>No</u> or N/A
4. Has any business or commercial enterprise for which you, or if applicable your partner(s), have had responsibility ever gone into receivership or a similar scheme or arrangement?	Yes/ <u>No</u>
5. During the last 10 years have you, or if applicable your partner(s), been the subject of a court order in connection with monies owing to another party?	Yes/ <u>No</u>
6. Have you ever been summonsed or charged concerning non-payment of tax or outstanding tax debts, investigated for tax evasion or defaults, or negotiated with the Australian Taxation Office over outstanding tax debts?	Yes/ <u>No</u>
7. Have you ever been the subject of a complaint to a professional body which has been substantiated, or is currently under investigation?	Yes/ <u>No</u>
8. Have you ever been dismissed from employment because of a discipline or misconduct issue?	Yes/ <u>No</u>
9. Do you or your immediate family have any financial interest in any company or business, or are you or your immediate family employed or engaged by any company or business, which might have dealings with, or an interest in the decisions of, the office to which you may be appointed?	<u>Yes</u> / <u>No</u>
10. Are you a lobbyist registered on the Australian Government's Lobbyists Register or the register of a state or territory?	Yes/ <u>No</u>

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



Australian Government
**Department of Immigration
and Border Protection**

ASSURANCE

I advise that to the best of my knowledge my private, business and financial interests, including taxation affairs, would not conflict with my public duties or otherwise cause embarrassment to myself or to the Government during my term of appointment.

I also undertake to advise the Department should a situation arise in the future which might cause a conflict of interest with my responsibilities under this appointment.

GILLIAN CALVERT

Name

S47F

Signature

17/5/2017

Date

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under the Freedom of Information Act 1982

Contract Annex 3 – Conflict of Interest Declaration

CONFLICT OF INTEREST DECLARATION

I, GILLIAN CALVERT acknowledge my responsibilities in the following areas:

Disclosure of Conflicts of Interest

I acknowledge that I am required to declare all conflicts of interests (actual or perceived) which may arise over the duration of the Norfolk Island Expert Panel.

I understand that I will not be permitted to take part in the discussion or decision making process where a material conflict of interests exists unless a member of the Senior Executive Service in the Department of the Prime Minister and Cabinet determines otherwise.

Signed

s47F


Date

17/5/2017

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under the Freedom of Information Act 1982

Contract Annex 4 – Deed of Confidentiality

DEED OF CONFIDENTIALITY

THIS DEED is made the SEVENTETH day of May 2017

BETWEEN the Commonwealth of Australia as represented by the Department of the Prime Minister and Cabinet and The Department of Immigration and Border Protection (**the Department**)

AND GILLIAN CALVERT (the Confidant)

RECITALS

- A. The Confidant is to be an expert on the Norfolk Island Expert Panel under the Terms of Reference for that Panel.
- B. The Confidant and the Department will enter a contract in relation to the Norfolk Island Expert Panel (the **Contract**).
- C. The Confidant may become aware of information pertaining to, or in connection with, the Contract which is Confidential Information.
- D. The Department requires, and the Confidant agrees, that it is necessary to take all reasonable steps (including the execution of this Deed of Confidentiality) to ensure that Confidential Information is kept confidential.

COVENANTS

1. Interpretation

Commonwealth Material has the same meaning as defined in the Contract.

Confidential Information means information that:

- (a) is comprised in Contract Material or Commonwealth Material;
- (b) is described in an Official Order as Confidential Information;
- (c) is Personal Information under the *Privacy Act 1988*;
- (d) amounts to protected information (information about a person that is or was held in the records of the Department, or information that there is no information about a person held in the records of the Department) under section 23(1) of the *Social Security Act 1991*;
- (e) is protected information under Division 2 of Part 6 of *A New Tax system (Family Assistance) [Administration] Act 1999* or other Commonwealth legislation;
- (f) is by its nature confidential;

- (g) is designated by the Department as confidential;
- (h) the Contractor knows or ought to know is confidential; or
- (i) is information that is agreed between the Parties in writing after the date of commencement of the Contract as constituting Confidential Information for the purposes of the Contract.

Confidential Information does not include information which:

- (i) is or becomes public knowledge other than by breach of this Deed or any other confidentiality obligations;
- (ii) is in the possession of the Contractor without restriction in relation to disclosure before the date of receipt from the Department; or
- (iii) has been independently developed or acquired by the Contractor as established by written evidence.

Contract Material has the same meaning as defined in the Contract.

Deed means this Deed of Confidentiality.

Document includes:

- (a) any paper or other material on which there is writing;
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning to persons qualified to interpret them; and
- (c) any article, material or media from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device.

Intellectual Property has the same meaning as defined in the Contract.

Party means a Party to the Contract.

Third Party Interest means any legal or equitable right, interest, power or remedy in favour of any person other than the Commonwealth, the Contractor or the Confidant in connection with the Contract, including, without limitation, any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest.

Staff means a Party's employees, agents, contractors or advisers engaged in the performance or management of the Contract.

2. Non-Disclosure

2.1 In consideration of the Department disclosing certain Confidential Information to the Confidant, the Confidant acknowledges and agrees with the Department:

- (a) that all Confidential Information is secret and confidential, is the property of the Department, and that any Confidential Information disclosed to the Confidant is disclosed to the Confidant only pursuant to the terms of this Deed;
- (b) to keep Confidential Information secret and confidential at all times; and
- (c) that it must observe and be bound by the provisions of this Deed.

3. Restriction on Use

3.1 The Confidant must use Confidential Information only for the purpose of performing any obligation of a party under or in relation to the Contract.

3.2 The Confidant must:

- (a) take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by the Department to keep the Confidential Information, including all Documents setting out or referring to any Confidential Information, under effective control of the Confidant;
- (b) immediately notify the Department in the event that the Confidant becomes aware of any unauthorised access to, or use or disclosure of, any Confidential Information;

- (c) not use, copy or reproduce any Document, nor allow any other person to use or reproduce any Document, setting out or referring to any Confidential Information otherwise than for the purposes specified in Clauses 4 and 5 without the prior written consent of the Department, which consent the Department may grant or withhold in its absolute discretion;
- (d) take all reasonable steps to ensure that the Confidential Information, including all Documents, setting out or referring to the Confidential Information, are protected at all times from any unauthorised use or access;
- (e) subject to Clauses 4 and 5, the Confidant will if required at any time by the Department, deliver up to the Department, or at the option of the Department destroy, all Confidential Information in all Documents, including Documents setting out or referring to any Confidential Information in the possession, custody or control of the Confidant; and
- (f) if required by the Department:
 - (i) permit the Department or any nominees of the Department reasonable access to the premises of the Confidant to ensure or check compliance with this Deed ; and/or
 - (ii) provide to the Department a statutory declaration signed by the Confidant stating that Clause 4 or Clause 5, as the case may require, has been complied with.

3.3 The Confidant may retain a copy of the Confidential Information if, and only to the extent to which and for the purpose for which, the Confidant is required by law to do so.

4. Disclosure to Employees and Nominees

4.1 Subject to this Clause 4, the Confidant may give access to or disclose the Confidential Information disclosed to the Confidant to:

- (a) any fellow employee of the Confidant;
- (b) any Staff of the Confidant; or
- (c) any other person;

provided that the person (a Nominee) to whom the Confidant proposes to disclose or give access to Confidential Information:

- (i) has been nominated by the Confidant in writing to the Department and the Department has consented in writing prior to any such access or disclosure; and
- (ii) is a person to whom it is necessary that access to or disclosure of such Confidential Information be given to enable the Confidant to perform its obligations under the Contract.

4.2 Any Staff, fellow employee or Nominee to whom access or disclosure of any Confidential Information is to be given pursuant to this Clause 4 must have given a written undertaking in such form as the Department may require prior to any such access or disclosure being given.

5. Disclosure as Required by Law

5.1 The obligations on the Confidant under this Deed will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by the Confidant in response to a request by any Commonwealth Minister, or by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (b) is authorised or required by law to be disclosed; or
- (c) is in the public domain otherwise than due to a breach of this Deed or the Contract.

5.2 Where the Confidant discloses Confidential Information to another person pursuant to sub-clause 5.1 the Confidant must notify the receiving person that the information is Confidential Information.

5.3 The Confidant may disclose any Confidential Information which the Confidant is required by law to disclose, but only if:

- (a) the extent and manner of the disclosure is strictly limited to what is required by law; and
- (b) the Confidant has:
 - (i) given the Department sufficient notice to enable the Department to seek a protective order or other relief from disclosure; and
 - (ii) provided all assistance and cooperation which the Department reasonably considers necessary for that purpose.

6. Security

- 6.1 If requested by the Department the Confidant must cooperate in any security checks the Department wishes to make of the Confidant (including by providing information usually requested in such circumstances).

7. Privacy

- 7.1 This Clause 7 applies only where the Confidant deals with Personal Information when, and for the purpose of, providing Contract Services under the Contract.
- 7.2 In this Clause 7, the terms 'agency', 'approved privacy code' (APC), 'Information Privacy Principles' (IPPs), and 'National Privacy Principles' (NPPs) have the same meaning as they have in section 6 of the Privacy Act, and 'Personal Information', which also has the meaning it has in section 6 of the Privacy Act, 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'.
- 7.3 The Confidant acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (the Privacy Act), and agrees in respect of the provision of Contract Services under the Contract:
 - (a) to use or disclose Personal Information obtained during the course of providing Contract Services under the Contract, only for the purposes of the Contract;
 - (b) not to do any act or engage in any practice that would breach an Information Privacy Principle (IPP) contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
 - (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;
 - (d) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), an NPP (particularly NPPs 7 to 10) or an APC, where that section, NPP or APC is applicable to the Confidant, unless:
 - (i) in the case of section 16F of the Privacy Act – the use or disclosure is necessary, directly or indirectly, to discharge an obligation under the Contract; or
 - (ii) in the case of an NPP or an APC – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under the Contract or this Deed, and the activity or practice which is authorised by the Contract or Deed is inconsistent with the NPP or APC;
 - (e) to immediately notify the Department if the Confidant becomes aware of a breach or possible breach of any of the obligations contained in, or referred to, in this Clause 7 whether by the Confidant, Staff, fellow employee or Nominee;
 - (f) to comply with any directions, guidelines, determinations or recommendations of the Department to the extent that they are not inconsistent with the requirements of this Clause; and

- (g) to ensure that any Staff, fellow employee or Nominee of the Confidant who is required to deal with Personal Information for the purposes of the Contract is made aware of the obligations of the Confidant set out in this Clause 7.

7.4 The Confidant agrees to indemnify the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the obligations of the Confidant under this Clause 7.

7.5 The provisions of this Clause 7 survive termination or expiration of the Contract.

8. Delivery up of Documents

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

9. Conflict of Interest

9.1 The Confidant warrants that no conflict of interest exists or is likely to arise while in receipt of Confidential Information.

9.2 The Confidant warrants that it will not permit any situation to arise or engage in any activity which may result in a conflict of interest with the Confidant's receipt of Confidential Information.

10. Crimes Act

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

10.2 The Confidant acknowledges that:

- (a) the giving of false and misleading information is a serious offence under section 137.1 of the *Criminal Code Act 1995* and there are a number of computer offences and other offences under the *Criminal Code Act 1995* for which there are a range of penalties, including a maximum of ten years imprisonment; and
- (b) the publication or communication by the Confidant of any fact or document which has come to its knowledge or into its possession or custody by virtue of the performance of the Contract (other than to a person to whom the Confidant is authorised to publish or disclose the fact or document) may be an offence under section 70 of the *Crimes Act 1914*, punishment for which may be a maximum of two (2) years imprisonment.

11. Commencement

11.1 This Deed will be taken to have commenced on the date on which the Confidant first received the Confidential Information, whether or not that date was before the date of the execution of this Deed.

12. Indemnity

12.1 In addition to Clause 7, the Confidant indemnifies the Department against any claim, loss, liability or expense incurred by the Department which is caused or contributed to by:

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

13. Survival of Obligations

13.1 The obligations under this Deed continue, notwithstanding the expiry or termination of this Deed:

- (a) in relation to an item of information described in an Official Order, for the period set out in that Official Order in respect of that item; and
- (b) in relation to any information which the Parties agree in writing after the date of commencement of the Contract is to constitute Confidential Information for the purposes of the Contract, for the period agreed by the Parties in writing in respect of that information.

14. Applicable Law

- 14.1 This Deed will be governed by and construed in accordance with the laws of the Australian Capital Territory and the Confidant agrees to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Deed.

15. No Exclusion

- 15.1 This Deed does not exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.
- 15.2 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law.

16. Waiver

- 16.1 Failure by the Department to enforce a provision of the Deed will not be construed as in any way affecting the enforceability of that provision or of the Deed as a whole.

17. Moral Rights Consent

- 17.1 For the purposes of this Clause 17 'Specified Acts' in relation to any Contract Material, means the following classes or types of acts or omissions:

- (a) those which would, but for this Clause 17, infringe the author's right of attribution of authorship;
- (b) those which would, but for this Clause 17, infringe the author's right of integrity of authorship;

but does not include:

- (c) those which would infringe the author's right not to have authorship falsely attributed.

- 17.2 Where the Confidant is a natural person and the author of any Contract Material, he or she consents to the Specified Acts by or on behalf of the Commonwealth in relation to such Contract Material (whether occurring before or after the consent is given).

- 17.3 In any other case, the Confidant warrants or undertakes that the author of the Contract Material has given or will give a written consent to the Specified Acts, and that such consent extends directly or indirectly to the performance of the Specified Acts by or on behalf of the Commonwealth in relation to such Contract Material (whether occurring before or after the consent is given).

EXECUTED as a deed.

SIGNED, SEALED and DELIVERED by

GILLIAN CALVERT
(Name of Confidant)

s47F

(Signature of Confidant)

in the presence of:

s47F

(Name of witness)

s47F

(Signature of witness)

SIGNED SEALED and DELIVERED by:

s22(1)(a)(ii)

(Name of Commonwealth representative)

s22(1)(a)(ii)

(Signature of Commonwealth representative)

for and on behalf of the **Commonwealth of
Australia** in the presence of:

s22(1)(a)(ii)

(Name of witness)

s22(1)(a)(ii)

(Signature of witness)

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Commonwealth Contract Terms

C.C.1 Background:

The Customer requires the provision of certain Goods and/or Services. The Supplier has fully informed itself on all aspects of the Customer's requirements and has responded representing that it is able to meet the Statement of Requirement.

Some terms used in these *Commonwealth Contract Terms* have been given a special meaning. Their meanings are set out either in the *Commonwealth Contracting Suite Glossary* or in the relevant *Commonwealth Contract*.

C.C.2 Relationship of the Parties:

Neither party is the employee, agent, officer or partner of the other party nor, by virtue of this Contract, authorised to bind or represent the other party.

The Supplier must ensure that its officers, employees, agents or Subcontractors do not represent themselves as being an officer, employee, partner or agent of the Customer.

In all dealings related to the Contract, the parties agree to:

- (a) communicate openly with each other and cooperate in achieving the contractual objectives; and
- (b) act honestly and ethically; and
- (c) comply with reasonable commercial standards of fair conduct; and
- (d) consult, cooperate and coordinate activities to identify and address any overlapping work health and safety responsibilities aimed at ensuring the health and safety of workers and workplaces; and
- (e) comply with all reasonable directions and procedures relating to work health and safety, record keeping and security in operation at each other's premises or facilities whether specifically informed or as might reasonably be inferred from the circumstances.

C.C.3 Conflict of Interest:

The Supplier has either declared any real or perceived conflicts of interest that might arise; or states that no conflicts of interest exist, or are anticipated, relevant to the performance of its obligations under the Contract.

If any conflict or potential conflict arises during the Contract Term, the Supplier will immediately notify the Customer and comply with any reasonable Notice given to the Supplier by the Customer in relation to the conflict. As soon as practicable, any verbal advice must be followed by written confirmation.

C.C.4 Precedence of Documents:

The Contract is comprised of:

- (a) *Additional Contract Terms* (if any);
- (b) *Statement of Work*;
- (c) *Commonwealth Contract Terms*;
- (d) *Commonwealth Contracting Suite Glossary*; and
- (e) *Contract Annex 1 – Supplementary information* (if any),

unless otherwise agreed in writing between the parties.

If there is ambiguity or inconsistency between documents comprising the Contract, the document appearing higher in the list will have precedence.

The Contract may be signed and dated by the parties on separate, but identical, copies. All signed copies constitute one (1) Contract.

C.C.5 Governing Law:

The laws of the Australian Capital Territory apply to the Contract.

C.C.6 Entire Agreement:

The Contract represents the Parties' entire agreement in relation to the subject matter, at the time this Contract was entered.

Anything that occurred before the making of this Contract shall be disregarded (unless incorporated into the Contract in writing). However, the Supplier represents that the claims made in its Response to the ATM were correct when made and remain correct.

The Parties agree that no agreement or understanding varying or extending the Contract will be legally binding upon either Party unless in writing and agreed by both Parties.

If either Party does not exercise (or delays in exercising) any of its contractual rights, that failure or delay will not prejudice those rights.

C.C.7 Survival:

All Additional Contract Terms (if any), plus Clauses C.C.14 [*Liability of the Supplier*], C.C.17 [*Supplier Payments*], C.C.20 [*Transition Out*], C.C.22 [*Compliance with Commonwealth Laws and Policies*], C.C.22(A) [*Access to Supplier's Premises and Records*], C.C.22(F) [*Fraud*] survive termination or expiry of the Contract.

C.C.8 Notices:

A Notice is deemed to be effected:

- (a) if delivered by hand - upon delivery to the relevant address;
- (b) if sent by registered post - upon delivery to the relevant address; or
- (c) if transmitted electronically - upon actual delivery as evidenced by a delivery receipt by the addressee.

A Notice received after 5.00 pm, or on a day that is not a working day in the place of receipt, is deemed to be effected on the next working day in that place.

C.C.9 Assignment:

The Supplier may not assign any rights under the Contract without the Customer's written consent. To seek consent, the Supplier must provide the Customer with a Notice, which includes full details of the proposed assignee and the rights the Supplier proposes to assign.

To decline consent, the Customer must provide a Notice to the Supplier, setting out its reasons, within twenty-eight (28) calendar days of receiving the Notice seeking consent. Otherwise, the Customer is taken to have consented.

C.C.10 Subcontracting:

Subcontracting any part of, or the entire Supplier's obligations under the Contract, will not relieve the Supplier from any of its obligations under the Contract.

The Supplier must ensure that Subcontractors specified in Item C.A.6 [*Subcontractors*] (if any) perform that part of the Services Specified in that item. Unless otherwise agreed by the Customer (in writing) the Supplier must not subcontract any part of its obligations under the Contract other than to Subcontractors named in Item C.A.6. The Supplier must ensure that specified Subcontractors (if any) are not replaced without the prior written consent of the Customer. The Customer's written consent will not be unreasonably withheld.

The Supplier must make available to the Customer the details of all Subcontractors engaged to provide the Goods and/or Services under the Contract. The Supplier acknowledges that the Customer may be required to publicly disclose such information.

Commonwealth Contract Terms

The Supplier must ensure that any subcontract entered into by the Supplier, for the purpose of fulfilling the Supplier's obligations under the Contract, imposes on the Subcontractor the same obligations that the Supplier has under the Contract (including this requirement in relation to subcontracts).

At the Customer's request, the Supplier, at no additional cost to the Customer, must promptly remove from involvement in the Contract any Subcontractor that the Customer reasonably considers should be removed.

C.C.11 Delivery and Acceptance:

The Supplier must provide the Goods and/or Services as specified in the *Statement of Work* and meet any requirements and standard specified in the *Statement of Work*.

The Supplier must promptly notify the Customer if the Supplier becomes aware that it will be unable to provide all or part of the Goods and/or Services specified in the *Statement of Work* and advise the Customer when it will be able to do so.

Any Goods must be delivered free from any security interest. Unless otherwise stated in the Contract, Goods must be new and unused. Any Services must be provided to the higher of the standard that would be expected of an experienced, professional supplier of similar services and any standard specified in the *Statement of Work*.

The Customer may reject the Goods and/or Services within fourteen (14) calendar days after delivery or such longer period specified in the Contract at Item C.A.2(d) [*Delivery and Acceptance*], if the Goods and/or Services do not comply with the requirements of the Contract ("Acceptance Period").

If during the Acceptance Period circumstances outside the Customer's reasonable control cause a delay in the Customer's evaluation of the compliance of the Goods and/or Services with the Contract, the Customer may give the Supplier a Notice before the end of the original Acceptance Period, setting out the reason for the delay and the revised Acceptance Period date (which must be reasonable having regard to the circumstances causing the delay).

If the Customer does not notify the Supplier of rejection within the Acceptance Period (as extended if applicable) the Customer will be taken to have accepted the Goods and/or Services, though the Customer may accept the Goods and/or Services sooner. Title to Goods transfers to the Customer only on acceptance.

If the Customer rejects the Goods and/or Services, the Customer must issue a Notice clearly stating the reason for rejection and the remedy the Customer requires. No payment will be due for rejected Goods and/or Services until their acceptance.

C.C.12 Licences Approvals and Warranties:

At no cost to the Customer, the Supplier must obtain and maintain all Intellectual Property Rights, licences or other approvals required for the lawful provision of the Goods and/or Services and arrange any necessary customs entry for any Goods.

The Supplier must provide the Customer with all relevant third Party warranties in respect of Goods. If the Supplier is a manufacturer, the Supplier must provide the Customer with all standard manufacturer's warranties in respect of the Goods it has manufactured and supplied.

To the extent permitted by laws and for the benefit of the Customer, the Supplier consents, and must use its best endeavours to ensure that each author of Material consents in writing, to the use by the Customer of the Material, even if the use may otherwise be an infringement of their Intellectual Property Rights and/or Moral Rights.

C.C.13 Specified Personnel:

The Supplier must ensure that the Specified Personnel set out in Item C.A.5 [*Specified Personnel*] (if any) perform the part of the Services specified in that item. The Supplier must ensure that Specified Personnel (if any) are not replaced without the prior written consent of the Customer. The Customer's written consent will not be unreasonably withheld.

At the Customer's reasonable request, the Supplier, at no additional cost to the Customer, must as soon as reasonably practicable replace any Specified Personnel that the Customer reasonably considers:

- (a) is not performing the Supplier's obligations under the Contract to the standard or within the timeframe reasonably required by the Customer;
- (b) is not a fit and proper person; or
- (c) is not suitably qualified to perform the Services.

Any Specified Personnel must be replaced with personnel that are acceptable to the Customer.

C.C.14 Liability of the Supplier:

The Supplier will indemnify the Customer and its officials against any claim, loss or damage arising in connection with any negligent or wilful breach of the Supplier's obligations or representations under the Contract.

The Supplier's obligation to indemnify the Customer and its officials will reduce proportionally to the extent that any act or omission, on the part of the Customer or its officials contributed to the claim, loss or damage.

The Supplier's liability under this clause shall not exceed the maximum applicable amount that applies to the claim loss or damage under a scheme operating under Schedule 4 of the *Civil Law (Wrongs) Act 2002* (ACT), or any corresponding State, Territory or Commonwealth legislation, that limits the civil liability of members of particular professions arising from the performance of their professional services, where the Supplier is a member of that scheme, and where that scheme applies to the Goods and/or Services delivered under the Contract.

The Supplier will maintain adequate insurances for the Contract and provide the Customer with proof when reasonably requested.

C.C.15 Termination or Reduction for Convenience:

In addition to any other rights either party has under the Contract,

- (a) the Customer acting in good faith, may at any time; or
- (b) the Supplier, acting in good faith, may notify that it wishes to terminate the Contract or reduce the scope or quantity of the Goods and/or Services by providing a Notice to the other Party.

If the Supplier issues a Notice under this clause, the Supplier must comply with any reasonable directions given by the Customer. The Contract will terminate, or the scope will be reduced in accordance with the Notice, when the Supplier has complied with all of those directions.

If the Customer issues a Notice under this clause, the Supplier must stop or reduce work in accordance with the Notice and comply with any reasonable directions given by the Customer.

In either case, the Supplier must mitigate all loss and expenses in connection with the termination or reduction in scope (including the costs of its compliance with any directions). The Customer will pay the Supplier for Goods and/or Services accepted in accordance with clause C.C.11 [Delivery and Acceptance] and item C.A.2(d) [Delivery and Acceptance] before the effective date of termination or reduction.

If the Customer issues a Notice under this clause, the Customer will also pay the Supplier for any reasonable costs the Supplier incurs that are directly attributable to the termination or reduction, provided the Supplier substantiates these costs to the satisfaction of the Customer.

Under no circumstances will the total of all payments to the Supplier exceed the Contract Price. The Supplier will not be entitled to loss of anticipated profit for any part of the Contract not performed.

C.C.16 Termination for Cause:

The Customer may terminate the Contract in whole or in part if:

- (a) the Supplier does not deliver the Goods and/or Services as specified in the Contract, or notifies the Customer that the Supplier will be unable to deliver the Goods and/or Services as specified in the Contract;
- (b) the Customer rejects the Goods and/or Services in accordance with clause C.C.11 [Delivery and Acceptance] and the Goods and/or Services are not remedied as required by the Notice of rejection;
- (c) the Supplier breaches a material term of the Contract and the breach is not capable of remedy;
- (d) the Supplier does not remediate a material breach of the Contract which is capable of remediation within the period specified by the Customer in a Notice of default issued to the Supplier; or
- (e) the Supplier:
 - (i) is unable to pay all its debts when they become due;
 - (ii) if incorporated – has a liquidator, receiver, administrator or other controller appointed or an equivalent appointment is made under legislation other than the *Corporations Act 2001* (Cth); or
 - (iii) if an individual – becomes bankrupt or enters into an arrangement under *Part IX* or *Part X* of the *Bankruptcy Act 1966* (Cth).

Termination of a Contract under this clause does not change the Customer's obligation to pay any Correctly Rendered Invoice.

C.C.17 Supplier Payments:

If the Supplier is required to submit an invoice to trigger payment, the invoice must be a Correctly Rendered Invoice.

The Supplier must promptly provide to the Customer such supporting documentation and other evidence reasonably required by the Customer to substantiate performance of the Contract by the Supplier.

Payment of any invoice is payment on account only, and does not substantiate performance of the Contract.

If the Supplier owes any amount to the Customer in connection with the Contract, the Customer may offset that amount, or part of it, against its obligation to pay any Correctly Rendered Invoice.

C.C.18 Dispute Resolution:

For any dispute arising under the Contract both the Supplier and the Customer agree to comply with (a) to (d) of this clause sequentially:

- (a) both Contract Managers will try to settle the dispute by direct negotiation;
- (b) if unresolved, the Contract Manager claiming that there is a dispute will give the other Contract Manager a Notice setting out details of the dispute and proposing a solution;
- (c) if the proposed solution is not accepted by the other Contract Manager within five (5) business days, each Contract Manager will nominate a more senior representative, who has not had prior direct involvement in the dispute. These representatives will try to settle the dispute by direct negotiation;
- (d) failing settlement within a further ten (10) business days, the Customer will, without delay, refer the dispute to an appropriately qualified mediator selected by the Customer or, at the Customer's discretion, to the chairperson of an accredited mediation organisation to appoint a mediator, for mediation to commence within fifteen (15) business days of the request.

Representatives for the Supplier and the Customer must attend the mediation. The nominated representatives must have the authority to bind the relevant party and act in good faith to genuinely attempt to resolve the dispute.

The Customer and the Supplier will each bear their own costs for dispute resolution. The Customer will bear the costs of a mediator.

If the dispute is not resolved within thirty (30) business days after mediation commences, either the Supplier or the Customer may commence legal proceedings.

Despite the existence of a dispute, the Supplier will (unless requested in writing by the Customer not to do so) continue their performance under the Contract.

This procedure for dispute resolution does not apply to action relating to clause C.C.16 [Termination for Cause] or to legal proceedings for urgent interlocutory relief.

C.C.19 Transition In:

The Supplier must perform all tasks reasonably required to facilitate the smooth transition of the provision of the Goods and/or Services from any outgoing supplier to the Supplier.

C.C.20 Transition Out:

If the Contract expires or is terminated under clause C.C.16 [Termination for Cause] the Supplier must comply with any reasonable directions given by the Customer in order to facilitate the smooth transition of the provision of the Goods and/or Services to the Customer or to another supplier nominated by the Customer.

C.C.21 Compliance with Laws:

The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in any jurisdiction in which any part of the Contract is performed.

C.C.22 Compliance with Commonwealth Laws and Policies:

The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with all Commonwealth laws and policies relevant to the Goods and/or Services.

If the Supplier becomes aware of any actual or suspected breach of the requirements set out in clauses A to F below, it must:

- (a) immediately report it to the Customer and provide a written report on the matter within five (5) business days; and

- (b) comply with any reasonable directions by the Customer in relation to any investigation or further reporting of the actual or suspected breach.

A. Access to Supplier's Premises and Records: The Supplier must maintain proper business and accounting records relating to the supply of the Goods and/or Services and performance of the Contract.

The Supplier agrees to provide to the Customer, or its nominee, access to the Supplier's, or its Subcontractor's premises, personnel, documents and other records, and all assistance reasonably requested, for any purpose associated with the Contract or any review of the Supplier's or the Customer's performance under the Contract, including (but not limited to) in connection with a request made under the *Freedom of Information Act 1982* (Cth) or audit or review by the Australian National Audit Office. Unless the access is required for the purpose of a criminal investigation into the Supplier, its employees or subcontractors, the Customer will reimburse the Supplier's substantiated reasonable cost for complying with the Customer's request.

The Supplier must not transfer, or permit the transfer of, custody or ownership, or allow the destruction, of any Commonwealth record (as defined in the *Archives Act 1983* (Cth)) without the prior written consent of the Customer. All Commonwealth records, including any held by Subcontractors, must be returned to the Customer at the conclusion of the Contract.

B. Privacy Act 1988 (Cth) Requirements: In providing the Goods and/or Services, the Supplier agrees to comply, and to ensure that its officers, employees, agents and subcontractors comply with the *Privacy Act 1988* (Cth) and not to do anything, which if done by the Customer would breach an Australian Privacy Principle as defined in that Act.

C. Confidential Information: Other than information available in the public domain, the Supplier agrees not to disclose to any person, other than the Customer, any confidential information relating to the Contract or the Goods and/or Services, without prior written approval from the Customer. This obligation will not be breached where the Supplier is required by law or a stock exchange to disclose the relevant information or where the relevant information is publicly available (other than through breach of a confidentiality or non-disclosure obligation).

The Customer may at any time require the Supplier to arrange for its employees, agents or subcontractors to give a written undertaking relating to nondisclosure of the Customer's confidential information in a form acceptable to the Customer.

The Customer will keep any information in connection with the Contract confidential to the extent it has agreed in writing to keep such specified information confidential. The Customer will not be in breach of any confidentiality agreement if the Customer is required to disclose the information by law, a Minister or a House or Committee of Parliament.

D. Security and Safety: When accessing any Commonwealth place, area or facility, the Supplier must comply with any security and safety requirements notified to the Supplier by the Customer or of which the Supplier is, or should reasonably be aware. The Supplier must ensure that its officers, employees, agents and subcontractors are aware of, and comply with, such security and safety requirements.

The Supplier must ensure that all information, material and property provided by the Customer for the purposes of the Contract is protected at all times from unauthorised access, use by a third party, misuse, damage and destruction and is returned as directed by the Customer.

The Supplier acknowledges that unauthorised disclosure of security-classified information is an offence. Legislation (including, but not limited to, the *Crimes Act 1914*) contains provisions relating to the protection of prescribed official information and sets out the penalties for the unauthorised disclosure of that information.

E. Criminal Code: The Supplier acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the *Criminal Code Act 1995* (Cth). The Supplier must ensure that any subcontractor engaged in connection with the Contract is aware of the information contained in this clause.

F. Fraud: For the purposes of this clause, Fraud means dishonestly obtaining a benefit from the Commonwealth or causing a loss to the Commonwealth by deception or other means.

The Supplier must take all reasonable steps to prevent and detect Fraud in relation to the performance of this Contract. The Supplier acknowledges the occurrence of Fraud will constitute a breach of this Contract.

If an investigation finds that the Supplier or its employees have committed Fraud, or the Supplier has failed to take reasonable steps to prevent Fraud by an employee or subcontractor, the Supplier must reimburse or compensate the Customer in full.

Commonwealth Contracting Suite (CCS) Glossary

In the Commonwealth Contracting Suite:

A reference to:

- a) a clause in the form A.A.[x] – is a reference to a clause of the **Approach to Market**;
- b) a clause in the form A.B.[x] – is a reference to a clause of the **Commonwealth ATM Terms**;
- c) an item in the form C.A.[x] – is a reference to an item in the **Statement of Work**;
- d) a clause in the form C.B.[x] – is a reference to a clause in the **Additional Contract Terms**;
- e) a clause in the form C.C.[x] – is a reference to a clause of the **Commonwealth Contract Terms** or the **Commonwealth Purchase Order Terms**, as the case may be.

“Additional Contract Terms” means the terms and conditions set out in the section of the Contract with the heading ‘Additional Contract Terms’.

“Approach to Market or ATM” means the notice inviting potential suppliers to participate in the procurement.

“Closing Time” means the closing time specified in clause A.A.1 [*Key Events and Dates*].

“Contract” means the documentation specified in clause C.C.4 [*Precedence of Documents*].

“Contract Extension Option” means an option of a Customer to extend the term of a Contract for one or more additional time periods.

“Contract Manager” means the contract manager for the Customer and/or Supplier (as relevant) specified in the Contract.

“Contract Price” means the total contract price specified in the Contract, including any GST component payable, but does not include any simple interest payable on late payments.

“Correctly Rendered Invoice” means an invoice that:

- a) is correctly addressed and calculated in accordance with the Contract;
- b) relates only to Goods and/or Services that have been accepted by the Customer in accordance with the Contract;
- c) includes any purchase order number, and the name and phone number of the Customer’s Contract Manager;
- d) is for an amount which, together with all previously Correctly Rendered Invoices, does not exceed the Contract Price; and
- e) is a valid tax invoice in accordance with the GST Act.

“Customer” means a party specified in a Contract as a Customer.

“Delivery and Acceptance” means the process by which Goods and/or Services are delivered to a Customer and accepted by the Customer as meeting the terms specified in the Contract.

“General Interest Charge Rate” means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* on the day payment is due, expressed as a decimal rate per day.

“Goods and/or Services” means:

- a) the Goods, Services, or Goods and Services and any Material specified in the Contract; and
- b) all such incidental Goods and Services that are reasonably required to achieve the purposes of the Customer as specified in the Contract.

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

“GST” means a Commonwealth goods and services tax imposed by the GST Act.

“Intellectual Property Rights” means all intellectual property rights which may subsist in Australia or elsewhere, whether or not they are registered or capable of being registered.

Commonwealth Contracting Suite (CCS) Glossary

“Material” means any material brought into existence as a part of, or for the purpose of producing the Goods and/or Services, and includes but is not limited to documents, equipment, information or data stored by any means.

“Moral Rights” means the rights in *Part IX of the Copyright Act 1968 (Cth)*, including the right of attribution, the right against false attribution and the right of integrity.

“Notice” means an official notice or communication under the Contract in writing, from one Contract Manager and delivered to the other Contract Manager, at the postal address, or email address, or facsimile number set out in the Contract or as notified from time to time.

“Requirement” means the description of the Goods and Services described in:

- a) for the purposes of the Commonwealth ATM Terms the section of the Approach to Market with the heading ‘Requirement’;
- b) for the purposes of the Commonwealth Contract Terms the section of the Statement of Work with the heading ‘Requirement’;
- c) for the purposes of the Commonwealth Purchase Order Terms the document setting out the Goods and/or Services.

“Specified Personnel” means the personnel specified in the Contract or such other personnel who are accepted by the Customer in accordance with clause C.C.13 [*Specified Personnel*].

“Statement of Requirement” means the section of the Approach to Market with the heading ‘Statement of Requirement’.

“Statement of Work” means the section of the Contract, as the case may be, with the heading ‘Statement of Work’.

“Supplier” means a party specified in a Contract as a Supplier.

Contract Signing Page

The Parties agree that by signing this Commonwealth Contract – Labour Hire Services, they enter into a Contract comprising:

- (a) Additional Contract Terms (if any);
- (b) Statement of Work;
- (c) Commonwealth Contract Terms;
- (d) Commonwealth Contracting Suite Glossary; and
- (e) Contract Annex 1 – Supplementary information (if any).

EXECUTED as an Agreement

Signed for and on behalf of the **Commonwealth of Australia** as represented by **Department of Immigration and Border Protection ABN 33 380 054 835** by its duly authorised delegate in the presence of

Signature of witness

s22(1)(a)(ii)

Signature of delegate

s22(1)(a)(ii)

Name of witness (**print**)

s22(1)(a)(ii)

Name of delegate (**print**)

s22(1)(a)(ii)

Position of delegate (**print**)

A/g Assistant Secretary

On:

15 May 2017

Executed by Ms Gillian Calvert **ABN 20 467 681 150** in accordance with Section 127 of the *Corporations Act 2001*

Signature of ~~director~~ *sole trader*

Signature of director/company secretary who state they are the sole director/company secretary of

s47F

Name of ~~director~~ (**print**) *sole trader*

GILLIAN CALVERT

Name of director/company secretary (**print**)

On:



Commonwealth of Australia

Commonwealth Contract - for Labour Hire Services
Reference No: 294003

Customer

Customer Name Department of Home Affairs
Customer ABN 33 380 054 835
Address 6 Chan Street, Belconnen, ACT 2616

Supplier

Supplier Name Gillian Calvert AO
Supplier ABN 20 467 681 150
Address s47F

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under the Freedom of Information Act 1982

Statement of Work

C.A.1 Key Events and Dates

This Contract commences on the Contract Start Date and continues for the Contract Term unless:

- (a) it is terminated earlier; or
- (b) if a Contract Extension Option is set out in the table, the Customer exercises the Contract Extension Option, in which case this Contract will continue until the end of the extended term (unless it is terminated earlier).

Event	Date
Contract Start Date	16 December 2019
Contract Term	This Contract will commence on the Contract Start Date and will continue until 30 June 2020 unless terminated earlier in accordance with this Contract or extended by the written agreement of the Parties, in the form of a Deed of Variation

C.A.2 The Requirement

Background

The Department of Home Affairs (the Department) seeks to engage the services of an independent consultant to assure the conditions of the physical detention of children accommodated on Christmas Island since 31 August 2019. The Contractor's role will be to consider the Department's current application of its child safeguarding and detention operations policies and practices, which acknowledge the particular vulnerability of children and young people in immigration detention environments and prioritise their safety and wellbeing.

The Department seeks to provide assurances that the safety and wellbeing needs of children accommodated in held detention on Christmas Island are being satisfactorily met and supports the conduct of inquiries into its own child-focused practices and those of contracted services provided under the Migration Act (1958) and in compliance with the Western Australian Children and Community Services Act (2004).

The Department's child wellbeing officer (CWO) with responsibility for Western Australia will attend Christmas Island to monitor the physical circumstances of the detention of the family and the health and wellbeing of the children in December 2019; however, an experienced and independent child expert is needed to supplement this engagement and provide independent, thorough and detailed research, assessment and recommendations.

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Scope of Work

- a) To provide expert advice in relation to the conditions of physical detention under section 189 of the *Migration Act 1958* (Migration Act) of children on Christmas Island, specifically concerning the appropriateness of:
 - i. accommodation
 - ii. food
 - iii. health
 - iv. education and learning
 - v. play and recreation
 - vi. spiritual, cultural and community connections
 - vii. family support, privacy and routines
 - viii. safeguarding
- b) To provide written observations relating to the arrangements in place to support children and families detained on Christmas Island (within 14 days of completing any travel to Christmas Island)
- c) To provide written recommendations for the redress of child welfare or wellbeing issues identified (within 14 days of completing any travel to Christmas Island)
- d) To provide expert advice as requested on proposed departmental responses to recommendations to enhance the Department's commitment to the safeguarding and wellbeing of children detained on Christmas Island (within 30 days of completing any travel to Christmas Island).

The Contractor will not be required to advise upon placement options or decisions for unlawful noncitizen families under the terms of this Contract. Families detained on Christmas Island are done so under section 189 of the Migration Act; the basis for their detention under the Act is not in scope under the terms of this Contract.

Meetings

The Supplier will participate in meetings and discussions as required by the Customer, either in-person, via email or telephone.

Assistance to be Provided

The Customer will provide:

- (a) access to the Phosphate Hill APOD, Christmas Island;
- (b) access to the Broadmeadows Residential Precinct (BRP) at the Melbourne Immigration Transit Accommodation;
- (c) interview or administrative and logistical support from relevant officers from Child Wellbeing Branch, Detention Operations Command and Audit and Assurance Branch;
- (d) access to families accommodated at Phosphate Hill APOD, with their consent and pending their cooperation in scheduled engagements; and
- (e) the records and material set out in Contract Annex 2 – Commonwealth Material.

C.A.2 (a) Standards

The Supplier must ensure that any goods and services provided under this Contract comply with all applicable Australian standards (or in its absence an international standard) including any requirements or standards specified in this Statement of Work. If requested by the Customer, the Supplier must enable the Customer, or an independent assessor, to conduct periodic audits to confirm compliance with all applicable Australian or international standards, including, but not limited to, those specified in this Statement of Work. This clause C.A.2(a) survives termination or expiry of this Contract.

C.A.2 (b) Security Requirements

In providing the Requirement, the Supplier must comply with the following security requirements:

- a) AGSVA security clearance of 'baseline'; and
- b) Department of Home Affairs Employee Suitability Clearance.

C.A.2 (c) Workplace Health and Safety

Throughout the Contract period, the Customer and the Supplier will proactively identify and cooperate to manage any Workplace Health and Safety issues that may arise.

C.A.2 (d) Delivery and Acceptance

Where the Customer rejects any Services pursuant to Clause C.C.11 [*Delivery and Acceptance*] the Customer will specify a timeframe in which the Supplier is required to rectify deficiencies, at the Supplier's cost, so that the Services meet the requirements of this Contract. The rectified Services are subject to acceptance by the Customer pursuant to Clause C.C.11 [*Delivery and Acceptance*].

In the event that the Customer has made any payments to the Supplier for Services which are subsequently not accepted by the Customer, the Supplier must refund all payments related to the Services which have not been rectified and accepted by the Customer.

If the Supplier is unable to meet the Customer's timeframe, the Customer may terminate the Contract in accordance with clause C.C.16(b) [*Termination for Cause*].

C.A.2 (e) Facilities and Assistance Provided by the Customer

Without limiting any of the Supplier's obligations under this Contract, the Customer will provide the facilities and assistance to the Supplier as specified in clause C.A.2 [*The Requirement*].

C.A.3 Performance Management**C.A.3 (a) Performance Management General**

- a. Where there are performance measures applicable to this Contract, as listed in Contract Annexure 3 [*Performance Measures*], the following will apply:
 - i. The Customer will monitor the performance of the Supplier under this Contract and will evaluate the effectiveness of the Supplier's performance on an ongoing basis.
 - ii. The Supplier must report to the Customer Project Officer on its performance under this Contract monthly or as otherwise specified in Contract Annex 3 [*Performance Measures*].
 - iii. The Customer may conduct a review to assess the performance of the Supplier. Reviews will take into account the information that the Supplier provides to the Customer in the Supplier's reports in clause C.A.3(a)b.

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- iv. If the Customer determines that the Supplier's performance is not compliant with this Contract, or if the Supplier has, whether after a review or otherwise, then, without limiting the Customer's rights under this Contract or at law, the Customer may:
 - A. require the Supplier to propose and comply with service levels or other measures for performance that are acceptable to the Customer to address the under or non-performance issues identified by the Customer;
 - B. withhold part or all of the Contract Charges payable under this Contract until such time as the Supplier's performance has improved, or until a breach of this Contract by the Supplier is rectified, to the Customer's satisfaction;
 - C. reduce the scope of this Contract in accordance with clause C.C.15 [*Termination or Reduction for Convenience*]; or
 - D. terminate this Contract in accordance with clause C.C.16 [*Termination for Cause*].
- b. This remainder of this clause C.A.3 applies if Contract Annex 3 [*Performance Measures*] is completed with specific Performance Measures.

C.A.3 (b) Measuring and Monitoring tools

- a. Unless specified otherwise in Contract Annex 3 [*Performance Measures*], the Supplier must:
 - i. implement and maintain during the Term, measuring and monitoring tools capable of measuring its performance against the Performance Measures;
 - ii. provide the Customer with access to the data and information gathered by those tools;
 - iii. if requested by the Customer demonstrate to the Customer the operation and accuracy of those tools; and
 - iv. investigate any failure to provide the Requirement in accordance with the Performance Measures.

C.A.3 (c) Consequences of failing to meet Performance Measures

- a. Contract Annex 3 [*Performance Measures*] may specify consequences which will apply if the Supplier fails to meet a Performance Measure.
- b. Without limiting clause C.A.3(c)a, a failure by the Supplier to meet a Performance Measure may affect the Supplier's entitlement to Performance Payments in accordance with clause C.A.4 [*Contract Price*].
- c. The Supplier acknowledges and agrees that the consequences for failing to meet the Performance Measures set out in Contract Annex 3 [*Performance Measures*]:
 - i. are reasonable and appropriate for managing the Supplier's adherence to its obligations under this Contract; and
 - ii. do not limit the Customer's rights or remedies arising from any defective performance under this Contract.

C.A.4 Contract Price

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C.A.4 (a) Fees and Charges

The Supplier must only invoice the Customer for hours of work actually incurred, at the hourly or daily capped rates (as applicable) as indicated in the table below. All invoices submitted by the Supplier to the Customer must include itemised descriptions of the work performed by the Supplier to substantiate the hours invoiced to the Customer.

The Contractor may vary working hours/days to suit project requirements. It is estimated that the proposed activity may be completed in approximately 14 working days.

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Where the Customer is obliged under the *Superannuation Guarantee (Administration) Act 1992* (the SG Act) to make superannuation contributions on behalf of the Supplier, the Customer will pay amounts due under the SG Act, at the current superannuation guarantee rate (9.5%) on the service fees excluding GST, into the SG Act compliant fund nominated by the Supplier as set out in the Contract Annex 1 [Supplementary Information], or as otherwise notified in writing by the Supplier to the Customer from time to time.

C.A.4 (b) Travel

The Customer will organise and pay for the costs of approved official business travel undertaken to attend SAM commitments (including flights and accommodation).

Domestic travel will be conducted using business class when available. The travel and accommodation rate will be consistent with non-SES officer rates.

The supplier is responsible for organising taxis, meals and incidentals involved in delivering the Services. The Supplier must provide the Customer with a correctly rendered invoice for reimbursement. The Customer will cover meal costs up to the rate for non-SES officers.

Where additional expenses are incurred whilst travelling, the Customer may reimburse the Supplier for these costs only where the Supplier obtains the written approval of the Customer prior to incurring such expenses and provides the Customer with a correctly rendered invoice for reimbursement.

C.A.4 (c) Payment Schedule

If the Supplier incurs any additional expenses as contemplated by clause C.A.4(b), the Customer will reimburse the Supplier at cost for these additional expenses on submission of a Correctly Rendered Invoice and production of satisfactory evidence in accordance with Clause C.C.17 [Supplier Payment].

C.A.4 (d) Pricing for Extension Period

Not used.

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C.A.5 Contract Managers and Addresses for Notices

Contract Managers are responsible for issuing or accepting any written Notices under this Contract and are the contact points for general liaison.

C.A.5 (a) The Customer's Contract Manager:

The person occupying the position of: Director, Child Wellbeing Operations

Currently: s22(1)(a)(ii)

Postal Address: 3 Molonglo Drive, Brindabella Business Park, ACT 2611

Telephone: s22(1)(a)(ii)

Email Address: s22(1)(a)(ii)

C.A.5 (b) Address for Invoices:

Addressee Name: s22(1)(a)(ii)

Section: Child Wellbeing Operations

Postal Address: 3 Molonglo Drive, Brindabella Business Park, ACT 2611

Email Address: s22(1)(a)(ii)

Telephone: s22(1)(a)(ii)

C.A.6 (d) The Supplier's Contract Manager:

Name: Gillian Calvert

Postal Address: s47F

Telephone: s47F

Email Address: s47F

C.A.7 Specified Personnel

Position/Role	Name
Independent Reviewer	Gillian Calvert

s47F

C.A.8 Subcontractors

The Supplier must not subcontract the requirement at clause C.A.2.

Additional Contract Terms

C.B.1 Commonwealth Intellectual Property

C.B.1.1 For the purposes of this clause, Commonwealth Material means any Material provided by the Customer to the Supplier for the purposes of this Contract (including any Material specified as Commonwealth Material in Contract Annex 2 [*Commonwealth Material*] or which is copied or derived from that Material.

C.B.1.2 For the purposes of this clause, Contract Material means all Material:

- a. created by or on behalf of the Supplier or a Subcontractor of the Supplier for the purposes of this Contract, including any Material specified as Contract Material in Contract Annex 2 [*Commonwealth Material*]
- b. incorporated in, supplied or required to be supplied along with the Material referred to in clause C.B.1.2(a); or
- c. copied or derived from Material referred to in clause C.B.1.2(a) or clause C.B.1.2(b).

C.B.1.3 Commonwealth ownership of Intellectual Property Rights in Contract Material is to apply.

- a. All Intellectual Property Rights in all Contract Material vests or will vest in the Customer immediately on its creation.
- b. Unless otherwise specified in Contract Annex 2 [*Commonwealth Material*], the Supplier grants to (or must procure for) the Customer a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right to sublicense) to use, reproduce, adapt, modify, distribute, communicate and exploit any Supplier or other third party Material used in the creation of Contract Material.
- c. Unless otherwise specified in Contract Annex 2 [*Commonwealth Material*] to the extent that the Supplier needs to use any of the Commonwealth Material or Contract Material for the purpose of performing its obligations under the Contract, the Customer grants to the Supplier a world-wide, royalty free, non-exclusive, non-transferable licence to use, reproduce, adapt, modify, distribute and communicate that Material solely for the purpose of providing the Requirement.
- d. The licences in this clause C.B.1 is subject to:
 - i. any permissions, limitations, conditions or restrictions in Contract Annex 2 [*Commonwealth Material*]; and
 - ii. any direction given by the Customer to the Supplier.

Pre-Existing Intellectual Property of the Supplier

Not Applicable.

C.B.2 Reporting Obligations and Disclosures

- a. The Supplier permits the disclosure of information related to this Contract for various reporting and Customer disclosure obligations. These disclosures include:
 - i. disclosure of procurement information for the Customer's annual reporting purposes;
 - ii. disclosure to the Parliament and its committees, as appropriate, in line with the Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters;
 - iii. disclosure of information consistent with the *Freedom of Information Act 1982* (Cth);
 - iv. disclosure of information consistent with the *Ombudsman Act 1976* (Cth);

- v. disclosure of discoverable information that is relevant to a case before a court; and
 - vi. disclosure of information as required under other Law or Commonwealth policy.
- b. The Supplier must provide all reasonable assistance to the Customer with regard to the release of the Supplier's Confidential Information where disclosure may be required for the purposes of the Customer's Parliamentary reporting and accountability obligations.

C.B.3 Interest on Late Payments

If the Customer fails to make a payment to the Supplier by the business day it is due and the amount of interest payable under this clause exceeds \$10, the Customer will pay the unpaid amount plus interest on the unpaid amount.

Interest payable under this clause will be simple interest calculated in respect of each calendar day from the day after the amount was due and payable, up to and including the day that the Customer effects payment, calculated using the General Interest Charge Rate formula available at the Australian Taxation Office website.

C.B.4 Illegal Workers

C.B.4.1 Illegal Worker means a non-citizen who:

- (a) does not hold a valid visa and who performs Work in Australia; or
- (b) holds a valid visa and who performs Work in Australia in breach of a visa condition that:
 - (i) prohibits him or her from working in Australia; or
 - (ii) restricts the Work that he or she may perform in Australia.

C.B.4.2 Work means any work, whether for reward or otherwise.

For more information refer to the "Employing Legal Workers Guide" available at:

<http://www.border.gov.au/Busi/Empl/Empl/employing-legal-workers/legal-workers-a-guide-for-employers>.

C.B.4.3 The Supplier must not engage Illegal Workers in any capacity to carry out any Work under or in connection with this Contract and must Notify the Customer immediately it becomes aware of the involvement of an Illegal Worker in such Work.

C.B.4.4 The Supplier must remove, or cause to be removed, any Illegal Worker from any involvement in performing its Obligations under this Contract (including if engaged by a Subcontractor) and arrange for their replacement at no cost to the Customer and immediately upon becoming aware of the involvement of the Illegal Worker.

C.B.4.5 If requested in writing by the Customer, the Supplier must provide evidence within 14 days that it has taken all reasonable steps to ensure that it has complied and is complying with its Obligations in respect of Illegal Workers.

C.B.5 Immigration and Border Protection Workers

C.B.5.1 The Supplier acknowledges that it, and its employees, contractors and subcontractor personnel, may be Immigration and Border Protection workers under the *Australian Border Force Act 2015* (Cth), and if so, must comply with:

- (a) requirements and directions that may be issued under Part 5 of the *Australian Border Force Act 2015* (Cth) relating to alcohol and drug tests;

- (b) secrecy and disclosure provisions in Part 6 of the *Australian Border Force Act 2015* (Cth);
- (c) directions given by the Secretary or the Australian Border Force Commissioner to Immigration and Border Protection workers from time to time, which may include directions about security clearances, drugs and alcohol, mandatory reporting and professional standards;
- (d) any other obligations under the *Australian Border Force Act 2015* (Cth); and
- (e) Customer policies issued by the Customer of Immigration and Border Protection to Immigration and Border Protection workers, as applicable.

C.B.5.2 If the Supplier, or its employees, contractors or subcontractor personnel who are Immigration and Border Protection workers breach any of their obligations under the *Australian Border Force Act 2015* (Cth) or applicable Customer policies, the Customer may, by written notice and in its absolute discretion:

- (a) require that the Supplier immediately cease the involvement of specified employees, contractors or subcontractor personnel in the performance of the Services; or
- (b) immediately terminate this Contract; without liability and at no additional cost to the Customer.

C.B.5.3 The Customer's rights under this clause are in addition to the rights of the Secretary and the Australian Border Force Commissioner under section 57 of the *Australian Border Force Act 2015* (Cth). Any termination of this Contract under section 57 is also a valid termination under the terms and conditions of this Contract.

C.B.6 Subcontracting

C.B.6.1 The Supplier must not subcontract the requirement.

C.B.7 Insurance Requirements

C.B.7.1 Not Applicable.

C.B.8 Conflicts of Interest

C.B.8.1 Without limiting clause C.C.3, the Supplier must complete a Declaration of Conflicts of Interest substantially in the form provided by the Customer at the commencement of the Contract.

C.B.8.2 The Supplier acknowledges and agrees that the Supplier's obligation to declare all potential, perceived and actual conflicts of interest is an ongoing obligation through the term of this Contract. The Supplier is required to update its Declaration of Conflicts of Interest throughout the term of this Contract, as it becomes aware of any potential, perceived and actual conflicts of interest which may impact on the Services the Supplier is providing under this Contract.

C.B.8.3 Without limiting any other right of the Customer under this Contract, the Supplier agrees to deal with any declared potential, perceived or actual conflict of interest as directed by the Customer. The Supplier acknowledges that a failure by the Supplier to deal with any declared potential, perceived or actual conflict of interest as directed by the Customer will entitle the Customer to terminate this Contract in accordance with clause C.C.16.

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Contract Annex 1 – Supplementary Information

Supplier's nominated SG Act compliant superannuation fund:

Fund Name:

Fund ABN:

Fund Member Name:

Fund Address:

Contact Number of Fund:

Contributor Name:

s47F



Department of Home Affairs

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Contract Annex 2**1. Commonwealth Material**

Commonwealth Material to be made available	When Commonwealth Material is to be made available	Form in which Commonwealth Material is to be made available	Any permissions, conditions or restrictions in relation to that Commonwealth Material
<p>(f) health and medical records relating to the management of the children's health for the duration of their current detention</p> <p>(g) records relating to services provided to support families' or minors' accommodated in detention on Christmas Island</p> <p>(h) records relating to the oversight of external authorities enquiring into the circumstances of the detention of the children (e.g. Victorian Children's Commissioner, Comcare, United Nations Human Rights Committee)</p>	Over the course of the Contract period	Various	The Supplier acknowledges that provision of Commonwealth Material under Annex 2 is dependent on the Department obtaining the consent of each relevant detainee, and any other consents or approvals required by Law.

2. Existing Supplier Material

Not applicable.

3. Third Party Material

Not applicable.

4. Other Auxiliary Material

Not applicable.

5. Contract Material

The Contract Material that the Supplier is required to generate includes any material that is requested pursuant to the Requirement (refer to clause C.A.2).

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Contract Annex 3

Performance Measures

Not used.

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Contract Signing Page

The Customer and Supplier agree that by signing this Commonwealth Contract – Labour Hire Services, they enter into a Contract comprising:

- (a) Additional Contract Terms (if any);
- (b) Statement of Work;
- (c) Commonwealth Contract Terms;
- (d) Commonwealth Contracting Suite Glossary;
- (e) Contract Annex 1 – Supplementary Information;
- (f) Contract Annex 2 – Commonwealth Material;
- (e) Contract Annex 3 – Performances Measures.

EXECUTED as an Agreement

Signed for and on behalf of the **Commonwealth of Australia** as represented by **Department of Home Affairs**
ABN 33 380 054 835 by its duly authorised delegate in the presence of

Signature of witness
s22(1)(a)(ii)

[Redacted signature]

Signature of delegate

s22(1)(a)(ii)

[Redacted signature]

Name of witness (*print*)

s22(1)(a)(ii)

[Redacted name]

Name of delegate (*print*)

s22(1)(a)(ii)

[Redacted name]

Position of delegate (*print*)

Director Child Wellbeing
Operations

On:

19/12/19.

Executed by Gillian Calvert in the presence of

Signature of witness

s47F

[Redacted signature]

Signature of Supplier

s47F

[Redacted signature]

Name of witness (*print*)

s47F

[Redacted name]

Name of Supplier (*print*)

Gillian Calvert

On: 18 December 2019

Reference No: 1700295

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Commonwealth Contract Terms

C.C.1 Background:

The Customer requires the provision of certain Goods and/or Services. The Supplier has fully informed itself on all aspects of the Customer's requirements and has responded representing that it is able to meet the Statement of Requirement.

Some terms used in these *Commonwealth Contract Terms* have been given a special meaning. Their meanings are set out either in the *Commonwealth Contracting Suite Glossary* or in the relevant *Commonwealth Contract*.

C.C.2 Relationship of the Parties:

Neither party is the employee, agent, officer or partner of the other party nor, by virtue of this Contract, authorised to bind or represent the other party.

The Supplier must ensure that its officers, employees, agents or Subcontractors do not represent themselves as being an officer, employee, partner or agent of the Customer.

In all dealings related to the Contract, the parties agree to:

- (a) communicate openly with each other and cooperate in achieving the contractual objectives; and
- (b) act honestly and ethically; and
- (c) comply with reasonable commercial standards of fair conduct; and
- (d) consult, cooperate and coordinate activities to identify and address any overlapping work health and safety responsibilities aimed at ensuring the health and safety of workers and workplaces; and
- (e) comply with all reasonable directions and procedures relating to work health and safety, record keeping and security in operation at each other's premises or facilities whether specifically informed or as might reasonably be inferred from the circumstances.

C.C.3 Conflict of Interest:

The Supplier has either declared any real or perceived conflicts of interest that might arise; or states that no conflicts of interest exist, or are anticipated, relevant to the performance of its obligations under the Contract.

If any conflict or potential conflict arises during the Contract Term, the Supplier will immediately notify the Customer and comply with any reasonable Notice given to the Supplier by the Customer in relation to the conflict. As soon as practicable, any verbal advice must be followed by written confirmation.

C.C.4 Precedence of Documents:

The Contract is comprised of:

- (a) *Additional Contract Terms* (if any);
- (b) *Statement of Work*;
- (c) *Commonwealth Contract Terms*;
- (d) *Commonwealth Contracting Suite Glossary*; and
- (e) *Contract Annex 1 – Supplementary information* (if any),

unless otherwise agreed in writing between the parties.

If there is ambiguity or inconsistency between documents comprising the Contract, the document appearing higher in the list will have precedence.

The Contract may be signed and dated by the parties on separate, but identical, copies. All signed copies constitute one (1) Contract.

C.C.5 Governing Law:

The laws of the Australian Capital Territory apply to the Contract.

C.C.6 Entire Agreement:

The Contract represents the Parties' entire agreement in relation to the subject matter, at the time this Contract was entered.

Anything that occurred before the making of this Contract shall be disregarded (unless incorporated into the Contract in writing). However, the Supplier represents that the claims made in its Response to the ATM were correct when made and remain correct.

The Parties agree that no agreement or understanding varying or extending the Contract will be legally binding upon either Party unless in writing and agreed by both Parties.

If either Party does not exercise (or delays in exercising) any of its contractual rights, that failure or delay will not prejudice those rights.

C.C.7 Survival:

All Additional Contract Terms (if any), plus Clauses C.C.14 [*Liability of the Supplier*], C.C.17 [*Supplier Payments*], C.C.20 [*Transition Out*], C.C.22 [*Compliance with Commonwealth Laws and Policies*], C.C.22(A) [*Access to Supplier's Premises and Records*], C.C.22(F) [*Fraud*] survive termination or expiry of the Contract.

C.C.8 Notices:

A Notice is deemed to be effected:

- (a) if delivered by hand - upon delivery to the relevant address;
- (b) if sent by registered post - upon delivery to the relevant address; or
- (c) if transmitted electronically - upon actual delivery as evidenced by an acknowledgement of receipt from the recipient's system by any means (including by means of delivery receipt).

A Notice received after 5.00 pm, or on a day that is not a working day in the place of receipt, is deemed to be effected on the next working day in that place.

C.C.9 Assignment:

The Supplier may not assign any rights under the Contract without the Customer's written consent. To seek consent, the Supplier must provide the Customer with a Notice, which includes full details of the proposed assignee and the rights the Supplier proposes to assign.

To decline consent, the Customer must provide a Notice to the Supplier, setting out its reasons, within twenty-eight (28) calendar days of receiving the Notice seeking consent. Otherwise, the Customer is taken to have consented.

C.C.10 Subcontracting:

Subcontracting any part of, or the entire Supplier's obligations under the Contract, will not relieve the Supplier from any of its obligations under the Contract.

The Supplier must ensure that Subcontractors specified in Item C.A.6 [*Subcontractors*] (if any) perform that part of the Services Specified in that item. Unless otherwise agreed by the Customer (in writing) the Supplier must not subcontract any part of its obligations under the Contract other than to Subcontractors named in Item C.A.6. The Supplier must ensure that specified Subcontractors (if any) are not replaced without the prior written consent of the Customer. The Customer's written consent will not be unreasonably withheld.

At the Customer's request, the Supplier, at no additional cost to the Customer, must promptly remove from involvement in the Contract any Subcontractor that the Customer reasonably considers should be removed.

Commonwealth Contract Terms

The Supplier must make available to the Customer the details of all Subcontractors engaged to provide the Goods and/or Services under the Contract. The Supplier acknowledges that the Customer may be required to publicly disclose such information.

The Supplier must ensure that any subcontract entered into by the Supplier, for the purpose of fulfilling the Supplier's obligations under the Contract, imposes on the Subcontractor the same obligations that the Supplier has under the Contract (including this requirement in relation to subcontracts).

C.C.11 Delivery and Acceptance:

The Supplier must provide the Goods and/or Services as specified in the *Statement of Work* and meet any requirements and standard specified in the *Statement of Work*.

The Supplier must promptly notify the Customer if the Supplier becomes aware that it will be unable to provide all or part of the Goods and/or Services specified in the *Statement of Work* and advise the Customer when it will be able to do so.

Any Goods must be delivered free from any security interest. Unless otherwise stated in the Contract, Goods must be new and unused. Any Services must be provided to the higher of the standard that would be expected of an experienced, professional supplier of similar services and any standard specified in the *Statement of Work*.

The Customer may reject the Goods and/or Services within fourteen (14) calendar days after delivery or such longer period specified in the Contract at Item C.A.2(d) [*Delivery and Acceptance*], if the Goods and/or Services do not comply with the requirements of the Contract ("Acceptance Period").

If during the Acceptance Period circumstances outside the Customer's reasonable control cause a delay in the Customer's evaluation of the compliance of the Goods and/or Services with the Contract, the Customer may give the Supplier a Notice before the end of the original Acceptance Period, setting out the reason for the delay and the revised Acceptance Period date (which must be reasonable having regard to the circumstances causing the delay).

If the Customer does not notify the Supplier of rejection within the Acceptance Period (as extended if applicable), the Customer will be taken to have accepted the Goods and/or Services, though the Customer may accept the Goods and/or Services sooner. Title to Goods transfers to the Customer only on acceptance.

If the Customer rejects the Goods and/or Services, the Customer must issue a Notice clearly stating the reason for rejection and the remedy the Customer requires. No payment will be due for rejected Goods and/or Services until their acceptance.

C.C.12 Licences Approvals and Warranties:

At no cost to the Customer, the Supplier must obtain and maintain all Intellectual Property Rights, licences or other approvals required for the lawful provision of the Goods and/or Services and arrange any necessary customs entry for any Goods.

The Supplier must provide the Customer with all relevant third Party warranties in respect of Goods. If the Supplier is a manufacturer, the Supplier must provide the Customer with all standard manufacturer's warranties in respect of the Goods it has manufactured and supplied.

To the extent permitted by laws and for the benefit of the Customer, the Supplier consents, and must use its best endeavours to ensure that each author of Material consents in writing, to the use by the Customer of the Material, even if the use may otherwise be an infringement of their Intellectual Property Rights and/or Moral Rights.

C.C.13 Specified Personnel:

The Supplier must ensure that the Specified Personnel set out in Item C.A.5 [*Specified Personnel*] (if any) perform the part of the Services specified in that item. The Supplier must ensure that Specified Personnel (if any) are not replaced without the prior written consent of the Customer. The Customer's written consent will not be unreasonably withheld.

At the Customer's reasonable request, the Supplier, at no additional cost to the Customer, must as soon as reasonably practicable replace any Specified Personnel that the Customer reasonably considers:

- (a) is not performing the Supplier's obligations under the Contract to the standard or within the timeframe reasonably required by the Customer;
- (b) is not a fit and proper person; or
- (c) is not suitably qualified to perform the Services.

Any Specified Personnel must be replaced with personnel that are acceptable to the Customer.

C.C.14 Liability of the Supplier:

The Supplier will indemnify the Customer and its officials against any claim, loss or damage arising in connection with any negligent or wilful breach of the Supplier's obligations or representations under the Contract.

The Supplier's obligation to indemnify the Customer and its officials will reduce proportionally to the extent that any act or omission, on the part of the Customer or its officials contributed to the claim, loss or damage.

The Supplier's liability under this clause shall not exceed the maximum applicable amount that applies to the claim loss or damage under a scheme operating under Schedule 4 of the *Civil Law (Wrongs) Act 2002* (ACT), or any corresponding State, Territory or Commonwealth legislation, that limits the civil liability of members of particular professions arising from the performance of their professional services, where the Supplier is a member of that scheme, and where that scheme applies to the Goods and/or Services delivered under the Contract.

The Supplier will maintain adequate insurances for the Contract and provide the Customer with proof when reasonably requested.

C.C.15 Termination or Reduction for Convenience:

In addition to any other rights either party has under the Contract,

- (a) the Customer acting in good faith, may at any time; or
- (b) the Supplier, acting in good faith, may notify that it wishes to, terminate the Contract or reduce the scope or quantity of the Goods and/or Services by providing a Notice to the other Party.

If the Supplier issues a Notice under this clause, the Supplier must comply with any reasonable directions given by the Customer. The Contract will terminate, or the scope will be reduced in accordance with the Notice, when the Supplier has complied with all of those directions.

If the Customer issues a Notice under this clause, the Supplier must stop or reduce work in accordance with the Notice and comply with any reasonable directions given by the Customer.

Commonwealth Contract Terms

In either case, the Supplier must mitigate all loss and expenses in connection with the termination or reduction in scope (including the costs of its compliance with any directions). The Customer will pay the Supplier for Goods and/or Services accepted in accordance with clause C.C.11 [Delivery and Acceptance] and item C.A.2(d) [Delivery and Acceptance] before the effective date of termination or reduction.

If the Customer issues a Notice under this clause, the Customer will also pay the Supplier for any reasonable costs the Supplier incurs that are directly attributable to the termination or reduction, provided the Supplier substantiates these costs to the satisfaction of the Customer.

Under no circumstances will the total of all payments to the Supplier exceed the Contract Price. The Supplier will not be entitled to loss of anticipated profit for any part of the Contract not performed.

C.C.16 Termination for Cause:

The Customer may issue a Notice to immediately terminate or reduce the scope of the Contract if:

- (a) the Supplier does not deliver the Goods and/or Services as specified in the Contract, or notifies the Customer that the Supplier will be unable to deliver the Goods and/or Services as specified in the Contract;
- (b) the Customer rejects the Goods and/or Services in accordance with clause C.C.11 [Delivery and Acceptance] and the Goods and/or Services are not remedied as required by the Notice of rejection;
- (c) the Supplier breaches a material term of the Contract and the breach is not capable of remedy;
- (d) the Supplier does not remediate a material breach of the Contract which is capable of remediation within the period specified by the Customer in a Notice of default issued to the Supplier; or
- (e) subject to the Customer complying with any requirements in the *Corporations Act 2001* (Cth), the Supplier:
 - (i) is unable to pay all its debts when they become due;
 - (ii) if incorporated – has a liquidator, receiver, administrator or other controller appointed or an equivalent appointment is made under legislation other than the *Corporations Act 2001* (Cth); or
 - (iii) if an individual – becomes bankrupt or enters into an arrangement under *Part IX* or *Part X* of the *Bankruptcy Act 1966* (Cth).

Termination of the Contract under this clause does not change the Customer's obligation to pay any Correctly Rendered Invoice.

C.C.17 Supplier Payments:

If the Supplier is required to submit an invoice to trigger payment, the invoice must be a Correctly Rendered Invoice.

The Supplier must promptly provide to the Customer such supporting documentation and other evidence reasonably required by the Customer to substantiate performance of the Contract by the Supplier.

Payment of any invoice is payment on account only, and does not substantiate performance of the Contract.

If the Supplier owes any amount to the Customer in connection with the Contract, the Customer may offset that amount, or part of it, against its obligation to pay any Correctly Rendered Invoice.

C.C.18 Dispute Resolution:

For any dispute arising under the Contract both the Supplier and the Customer agree to comply with (a) to (d) of this clause sequentially:

- (a) both Contract Managers will try to settle the dispute by direct negotiation;
- (b) if unresolved, the Contract Manager claiming that there is a dispute will give the other Contract Manager a Notice setting out details of the dispute and proposing a solution;
- (c) if the proposed solution is not accepted by the other Contract Manager within five (5) business days, each Contract Manager will nominate a more senior representative, who has not had prior direct involvement in the dispute. These representatives will try to settle the dispute by direct negotiation;
- (d) failing settlement within a further ten (10) business days, the Customer will, without delay, refer the dispute to an appropriately qualified mediator selected by the Customer or, at the Customer's discretion, to the chairperson of an accredited mediation organisation to appoint a mediator, for mediation to commence within fifteen (15) business days of the request.

Representatives for the Supplier and the Customer must attend the mediation. The nominated representatives must have the authority to bind the relevant party and act in good faith to genuinely attempt to resolve the dispute.

The Customer and the Supplier will each bear their own costs for dispute resolution. The Customer will bear the costs of a mediator.

If the dispute is not resolved within thirty (30) business days after mediation commences, either the Supplier or the Customer may commence legal proceedings.

Despite the existence of a dispute, the Supplier will (unless requested in writing by the Customer not to do so) continue their performance under the Contract.

This procedure for dispute resolution does not apply to action relating to clause C.C.16 [Termination for Cause] or to legal proceedings for urgent interlocutory relief.

C.C.19 Transition In:

The Supplier must perform all tasks reasonably required to facilitate the smooth transition of the provision of the Goods and/or Services from any outgoing supplier to the Supplier.

C.C.20 Transition Out:

If the Contract expires or is terminated under clause C.C.16 [Termination for Cause] the Supplier must comply with any reasonable directions given by the Customer in order to facilitate the smooth transition of the provision of the Goods and/or Services to the Customer or to another supplier nominated by the Customer.

C.C.21 Compliance with Laws:

The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in any jurisdiction in which any part of the Contract is performed.

C.C.22 Compliance with Commonwealth Laws and Policies:

The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with all Commonwealth laws and policies relevant to the Goods and/or Services.

If the Supplier becomes aware of any actual or suspected breach of the requirements set out in clauses A to G below, it must:

Commonwealth Contract Terms

- (a) immediately report it to the Customer and provide a written report on the matter within five (5) business days; and
- (b) comply with any reasonable directions by the Customer in relation to any investigation or further reporting of the actual or suspected breach.
- A. Access to Supplier's Premises and Records:** The Supplier must maintain proper business and accounting records relating to the supply of the Goods and/or Services and performance of the Contract.
- The Supplier agrees to provide to the Customer, or its nominee, access to the Supplier's, or its Subcontractor's premises, personnel, documents and other records, and all assistance reasonably requested, for any purpose associated with the Contract or any review of the Supplier's or the Customer's performance under the Contract, including (but not limited to) in connection with a request made under the *Freedom of Information Act 1982* (Cth) or audit or review by the Australian National Audit Office. Unless the access is required for the purpose of a criminal investigation into the Supplier, its employees or subcontractors, the Customer will reimburse the Supplier's substantiated reasonable cost for complying with the Customer's request.
- The Supplier must not transfer, or permit the transfer of, custody or ownership, or allow the destruction, of any Commonwealth record (as defined in the *Archives Act 1983* (Cth)) without the prior written consent of the Customer. All Commonwealth records, including any held by Subcontractors, must be returned to the Customer at the conclusion of the Contract.
- B. Privacy Act 1988 (Cth) Requirements:** In providing the Goods and/or Services, the Supplier agrees to comply, and to ensure that its officers, employees, agents and subcontractors comply with the *Privacy Act 1988* (Cth) and not to do anything, which if done by the Customer would breach an Australian Privacy Principle as defined in that Act.
- C. Confidential Information:** Other than information available in the public domain, the Supplier agrees not to disclose to any person, other than the Customer, any confidential information relating to the Contract or the Goods and/or Services, without prior written approval from the Customer. This obligation will not be breached where the Supplier is required by law or a stock exchange to disclose the relevant information or where the relevant information is publicly available (other than through breach of a confidentiality or non-disclosure obligation).
- The Customer may at any time require the Supplier to arrange for its employees, agents or subcontractors to give a written undertaking relating to nondisclosure of the Customer's confidential information in a form acceptable to the Customer.
- The Customer will keep any information in connection with the Contract confidential to the extent it has agreed in writing to keep such specified information confidential. The Customer will not be in breach of any confidentiality agreement if the Customer is required to disclose the information by law, a Minister or a House or Committee of Parliament.
- D. Security and Safety:** When accessing any Commonwealth place, area or facility, the Supplier must comply with any security and safety requirements notified to the Supplier by the Customer or of which the Supplier is, or should reasonably be aware. The Supplier must ensure that its officers, employees, agents and subcontractors are aware of, and comply with, such security and safety requirements.
- The Supplier must ensure that all information, material and property provided by the Customer for the purposes of the Contract is protected at all times from unauthorised access, use by a third party, misuse, damage and destruction and is returned as directed by the Customer.
- The Supplier acknowledges that unauthorised disclosure of security-classified information is an offence. Legislation (including, but not limited to, the *Criminal Code Act 1995* (Cth)) contains provisions relating to the protection of certain information and sets out the penalties for the unauthorised disclosure of that information.
- E. Criminal Code:** The Supplier acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the *Criminal Code Act 1995* (Cth). The Supplier must ensure that any subcontractor engaged in connection with the Contract is aware of the information contained in this clause.
- F. Fraud:** For the purposes of this clause, Fraud means dishonestly obtaining a benefit from the Commonwealth or causing a loss to the Commonwealth by deception or other means.
- The Supplier must take all reasonable steps to prevent and detect Fraud in relation to the performance of this Contract. The Supplier acknowledges the occurrence of Fraud will constitute a breach of this Contract.
- If an investigation finds that the Supplier or its employees have committed Fraud, or the Supplier has failed to take reasonable steps to prevent Fraud by an employee or subcontractor, the Supplier must reimburse or compensate the Customer in full.
- G. Taxation:** The Supplier agrees to comply, and to require its subcontractors to comply, with all applicable laws relating to taxation.



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Review of detention of children and family wellbeing currently accommodated on Christmas Island

Purpose of the Report

To provide the Department of Home Affairs (the Department) with independent advice and written observations relating to the arrangements in place to support children and families detained on Christmas Island (CI) and written recommendations for the redress of child welfare or wellbeing issues identified. The contract required me to consider the Department's current application of its child safeguarding and detention operations policies and practices. It did not require me to advise upon placement options.

All behaviour is influenced by a variety of factors that work together as a system. A child and their parents, friends, school, economic circumstance, living environment, agency, policies, procedures and other factors all influence how they think and act. The system impacts behaviour. Correcting missing or ineffective parts of the system can have a positive impact on behaviour and wellbeing. The reverse, of course, is also true.

Observations relating to the arrangements in place to support children and families detained on CI

The system features outlined below exert significant stress on child and family wellbeing. Finding solutions and building approaches that support child and family wellbeing, is challenging and in some cases, only possible with significant system change.

I observed considerable effort by people, to enable child and family wellbeing within a system that imposes constraints and limits how far child and family wellbeing can be protected. This effort was demonstrated s47F as well as departmental and contracted service provider staff, staff from island services and volunteers from the community.

I acknowledge and commend the leadership provided by Superintendent s22(1)(a)(ii) s47E(d) s22(1)(a)(ii) has also modelled and led the department and contracted service providers in actively seeking opportunities to correct missing or ineffective parts of the system which would otherwise have a negative impact on child and family wellbeing.

Being in detention

Being in detention by its nature disrupts family life. Some of these features are described below:

s47E(d)

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s47E(d) [REDACTED]
[REDACTED]
[REDACTED] the impacts are still experienced by the nature of being in detention.

- s47E(d) [REDACTED]
[REDACTED] The department and the contracted service providers have significantly mediated this s47E(d), s47F [REDACTED]
[REDACTED] Feeding is a particularly significant activity within families, especially for young children.

- Families are intimate places full of quiet tender moments between a child and their parents, between siblings and places of intimacy between parents as a couple; s47E(d) [REDACTED]
[REDACTED]

- s47E(d) [REDACTED]
[REDACTED]
Superintendent s22(1)(a)(ii) has mediated this somewhat by making s22(1)(a)(ii) available regardless of the time, for contracted service providers and department staff to seek approval to vary arrangements often s47F [REDACTED].

- s47E(d) [REDACTED]
[REDACTED]
[REDACTED] Yet families are very different to this cohort and in any case, are less able than adult individuals to adapt to institutional requirements.
s47E(d) [REDACTED]
[REDACTED]

- s47E(d) [REDACTED]
[REDACTED]

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s47E(d)



Applying a systems lens to understanding parental, child and staff behaviour assists in keeping family and staff safe and well, by identifying and remediating missing or ineffective parts of the system. Behaviour that might otherwise be misinterpreted, can be explained by reference to the system in which the family are living and staff are working. Some examples that illustrate this are:

- Parents will often keep their children close because they worry they will be separated from their children. Failing to apply a systems lens can result in the parents being seen as “overly protective”.
- Little things that usually don’t matter become much bigger when in detention. Failing to apply a systems lens can result in the parents becoming seen as “demanding or unreasonable”.
- Stress levels for parents and staff are heightened so parents and staff react sooner and at higher levels. Failing to apply a systems lens can result in the parents or staff over reacting and escalating tensions.
- Staff with less to do than usual, survey the family at a level they wouldn’t usually do if they were more fully occupied. Failing to apply a systems lens can result in behaviours being interpreted as dysfunctional when they reflect, for example, gendered notions of mothers and father’s roles.

A deliberate and conscious effort needs to be made to provide for child and family wellbeing when families are in detention. Departmental staff and contracted service providers have corrected missing or changed ineffective parts of the system and they must maintain this effort as issues will continue to be identified and raised. However significant limits remain on what they can do to mitigate the impacts of detention on child and family wellbeing. Some of the more notable of these are outlined below.

s47E(d)


This announcement presents new challenges for the department staff and contracted service providers.



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s47E(d), s47F

It is important in these situations that department staff and contracted service providers attention remain on child and family wellbeing and it is not displaced

Contracting and families

Most of the services provided on CI are by 'for profit' organisations under contract. This provides certainty for the department around cost, delivery and reporting. Contracts, however, cannot cover the range of situations families are in, nor the range of human behaviours.

s47E(d)

s47F

The only reason it couldn't be extended was the lack of local decision making capability or process for seeking immediate variations.

The department and contracted service providers subsequently mediated this issue.

s47E(d), s47F

Everybody's looking

The nature of detention as described above, means scrutiny is already built into the system itself.

The contracted service providers are under scrutiny from their managers who in turn are under

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scrutiny from the department to demonstrate compliance with contractual arrangements and budget. The departments operational staff and leaders are under scrutiny to meet their obligations within their policies, protocols and budget. The department is under scrutiny from various reporting bodies and significantly it is under scrutiny from the media. ^{s47E(d)}

[REDACTED]

Recommendations for the redress of child welfare or wellbeing issues identified

Continue seeking opportunities to correct missing and ineffective parts of the system

The department staff and contracted service providers working alongside the family should continue to actively seek opportunities to correct missing or ineffective parts of the system which would otherwise have a negative impact on child and family wellbeing by:

- being innovative within the terms of the contracts
- being adaptive given young children change rapidly and family needs also change
- being responsive to parents concerns and family needs
- building relationships and being cooperative with other service providers and external community agencies
- respecting family integrity, parental authority and family functioning

These features were illustrated ^{s47E(d), s47F}

[REDACTED]

^{s47E(d)}

[REDACTED]

Changes must be based on child and family wellbeing reasons.

Enabling peer connections

The department and contracted service providers must continue to actively seek and enable opportunities for the children to build their peer connections including outside of school. ^{s47F}

[REDACTED]

This peer connection is important for children's development and wellbeing.

^{s47F}

[REDACTED]

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s47F

The department and contracted service providers must enable parents and the family attending all family-based school and childcare activities and events, that they wish to. This should be done with a minimum of fuss and visibility of contracted service providers.

The department and contracted service providers should continue to enable activities for the parents including within and with the community, s47F

s47E(d)

Accommodation

There are two options s47E(d)

Both options are possible, neither is significantly better or worse from an operations viewpoint.

s47F

Each option emphasises different aspects of family life. s47F

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s47F [REDACTED] This process should be led by
Superintendent s22(1)(a)(ii) [REDACTED]

Other

s47F [REDACTED] a follow up visit and review
should be undertaken.

Superintendent s22(1)(a)(ii) [REDACTED] should be given a copy of this report.

Methodology

In drafting this report, the following activities were undertaken:

- s47F [REDACTED]
- visit to CI from 15-18 January 2020
- visit to BRP on 9 January 2020
- consideration of the Child Wellbeing Officer's report on s22(1)(a)(ii) [REDACTED] visit three weeks' earlier
- interviews (see attached)
- consideration of departmental policies, protocols and procedures
- review of s47F [REDACTED] Individual Management Plans
- review of the minutes of the daily operational meetings held on CI.

My thanks and appreciation to those who hosted, arranged and supported the above activities.

This report focuses on the family currently in detention. A further and later report will be provided on broader issues relating to families and children in detention.

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