

**Commonwealth of Australia represented by
Department of Immigration and Citizenship**

-and-

The Trustee for the Salvation Army (NSW) Property Trust (ABN 55 507 607 457)

**HEADS OF
AGREEMENT**

relating to

The provision of services on Nauru

Released by DIAC under the
Freedom of Information Act 1982

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THIS AGREEMENT is made on

BETWEEN:

THE COMMONWEALTH OF AUSTRALIA, ACTING THROUGH AND REPRESENTED BY THE DEPARTMENT OF IMMIGRATION AND CITIZENSHIP (Department)

AND

THE TRUSTEE FOR THE SALVATION ARMY (NSW) PROPERTY TRUST ABN 55 507 607 457 (Service Provider)

RECITALS

- A. The Department wishes to obtain care and support services (**Services**) for people expected to be transferred to a Regional Processing Country (**Transferees**) in the Republic of Nauru from September 2012 and has asked the Service Provider to provide these services as a matter of urgency.
- B. The parties have agreed that the Service Provider will provide interim services (the **Services**) to Transferees and other persons nominated by the Department on the Republic of Nauru on the terms of this Heads of Agreement (this **Agreement**).
- C. The parties have also agreed to negotiate in good faith the terms of a contract (**New Contract**) for the ongoing provision of the Services in the manner and in accordance with the timetable set out in this Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS

1.1.1 In this Agreement, unless the context indicates otherwise:

Business Day	means a weekday other than a public holiday in the place specified or, if no place is specified, in the Australian Capital Territory, Australia;
Department	includes any department, agency or authority of the Commonwealth which is from time to time responsible for administering this Agreement;
Commencement Date	means the 14 September 2012;
Confidential Information (of the Service Provider)	means information that is by its nature confidential and is described in Schedule 4;
Contract Administrator	means the person appointed by the Department's Secretary to perform the duties of Contract Administrator;
Department	means the person (or delegate) appointed by the Department

Operations Team Leader	to perform the role of Department Operations Team Leader at the Site;
Execution Date	the date on which the last of the parties signs this Agreement;
GST	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
Information Officer	means any of the information officers appointed under the <i>Australian Information Commissioner Act 2010</i> (Cth) when performing privacy functions as defined in that Act;
Information Privacy Principle	has the same meaning as it has in the <i>Privacy Act 1988</i> (Cth);
Key Personnel	means the Service Provider Personnel specified in clause 9.3;
Media Protocols	means the media and communication protocols agreed between the Service Provider and the Department;
Migration Act	means the <i>Migration Act 1958</i> (Cth);
Official Information	means any information developed, received or collected by or on behalf of the Department to which the Service Provider gains access under or in connection with this Agreement and the terms of the Agreement;
Personnel	means: <ul style="list-style-type: none"> a. in relation to the Service Provider - any natural person who is an officer, employee, volunteer, consultant, agent or professional advisor of the Service Provider or of its subcontractors; and b. in relation to the Department - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the Commonwealth.
Regional Processing Country	means a country designated by the Minister for Immigration and Citizenship, acting under subsection 198AB(1) of the <i>Migration Act</i> as a regional processing country;
Schedule	means the schedules to this Agreement and includes the Schedules as amended or replaced from time to time by agreement in writing between the parties;
Services	means the services described in Schedule 1 [Statement of Work];
Services Fee	has the meaning given in Schedule 2;
Site	means the Regional Processing Centre on Nauru and where another site is established on Nauru, will also include reference to that Site;
Term	has the meaning given by clause 5; and
WHS Law	means all statutes, regulations, statutory instruments, subordinate legislation, codes of practice and standards

(including those of the Commonwealth of Australia and of the State or Territory where the Services are being delivered) dealing with or relevant to health and safety in workplaces and of workers and others who may be affected by the carrying out of work and includes any approvals, permits, licences, directions or requirements of an authority exercising regulatory powers in respect of such matters.

1.1.1. In this Agreement, unless the contrary intention appears:

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

2. PURPOSE AND OBJECTIVE

2.1 Purpose

2.1.1 The purpose of this Agreement is to:

- (a) implement the Services on and from the Commencement Date;
- (b) set out the terms on which those Services must be provided; and
- (c) establish a process for finalising a detailed contract for provision of the Services, to take effect from 31 October 2012.

2.1.2 Subject to the specific requirements of this Agreement, the Services must be provided on the terms of this Agreement.

2.2 Agreement objectives

2.2.1 The primary objectives of this Agreement are to:

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

3. COOPERATION AND GOOD FAITH

3.1.1 The Parties intend to conduct themselves and perform this Agreement in the spirit of cooperation and good faith. For avoidance of doubt, the spirit of cooperation and good faith does not override or limit the provisions of this Agreement.

4. NAURU MEMORANDUM OF UNDERSTANDING

4.1.1 The Service Provider agrees not to permit any act or omission that causes or may cause the Commonwealth to be in breach of the its Memorandum of Understanding with the Republic of Nauru.

5. TERM

5.1.1 This Agreement commences on the Commencement Date and continues until the first to occur of:

- (a) the New Contract commences;
- (b) the Agreement is terminated under clause 18; or
- (c) 6 months after the Commencement Date,
(Term).

6. TRANSITION-IN

6.1.1 The Service Provider must commence the provision of Services on the Commencement Date and must perform all activities required to ensure it is ready to provide Services in accordance with this Agreement on and from that date.

7. NEW CONTRACT

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

- (a) the Department will provide a New Contract for comment by the Service Provider and the Service Provider must provide comment and any information requested within the timeframe reasonably specified by the Department (in consultation with the Service Provider); and
- (b) the Service Provider must use its best endeavours to assist the Department to finalise and execute the New Contract by 31 October 2012.

7.1.2 If the New Contract is not signed by both parties on or before 31 October 2012 (or such other date as agreed by the parties), the Department may:

- (a) require the Service Provider to attend focussed negotiations for a period of up to 4 weeks, including ensuring the availability of Personnel able to make decisions on negotiation issues, in Canberra; or
- (b) terminate this Agreement in accordance with clause 18.

7.1.3 The New Contract will include:

- (a) terms and conditions that are no less favourable to the Department than this Heads of Agreement;
- (b) a more detailed description of the services (with no intended reduction in the scope);
- (c) payment arrangements which are to be agreed; and
- (d) abatement indicators and a performance framework that includes performance standards for the Services and incentives and abatements in respect of the level of performance achieved in the performance of the Services.

8. SERVICES

8.1 Service Obligations

8.1.1 Schedule 1 [Statement of Work] sets out the specific requirements for the Services to be performed on the Republic of Nauru. The Department may request the Service Provider to provide other services.

8.1.2 In accordance with clause 15 the Service Provider is required to comply with all applicable laws. The requirements in Schedule 1 are to be read subject to that requirement.

8.1.3 The Service Provider agrees to:

- (a) provide the Services described in Schedule 1 [Statement of Work];

- (b) adopt relevant best practice, including any applicable Department, Commonwealth or industry standards and guidelines; and
- (c) submit invoices, and any required supporting documents, in the manner specified by the Department.

9. PERSONNEL

9.1 Department Personnel

9.1.1 The Department will appoint a:

- (a) Contract Administrator; and
- (b) Department Operations Team Leader Manager for the Site.

9.2 Liaison with Contract Administrator

9.2.1 The Service Provider agrees:

- (a) to liaise with the Contract Administrator and Department Operations Team Leader (if applicable) as reasonably required; and
- (b) to comply with the reasonable directions of the Contract Administrator that are consistent with this Agreement.

9.3 Service Provider Personnel

9.3.1 The Service Provider will notify the Department from time to time of Key Personnel that have been retained.

9.4 Retention of Key Personnel

9.4.1 The Service Provider must ensure that each of the Key Personnel occupy the position and provide the Services notified to the Department.

9.5 Replacement of Key Personnel

9.5.1 Where Key Personnel cease to work in respect of this Agreement, the Service Provider must notify the Department immediately and must provide replacement Key Personnel acceptable to the Department at no additional charge and at the earliest opportunity.

9.5.2 If the Service Provider is unable to provide replacement Key Personnel acceptable to the Department within 10 Business Days of their ceasing work in respect of this Agreement, the Department may, at its discretion, terminate this Agreement or remove Services from scope in accordance with clause 18.

9.6 Removal of Key Personnel

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

9.7 Personnel levels

- 9.7.1 The Service Provider will ensure that the Personnel levels at the Site are adequate to deliver the Services in accordance with this Agreement.
- 9.7.2 The Service Provider must endeavour to employ local Personnel who meet the requirements of this Agreement.

9.8 Service Provider Personnel

- 9.8.1 Without limiting this clause 9.8 the Service Provider must, at its own cost, ensure that all Service Provider Personnel who carry out work or perform duties under this Agreement:

- (a) are, and remain, of good character and good conduct;
- (b) are considered suitable by the Department having regard to any issues identified in an Australian Federal Police background check and brought to the attention of the Department;
- (c) undergo induction and orientation training that complies with the Department requirements when commencing employment with the Service Provider or starting work in relation to the Services;
- (d) are appropriately skilled, trained and qualified to provide the Services in accordance with the requirements of Schedule 1 [Statement of Work];
- (e) are authorised, registered or licensed in accordance with any applicable regulatory requirements for the purposes of or incidental to the performance of the Services;
- (f) possess all relevant industry body, supplier, manufacturer and accreditation or scheme memberships and professional association membership that might be reasonably expected of providers of the Services, and produce evidence of such authorisation, registration, license, accreditation or membership to the Department upon request at any time during the term of this Agreement; and
- (g) will be subject to internal disciplinary processes.

9.9 Documents to be signed by Service Provider Personnel

- 9.9.1 The Service Provider must ensure that all Service Provider Personnel that are to carry out work or perform duties under this Agreement have signed:

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

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

9.10 Behaviour of Service Provider Personnel at the Sites

9.10.1 The Service Provider must ensure that all Service Provider Personnel at a Site:

- (a) are aware of, and comply with, the Code of Conduct at all times;
- (b) comply with the Department's policy on smoking and other occupational health and safety matters as declared from time to time by the Department; and
- (c) carry out their duties and behave in such a way as to maximise the seamless interface between the delivery of the Services and:
 - (i) any other services provided by other service providers; and
 - (ii) the day to day activities of the Department,

so that services delivered by multiple service providers give the impression of being delivered by a single provider.

9.11 Illegal Workers and Non-citizens

9.11.1 The Service Provider must ensure that its Service Provider Personnel do not include any illegal workers and must notify the Department immediately if it becomes aware of any of its Service Provider Personnel being an illegal worker.

9.11.2 For the purposes of clause 9.11.1, an illegal worker is a person who:

- (a) has unlawfully entered and remains in Australia or Nauru;
- (b) has lawfully entered Australia or Nauru but remains in that country after his or her visa has expired; or
- (c) is working in breach of his or her visa conditions.

9.12 Removal of Service Provider Personnel

9.12.1 The Department may, in its absolute discretion, give notice requiring the Service Provider to remove any Service Provider Personnel from work in respect of the Services. The Department must provide to the Service Provider reasons that explain why it is seeking removal of the Service Provider Personnel. The Service Provider must promptly arrange for the removal of such Service Provider Personnel from

work in respect of the Services and their replacement with Personnel acceptable to the Department and at no additional cost to the Department.

10. SUBCONTRACTOR ARRANGEMENTS

10.1 Approval of subcontracts

- 10.1.1 The Service Provider must not enter into a subcontract without the prior written approval of the Department (and the Department shall not unreasonably withhold such approval) s. 47G(1)(a)

10.2 Extension of provisions to subcontractors and Personnel

- 10.2.1 In this clause 10.2:

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

- 10.2.2 The Service Provider agrees to ensure that:

- (a) its subcontractors and Personnel comply with all relevant Requirements; and
- (b) any contract entered into in connection with this Agreement imposes all relevant Requirements on the other party.

- 10.2.3 The Service Provider agrees to exercise any rights it may have against any of its subcontractors, Personnel or third parties in connection with a Requirement in accordance with any reasonable direction by the Department.

10.3 Copies of subcontracts

- 10.3.1 The Service Provider must:

- (a) maintain a record of each of the subcontractors and the Services being performed by each of them; and
- (b) promptly provide copies of any subcontracts to the Department at the request of the Contract Administrator.

10.4 Service Provider liability and obligations

- 10.4.1 The Department's approval of any Subcontract does not relieve the Service Provider from any liability or obligation under this Agreement.

- 10.4.2 The Service Provider will be liable to the Department for the acts, omissions, defaults and neglect of any subcontractor or any representative of the subcontractor engaged in the performance of the Services as fully as if they were the acts, omissions, defaults or neglect of the Service Provider.

- 10.4.3 The Service Provider remains responsible for ensuring that:

- (a) the work performed by each subcontractor meets the requirements of this Agreement; and
- (b) no subcontractor further subcontracts any work s. 47G(1)(a) without the prior written approval of the Department.

10.5 Subcontractor warranty

10.5.1 The Service Provider warrants that each subcontractor:

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

10.6 Service Provider to be the Department's sole point of contact

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

10.6.2 Except as provided in clause 10.6.1, the Service Provider will be the Department's sole point of contact regarding the Services, including with respect to payment.

11. PAYMENTS

11.1 Fees

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

11.2 Taxes, duties and government charges

11.2.1 Except as provided by this clause 11.2, the Service Provider agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.

11.2.2 Unless otherwise indicated, the fees and all other consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.

11.2.3 If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Agreement, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

11.2.4 No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

11.2.5 s. 47G(1)(a)

11.3 Currency

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

12. CONFIDENTIALITY OF OFFICIAL INFORMATION AND SECURITY

12.1 Interpretation

12.1.1 In this clause 12:

Official Resources	includes: <ul style="list-style-type: none">a. Official Information;b. people who work for or with the Department; andc. assets belonging to (even if in the possession of contracted providers) or in the possession of the Department;
Security Classified Resources	means Official Resources that, if compromised, could have adverse consequences for the Department; and
Security Incident	means a security breach, violation, contact or approach from those seeking unauthorised access to Official Resources.

12.2 Confidentiality of Official Information

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

12.2.2 The Service Provider is authorised, subject to clause 12.3, to provide Official Information to those Personnel and subcontractors who require access for the purposes of this Agreement.

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

12.3 Other security obligations of Service Provider

12.3.1 The Service Provider agrees to comply with any security requirements notified by the Department from time to time.

12.3.2 The Service Provider agrees to implement security procedures to ensure that it meets its obligations under this clause 12 and will provide details of these procedures to the Department on request.

13. CONFIDENTIAL INFORMATION OF SERVICE PROVIDER

13.1 Confidential Information not to be disclosed

13.1.1 Subject to clause 13.2 the Department will not, without the prior written authorisation of the Service Provider, disclose any Confidential Information of the Service Provider to a third party.

13.2 Exceptions to obligations

13.2.1 The obligations of the Department under this clause 13 will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by the Department to its Personnel solely in order to comply with its obligations, or to exercise its rights, under this Agreement;
- (b) is disclosed by the Department to its internal management Personnel, solely to enable effective management or auditing of contract-related activities;
- (c) is disclosed by the Department to the responsible Minister;
- (d) is disclosed by the Department in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (e) is shared by the Department within the Department's organisation, or with another Commonwealth agency, where this serves the Commonwealth's legitimate interests;
- (f) is authorised or required by law to be disclosed; or
- (g) is in the public domain otherwise than due to a breach of this clause 13.

13.2.2 Where the Department discloses Confidential Information to another person pursuant to clauses 13.2.1(a) - 13.2.1(e), the Department will notify the receiving person that the information is confidential.

13.2.3 In the circumstances referred to in clauses 13.2.1(a), 13.2.1(b), and 13.2.1(e) the Department agrees not to provide the information unless the receiving person agrees to keep the information confidential.

13.3 Period of confidentiality

- 13.3.1 The obligations under this clause 13 in relation to an item of information described in Schedule 5 continue for the period set out there in respect of that item.

14. INDEMNITY AND INSURANCE

14.1 Liability

s. 47G(1)(a)

15. COMPLIANCE WITH LAWS

15.1.1 The Service Provider must, in performing its obligations in this Agreement, comply, and ensure compliance by all its Personnel and subcontractors, with:

- (a) all applicable laws, including those applicable to Nauru and those Australian laws that are applicable to the Services or the Site; and
- (b) all applicable Commonwealth policies as notified to the Service Provider from time to time.

15.1.2 The Service Provider may seek assistance from the Department in complying with clause 15.1.1, for example in respect of Personnel and subcontractor clearances, resources imports and the establishment of facilities and, without limiting the Service Provider's obligations in connection with the Agreement, the Department will provide assistance to the extent it is reasonably able to do so.

16. MANAGEMENT AND GOVERNANCE

16.1.1 The Service Provider must comply with the project management and governance arrangements as outlined in Schedule 1 [Statement of Work] of this Agreement.

17. PUBLICITY, MEDIA AND EXTERNAL RELATIONSHIP MANAGEMENT

17.1 Publicity and Media

17.1.1 The Service Provider acknowledges and agrees that the Department has an interest in the management of publicity and media and agrees to:

- (a) provide advice to the Department prior to the release of information, comment or opinion that is either directly or indirectly related to this Agreement including, without limitation, regarding the Department and any matter related to the Services, any Transferees, or the relationship or issues between the Service Provider and the Department; and
- (b) provide advice to the Department prior to the release of information, comment or opinion regarding the relationship and dealings with stakeholders and external parties (including industry groups, special interest or lobby groups, and the community).

17.1.2 Any contact with or release to the media by the Department which specifically names the Service Provider is to be approved by the Service Provider prior to any statement being made or material being released, which consent or approval must not be unreasonably withheld or delayed.

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

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

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

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

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

other than:

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

18. TERMINATION

18.1 Termination without default

18.1.1 In addition to any right to terminate at law, at any time after the 15 October 2012, the Department may by 4 weeks written notice and in its absolute discretion terminate this Agreement or reduce the scope of the Services immediately.

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

- (a) to stop or reduce work as specified in the notice;
- (b) to take all available steps to minimise loss resulting from that termination or reduction; and
- (c) to continue work on any part of the Services not affected by the notice.

- 18.1.3 In the event of termination under clause 18.1, the Department will be liable only:
- (a) to pay any fees relating to Services completed before the effective date of termination; and
 - (b) to reimburse any expenses the Service Provider unavoidably incurs relating entirely to Services not covered under clause 18.1.3(a).
- 18.1.4 The Department will not be liable to pay amounts under clause 18.1.3(a) and 18.1.3(b) which would, added to any fees already paid to the Service Provider under this Agreement, together exceed the fees set out in Schedule 2 [Fees and Payment].
- 18.1.5 In the event of a reduction in the scope of the Services under clause 18.1, the Department's liability to pay fees under clause 11 will, unless there is agreement in writing to the contrary, reduce in accordance with (and in proportion to) the reduction in the Services.
- 18.1.6 The Service Provider will not be entitled to compensation for loss of prospective profits.

18.2 Termination for default

- 18.2.1 In addition to any right to terminate at law, if the Service Provider fails to perform any obligation under this Agreement, the Department - if it considers that the failure is:
- (a) not capable of remedy – may, by notice, terminate this Agreement immediately;
 - (b) capable of remedy – may, by notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate this Agreement immediately by giving a second notice.
- 18.2.2 The Department may also, by notice, terminate this Agreement immediately (but without prejudice to any prior right of action or remedy which the Department has or may have) if the Service Provider:
- (a) being a corporation, comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001*, or an order has been made for the purpose of placing the corporation under external administration, or
 - (b) being an individual, becomes bankrupt or enters into a scheme of arrangement with creditors.

18.3 Transition

- 18.3.1 If this Agreement is terminated for any reason, the Service Provider must comply with any reasonable directions issued by the Department to achieve an orderly transition of the Services to the Department or an alternative provider. Where the

Agreement is terminated under clause 18.1, the Department will meet the Service Provider's approved and reasonable costs of complying with this clause.

19. COMPLIANCE WITH FAIR WORK PRINCIPLES

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

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

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

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

19.1.4 As far as practicable, the Service Provider must:

- (a) not use a subcontractor in relation to this Agreement where the subcontractor would be precluded from contracting directly with the Department under the requirements of the Fair Work Principles; and
- (b) ensure that all subcontracts impose obligations on subcontractors equivalent to the obligations specified in clauses 19.1.1 to 19.1.4.

20. NOTICES

20.1 Format, addressing and delivery

20.1.1 A notice under this Agreement is only effective if it is in writing, and dealt with as follows:

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

Major Paul Moulds AM

Territorial Director - Social Mission and Resources

The Salvation Army

140 Elizabeth Street

SYDNEY NSW 2000

or as otherwise notified by the Service Provider.

20.1.2 A notice is to be:

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

20.2 When effective

20.2.1 A notice is deemed to be effected:

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

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

21. CONFLICT OF INTERESTS

21.1.1 In this clause 21:

Conflict means any matter, circumstance, interest, or activity affecting the Service Provider, its Personnel or subcontractors which may or may appear to impair the ability of the Service Provider to provide the Services to the Department diligently and independently.

21.1.2 The Service Provider warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date no Conflict exists or is likely to arise in the performance of the Services.

21.1.3 If, during the period of this Agreement a Conflict arises, or appears likely to arise, the Service Provider agrees:

- (a) to notify the Department immediately;
- (b) to make full disclosure of all relevant information relating to the Conflict; and
- (c) to take any steps the Department reasonably requires to resolve or otherwise deal with the Conflict.

22. GENERAL PROVISIONS

22.1 Work health and safety

22.1.1 The Service Provider must at all times:

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

22.2 Privacy

22.2.1 The Service Provider agrees, in providing the Services:

- (a) not to do any act or engage in any practice which, if done or engaged in by the Department, would be a breach of an Information Privacy Principle; and

- (b) to comply with any directions, guidelines, determinations or recommendations specified by the Department, to the extent that they are consistent with the Information Privacy Principles.

22.2.2 The Service Provider agrees to notify the Department immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 22.2.

22.3 Audit and access

22.3.1 The Service Provider agrees:

- (a) to give the Contract Administrator, or any persons authorised in writing by the Contract Administrator, access to premises where the Services are being performed or where Official Resources are located; and
- (b) to permit those persons to inspect and take copies of any Material relevant to the Services.

22.3.2 The rights referred to in clause 22.3.1 are subject to:

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

22.3.3 The Auditor-General and Information Officer (including their delegates) are persons authorised for the purposes of this clause 22.3.

22.4 Access to documents

22.4.1 In this clause 22.4, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).

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

22.4.3 Where the Department has received a request for access to a document created by, or in the possession of, the Service Provider or any subcontractor that relates to the performance of this contract (and not to the entry into the contract), the Department may at any time by written notice require the Service Provider to provide the document to the Department and the Service Provider must promptly comply with the notice. The Department will pay reasonable substantiated costs incurred by the Service Provider in complying with this clause provided that the Service Provider seeks prior approval of those costs.

- 22.4.4 The Service Provider must include in any subcontract relating to the performance of this Agreement provisions that will enable the Service Provider to comply with its obligations under this clause 22.4.

22.5 Relationship of parties

- 22.5.1 The Service Provider is not by virtue of this Agreement an officer, employee, partner or agent of the Department, nor does the Service Provider have any power or authority to bind or represent the Department.

- 22.5.2 The Service Provider agrees:

- (a) not to misrepresent its relationship with the Department; and
- (b) not to engage in any misleading or deceptive conduct in relation to the Services.

22.6 Waiver

- 22.6.1 A failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right.

- 22.6.2 A single or partial exercise by a party of any right or remedy it holds under this Agreement or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

22.7 Variation

- 22.7.1 A variation of this Agreement is binding only if agreed in writing and signed by the parties.

22.8 Assignment

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

22.9 Survival

- 22.9.1 Unless the contrary intention appears, the expiry or earlier termination of this Agreement will not affect the continued operation of any provision relating to:

- (a) confidentiality;
- (b) privacy;
- (c) audit and access;
- (d) an indemnity;

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

22.10 Applicable law

22.10.1 This Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.

22.10.2 The parties submit to the jurisdiction of the courts of that Territory.

SCHEDULE 1 STATEMENT OF WORK

PART 1: NATURE OF THE SERVICES AND RELATIONSHIP WITH OTHER SERVICE PROVIDERS

1. General

- (a) The Service Provider has been engaged to provide services which primarily relate to the Transferees welfare and engagement. Other service providers have been engaged to take primary responsibility for health, operational and maintenance requirements. The Service Provider will work cooperatively with other service providers. Where an obligation is expressed as 'support' in this statement of work, this usually denotes that another service provider has primary responsibility for the relevant activity and the Service Provider must provide necessary support to that activity.
- (b) The Service Provider must cooperate with other services providers appointed by the Department to ensure the integrated and efficient carrying on of the operations of the Site, and must provide such reasonable assistance to the Department, local authorities and others services providers as the Department may reasonably request whether or not this is specifically stated in the Schedule.

PART 2 - TRANSFEREE SERVICES

2. General

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

3. Programs and activities

3.1. Overview

The Service Provider must:

- (a) develop, manage and deliver structured and unstructured programs and activities designed to provide educational and recreational opportunities, and provide meaningful activities that will enhance the mental health and well-being of individuals accommodated at the Site;
- (b) develop strategies to encourage Transferees to participate in programs and activities, but enable Transferees at the Site to determine their own level of participation and involvement;
- (c) ensure programs and activities cater for the diverse needs of Transferees;
- (d) take feedback from Transferees into account when developing programs and activities;
- (e) provide the equipment and qualified Service Provider Personnel required to support the activities.

3.2. Families with children

The Service Provider should support parents to understand and exercise parental responsibility while accommodated in the Site including:

- (a) encouraging parents of school aged children to send children to schools;
- (b) assisting school aged children with access to schools; and
- (c) providing children attending schools with uniforms (if appropriate).

3.3. Religious activities

The Service Provider must ensure all Transferees are free to practice their religion of choice individually or communally in accordance with Departmental Policy and subject to the overriding safety and security of Transferees.

4. Reception, transfer and discharge of Transferees

4.1. General responsibilities

The Service Provider will be responsible for coordinating reception, transfer and discharge processes at the Site. The Service Provider must:

- (a) conduct reception processes upon the arrival of Transferees at the Site;
- (b) assist Transferees to prepare for transfer within or from the Site;
- (c) provide discharge processes in a manner that promotes the well-being of Transferees, their dignity and safety;
- (d) ensure that Transferees are regularly informed about what is happening to them in a language they understand through the use of interpreters provided by the

Service Provider. This requirement may include passing on information from the Department, other authorities or other service providers; and

- (e) take primary responsibility for induction including provision of an induction booklet.

4.2. Processing times

The Service Provider must:

- (a) ensure Service Provider Personnel are available to undertake reception, transfer and discharge activities at any time;
- (b) have capacity to undertake these processes simultaneously;
- (c) commence the reception process, immediately after a Transferee arrives at the Site and complete the reception process within 12 hours of their arrival at the Site;
- (d) commence the induction processes as soon as reasonably practicable after the Transferee's arrival at the Site and complete the induction processes within two days of the Transferee arriving at the Site - the induction process includes providing information regarding how the Site operates and explaining relevant policies, procedures and roles.
- (e) undertake transfer and discharge processes in accordance with timeframes determined by the Department on a case by case basis; and
- (f) undertake discharge processes where a Transferee is being released immediately after the Service Provider is advised by the Department of the Transferee's release.

4.3. Reception process

The Service Provider must:

- (a) develop and implement a reception process and checklist as soon as possible in consultation with the Department;
- (b) ensure the reception process is coordinated with the Department and the other service providers;
- (c) make available leaflets on the reception and induction processes in a range of languages to explain the reception and induction processes;
- (d) on admission of a Transferee to the Site, offer the Transferee food and drink, access to bathroom facilities and toiletries;
- (e) ensure that Service Provider Personnel involved in the reception process are specifically trained to manage the reception process in a non-threatening and threat-reducing way, with a focus on the well being of Transferees at all times; and
- (f) provide a copy of reception reports to the Department within 48 hours of a Transferee being received at the Site

4.4. Transferee health induction assessment

- (a) During the reception process, the Service Provider must facilitate, in conjunction with the health Service Provider, the opportunity for each Transferee to undergo a health induction assessment.
- (b) Where a Transferee undergoes a health induction assessment, the Service Provider must ensure it receives a Transferee's health summary from the Department as soon as practicable.

4.5. Arrival phone call

As part of the induction process, Transferees must be offered the ability to make a telephone call. The purpose of the telephone call is for the Transferee to advise family, friends or other support networks of their arrival at the Site.

5. Individual Management

5.1. Individual management plans

The Service Provider will be responsible for the development and implementation of individual management plans for Transferees.

5.2. Transferee records

The Service Provider will be responsible for the development and management of Transferee Records. Other service providers will contribute information for inclusion in those records.

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

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

5.4. Referral of Transferee identity issues

- (a) The Service Provider must immediately refer any doubts or concerns regarding a Transferee's identity to the Department.
- (b) Where the Service Provider identifies that a Transferee that claimed to be 18 or over, is under 18, the Service Provider must manage that Transferee in accordance with any Department instructions.

5.5. Health of Transferees

- (a) The Service Provider must ensure that any Transferee who requests, or appears to be in need of medical attention, is referred for appropriate medical attention.
- (b) Where it appears that a Transferee requires emergency medical attention, the Service Provider must:
 - i. provide first aid;

- ii. seek emergency medical attention for the Transferee immediately, including arranging for an ambulance or transport of the Transferee to the nominated medical facility at the Department's cost;
- iii. inform the service provider responsible for health services of the Transferee's circumstances as soon as the initial response is complete; and
- iv. inform the Department of the Transferee's circumstances as soon as the initial response is complete.

5.6. Transferees under the influence of drugs or alcohol

The Service Provider will:

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

5.7. Mental health awareness

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

5.8. Behavioural management of Transferees

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

5.9. Illegal and anti-social behaviour

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

For the purposes of this clause undesirable behaviours may include:

- i. bullying;
 - ii. verbal abuse;
 - iii. sexual or other forms of harassment;
 - iv. assault;
 - v. malicious destruction of property; and
 - vi. possession of weapons or illegal drugs.
- (b) The Service Provider must:

- i. communicate the Site policy on anti-social behaviour to all Transferees during the induction process; and
 - ii. prominently display the policy on anti-social behaviour in all relevant languages in the Site.
- (c) Where the Service Provider has identified, or suspects, that a Transferee has engaged in illegal, non-compliant or antisocial behaviour, the Service Provider must: immediately inform the Department with recommendations for:
 - i. dealing with the perpetrator(s); and
 - ii. preventing recurrence;
- (d) The Service Provider must record details of and responses to instances of individual illegal, non-compliant or antisocial behaviour by Transferees.
- (e) The Service Provider must ensure that Transferees identified as victims of anti-social behaviour are supported by Service Provider Personnel and other service providers, with relevant details recorded.

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

SCHEDULE 2 FEES AND PAYMENT

s. 47G(1)(a)



Nauru in country staff rates

Nauru in country staff - off shore rates		
Position	Total Daily Rate \$	
Administration Staff		
In-Country Operations Manager	s. 47G(1)(a)	
Logistics Manager		
Administration Assistant		
Roster / Payroll		
TSA Officer		
Field Staff		
Field Operations Coordinator		
Support Worker Team Leader		
Support Workers		
Program Coordinator Team Leader		
Program Coordinator Workers		
Senior Client Communications & Engagement Team		
Leader		
Client Communications & Engagement Workers		
Cultural Advisory Worker		
Teacher		
Teacher aide		
Community Development Officer		
Counsellor / Psychologist		

s. 47G(1)(a)

s. 47G(1)(a)

Headquarters service delivery team rates

Headquarters service delivery team staff

Position	Total Daily Rate \$
Program Director	s. 47G(1)(a)
Program Operations Manager (Finance / Business)	(a)
Field Ops Coord	
Research / Resource Development / policy advisor	
HR 1 (scheduling staff turnover etc)	
HR 2 recruiting	
VET Education Coordinator	
IT/SAMIS	
Training / cultural Coordinator	
Communication and Community Engagement	
Office Coord/ General Admin/ finance clerk	
Media / Comms / contracts (as required)	

s. 47G(1)(a)

s. 47G(1)(a)

SCHEDULE 3 CONFIDENTIALITY DEED

THIS DEED POLL is made the day of 2012 in favour of the **COMMONWEALTH OF AUSTRALIA** represented by the Department of Immigration and Citizenship (**the Department**) BY (the **Confidant**)

RECITALS

A The Department and The Salvation Army (**Service Provider**) have entered into an Agreement under which the Service Provider will provide the Services to the Department.

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

C. The Confidant will be performing Services.

THE CONFIDANT DECLARES AS FOLLOWS:

1. INTERPRETATION

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

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

Department Confidential Information means information that:

- (a) is by its nature confidential;
 - (b) is designated by the Department or any law as confidential; or
 - (c) the Confidant knows or ought to know is confidential;
- and includes to the extent that it is confidential:
- (d) information comprised in or relating to any Intellectual Property of the Department;
 - (e) information relating to contractors or suppliers to the Department; and
 - (f) information relating to Department Data,
- but does not include information which:

- (g) is or becomes public knowledge other than by breach of the Agreement or any other confidentiality obligation; or
- (h) has been independently developed or acquired by the Confidant as established by written evidence.

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

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

Services means the Services specified in the Agreement.

2. NON DISCLOSURE

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

3. RESTRICTION ON USE

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

4. CRIMES ACT

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

4.2. The Confidant acknowledges that the Crimes Act contains penalties (including fines and imprisonment) in relation to unauthorised disclosure of information that may be applicable to the Confidant.

4.3 The Confidant acknowledges that it is an offence under Division 137 of the *Criminal Code 1995* (Cth) to give false and misleading information to the Commonwealth or its officers or agents.

4.4 The Confidant acknowledges that any unauthorised access, alteration, removal, addition, possession, control, supply or impediment to the access, reliability, security or operation of data held in any computer (or, in some cases, any storage device) in the course of performing a contract with the Commonwealth may be an offence under Part 10.7 of the *Criminal Code 1995* (Cth) for which there are a range of penalties, including imprisonment.

5. DELIVERY UP OF DOCUMENTS

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

6. CONFLICT OF INTEREST

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

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

7. SURVIVAL OF OBLIGATIONS

7.1. The obligations in this Deed are perpetual.

8. INDEMNITY

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

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

(a) the Confidant's failure to comply with this Deed; or

(b) the act or omission of the Confidant's employees, agents or subcontractors in relation to Department Confidential Information.

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

Executed as a Deed

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

SIGNED, SEALED and DELIVERED by
[Confidant] in the presence of:

Signature of Recipient

Signature of witness

Name

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

Signature of director

Signature of director/secretary

Name

Name

SCHEDULE 4 DEED OF NON-DISCLOSURE OF PERSONAL INFORMATION

THIS DEED POLL is made the _____ day of 2012
in favour of the COMMONWEALTH OF AUSTRALIA represented by the Department of
Immigration and Citizenship (the **Department**)

BY _____ (the **Confidant**)

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

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

4. The Confidant agrees that its obligations under this Deed and to perform duties in relation to the Agreement:
 - (a) to the extent of any inconsistency with the National Privacy Principles in the *Privacy Act 1988* (Cth) or any privacy codes or privacy principles contained in, authorised by or registered under any law, take priority to the fullest extent permitted by applicable law; and
 - (b) to the extent not so inconsistent, are in addition to any obligations the Confidant may have under the *Privacy Act 1988* (Cth) or any privacy codes or privacy principles contained in, authorised by or registered under any law.
5. The Confidant acknowledges that failure by it to comply with the obligations under the Privacy Act in accordance with **paragraph 3** may result in the Service Provider or the Department taking action against the Confidant (including, without limitation, disciplinary action).
6. The Confidant agrees to treat all Personal Information with the utmost care and to protect that information at all times in accordance with all security and privacy requirements imposed by the Agreement on persons performing duties in relation to the Agreement.
7. The Confidant acknowledges and agrees that this Deed survives the termination or expiry of any contract providing for the performance of services by it (whether directly or indirectly) in relation to the Agreement.
8. This Deed will be governed by, and construed in all respects in accordance with, the law of the Australian Capital Territory and the Confidant agrees to submit to the applicable jurisdiction of the Courts of that Territory in respect of all matters arising under, or in relation to, this Deed.
9. Without limiting the rights of the Department to enforce this Deed, the Department may also enforce this Deed against the Confidant.

Executed as a Deed

SIGNED, SEALED and DELIVERED by
[*Confidant*] in the presence of:

Signature of Recipient

Signature of witness

Name

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

Signature of director

Signature of director/secretary

Name

Name

SCHEDULE 5 SERVICE PROVIDER CONFIDENTIAL INFORMATION

Information contained in Agreement:

Item	Period of Confidentiality
Each of the individual components of the Service Fee as set out in Schedule 2	3 years
Insurance levels	3 years

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

.....
Signature of witness

.....
Name of witness (print)

.....
Signature of delegate

Tracy Mackey
.....
Name of delegate (print)

Ag First Assistant Secretary
.....
Position of delegate (print)

Executed by **The Trustee for the Salvation
Army (NSW) Property Trust ABN 57 507
607 457**. The common seal of the Salvation
Army (New South Wales) Property Trust is
affixed in the presence of:

.....
Signature of witness

.....
Name of witness (print)

.....
Signature of witness

.....
Name of witness (print)

.....
Signature of witness

.....
Name of witness (print)



.....
Signature of Trustee

.....
Name of Trustee (print)

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Signature of Trustee

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Name of Trustee (print)

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Signature of Trustee

.....
Name of Trustee (print)