SUBCONTRACT AGREEMENT GENERAL TERMS AND CONDITIONS IN RELATION TO THE PROVISION OF SERVICES ON THE REPUBLIC OF NAURU

CONTRACT NUMBER: 3046/01

THIS AGREEMENT is made on 2 of ~~August~~ September 2013.

BETWEEN: **TRANSFIELD SERVICES (AUSTRALIA) PTY LIMITED** (ABN 11 093 114 553) of Level 10, 111 Pacific Highway, North Sydney NSW 2060 ("Transfield Services")

AND **Wilson Parking Australia (1992) Pty Ltd trading as Wilson Security** (ABN 67 052 475 911) Level 16, 360 Elizabeth St, Melbourne, VIC 3000 ("Subcontractor")

Recitals

A Transfield Services has entered into an agreement with the Principal dated 1 February 2013 ("Head Contract") to provide operational and maintenance services ("Head Contract Services") for people being transferred to a Regional Processing Country ("Transferees") in the Republic of Nauru.

B Transfield Services wishes to appoint the Subcontractor, and the Subcontractor has agreed to carry out the Services in accordance with the terms and conditions set out in this Agreement.

C Transfield Services and the Subcontractor will vary this Agreement following execution to incorporate Staff Accommodation services to be provided by the Subcontractor on the pricing basis submitted to Transfield Services on 3 July 2013.

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1. Definitions and interpretation

1.1 Definitions

In this Agreement, capitalised words defined in the Definitions (in Annexure 1) will have the meanings set out therein and will form part of this Agreement.

1.2 Interpretation

In this Agreement:

(a) a reference to Including, includes or include must be read as if it is followed by without limitation;

(b) where an expression is defined, any other part of speech or grammatical form of that expression has a corresponding meaning;

(c) the singular includes the plural and vice versa;

(d) a reference to any legislation includes any associated subordinated legislation and amendments to such legislation and subordinated legislation;

(e) headings do not affect the interpretation of this Agreement;

(f) words denoting a natural person include a corporation and vice versa; and

(g) a reference to $, AUD or dollar is to the lawful currency of the Commonwealth of Australia.

2. Services and remuneration

2.1 Performance of Services

(a) The Subcontractor must execute and complete the Services in accordance with the terms of this Agreement during the Term.

(b) In performance of the Services in clause 2.1(a), the terms set out in Annexure 4 will form part of this Agreement.

(c) Transfield Services may extend the term of this Agreement beyond the initial Term for one or more periods up to a total of s. 47(1)(b) on the terms and conditions of this Agreement then in effect, by providing in each case at least 30 days written notice to the Subcontractor.

2.2 Remuneration

As full consideration for the Subcontractor providing the Services under this Agreement (including the provision of any Security required under clause 2.3), Transfield Services agrees to pay the Subcontractor the Fee in relation to the Services in accordance with the terms of this Agreement. Adjustments may be made to any Fee only in accordance with the provisions of this Agreement.

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3. The Subcontractor's responsibilities

3.1 Primary obligation

The Subcontractor acknowledges that it is primarily contractually responsible for the planning and performance of the Services in accordance with this Agreement, and that any part of the Services that the Subcontractor may subcontract out to any person in no way relieves the Subcontractor of any of its obligations or warranties under this Agreement.

3.2 Performance warranties and covenants

Without limiting the generality of clause 3.1, the Subcontractor warrants and covenants that:

(a) In agreeing to perform the Services, it has the necessary skills, resources and experience to successfully perform the Services;

(b) With respect to the Services, it will perform the Services:

(i) that would be expected of a services provider experienced in projects or activities of a similar nature to those the subject to the Services;

(ii) are required;

(c) It will perform the Services so that they comply with the requirements of this Agreement, all Authorities, relevant Australian Standards, Good Industry Practice and any of Transfield Services' or the Principal's policies (as advised from time to time, including without limitation, Transfield Services' Code of Business Conduct (available at: http://www.transfieldservices.com));

(d) To the extent possible, it must comply with the Law in performing its obligations under this Agreement;

(e) It will obtain all the necessary licences and permits required in the execution of the Services and pay for all associated taxes, levies and charges;

(f) In respect of other contractors generally, or in respect of the employees of the Principal both whom may be present on the Site during the performance of the Services, it will mutually co-operate with any such contractors or employees and not unreasonably obstruct, delay, disrupt or otherwise interfere with or damage such contractor's or employee's work or property;

(g) It will manage all aspects of industrial relations for the performance of the Services (including without limitation) it must:

(i) ensure that the rates of pay and conditions of employment specified in the relevant awards and enterprise and project agreements and relevant legislation, for all employees of the Subcontractor are always observed in full; and

(ii) keep Transfield Services fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the performance of the Services;

(h) It must comply with all requirements of Law and this Agreement for protection of the Environment;

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(i) It must familiarise itself and its employees with relevant WHS Law, the Site's safety rules and regulations, and associated permit-to-work systems (including the Principal's) and ensure that they are understood, observed, maintained and complied with in the execution of the Services;

(j) It must familiarise itself and its employees with Transfield Services' Mandatory Safety Rules as set out in Annexure 12, a breach of which may - subject to the findings of an investigation - lead to termination of this Agreement under clause 11.4, and ensure they are understood, observed, maintained and complied with in the execution of the Services;

(k) It must, at its own expense, keep its work area clean and tidy, regularly removing rubbish and surplus material from the Site to the approval of Transfield Services;

(l) It will provide a Subcontractor's program as reasonably requested by Transfield Services;

(m) It will take all steps to minimise and prevent unnecessary delay in the performance of the Services;

(n) It will be responsible for the security of its own tools, plant and equipment; and

(o) It must ensure that it and its employees, subcontractors and agents do not make, receive, provide or offer substantial gifts, entertainment, payments, loans or other consideration to either Transfield Services or the Principal (or either Transfield Services' or the Principal's employees and agents) for the purpose of influencing those persons to act contrary to the best interests of Transfield Services or the Principal.

3.3 Safety and quality

Without limiting clause 3.2, the Subcontractor warrants and covenants that:

(a) It will ensure that the Services are performed in a safe manner; and

(b) It will either:

(i) establish, maintain and implement a management system in accordance with recognised Australian and International management system standards (eg ISO 9001 & AS/NZS 4801) to ensure all Services performed under this Agreement are carried out in a controlled manner and that the requirements of this Agreement are fuliy complied with. The Subcontractor must provide copies of such systems for review and acceptance as directed by Transfield Services; or

(ii) adopt a management system developed by Transfield Services and apply such a management system in the performance of the Services.

(c) It must, at its own cost, comply with any quality assurance and customer service requirements detailed in this Agreement.

3.4 Right of removal

The Subcontractor must promptly remove from the Site any employee or agent of the Subcontractor (or employee of any subcontractor of the Subcontractor), performing the Services, as Transfield Services may in its sole discretion but acting reasonably designate and, where so required by Transfield Services, arrange for replacement with personnel acceptable to Transfield Services at no additional cost to Transfield Services. The

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Subcontractor hereby releases and forever discharges and holds harmless Transfield Services from any costs, claims, losses, and damages of any kind whatsoever, based on negligence, defamation, wrongful discharge/dismissal or otherwise, which the Subcontractor may suffer, sustain, pay or incur as the result of any such removal and will indemnify, defend and hold harmless Transfield Services against any third party claims based on removals under this clause.

3.5 Subcontracting, assignment and Change of Control

(a) The Subcontractor must not subcontract all or any part of the Services without the prior written approval of Transfield Services where the proposed subcontract works are valued at s. 47(1)(b) or more and the subcontract shall be on such terms as acceptable to Transfield Services. Transfield Services may, in its discretion, withhold its approval under this clause.

(b) Approval by Transfield Services to any subcontractor or subcontract referred to in clause 3.5(a), does not in any way relieve the Subcontractor of any of its obligations or liabilities under this Agreement.

(c) The Subcontractor will be liable to Transfield Services 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 Subcontractor. The Subcontractor remains responsible for ensuring that the work performed by each subcontractor meets the requirements of this Agreement. s. 47(1)(b)

s. 47(1)(b)

(d) The Subcontractor may not assign all or any of its rights under this Agreement, or create any Security Interest or allow any Security Interest to subsist over this Agreement, without the prior written approval of Transfield Services. Transfield Services will not unreasonably withhold consent to such assignment where the assignee is a wholly owned subsidiary of the Subcontractor.

(e) The Subcontractor shall not procure or permit any Change of Control to occur in respect of it.

4. Scope of the Services and Variations

4.1 General

(a) The Subcontractor agrees and accepts the obligation to fully inform itself on Site conditions, all relevant commercial and other circumstances and any documents furnished by Transfield Services prior to it providing the Services, and the Subcontractor agrees to fully satisfy itself of all conditions, risks, contingencies and other circumstances which might affect its performance of the Services. No increase in the Fee will be allowed for the Subcontractor's failure to ensure that it is fully informed regarding all the circumstances relating to the performance of the Services.

(b) The Subcontractor agrees that it has included in the Fee any associated and complementary services which are not shown in the Scope of Services in Annexure 8 but which are necessary for the satisfactory completion and performance of the Services in accordance with Good Industry Practice.

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4.2 Variations

(a) Transfield Services may, by written notice in writing to the Subcontractor, direct the Subcontractor to vary the Services by anyone or more of the following:

(i) increase, decrease or omit any part (including for the purpose of engaging another contractor to provide the Services or any part thereof decreased or omitted);

(ii) carry out additional work;

(iii) demolish or remove material or work no longer required by Transfield Services,

and the Subcontractor must carry out any such variation as directed by Transfield Services in writing. The Subcontractor's fee (or deduction from the Fee, as the case may be) for carrying out any variation as a consequence of the written direction is to be agreed between the Parties prior to the Subcontractor carrying out any such variation. However, in the event that agreement cannot be reached, then Transfield Services may direct the Subcontractor in writing to proceed with the variation and the variation will be valued using any applicable rates and prices included in this Agreement, or where no such rates apply, using reasonable rates and prices, as determined by Transfield Services. Unless otherwise agreed any deduction shall also include a reasonable deduction for profit and overheads.

(b) The Subcontractor must not vary the Services, except as directed and approved by Transfield Services in writing.

4.3 Right of inspection, and defective Services

(a) Transfield Services or the Principal will have the right to inspect and monitor the performance of the Services. and the Subcontractor must give Transfield Services access to the Subcontractor's premises or the Site for such purpose during its normal working hours. The Services will not be accepted by Transfield Services until inspected and approved by Transfield Services. Any inspection by Transfield Services or the Principal will not relieve the Subcontractor from its obligations to comply with the requirements of this Agreement.

(b) The Subcontractor warrants that it will provide the Services free of any defects, faults or omissions. Transfield Services may at any time (and notwithstanding that payment may have already been made for certain of the Services), issue a notice in writing, directing the Subcontractor to rectify, replace or rework any part of the Services that it considers is not in accordance with this Agreement. The Subcontractor must at its own cost promptly commence and complete the rectification, replacement or rework as directed by Transfield Services.

5. Suspension

5.1 General

(a) Transfield Services may at any time give written notice to the Subcontractor to suspend the performance of all or any part of the Services and may include in that notice details of the extent to which Transfield Services requires the Subcontractor to:

(i) keep its personnel, subcontractors and equipment on standby; and

(ii) comply with any safety and operational requirements.

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(b) If the Subcontractor receives a written notice from Transfield Services under clause 5.1(a), the Subcontractor must immediately, or as soon as practicable (having regard to any safety and operational requirements), suspend the performance of the Services (or the relevant part).

(c) s. 47(1)(b)

(d) Transfield Services may at any time give written notice to the Subcontractor to resume the performance of the Services (or the relevant part) which has been suspended and the Subcontractor must immediately resume performance of the Services (or the relevant part) which has been suspended.

(e) If Transfield Services gives a written notice under clause 5.1(a) as a result of a breach by the Subcontractor of its obligations under this Agreement, the Subcontractor is not entitled to any payment under clause 5.1(c) or otherwise.

6. Payment

6.1 Transfield Services' payment obligations

(a) Subject to the proper performance of the Services, Transfield Services must pay the Subcontractor the Fee.

(b) The Subcontractor acknowledges that the Fee includes all costs and expenses it may incur in performing the Services and complying with all of its other obligations under this Agreement.

(c) The Parties acknowledge that the Fee will be claimed on a Payment Period basis and in accordance with this clause 6 and all payments will be made in Australian Dollars unless otherwise agreed.

6.2 Payment claim procedures

(a) The Subcontractor must provide to Transfield Services a statement in a form required by Transfield Services, on or before the last Business Day of each Payment Period (or at such other times as may be agreed between the parties), showing the part of the Fee claimed for the Services completed for that Payment Period. The payment claim shall relate to work satisfactorily completed since the previous Payment Period and shall be accompanied by any documentation that is required to support such claim. The first Payment Period begins on the date of this Agreement.

(b) The Subcontractor must include with each statement provided in accordance with clause 6.2(a), a statement that all remuneration or other amounts payable by the Subcontractor to any of its employees, consultants or any subcontractors of the Subcontractor have been paid by Law or under an industrial instrument in respect of the Services.

(ii) In relation to a Subcontractor who has performed Services:

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(A) in NSW (or otherwise has liabilities which arise under the Payroll Tax Act 2007 (NSW)), the Subcontractor must include with each statement provided in accordance with clause 6.2(a), a statement by the Subcontractor in accordance with the requirements of clause 18 of Schedule 2 of the Payroll Tax Act 2007 (NSW); and

(B) in NSW the Subcontractor must include with each statement provided in accordance with clause 6.2(a), a statement by the Subcontractor in accordance with the requirements of section 175B(4) of the Workers Compensation Act 1987 (NSW).

(iii) Transfield Services may withhold any payment due to the Subcontractor until it receives from the Subcontractor the relevant statements required by clauses 6.2(b)(i) and 6.2(b)(ii).

(c) At the same time as the Subcontractor provides Transfield Services a statement in accordance with clause 6.2(a), the Subcontractor must provide Transfield Services with a Tax Invoice that complies in all respects with the requirements of the GST Act.

6.3 Payment

(a) Following receipt of the statements and Tax Invoice under clause 6.2, Transfield Services will review and either approve or reject the payment claim, whether in part or in full. Approval may be subject to approval of the Services by the Principal. Where Transfield Services rejects a payment claim, in part or in full, Transfield Services will inform the Subcontractor in writing of such rejection including reasons for the rejection.

(b) If payment is approved, Transfield Services must pay the Subcontractor the amount stated in the statement referred to in clause 6.2(a) within the Payment Term after the end of the Payment Period to which the payment relates, by either electronic funds transfer to a bank account nominated by the Subcontractor or cheque.

(c) The Principal may make payment to the Subcontractor under this Agreement as agent for Transfield Services, and the Subcontractor acknowledges this may be the case.

6.4 Set-off

Transfield Services may set-off or deduct from any payments due to the Subcontractor under this Agreement, s. 47(1)(b)

s. 47(1)(b)

6.5 Taxes

(a) The Subcontractor must s. 47(1)(b)

s. 47(1)(b)

(b) If any supply made under this Agreement is or becomes subject to GST, the party to whom the supply is made ("the Recipient") must pay to the party making the supply ("the Supplier"), as consideration in addition to any consideration payable or to be provided elsewhere in this Agreement, subject to issuing a valid Tax Invoice, an additional amount on account of GST, such amount to be calculated by multiplying the consideration by the applicable rate of GST.

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(c) Any amount in respect of GST payable under clause 6.5(b) must be paid to the Supplier at the same time as the consideration to which it relates is paid.

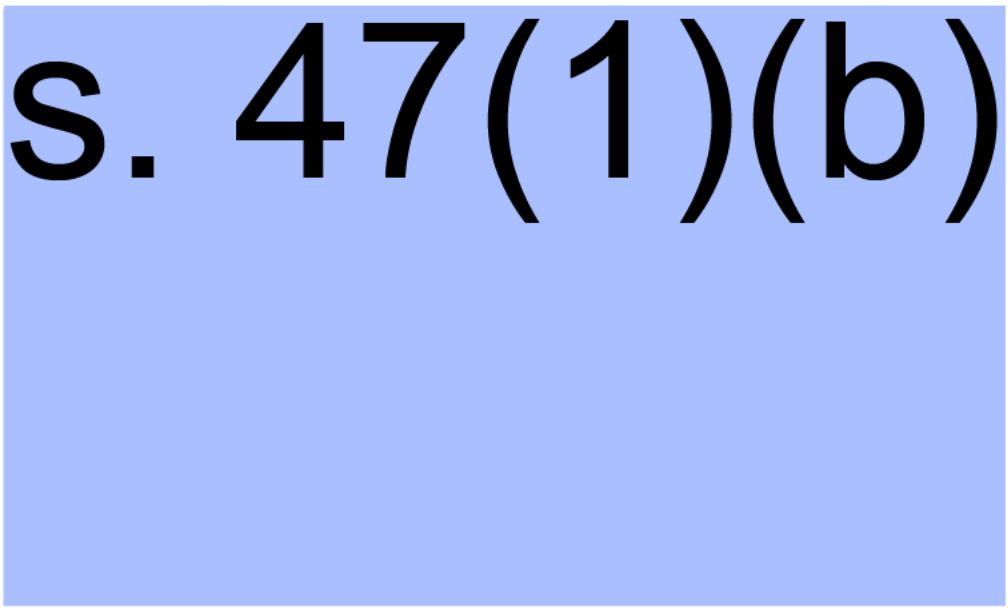
(d) If Subcontractor fails to obtain the immunity or exemption from taxes or duties to which the Subcontractor is entitled under Law, or fails to obtain a refund or credit, including interest, for any such taxes or duties paid, Transfield Services shall not be responsible for the reimbursement to Subcontractor of such taxes and duties.

6.6 Subcontractor's subcontractor payment provisions

The terms set out in Annexure 10 form part of this Agreement.

7. Indemnities

7.1 Indemnity by the Subcontractor



8. Insurance

8.1 Insurance policies

Before commencing the provision of the Services, the Subcontractor must effect or cause to be effected the Insurances detailed in Annexure 5.

8.2 Insurance generally

(a) The Subcontractor must:

(i) give Transfield Services (before the commencement of the Term and at other times requested by Transfield Services) certificates of currency of the Insurances referred to in clause 8.1;

(ii) ensure that all insurance premiums in respect of the Insurances referred to in clause 8.1 are paid on time, that all deductibles are paid promptly and that all conditions of insurance are otherwise complied with;

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(b) the Subcontractor must inform Transfield Services promptly in writing of any occurrence or accident giving rise to or likely to give rise to a claim under any of the Insurances relating to or arising from, the Services.

8.3 Maintain Insurances

The Subcontractor must maintain the Insurances referred to in clause 8.1 during the Term.

9. Force Majeure

(a) If either Party is prevented from or delayed in performing any of its obligations under this Agreement by a Force Majeure Event, the affected Party must immediately give the other Party a written notice containing the:

(i) full particulars of the Force Majeure Event;

(ii) nature and likely duration of the Force Majeure Event;

(iii) obligations of the party the performance of which is prevented or delayed; and

(iv) nature and extent of the effect of the Force Majeure Event on those obligations.

(b) The obligations of the Party affected by the Force Majeure Event are suspended to the extent that they are affected by the Force Majeure Event, from the date the affected Party gives the written notice under clause 9(a) until cessation of the Force Majeure Event. To the extent that a Force Majeure Event applies to the Subcontractor whilst performing Services, such a suspension will in effect amount to an extension of time allowable for the completion of the Services affected (but will not constitute grounds for a variation or extra payment), although such an extension of time will cease upon the cessation of the Force Majeure Event.

(c) On the cessation of the Force Majeure Event which is the subject of a written notice under clause 9(a), the Party affected by the Force Majeure Event must:

(i) immediately give written notice to the other Party of the cessation of the Force Majeure Event; and

(ii) resume performance of any obligations suspended as a result of the Force Majeure Event.

(d) Where the Party affected by a Force Majeure Event is the Subcontractor, it must:

(i) use its best endeavours to remove the effect of that Force Majeure Event affecting its obligations under this Agreement;

(ii) continue providing the Services and complying with its obligations under this Contract not effected by the Force Majeure Event;

(iii) implement and comply with any agreed processes and procedures relating to the management of Force Majeure Events; and

(iv) notify Transfield Services in writing as soon as the Force Majeure Period ceases.

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10. Intellectual property and Documentation

The terms set out in Annexure 6 form part of this Agreement.

11. Default and termination

11.1 Transfield Services remedy notice

(a) If Transfield Services considers that the Subcontractor:

(i) is in breach or default of this Agreement; or

(ii) has breached a warranty which it gives to Transfield Services under this Agreement,

Transfield Services may give the Subcontractor a notice requiring it to rectify that default or remedy that breach (or overcome their effects) within a reasonable time specified in the notice.

(b) Subject to clause 11.1(c), if the Subcontractor fails to rectify a default or remedy a breach (or overcome their effects) in accordance with the terms of a notice referred to in clause 11.1(a) or if urgent action is necessary:

(i) Transfield Services may take any action it considers appropriate to:

(A) rectify that default;

(B) remedy that breach; or

(C) take that urgent action; and

(ii) the Subcontractor must indemnify Transfield Services against any damage, expense, loss or liability Transfield Services reasonably suffers or incurs in respect of that action, unless that damage, expense, loss or liability arises from the negligence or wilful default of Transfield Services or its contractors.

(c) (i) Transfield Services may terminate this Agreement by giving the Subcontractor written notice after it has given the Subcontractor a notice under clause 11.1(a) and the Subcontractor has not complied with that notice.

(ii) Without limiting any other right in law or equity, if this Agreement is terminated under clause 11.1(c)(i), Transfield Services will be entitled to recover from the Subcontractor all costs, losses and damages suffered or incurred by Transfield Services arising out of or in connection with such termination.

(iii) In the event of any termination under this Agreement, Transfield Services may immediately suspend any further payment to the Subcontractor. Any additional monies required by Transfield Services to complete the Services in excess of what Transfield Services would have paid under this Agreement will be a debt due and payable by the Subcontractor to Transfield Services.

11.2 Termination for convenience

In addition to any right to terminate at law, Transfield Services may by giving s. 47(1)(b) written notice and in its absolute discretion (including, without any limitation on this discretion, for the purpose of carrying out the Services or engaging another contractor to carry out the Services

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or any part thereof) terminate this Agreement. Following any termination under this clause, the Subcontractor is only entitled to:

(a) receive amounts owing for Services provided up until the date of termination under this Agreement;

(b) payment for the reasonable and demonstrable demobilisation costs associated with the termination of the Agreement capped to an amount of s. 47(1)(b)

s. 47(1)(b)

11.3 Termination for Insolvency

If the Subcontractor is or becomes Insolvent, Transfield Services may terminate this Agreement, with immediate effect, by giving written notice to the Subcontractor and Transfield Services will be entitled to recover damages outlined in clause 11.1(c)(ii).

11.4 Termination for Serious Breach

If the Subcontractor is in Serious Breach of this Agreement then Transfield Services may terminate this Agreement immediately by giving written notice and Transfield Services will be entitled to recover damages outlined in clause 11.1(c)(ii). Following such a termination, the Subcontractor is only entitled to recover amounts owing up until the date of termination.

11.5 Termination of Head Contract

If the Head Contract (referred to in Recital A of this Agreement) is terminated for whatever reason, then Transfield Services may terminate this Agreement with immediate effect. In the event of termination under this clause, the Subcontractor is only entitled to receive amounts owing up until the date of termination, and is not otherwise entitled to claim any other damages or consequential loss in respect of the termination.

11.6 Transition Out

If this Agreement is terminated for any reason, the Subcontractor must comply with any reasonable directions issued by Transfield Services to achieve an orderly transition of the Services to Transfield Services, the Principal or an alternative provider as notified by Transfield Services.

12. Confidentiality

(a) Any Confidential Information supplied by Transfield Services to the Subcontractor must not be disclosed by the Subcontractor to any third party without the written consent of Transfield Services.

(b) The Subcontractor must not take any photographs of the Services or issue for public release any information, publication or document related to the Services, without first obtaining the written approval of Transfield Services.

(c) The obligations under this clause are continuing obligations and will survive the termination of this Agreement for a period of 5 years.

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13. Notices

(a) Any notice or other communication required under the Agreement must be in writing (to the addresses outlined in Annexure 2) except that Transfield Services may give verbal instructions or directions to the Subcontractor on Site in relation to the Services. If Transfield Services deems appropriate, any such verbal instructions or directions may be confirmed in writing by Transfield Services to the Subcontractor within a reasonable time.

(b) A notice sent by mail will be deemed received by the Party to whom it is addressed on the second Business Day after the date of its posting. Notices transmitted by facsimile will be deemed received on the day of transmission (subject to transmission report evidencing thereof), except that if the notice is transmitted after 5pm on a Business Day then the notice shall be deemed to have been received on the next Business Day, while a facsimile notice transmitted on a non-Business Day will be deemed to have been received on the next Business Day.

14. Dispute Resolution

14.1 Early Resolution

Disputes or differences arising between Transfield Services and the Subcontractor in relation to this Agreement must preferably be settled quickly and by negotiation.

14.2 Continuation of the Services

In the event of any unresolved dispute between Transfield Services and the Subcontractor in relation to this Agreement, the Subcontractor must ensure that the progress of the Services is continued without any effect on the Subcontractor's program.

14.3 Settlement of unresolved disputes

(a) The preferred method of determination of unresolved disputes will be by amicable agreement at the senior management level of Transfield Services and the Subcontractor. Accordingly, if a dispute under this Agreement arises, the Parties agree to try to resolve the dispute at the senior management level of both Parties.

(b) If the Parties cannot resolve a dispute referred to in clause 14.3(a) within 21 days the dispute is first raised by the Parties, the Parties agree that the dispute must then be referred to mediation with the Australian Commercial Disputes Centre ("ACDC"). The dispute referred to the ACDC for mediation must be heard by the ACDC within 30 days after the dispute is referred to the ACDC.

(c) The Parties agree to adhere to the procedures set out in clauses 14.3(a) and 14.3(b) before enforcing any other rights permitted by Law in the resolution of any disputes under this Agreement.

15. Special Conditions

The special conditions outlined in Annexure 7 form part of this Agreement.

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16. General

16.1 The Subcontractor's representative

The Subcontractor must appoint a representative who will at all times have authority to act on behalf of the Subcontractor in respect of this Agreement. The Subcontractor must promptly inform Transfield Services in writing of any change in the identity of the Subcontractor's representative.

16.2 Transfield Services' representative

Transfield Services must appoint a representative who will at all times have authority to act on behalf of Transfield Services in respect of this Agreement. Transfield Services must promptly inform the Subcontractor in writing of any change in the identity of Transfield Services' representative.

16.3 Auditing and return of documents

The terms of Annexure 11 form part of this Agreement.

16.4 Law of this agreement

(a) The law of this Agreement is the law in force in the Governing Law Jurisdiction.

(b) The parties submit to the jurisdiction of the courts of the Governing Law Jurisdiction.

16.5 Rights and remedies not affected

The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this Agreement.

16.6 Entire Agreement and interpreting any ambiguity

(a) This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

(b) In the event of any ambiguity, discrepancy or inconsistency in interpreting any term or terms of this Agreement, the order of priority in the interpretation of such term or terms will be in the order of the Special Conditions Annexure (Annexure 7) first, then the other Annexures, then the other terms of this Agreement.

16.7 Waivers and variations

(a) A provision of or a right created under this Agreement may not be waived, except in writing signed by the party granting the waiver.

(b) A failure or delay in the exercise, or the partial exercise of a right under this Agreement by a Party does not result in a waiver of that right.

(c) Unless otherwise stated in this Agreement, a Party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy.

(d) A variation of any term of this Agreement must be in writing and signed by the parties.

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16.8 Nature of the relationship

Nothing in this Agreement constitutes a joint venture, agency, partnership or other fiduciary relationship between Transfield Services and the Subcontractor, and at all times under this Agreement the Subcontractor is an independent contractor.

16.9 Conflict of interest

(a) In this clause 16.9, Conflict of Interest means any matter, circumstance, interest, or activity affecting the Subcontractor, its employees or subcontractors which may or may appear to impair the ability of:

(i) Transfield Services to provide the Services to the Principal diligently and independently; or

(ii) the Subcontractor to provide the Services to Transfield Services diligently and independently.

(b) The Subcontractor warrants that, to the best of its knowledge after making diligent inquiry, at the date of this Agreement, no Conflict of Interest exists or is likely to arise in the performance of the Services or performing any other work for third parties.

(c) The Subcontractor must not engage in any activity which might conflict with Transfield Services' interest under this Agreement.

(d) If, during the period of this Agreement a Conflict of Interest arises, or appears likely to arise, the Subcontractor agrees:

(e) to notify Transfield Services immediately;

(f) to make full disclosure of all relevant information relating to the Conflict of Interest; and

(g) to take any steps Transfield Services reasonably requires to resolve or otherwise deal with the Conflict of Interest.

16.10 Counterparts

This Agreement may be executed in any number of counterparts which, when taken together, will constitute one instrument.

16.11 Non-exclusive

This Agreement is non-exclusive. Transfield Services retains the right to carry out or engage any other person to provide the same type of Services (or any of the Services that it may choose to carry out itself or engage another contractor to carry out) without any liability to the Subcontractor.

No representation has been made by Transfield Services or any of its officers, employees or agents as to the number, volume or value of Services (including any minimum number) or additional services that it may direct or require the Subcontractor to perform under this Agreement or otherwise.

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ANNEXURE 1 - DEFINITIONS

Agreement means the Subcontract Agreement General Terms and Conditions, and all Annexures (including all terms and documents referenced therein).

Annexures means all the annexures to this Agreement.

Auditor means any such person nominated by Transfield Services to be the auditor and as notified by Transfield Services to the Subcontractor from time to time.

Australian Standards means standards relevant to the Subcontractors' performance of the Services, as approved by the Council of, and published from time to time by, Standards Australia International Limited (ACN 087 326 690), trading as Standards Australia, or any successor body.

Authority is any government department, local government council, government or statutory authority or other body, which has a statutory right to impose a requirement or whose consent is required with respect to any aspect of the Services.

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.

Change of Control means that any person or persons who does not own the Subcontractor (or a majority of it) at the date of this Agreement, acquires such ownership (or any interest in the Subcontractor) at any time hereafter.

Code of Conduct means the code of conduct provided by Transfield Services to the Subcontractor that outlines expectations and guidelines regarding the conduct of the Subcontractor and its Personnel;

Commencement Date means the date stated as such in **Annexure 2**.

Commonwealth Material means any Material:

a. provided by the Commonwealth to Transfield Services for the purposes of the head contract; or

b. derived at any time from the Material referred to in paragraph a.

Confidential Information means any information, documents and communications provided by Transfield Services to the Subcontractor that is either:

(i) related to the Services; or

(ii) designated by Transfield Services as confidential,

and, without limitation, includes any notes, documents, formula, plans, drawings, designs, models, trade secrets and includes any of the aforesaid which may be oral, written, stored in electronic form, translated from original form, re-compiled, copied, made into a compilation or altered from original form.

Contract Material means any Material:

a. created for the purposes of this Contract;

b. provided or required to be provided to Transfield Services as part of the Services; or

c. derived at any time from the Material referred to in paragraphs a or b;

Corporations Act is the *Corporations Act* 2001 (Cth).

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Department means the Commonwealth of Australia as represented by any department, agency or authority of the Commonwealth which is from time to time responsible for administering the head contract.

Documentation means all documentation, which the Subcontractor is required to produce in accordance with this Agreement including plans, drawings, specifications, calculations, models, equipment, information, and data stored by any means but does not include any such documentation that was created before this Agreement

Environment means:

(a) ecosystems and their constituent parts, including people and communities;

(b) all natural and physical resources;

(c) the qualities and characteristics of locations, places and areas, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, harmony and sense of community; and

(d) the social, economic, aesthetic and cultural conditions that affect or are affected by things mentioned in paragraphs (a), (b) and (c).

Excusable Performance Failure Event means any Force Majeure Event.

Fee means the remuneration payable by Transfield Services to the Subcontractor, being the Fee and/or Schedule of Rates set out in Annexure 3.

Force Majeure Event is any of the following:

(a) a fire, flood, earthquake, pandemic, elements of nature or other acts of God;

(b) war or other state of armed hostilities, national emergency, embargo or action by customs;

(c) unavailability of essential services such as air transport, electricity, gas or water for more than 48 hours;

(d) a restraint by any government agency in a Regional Processing Country,

other than as a result of the acts or omissions of the Subcontractor or its employees, agents or subcontractors which prevents or delays the performance of this Agreement by the Subcontractor.

Good Industry Practice means the exercise of that degree of skill, diligence, prudence and foresight that reasonably would be expected from competent contractors performing services comparable to the Services, consistent with Law.

Governing Law Jurisdiction means the laws of the jurisdiction outlined in Annexure 2.

GST means goods and services tax imposed by the GST Act.

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

Incident means an activity which threatens, harms or impacts, or has the potential to threaten, harm or impact upon:

a. the welfare of Transferees;

b. the good order, safety or security of a Site;

c. the success of escort/transfer activities; or

d. immigration processing.

Information Privacy Principle has the same meaning as it has in the Privacy Act 1988 (Cth).

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Insolvent means with respect to the Subcontractor that:

(a) it is (or states that it is) insolvent (as defined in the Corporations Act);

(b) it has a Controller (as defined in the Corporations Act) appointed to any part of its property;

(c) it is in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration or wound up or has had a receiver appointed to any part of its property;

(d) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, or dissolved (other than to carry out a reconstruction or amalgamation while solvent on terms approved by Transfield Services);

(e) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with the Subcontractor, which is preparatory to or could result in any of the circumstances detailed in any of paragraphs (a), (b), (c) or (d) above;

(f) it is taken (under section 459(F)(1) of the Corporations Act) to have failed to comply with a statutory demand;

(g) it is the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act (or it makes a statement from which Transfield Services reasonably deduces it is so subject);

(h) it is otherwise unable to pay its debts when they fall due;

(i) something having a substantially similar effect to any of the circumstances detailed in any of paragraphs (a) to (h) above happens in connection with the Subcontractor under the Law of any jurisdiction; or

(j) it is (or states that it is) bankrupt.

Insurances means the insurances set out in Annexure 5.

Key Personnel means the Subcontractor Personnel specified under clause 3 of the Special Conditions as Key Personnel.

Law is:

(a) any applicable laws, including those applicable in the Republic of Nauru and those Australian laws that are applicable to the Services or the Site including regulations, by-laws or other legislation;

(b) common law and equity; and

(c) all applicable Commonwealth policies as notified to the Subcontractor from time to time; and

(d) relevant Authorities' requirements.

Material means any thing in relation to which Services Intellectual Property rights arise.

Migration Act means the Migration Act 1958 (Cth).

Moral Rights means the following non-proprietary rights of authors of copyright Material:

a. the right of attribution of authorship;

b. the right of integrity of authorship; and

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c. the right not to have authorship falsely attributed.

National Code of Practice Construction Industry means the National Code of Practice for the Construction Industry 1997, a copy of which can be downloaded from www.deewr.gov.au/building.

Official Information means any information developed, received or collected by or on behalf of the Commonwealth to which the Subcontractor gains access under or in connection with this Agreement and the terms of this Agreement.

Official Resources is as defined in clause 7.1 of the Special Conditions of this Agreement.

Open Access Licence means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the material subject to certain restrictions. An Open Access Licence includes any Department or Australian Government open access licence and any Creative Commons Attribution licence (see http://creativecommons.org.au/learn-more/licences

Parties means Transfield Services and the Subcontractor (as defined on the first page of the Subcontract Agreement General Terms and Conditions.

Payment Period means the payment period stated in Annexure 2.

Payment Term means the payment term stated in Annexure 2.

Personnel means:

a. in relation to the Subcontractor - any natural person who is an officer, employee, agent or professional advisor of the Subcontractor or of its subcontractors; and

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

Performance Management Framework means the Performance Management Framework developed in accordance with clause 6.1 of Annexure 7 (Special Conditions).

Principal means the principal so named in Annexure 2.

Regional Processing Country means a country designated by the Minister for Immigration and Citizenship, acting under subsection 198AB (1) of the Migration Act as a regional processing country.

Schedule of Rates means the Schedule of Rates referred to in Annexure 3.

Security means the security so detailed in Annexure 2.

Security Interest is any bill of sale (as defined in any Law), mortgage, charge, lien, pledge, hypothecation, title retention arrangement, trust or power, as or having effect as a security for the payment of any monetary obligation or the observance of any other obligation.

Serious Breach means where the Subcontractor:

(i) breaches clauses 3.2, 3.3, 8, or 12 of this Agreement;

(ii) materially breaches clauses 2.1, 3.4 or 15 of this Agreement;

(iii) breaches clause 3.2.2 of Annexure 7;

(iv) breaches any of Transfield Services' Mandatory Safety Rules as set out in Annexure 12; or

(v) engages in any dishonest or fraudulent activity.

Services means the services set out in Annexure 8, and any other services which the Subcontractor and Transfield Services agree from time to time.

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Services Intellectual Property comprises artistic works, copyright moral rights (as described in the Berne Convention for the Protection of Literary and Artistic Works 1886), literary services, designs, trademarks, trade secrets, patents, inventions, discoveries, improvements to existing inventions or processes and novel designs whether or not registrable as designs or patents throughout the world including any developments or improvements to equipment, technology, methods, processes or techniques created or developed by, or on behalf of, the Subcontractor arising out of the performance of the Services including in relation to the Documentation

Site means the location outlined in Annexure 2 and if another site is established on Nauru and notified to the Subcontractor, will also include reference to the other site.

Special Conditions means the terms referred to in clause 15 (as contained in Annexure 7) of this Agreement.

Subcontractor means the party defined as the Subcontractor on the first page of the Subcontract Agreement General Terms and Conditions.

Tax Invoice means a tax invoice within the meaning of the GST Act.

Term has the meaning set out in Annexure 2.

Transferee means a person transferred to a Regional Processing Country, in this case to Nauru.

Transfield Services means the party defined as Transfield Services on the first page of the Subcontract Agreement General Terms and Conditions.

WHS Law means all statutes, regulations, statutory instruments, subordinate legislation, codes of practice and standards (including those of the Commonwealth of Australia and of the location where the Services are being delivered) dealing with or relevant to health and safety in workplaces and of workers and others who may be affected by the carrying out of work and includes any approvals, permits, licences, directions or requirements of an authority exercising regulatory powers in respect of such matters.

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ANNEXURE 2 - DETAILS

Commencement Date (Annexure 1): Date of execution

Term (see clause 2.1): Until 31 January 2014

Contract Authority (see Performance Management Framework):
Transfield Services: s. 47F(1) Subcontractor: s. 47F(1)

Security (see clause 2.3): Not applicable

Payment Period (see clause 6.2): s. 47(1)(b)

Payment Term (see clause 6.3): s. 47(1)(b) in which a properly rendered invoice is received by Transfield Services

Notices (see clause 13):

	Transfield Services		*Subcontractor*
Address:	Level 10 111 Pacific Highway Sydney NSW 2060	Address:	Level 16 360 Elizabeth St Melbourne VIC 3000
Facsimile:	03 88237764	Facsimile	03 9924 0295
Email:	s. 47F(1)	Email:	s. 47F(1)
Attention:	s. 47F(1)	Attention	s. 47F(1)

Governing Law Jurisdiction (see clause 16.4): The law of the Australian Capital Territory

Principal (see Definitions - Annexure 1): Commonwealth Department of Immigration and Citizenship

Site (see Definitions - Annexure 1): Republic of Nauru

Facilities and Assistance (if any) (Clause 2.2 of Special Conditions) provided by Transfield Services: As agreed between the Contract Authorities

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ANNEXURE 3 – FEES AND PAYMENTS

s. 47(1)(b)

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s. 47(1)(b)

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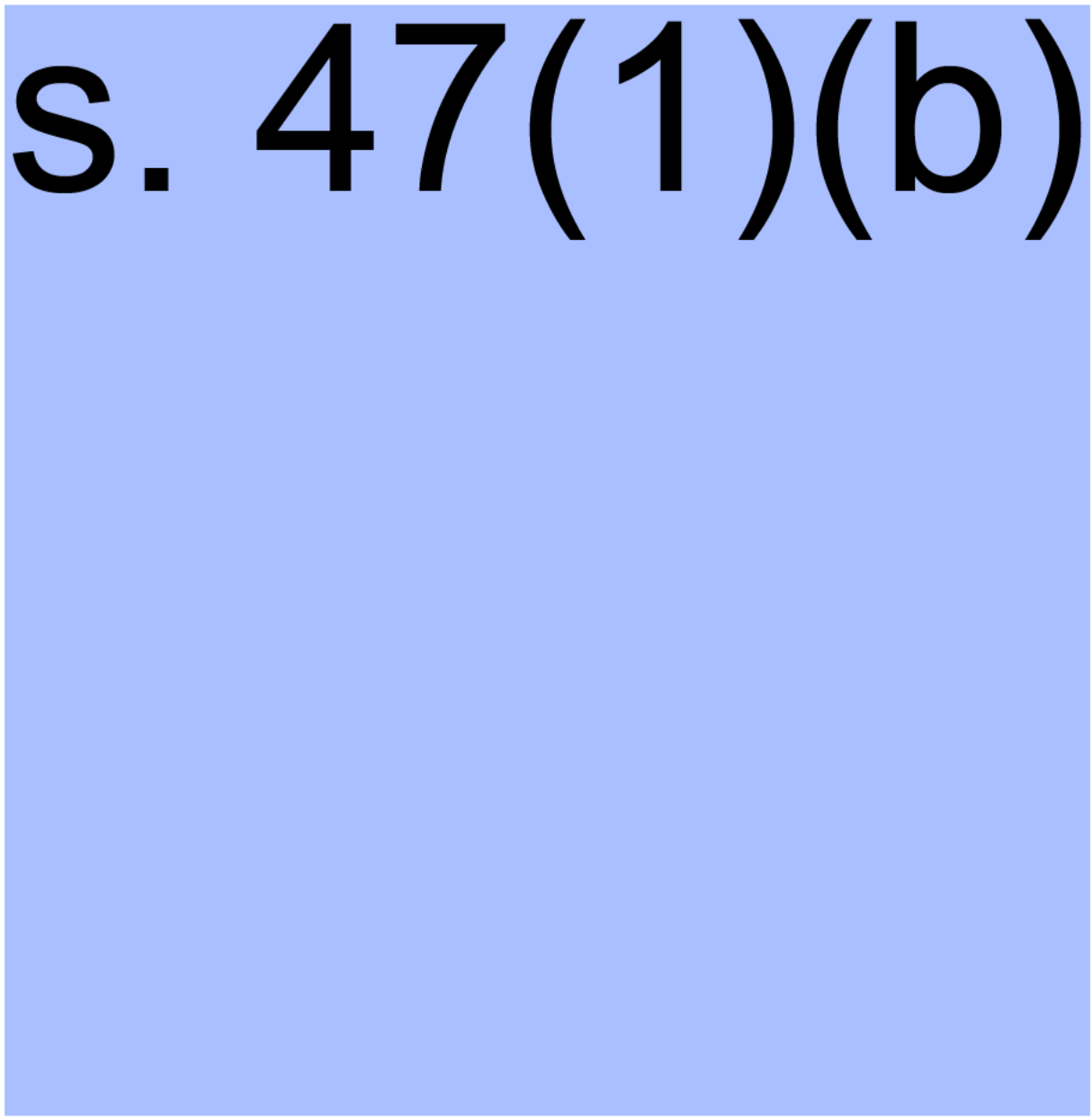

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ANNEXURE 4 – Not Used.

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ANNEXURE 5 – INSURANCES

a) Public Liability insurance to a minimum of s. 47(1)(b) for loss of, or damage to any property and injury (including death) to any person arising from or in connection with the execution of the Services by the Subcontractor. s. 47(1)(b) s. 47(1)(b)

b) Products liability insurance in the amount s. 47(1)(b) s. 47(1)(b)

c) Professional Indemnity insurance for the amount of s. 47(1)(b) s. 47(1)(b)

d) Workers Compensation insurance, and/or accident and sickness insurance.

e) (i) Compulsory third party motor vehicle insurance in respect of registered vehicles used in the provision of the services, where this is available. Otherwise, an insurance policy s. 47(1)(b) to cover Transfield Services, the Principal, the Subcontractor and their respective employees and respective agents for loss of, or damage to any property or injury (including death) as a result of vehicle use by the Subcontractor or its employees or agents on Nauru; and

(ii) A suitable policy of insurance s. 47(1)(b) s. 47(1)(b) to cover Transfield Services, the Principal, the Subcontractor and their respective employees and respective agents for loss of, or damage to any vehicle used by the Subcontractor or its employees or agents for any purpose.

f) Health and Medical evacuation insurance for all Subcontractor Personnel.

g) Any other type of insurance in addition to the insurances above as requested in writing by Transfield Services.

Transfield Services may require the Subcontractor to obtain additional insurance or higher levels of insurance than that specified above. s. 47(1)(b) s. 47(1)(b)

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ANNEXURE 6 – SERVICES INTELLECTUAL PROPERTY and DOCUMENTATION

A. Services Intellectual Property and Documentation

(i) Services Intellectual Property in the Documentation vests in Transfield Services upon its creation.

(ii) Sub-Clause A **(i)** above does not affect the ownership of intellectual property in any Commonwealth Material incorporated into the Documentation.

(iii) Any intellectual property owned by the Subcontractor prior to this Agreement will remain the property of the Subcontractor, although such intellectual property will be usable by Transfield Services and the Principal pursuant to a perpetual, irrevocable, royalty-free world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, perform, distribute, communicate and exploit any existing Material which is embedded within or otherwise forms part of the Documentation for any purpose.

(iv) The Subcontractor agrees that the licence granted in sub-clause A (iii) includes a right for Transfield Services to licence the existing Material which is embedded within or otherwise forms part of the Documentation to the public under an Open Access Licence.

(v) The Subcontractor agrees, on request by Transfield Services to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this Clause A.

(vi) The Subcontractor warrants that:

a. it is entitled; or

b. it will be entitled at the relevant time,

to deal with the Services Intellectual Property in the Documentation in the manner provided for in this Clause A.

B. Moral Rights

(i) In this clause B:

Permitted Acts means any of the following classes or types of acts or omissions:

a. using, reproducing, adapting or exploiting all or any part of the Documentation, with or without attribution or authorship;

b. supplementing the Documentation with any other Material;

c. using the Documentation in a different context to that originally envisaged;

d. releasing the Documentation to the public under an Open Access Licence;

but does not include false attribution of authorship.

(ii) The Subcontractor agrees:

a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by Transfield Services or any person claiming under or through Transfield Services (whether occurring before or after the consent is given) and, on request, to provide the executed original of any such consent to Transfield Services; and

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b. to ensure that each author's attention is drawn to the Principal's general policies and practices regarding Moral Rights.

(iii) This clause B does not apply to any Commonwealth Material or Material of Transfield Services incorporated in the Contract Material.

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Annexure 7 – Special Conditions of the Subcontract Agreement in relation to the provision of services on Nauru

1. General

1.1. Contract objectives

1.1.1. The primary objectives of the Head Contract are to:

(a) provide open, accountable and transparent Services to Transferees on Nauru;

(b) provide Transferees with a standard and range of operational and maintenance services that is the best available in the circumstances, and utilising facilities and personnel on the Republic of Nauru and that as far as possible (but recognising any unavoidable limitations deriving from the circumstances of Nauru) is broadly comparable with services available within the Australian community;

(c) provide the Services as set out in this Agreement.

1.2. Cooperation

1.2.1. The parties acknowledge that the terms of this Agreement require them to reach agreement on a range of matters. The Subcontractor must take all steps necessary to prepare relevant documentation and respond to any documentation provided by Transfield Services in relation to these matters in a timely manner. For the avoidance of doubt and without limiting clauses 11.1 to 11.5, if notwithstanding this, the parties fail to reach agreement; Transfield Services may terminate this Contract in accordance with clause 11.2.

1.3. Nauru Memorandum of Understanding

1.3.1. The Subcontractor agrees not to permit any act or omission that causes or may cause the Commonwealth to be in breach of its Memorandum of Understanding with the Republic of Nauru or with the related Administrative Arrangements.

1.4. Transition-in

1.4.1. The Subcontractor acknowledges that it has been at the Site since the Commencement Date and has completed its transition-in process.

1.4.2. The Subcontractor acknowledges that where it has provided any of the Services prior to the date of this Agreement the Services have been provided in accordance with all the requirements of this Agreement from the Commencement Date.

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2.1. Service obligations

2.1.1. Annexure 8 f this Agreement set out the specific requirements for the Services to be performed on the Republic of Nauru. Transfield Services may request the Subcontractor to provide other services on terms to be agreed. Once agreed, the parties will amend this Agreement to incorporate the other services and the other services will be Services for the purposes of this Agreement.

2.1.2. The Subcontractor agrees to:

(a) provide the Services and meet the requirements described in Annexures 8 of this Agreement; and

(b) adopt relevant best practice, including any appiicable Department, Commonwealth or industry standards and guidelines.

2.2. Facilities and assistance

2.2.1. Transfield Services will provide the Subcontractor with facilities and assistance specified in **Annexure 3** and such other facilities and assistance as agreed between the parties from time to time.

2.2.2. The Subcontractor acknowledges that:

(a) it will be sharing some of the facilities referred to in clause 2.2.1 with other service providers and Transfield Services' personnel and other contractors; and

(b) from time to time Transfield Services may require the Subcontractor to move out of part of the facilities or otherwise adjust the arrangements that apply to the access to the facilities.

The Subcontractor will cooperate with the other service providers and Transfield Services in relation to the management and use of the facilities.

2.3. Not Used

2.4. Compliance with Fair Work Principles

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

(a) complying with all applicable workplace relations, occupational health and safety and workers' compensation laws;

(b) informing Transfield Services of any adverse court or tribunal decision for a breach of workplace relations law, occupational health and safety laws or workers' compensation laws made against it during the term of this Contract and any remedial action it has taken, or proposes to take, as a result of the decision;

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(c) providing Transfield Services any information Transfield Services reasonably requires to confirm that the Subcontractor (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.

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

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

2.4.4. As far as practicable, the Subcontractor must:

(a) not use a subcontractor in relation to this Contract where the subcontractor would be precluded from contracting directly with Transfield Services 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 2.4.1 to 2.4.4.

3. Subcontractor Personnel

3.1. Key Personnel

3.1.1. The Subcontractor will notify Transfield Services from time to time of Key Personnel that have been retained in relation to the performance and management of the Services and the Subcontractor's obligations under this Contract.

3.1.2. The Subcontractor must ensure that each of the Key Personnel occupy the positions and provide the Services advised to Transfield Services.

3.2. Replacement of Key Personnel

3.2.1. Where Key Personnel cease to work in respect of this Contract, the Subcontractor must notify Transfield Services immediately and must provide replacement Key Personnel acceptable to Transfield Services at no additional charge and at the earliest opportunity.

3.2.2. If the Subcontractor is unable to provide replacement Key Personnel acceptable to Transfield Services within 10 Business Days of their ceasing work in respect of this Agreement, Transfield Services may, at its discretion, terminate this Agreement or remove Services from scope in accordance with clause 14.

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3.3. Removal of Key Personnel

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

3.4. Subcontractor Personnel

3.4.1. The Subcontractor must ensure that all Subcontractor Personnel that are to carry out work or perform duties under this Agreement have signed:

(a) Confidentiality Deed Poll substantially in the form of Schedule 1 (Confidentiality Deed); and

(b) Deed of Non-disclosure of Personal Information substantially in the form of Schedule 2 (Deed of Non-disclosure of Personal Information),

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

3.4.2. The Subcontractor must ensure that all Subcontractor Personnel that are to carry out work or perform duties under this Agreement:

(a) are, and remain, of good character and good conduct;

(b) are considered suitable by Transfield Services having regard to any issues identified in an Australian Federal Police background check and brought to the attention of Transfield Services;

(c) have a current 'working with children' check or certificate from an Australian jurisdiction;

(d) undergo induction, orientation and ongoing training that complies with Transfield Services requirements when commencing employment with the Subcontractor or starting work in relation to the Services and during deployment, including training provided by other Service Providers;

(e) are appropriately skilled, trained and qualified to provide the Services described in this Agreement;

(f) are authorised, registered or licensed in accordance with any applicable regulatory requirements for the purposes of or incidental to the performance of the Services;

(g) possess all relevant industry body, supplier, manufacturer accreditation or scheme memberships and professional association membership that might be reasonably expected of providers of the Services, and produce evidence of such authorisation, registration, license, accreditation or membership to Transfield Services upon request at any time during the term of this Agreement; and

(h) will be subject to internal disciplinary processes.

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3.5. **Behaviour of Subcontractor Personnel at the Sites**

3.5.1. The Subcontractor must ensure that all of its Subcontractor Personnel at a Site:

(a) are aware of, and comply with, the Code of Conduct at all times;

(b) comply with the Principal or Transfield Services' policy on smoking and other occupational health and safety matters as declared from time to time by Transfield Services; 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 Transfield Services,

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

3.6. **Illegal workers and non-citizens**

3.6.1. The Subcontractor must ensure that all of its Subcontractor Personnel do not include any illegal workers and must notify Transfield Services immediately if it becomes aware of any of its employees, agents and subcontractors being an illegal worker.

3.6.2. For the purposes of clause 3.6.1, 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.

4. Subcontractor arrangements

4.1 Extension of Subcontracts and records

4.1.1 The Subcontractor agrees to exercise any rights it may have against any of its Subcontractor Personnel or third parties in connection with a Requirement in accordance with any direction by Transfield Services.

4.1.2 A Requirement means an obligation, condition, restriction or prohibition binding on the Subcontractor under this Agreement.

4.1.3 The Subcontractor must:

(a) maintain a record of all contracts and subcontractors in respect of the Services; and

(b) promptly provide copies of any such contracts and subcontracts to Transfield Services where requested to so do.

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4.2. Subcontractor warranty

4.2.1. The Subcontractor warrants that each subcontractor:

(a) is suitable to carry out the Services under the subcontract;

(b) other than for local Nauruan subcontractors, are accredited or qualified in accordance with relevant Laws, Australian Standards and Commonwealth requirements; 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.

4.3. Subcontractor to be Transfield Services sole point of contact

4.3.1. The Subcontractor acknowledges that Transfield Services 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.

4.3.2. Except as provided in clause 4.3.1, the Subcontractor will be Transfield Services sole point of contact regarding the Services, including with respect to payment.

5. Document approval

5.1. Plans

5.1.1. The Subcontractor will develop, update and deliver all draft plans to Transfield Services in accordance with Schedule 8 [Statement of Services].

5.2. Review and approval of plans

5.2.1. Transfield Services will:

(a) review; and

(b) approve or request changes to,

each draft plan. The Subcontractor will promptly address any requested changes and deliver an updated draft plan to Transfield Services in a timely manner. This clause 5.2.1 will apply to any updated draft plan.

5.2.2. Once approved, the Subcontractor will comply with and perform the Agreement in accordance with the approved plans.

5.2.3. Approval of a draft Plan will:

(a) be construed as no more than an indication that the plan appears to Transfield Services to be capable of being used as a basis for performing the Services;

(b) not be construed as limiting the Subcontractor's responsibility to provide Services in accordance with the requirements of the Agreement; and

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(c) not be construed as a waiver of any right under this Agreement or any cause of action arising out of any act or omission of the Subcontractor or its Personnel or subcontractors.

s. 27 consultation

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7. Confidentiality of Official Information and security

7.1. Interpretation

7.1.1. In this clause 7:

Official Resources includes:

a. Official Information;

b. people who work for or with the Department; and

c. assets belonging to (even if in the possession of contracted providers) or in the possession of the Department;

7.2. Confidentiality of Official Information

7.2.1. The Subcontractor will not, without prior written authorisation of Transfield Services, disclose any Official Information to any person (unless required to do so by law).

7.2.2. The Subcontractor is authorised, subject to clause 7.3, to provide Official Information to those employees or subcontractors who require access for the purposes of this Agreement.

7.2.3. The Subcontractor agrees to secure all Official Information against loss and unauthorised access, use, modification or disclosure.

7.3. Other security obligations of Subcontractor

7.3.1. The Subcontractor agrees to comply with any security requirements notified by Transfield Services from time to time.

7.3.2. The Subcontractor agrees to implement security procedures to ensure that it meets its obligations under this clause 7 and will provide details of these procedures to Transfield Services on request.

8. Management

8.1. Publicity and media to be managed by Transfield Services

8.1.1. The Subcontractor acknowledges and agrees that Transfield Services will have management and control of:

(a) all publicity, dealings with, inquiries from, comments to or other matters related to the media that are directly or indirectly related to this Agreement including, without limitation, regarding Transfield Services and any matter related to the Services, any Transferees, or the relationship or issues between the Subcontractor and Transfield Services; and

(b) the relationship and dealings with stakeholders and external parties (including industry groups, special interest or lobby groups, and the community), except to the extent that such contact has been approved by Transfield Services in writing.

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8.1.2. Any contact with or release to the media which specifically names the Subcontractor is to be approved by Transfield Services prior to any statement being made or material being released.

8.2. Subcontractor not to make public statements

8.2.1. The Subcontractor must not, and will ensure that Subcontractor Personnel do not:

(a) make any public statement;

(b) release any information to, make any statement or comment to, deal with any inquiry from or otherwise assist or advise the media;

(c) publish, distribute or otherwise make available any information or material to third parties,

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

(d) Transfield Services, the Principal or their subcontractors (whether specifically referred to or not);

(e) the Services;

(f) the relationship between the parties; or

(g) any other matter directly or indirectly related to this Agreement,

other than:

(h) to direct any such inquiry to Transfield Services;

(i) as is specifically authorised by and to the minimum extent necessary to fulfil the Subcontractor's obligation under this Agreement or comply with the Law; or

(j) as may be otherwise specifically authorised in writing by Transfield Services.

9. General provisions

9.1. Work health and safety

9.1.1. The Subcontractor must at all times:

(a) comply with, and ensure that its Subcontractor Personnel comply with WHS Law in the provision of the Services;

(b) co-operate and ensure its Subcontractor Personnel co-operate as required with Transfield Services in the Subcontractor's performance of its work health and safety obligations under WHS Law, including participating in any consultation and representation required by Transfield Services;

(c) prepare and provide any report required under the WHS Law to Transfield Services;

(d) comply with any direction or requirement of Transfield Services in relation to work health and safety;

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(e) not permit any act or omission that causes or may cause Transfield Services or the Principal to be in breach of the WHS Law;

(f) immediately notify Transfield Services of any notifiable incident as defined in the WHS Law; and

(g) immediately notify Transfield Services of any circumstance which may give rise to a work health and safety risk or a failure by the Subcontractor or its Subcontractor Personnel, the Principal or Transfield Services to comply with WHS Law.

9.2. Privacy

9.2.1. The Subcontractor agrees, in providing the Services:

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

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

9.2.2. The Subcontractor agrees to notify Transfield Services immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 9.2.

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SCHEDULE 2 CONFIDENTIALITY DEED

THIS DEED POLL is made the day of [insert] of [insert] in favour of:

(a) the **COMMONWEALTH OF AUSTRALIA** represented by the Department of Immigration and Citizenship (**CTH**) ; and

(b) Transfield Services (Australia) Pty Ltd (**Transfield Services**); and

(c) Wilson Parking Australia (1992) Pty Ltd trading as Wilson Security

BY (the **Confidant**)

RECITALS

A. The CTH and Transfield Services have entered into a head contract under which Transfield Services will provide services to the CTH in Nauru.

B. Transfield Services has entered into a subcontract with [insert name] (the **Subcontractor)** and the Subcontract requires the Subcontractor to procure the execution of this Deed by the Subcontractor's Personnel.

C. The performance of the Services requires access to information confidential to the CTH.

D. The Confidant will be performing Services.

THE CONFIDANT DECLARES AS FOLLOWS:

1. INTERPRETATION

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

Contract means the Contract between Transfield Services and the Subcontractor for the provision of Services on Nauru .

Department Confidential Information means information that:

(a) is by its nature confidential;

(b) is designated by the CTH or Transfield Services 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 CTH;

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(e) information relating to contractors or suppliers to the CTH; and

(f) information relating to Department Data,

but does not include information which:

(g) is or becomes public knowledge other than by breach of the Contract or any other confidentiality obligation; or

(h) has been independently developed or acquired by the Confidant as established by

written evidence.

Department Data means all data and information relating to the CTH, 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 CTH and any other data in relation to which the Services are provided.

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

Services means the Services specified in the Contract.

2. NON DISCLOSURE

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

3. RESTRICTION ON USE

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

4. CRIMES ACT

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

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

5. DELIVERY UP OF DOCUMENTS

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

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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 Transfield Services and the CTH and their 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 Confidant agrees that the CTH may enforce the indemnity in clause 8.1 in favour of any of Transfield Services of the CTH's officers, employees or agents.

Executed as a Deed

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

SIGNED by

[*Confidant*] in the presence of:

Signature of Recipient

Signature of witness

Name

Signature of Authorised Officer

Name

Name

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SCHEDULE 3 DEED OF NON-DISCLOSURE PERSONAL INFORMATION

THIS DEED POLL is made the day of [insert]

in favour of the COMMONWEALTH OF AUSTRALIA represented by the Department of Immigration and Citizenship (**CTH**);

and

Transfield Services (Australia) Pty Ltd (**Transfield Services**)

BY ..... (the **Confidant**)

1. The Confidant understands that in the course of performing duties in relation to a head contract between Transfield Services and the CTH (**head contract**) and [insert name of Subcontractor] (**Contract**) for the services on Nauru, the Confidant may have access to personal information, being information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion (**Personal Information**).

2. The Confidant acknowledges and agrees that it may not access, use, disclose, publish, communicate or retain, or otherwise deal with in any way, Personal Information except in the course of, and for the purpose of, performing its duties in relation to the Contract.

3. The Confidant agrees, with respect to all Personal Information to which it has access in the course of performing duties in relation to the Contract, to:

   (a) not do any act, or engage in any practice that would breach:

      i. the Subcontractor's obligations under the Contract or Transfield Services obligations under the head contract to protect Personal Information if done or engaged in by the Subcontractor or Transfield Services; or

      ii. the Information Privacy Principles set out in the *Privacy Act 1988* (Cth) (**Privacy Act**) if done or engaged in by the Subcontractor or Transfield Services;

   (b) implement all reasonable measures to assist the Subcontractor and Transfield Services in meeting the obligations under the Privacy Act concerning the security, use and disclosure of information to which the Subcontractor and Transfield Services are 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 CTH except in the course of, and for the purpose of, performing the Contract, and it will immediately notify the CTH where it becomes aware that a disclosure of such information may be required by law;

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(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 CTH 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 its employees, agents and subcontractors have access to it. For the avoidance of doubt, Personal Information must not be used for, or in any way relating to, any direct marketing purpose;

(g) not transfer such Personal Information outside Australia, or allow parties outside Australia to have access to it, without the prior approval of the CTH;

(h) inform any person, on his or her request, in writing of the content of any provision of the Contract that is inconsistent with an approved privacy code binding the Subcontractor or a National Privacy Principle as set out in the Privacy Act, in accordance with the Subcontractor's obligations under section 95C of the Privacy Act;

(i) immediately to notify the CTH and Transfield Services 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 CTH andTransfield Services of, and co-operate with the CTH and Transfield Services 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 Subcontractor, except to the extent that the Subcontractor 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 Transfield Services or the CTH, 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 Transfield Services or the CTH, or use or disclose any such identifier except for the purpose of fulfilling its obligations under the Contract, or where required or authorised by law; and if the Personal Information is sensitive information or health information, as those terms are defined in the Privacy Act, not collect, use or disclose such information without the consent of the person to whom that information relates, subject to any exception provided for by law.

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

   (a) to the extent of any inconsistency with the National Privacy Principles in the *Privacy Act 1988* (Cth) or any privacy codes or privacy principles contained in, authorised by or registered under any law, take priority to the fullest extent permitted by applicable law; and

   (b) to the extent not so inconsistent, are in addition to any obligations the Confidant may have under the *Privacy Act 1988* (Cth) or any privacy codes or privacy principles contained in, authorised by or registered under any law.

5. The Confidant acknowledges that failure by it to comply with the obligations under the Privacy Act in accordance with paragraph 3 may result in the Subcontractor, Transfield Services or the CTH taking action against the Confidant (including, without limitation, disciplinary action).

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

7. The Confidant acknowledges that:

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

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

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

8. The Confidant agrees to treat all Personal Information with the utmost care and to protect that information at all times in accordance with all security and privacy requirements imposed by the Contract on persons performing duties in relation to the Contract.

9. The Confidant acknowledges and agrees that this Deed survives the termination or expiry of any contract providing for the performance of services by it (whether directly or indirectly) in relation to the Contract.

10. This Deed will be governed by, and construed in all respects in accordance with, the law of the Australian Capital Territory and the Confidant agrees to submit to the applicable jurisdiction of the Courts of that Territory in respect of all matters arising under, or in relation to, this Deed.

11. Without limiting the rights of Transfield Services or the CTH to enforce this Deed,

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Transfield Services and the CTH may also enforce this Deed against the Confidant.

Executed as a Deed

SIGNED

[Confidant] in the presence of: _____

Signature of Recipient

_____

Signature of witness

_____

Name

_____ _____

Signature of Authorised Officer

_____ _____

Name Name

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ANNEXURE 8 – STATEMENT OF SERVICES (also known as Statement of Work)

1. NATURE OF THE SERVICES

1.1. Background

The Regional Processing Centres are low security and allow a certain level of freedom for Transferees. Engagement with the local community will be encouraged. Transferee's employment within local communities, transferee's relationship with Nauru nationals and the management of high risk Transferees will be considered and advised as Transfield Services is informed by the Department.

1.2. Subcontractor Personnel

The Subcontractor will ensure that the personnel levels at the Site are adequate to deliver the Services and are in accordance with pre-approved rosters.

The Subcontractor must engage with the local community to employ local personnel or subcontract local businesses who meet the requirements of this Statement of Work. Where local capacity exists the Subcontractor will utilise this capacity as far as possible.

1.3. Other Service Providers

Other service providers will be engaged by the Department and Transfield Services (**'other service providers'**) including a Client Welfare Support Service Provider and a Health Service Provider. The Subcontractor will work cooperatively with the other service providers. Where an obligation is expressed as 'support' in this Statement of Work, this usually denotes that another service provider has primary responsibility for the relevant activity and the Subcontractor must provide necessary support to that activity such as transport, security or information.

The Subcontractor must cooperate with any other service providers appointed by the Department or Transfield Services to ensure the integrated and efficient carrying on of the operations of the Site, and must provide such reasonable assistance to Transfield Services, the Principal, local authorities and other services providers as Transfield Services may reasonably request whether or not this is specifically stated in this Schedule.

1.4. Time for Development of Plans, Procedures and Arrangements

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

1.5. Stakeholder Management

The Subcontractor may be required to work with the centre administrator appointed by the Government of the Republic of Nauru as directed by Transfield Services.

2. TRANSFEREE SERVICES

2.1. General

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The Subcontractor must provide and assist with a range of Transferees Services at the Site, and facilitate and encourage Transferees to access these Services.

All service delivery decisions taken by the Subcontractor 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.

The Subcontractor 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.

The Subcontractor must take reasonable steps to ensure that it and all its Personnel and subcontractors treat Transferees equitably and fairly, with dignity and respect.

The Subcontractor must focus on the well-being of each Transferee and will make every effort to ensure visits from family, friends and support groups are facilitated, while maintaining safety of all Transferees.

The Subcontractor will encourage interaction between Transferees where safe and appropriate.

The Subcontractor will facilitate activities in conjunction with other service providers, to enhance the ongoing emotional and mental health of each Transferee.

2.2. Communications – Management of Access

The Subcontractor will support other service providers in their management and supervision of access to and use of the communications services by Transferees.

Unless otherwise directed by the Department , the Subcontractor may allow a Transferee to retain their mobile phone within a Site, provided that the handset does not have a recording capability (either audio or visual).

The Subcontractor must inform Transferees that their access to communication services may be recorded and/or monitored for security purposes.

2.3. Programs and activities

2.3.1. Overview

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

2.3.2. Families with Children

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

2.3.3. Religious Activities

The Subcontractor will provide support for religious activities.

2.3.4. Complaints

The Subcontractor will comply with the complaints handling process, including:

a. promoting informal early rectification of issues;

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b. referring complaints to the Client Welfare Support Service Provider responsible for managing complaints; and

c. responding in a timely manner to the Client Welfare Support Service Provider where a complaint relates to the Subcontractor..

2.3.5. Private Interview Rooms

The Subcontractor will:

a. where possible, facilitate Transferee contact in a private interview room with the Australian and the Nauruan government officials and representatives; and

b. where possible, facilitate contact in a private interview room with any other visitor approved by the Principal.

2.4. Reception, transfer and discharge of Transferees

2.4.1. General Responsibilities

The Subcontractor will work with the Client Welfare Support Service Provider to coordinate reception, transfer and discharge processes at the Site. The Subcontractor must:

a. conduct reception processes upon the arrival of Transferees at the Site;

b. provide transfer processes to ready a Transferee for transfer to other locations advised by the Department;

c. provide discharge processes in a manner that promotes the well-being of Transferees, their dignity and safety; and

d. ensure that Transferees are regularly informed about what is happening to them in a language they understand through the use of interpreters provided by other service providers if required.

2.4.2. Processing times

The Subcontractor must:

a. ensure Subcontractor Personnel are available to undertake reception, transfer and discharge activities at any time;

b. have capacity to undertake these processes simultaneously, noting the temporary nature of the facilities at the Commencement Date;

c. commence the reception process, immediately after a Transferee arrives at the Site and complete the reception process within 12 hours of their arrival at the Site;

d. commence the induction processes as soon as reasonably practicable after the Transferee's arrival at the Site and complete the induction processes within two days of the Transferee arriving at the Site - the induction process includes providing information regarding how the Site operates and explaining relevant policies, procedures and roles;

e. undertake transfer and discharge processes in accordance with timeframes determined by the Principal on a case by case basis; and

f. undertake discharge processes where a Transferee is being released immediately after the Subcontractor is advised by the Principal of the Transferee's release.

2.4.3. Reception

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The Subcontractor must:

a. review, update and, if necessary, reissue identification cards to Transferees;

b. ensure the reception process is coordinated with the Principal and the other service providers;

c. ensure that Subcontractor 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

d. ensure that before new Transferees arrive at the Site, culturally appropriate food is available and other Transferees at the Site are informed of the new arrival/s.

2.4.4. Transferee health induction assessment

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

2.4.5. Bedding, clothing and footwear

Subject to availability the Subcontractor must ensure each Transferee is allocated with items provided by Transfield Services for those Transferees.

2.4.6. Arrival phone call

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

2.4.7. Transferees security risk assessment

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

The Subcontractor may:

a. use a Department provided Transferees security risk assessment framework; or

b. develop and use an alternative framework, providing it has been developed in accordance with the ASNZS 4360:2004 Standard for Risk Management and has been approved by the Principal.

The Subcontractor must:

a. review the security risk assessment for each Transferee at the Site monthly;

b. re-assess the Transferee's security risk assessment after the Transferee has been involved in any disturbance or received information that may adversely impact on their disposition; and

c. consider the Transferee's security risk assessment when developing individual management plans and provide information to the relevant service provider when they are conducting accommodation placement reviews.

2.4.8. Transferee record

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

2.4.9. Induction

The Subcontractor will support the induction briefing by providing information relevant to accommodation in the Site including:

a. a description of facilities and services that are available;

b. the roles and responsibilities of the Department and Subcontractor Personnel, including personnel from other service providers;

c. how to communicate with Subcontractor Personnel;

d. information on Transferees committees and how to be involved;

e. photographs of key Subcontractors;

f. which items are not permitted at the Site and why;

g. other relevant information as determined by the Subcontractor or as notified by the Department.

2.4.10. Induction booklet

The Subcontractor will provide all necessary information to the service provider responsible for the induction booklet.

2.4.11. Placement review

The Subcontractor will:

a. notify the Department, where the Subcontractor believes that existing placement is inappropriate for the Transferee and include reasons why they formed this view; and

b. support the recording of accommodation details for Transferees.

2.4.12. Transfer

When notified by the Principal , the Subcontractor will support preparation by Transferees for their transfer and must:

a. support preparation of briefing notes for the next party that will take the Transferee into their care that outline any known management or behavioural issues relevant to the Transferee;

b. ensure that the Transferees security risk assessment has been reviewed and updated;

c. ensure that medications and other essential items are prepared;

d. ensure that all personal property of Transferees is transferred with the Transferee and the Transferee signs agreeing as such;

e. ensure that all hard copy Transferee records are provided to the escort for transfer to the same destination as the Transferee;

f. take all reasonable steps to ensure that the Transferee has been provided with clothing that is appropriate for the journey and the destination climate; and

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g. co-operate with the Department and any other service providers involved in the Transfer process.

2.4.13. Discharge

When notified by the Department, the Subcontractor will support preparation for discharge of a Transferee from the Site including:

a. confirming that the identity of the Transferee matches that in the Department's documentation;

b. take all reasonable steps to ensure the Transferee has been provided with clothing appropriate to the journey and destination climate;

c. ensure all personal belongings are returned to the Transferee on discharge, or the Transferee's escort if required by Departmental policy.

2.4.14. Discharge for return

When notified by the Department that a Transferee is being returned, the Subcontractor must:

a. update the Transferee's security risk assessment before they travel and complete the Subcontractor assessment of a Transferee for aviation travel;

b. organise packing and weighing of the property of transferees; and

c. assist the Department and any other service providers to facilitate the return.

2.5. Individual management

2.5.1. General

The Subcontractor will in cooperation with all service providers:

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

b. establish processes to prevent Transferees being subjected to illegal and anti-social behaviour, and where such behaviour becomes apparent, to deal with the issues cooperatively with the local authorities, the Department and other service providers;

c. promote a culture in which Subcontractor Personnel interact with Transferees on a regular basis in both formal and informal settings, developing trust and effective communication channels in undertaking their duties;

d. take all reasonable steps to ensure all interaction between Subcontractor Personnel and Transferees is conducted in a culturally appropriate manner; and

e. ensure all interaction between Subcontractor Personnel and Transferees is conducted in a professional manner.

2.5.2. Interaction with Transferees

The Subcontractor will implement and support:

a. policies and procedures at the Site that promote high levels of positive and culturally sensitive interaction between Subcontractor Personnel and Transferees to deliver a healthy environment and assist Transferees to achieve greater self-sufficiency over their daily routine in preparation for post-release;

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b. policies and procedures that set out the standards and qualities the Subcontractor expects of Subcontractor Personnel when they interact with Transferees and other stakeholders, including :

   a. Subcontractor Personnel must clearly identify themselves when communicating with Transferees and other stakeholders and wear a name badge; and

   b. support Subcontractor Personnel to develop communication skills to interact and communicate with Transferees and other stakeholders in a positive and effective manner.

The Subcontractor must ensure that all of its Personnel:

a. read, sign and understand the Code of Conduct provided by the Department before commencing duty in the Site;

b. maintain regular contact with Transferees;

c. coordinate access by Transferees to available Services;

d. proactively manage issues relating to Transferees as they arise and before they impact on the Transferee's well-being or that of other Transferees in the Site; and

e. document and report any matters they consider material to the welfare of Transferees in individual management plans and advise the Department.

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

2.5.3. Individual management plans

The Subcontractor will contribute to the development and implementation of individual management plans.

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

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

2.5.5. Referral of Transferee identity issues

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

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

2.5.6. Health of Transferees

The Subcontractor must ensure that any Transferee who requests, or appears to be in need of medical attention, is referred for appropriate medical attention.

Where it appears that a Transferee requires emergency medical attention, the Subcontractor must:

a. provide first aid;

b. seek emergency medical attention for the Transferee immediately, including arranging for transport of the Transferee to the nominated medical facility at the Department's cost;

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c. inform the service provider responsible for health services of the Transferee's condition as soon as the initial response is complete; and

d. inform the Department of the Transferee's condition as soon as the initial response is complete.

2.5.7. Transferees under the influence of drugs or alcohol

The Subcontractor will :

a. ensure that a Transferee who appears to be under the influence of drugs or alcohol is supervised by Subcontractor Personnel until the Transferee appears to be no longer affected; and

b. refer the Transferee for assessment by the Health Service Provider within 12 hours, unless emergency medical attention is required.

2.5.8. Mental health awareness

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

2.5.9. Behavioural management of Transferees

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

2.5.10. Illegal and anti-social behaviour

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

For the purposes of this clause undesirable behaviours may include:

a. bullying;

b. verbal abuse;

c. sexual or other forms of harassment;

d. assault;

e. malicious destruction of property; and

f. possession of weapons or illegal drugs.

The Subcontractor must work with the Client Welfare Support Provider to communicate the Site policy on anti-social behaviour to all Transferees during the induction process.

Where the Subcontractor has identified, or suspects, that a Transferee has engaged in illegal, non-compliant or antisocial behaviour, the Subcontractor must immediately inform the Department and other relevant service providers with recommendations for:

a. dealing with the perpetrator(s);

b. preventing recurrence.

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c. The Subcontractor must record details of and responses to known or suspected instances of individual illegal, non-compliant or antisocial behaviour by Transferees.

d. The Subcontractor must take all reasonable steps to ensure that Transferees identified as victims of anti-social behaviour are supported by Subcontractor Personnel and other service providers, with relevant details recorded.

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

2.6. Property of Transferees

2.6.1. General

The Subcontractor will develop and implement a procedure to:

a. inform Transferees of the procedures for management of their property; and

b. manage the secure storage of:

    a. all property of Transferees provided voluntarily by the Transferee for storage; and

    b. all Excluded Items.

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

The Subcontractor will develop and implement a procedure to:

a. securely and separately store In Trust Property of Transferees;

b. document all In Trust Property of the Transferee;

c. provide Transferees with a receipt for all In Trust Property that is to be stored by the Subcontractor;

d. provide Transferees with access to their In Trust Property, while ensuring they do not have access to Excluded Items ; and

e. maintain a register to record all access to the secure store and ensure that all access is monitored.

2.6.3. Recording of property of Transferees

The Subcontractor must in accordance with Departmental guidelines:

a. record all property of Transferees in the Transferee's presence;

b. record all property retained by a Transferee while in the Site;

c. record all In Trust Property;

d. record all illegal and Excluded Items which have been removed and held in trust; and

e. provide a receipt to the Transferee.

2.6.4. Returning In Trust Property

The Subcontractor must:

a. provide the opportunity for Transferees to inspect their In Trust Property on discharge; and

b. provide the opportunity for the Transferee to sign a statement indicating their satisfaction or otherwise with the items returned and their condition.

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2.6.5. Lost, stolen or damaged property of Transferees in the care of the Subcontractor

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

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

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

2.6.6. Excluded Items

The Subcontractor must advise Transferees what items are Excluded Items. The Subcontractor must notify the Department if an Excluded Item is observed at the Site or in the possession of a Transferee that has not been surrendered.

Where a Transferee surrenders an Excluded Item, the Subcontractor must:

a. hold the Excluded Item as In Trust Property

b. record the Excluded Item;

c. securely store the Excluded Item;

d. return all Excluded Item that the Transferee may legally possess to the person immediately upon release; and

e. provide all Excluded Items that the Transferee may legally possess to an escorting officer where required by Departmental policy.

2.6.7. Illegal items

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

Where a Transferee surrenders an illegal item, the Subcontractor must:

a. hold the illegal item as In Trust Property

b. ensure the illegal item does not pose an ongoing safety risk to the Site or any persons at the Site;

c. notify the Department and local authorities in accordance with the Incident management reporting requirements issued by the Department;

d. record all identifying details concerning the illegal items; and

e. securely store the illegal item in a manner that protects the integrity of any evidence until custody of the Illegal Item can be transferred to the relevant authority.

3. MAINTENANCE AND MANAGEMENT OF ASSETS AND THE SITE

3.1. General

Where the Principal provides or pays for an asset at the Site (including as a Pass Through Cost), the asset will remain or become the property of the Department.

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3.2. Alternative arrangements during Maintenance

In the event that an asset is defective or has to be taken out of service for Maintenance, the Subcontractor must:

a. make reasonable alternative arrangements to maintain security, work/occupational health and safety and environmental standards until the asset is returned to service; and

b. coordinate with Transfield Services the alternative arrangements in order to advise the Department of and any impact these arrangements may have on provision of the Services.

3.3. Security systems

The Subcontractor may, in accordance with arrangements notified by Transfield Services, maintain and test security systems at the Site to ensure the security systems remain functional at all times.

3.4. Emergency systems

The Subcontractor on notifications from Transfield Services may be required to test emergency installed systems processes and equipment at the Site in accordance with applicable law, emergency services recommended procedures, manufacturer's instructions and any other requirements notified by the Transfield Services or the Department.

3.5. Work practices

Where Maintenance or modifications are conducted at the Site the Subcontractor must:

a. maintain safety in the Site;

b. ensure tools are controlled at all times and remain inaccessible to Transferees; and

c. ensure all Subcontractor Personnel abide by any conditions of entry to the Site.

Where gardening activities occur by interested Transferees, the Subcontractor must:

a. as far as reasonably practicable, ensure that all Maintenance tools are controlled by Subcontractor and Transfield Services Personnel in accordance with the documented control of tools procedure;

b. closely supervise Transferees during any gardening activities;

c. develop and implement specific induction procedures to be delivered to Transferees participating in gardening activities; and

d. satisfy any specific Department requirements regarding the use of tools.

3.6. Cleaning services

Where non-routine cleaning of occupied accommodation is required, Subcontractor must assist in the gaining of consent of the Transferee prior to conducting the cleaning.

3.7. Environmental management

3.7.1. Energy and water

The Subcontractor must implement any reasonable and cost-effective measures to minimise energy and water use in the Site, including:

a. identifying and correcting any wasteful operation or practices;

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b. promoting the responsible use of energy, natural resources and water to Transferees and Subcontractor Personnel to acknowledge the local conditions; and

c. complying with any applicable local water restrictions or other water saving measures notified by the Department.

3.7.2. Vermin and Pest Control

The Subcontractor must, to the extent possible having regard to the available infrastructure and facilities, avoid exposing any person to hazards caused by vermin and pest control activities and must minimise disturbance to Transferees caused by vermin and pest control activities by implementing measures including preventing Transferees from accessing areas that are being treated with hazardous chemicals.

3.8. Work health and safety

3.8.1. General

The Subcontractor must:

a. adhere to Transfield Services work health and safety

b. comply with all applicable Laws for occupational/work health and safety which include for the avoidance of doubt the Commonwealth Work Health and Safety Act, regulations and codes of practice as well as any applicable local laws and where there is any conflict, comply with the highest standard;

c. contribute to a work health and safety committee to oversee compliance with work/occupational health and safety requirements for the site as a whole.

The Subcontractor must comply with any work health and safety plan developed for the Site.

3.8.2. Hazardous Substances

The Subcontractor must take all reasonable steps and work with the other service providers to ensure that Transferees, visitors, Subcontractor Personnel, Subcontractor subcontractors, Department Personnel and contractors are not exposed to hazardous chemicals.

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

3.9. Management of emergencies

3.9.1. General

The Subcontractor must:

a. subject to clause 2.2.1(b) of the Contract, operate and maintain the Site as a safe and secure environment for people to live and work in; and

b. comply with all applicable Laws (which may include both Nauruan and Australian laws) and Australian Standards for the control and management of emergencies.

The Subcontractor must comply with the emergency plans approved by the Principal (that includes the Subcontractor procedures for managing and responding to all emergencies) for the Site, to ensure the safety and security at the Site of all Transferees, visitors, personnel of all service providers and Department Personnel.

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3.9.2. Compliance with Australian and Standards

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

3.9.3. Emergency control organisation

The Subcontractor in coordination with Transfield Services, must, develop and implement in conjunction with the Department and other service providers, an emergency control organisation (Emergency Control Organisation) at the Site which will be responsible for:

a. implementing emergency procedures as prescribed in the emergency plan and procedures;

b. ensuring that all Subcontractor Personnel within their area of responsibility are trained for their role in an emergency;

c. reporting any matters likely to affect the viability of the emergency plan and procedures;

d. checking on the effectiveness of emergency systems and equipment; and

e. controlling emergency situations until the appropriate emergency service arrives to take control, at which time, the Emergency Control Organisation will work in conjunction with that service.

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

3.9.4. Emergency exercises

The Subcontractor in coordination with Transfield Services, and in conjunction with other service providers:

a. conduct all emergency exercises required by law or as directed by the Principal at the Site; and

b. maintain records of all emergency exercises conducted.

3.9.5. Access to the Site

The Subcontractor must at all times, with or without notice, provide access to any part of the Site to Department Personnel, the Commonwealth and Immigration Ombudsman, the Australian Human Rights Commission, the Auditor-General and the Privacy Commissioner and members of the Council for Immigration Services and Status Resolution.

Subject to their compliance with any applicable security requirements, the Subcontractor must facilitate access to the Site by representatives of those government agencies who have entered into Memoranda of Understanding with the Department, in order to enable them to provide the Services referred to therein.

The Subcontractor must not knowingly provide access to the Site for media visits except with the approval of the Principal and in accordance with the procedures and conditions specified by the Department.

4. TRANSPORT AND ESCORT ARRANGEMENTS

4.1. General

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The Subcontractor must:

a. supply escort services for the Site;

b. escort Transferees and their property in accordance with the Department's requests, where the transport is voluntary or due to medical evacuation;

c. transport Transferees for the purposes of programs and activities;

d. transport via a shuttle bus service for Transferees and personnel including Personnel of the Department and other service providers, to points of interest within a reasonable vicinity of the Site.

Escort tasks conducted by the Subcontractor may include:

a. transferring Transferees to off-site programs and activities;

b. transferring Transferees to local appointments;

4.2. Delivery of escort Services

The Subcontractor must:

a. deliver escort services in a manner that takes into account the Department's requirements, the needs and wellbeing of Transferees, integrity of other service providers and contingency situations and related risks;

b. operate appropriate vehicles and inclusions, including communication devices;

c. provide appropriately trained Subcontractor Personnel to undertake the services;

d. where the transport and escort is for a voluntary return, ensure the Transferee being transported is the person nominated in the transport request before the task commences;

e. ensure that Transferees are aware of where they are going and the expected time of departure and arrival;

f. provide all meals, beverages and medications for the transport and escort task, which are appropriate for the Transferee.

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

5. DELIVERY OF SECURITY SERVICES

5.1. Scope of services

The Site needs to provide a safe and secure environment for Transferees, Subcontractor Personnel, Department Personnel and all other people at the Site, ensuring that each individual's human rights, dignity and well-being is preserved.

The Subcontractor must deliver structured security services at the Site that are consistent with the goals of the Site, enable the Subcontractor to manage routine events at the Site and respond promptly and flexibly to any Incident.

The Department will provide infrastructure at the Site including a perimeter fence, lighting towers and a boom gate.

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The approach to safety and security must be unobtrusive and ensure that the needs of Transferees are met. The approach and procedures should emphasise communication and interaction strategies that address potential or actual risks before they escalate and effect their de-escalation.

5.2. Integrity of the Site

The Subcontractor :

a. must take reasonable steps to ensure Transferees behave at all times in accordance with relevant provisions of the visa granted to them by the Republic of Nauru ; and

b. immediately notify relevant authorities and the Department if a Transferee does not return to the Site at a time required by local authorities.

5.3. Safety and security plan

The Subcontractor must comply with the safety and security plan.

The Subcontractor must develop a more detailed safety and security plan that will:

a. be based on AS/NZS ISO 31000:2009 Risk management – Principles and guidelines;

b. include details of:

   a. how the Subcontractor plans to implement the security services contained in this Schedule; and

   b. how the Services will be delivered in accordance with the Philosophy contained in this Schedule.

5.4. Subcontractor Personnel

The Subcontractor must provide trained Subcontractor Personnel to:

a. deliver security services unobtrusively, 24 hours a day and seven days a week at the Site;

b. respond effectively to unforeseen Incidents while treating Transferees with dignity and respect; and

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

5.5. Training of Subcontractor Personnel providing security services

Subcontractor Personnel are responsible for:

a. collecting biometric information;

b. operating surveillance systems; and

c. must have completed a training course developed by a Level IV accredited trainer in security operations prior to commencing work at the Site.

The Subcontractor must implement arrangements for refresher training of its relevant Personnel.

5.6. Safety and security information obligation

The Subcontractor must:

a. gather and record safety and security information to inform the development of the Site and Transferees security risk assessments and maintain the safety and security of the Site; and

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b. gather and store safety and security information in accordance with the record keeping obligations, including privacy and confidentiality obligations, set out in the Contract.

Safety and security information includes information to be provided by other service providers and covers amongst other things:

a. unusual occurrences;

b. information received from a Transferee;

c. a Transferee or group of Transferees, acting unusually or out of character;

d. Incident Reports;

e. trends in Incidents; and

f. relevant information received from any source.

5.7. Site security risk assessment

The Subcontractor must comply with the security risk assessment for the Site.

The Subcontractor will develop a more detailed security risk assessment which accords with AS 4360 Risk Management Standard. In developing the security risk assessment, the Subcontractor must take account of:

a. the number and risk profile of the Transferees at the Site;

b. the overall security situation (including any information that might be made available by the Department, other government agencies or other sources), including:

    a. visits;

    b. arrivals and departures of Transferees;

    c. protests and rallies;

    d. special events;

    e. significant dates; and

c. availability of and response times for emergency services; and

d. the condition and arrangement of built infrastructure and associated technology including any temporary arrangements for new construction or facilities maintenance.

The Subcontractor must review the Site security risk assessment as requested by Transfield Services for the Department or following any significant Incident. The Subcontractor, Transfield Services, and the Department will agree on timeframes for periodic review of the assessment.

The Subcontractor must provide Transfield Services for the Department with a copy of the then current security risk assessment, in the form requested by the Department, within five Business Days of any request.

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

5.8. Rostering of security personnel

The Subcontractor must:

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a. ensure daily rosters of Subcontractor Personnel for the Site provide a reasonable number of Subcontractor Personnel with the skills, experience and fitness required to manage the security environment in a manner that addresses identified risks in the security risk assessment; and

b. provide Transfield Services for the Department with rostering arrangements at the commencement of each alternate business week for the coming fortnight.

5.9. Communication of safety and security requirements

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

a. contain only information required by the target audience;

b. encourage compliance with the Site safety and security rules;

c. be in a language and form understood by the target audience; and

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

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

5.10. Entry control

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

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

5.11. Identification

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

a. confirming access rights and escort requirements;

b. creating and issuing identification passes; and

c. discreetly monitor movement and location of all people on the Site.

5.12. Access to controlled areas

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

a. secure storage areas;

b. administration areas;

c. hazardous materials stores;

d. medical facilities;

e. control room;

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f. tool and vehicle stores;

g. plant and equipment; and

h. other areas designated by Transfield Services for the Department or the Subcontractor as controlled areas.

5.13. Operations logs

The Subcontractor must:

a. maintain operations logs at the Site as needed to record the date, time and location for all security related events and actions taken, and constitute an official record of activities and events within the Site;

b. ensure operations logs provide a comprehensive and accurate account of all Site operations;

c. inform Transfield Services for the Department of the range, intent and scope of operations logs in use, and must advise any changes; and

d. provide operations logs as soon as is reasonably practicable to Transfield Services for the Department upon receiving a written request.

5.14. Digital records

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

Where such recordings have been made, the Subcontractor must within one hour of producing the recording:

a. make an unedited copy of the recording;

b. label the original and copy of the recording with the date and time of the recording and the names of people who appear in the recording; and

c. provide the original recording to the Department.

5.15. Incidents

The Subcontractor must:

a. take all reasonable steps to manage all Incidents to ensure the safety and welfare of Transferees and other people at the Sites;

b. seek to resolve all Incidents using negotiation and other de-escalation techniques; and

c. restore safety and security in the Site as quickly as possible.

5.16. Checks to verify all Transferees are present and safe

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

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

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

The Subcontractor must immediately report to Transfield Services or the Department any concerns about a Transferee's safety, well-being and security.

5.17. Searches

The Subcontractor must only conduct searches within the Site:

a. with the prior approval of the Department; or

b. on request of the Department.

5.18. Visitor escorts

The Subcontractor will ensure that:

a. visitors to the Site who are assessed by the Subcontractor as requiring a visitor escort are accompanied by Subcontractor Personnel at all times; and

b. visitor escorts are conducted as discreetly as possible, allowing for private conversations between Transferees and visitor.

5.19. Perimeter security

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

5.20. Contingency plans and procedures

The Subcontractor must:

a. adhere to the contingency/incident response plan for the Site, that details the control arrangements, communications, and other processes and procedures required for the Subcontractor to maintain the safety and security of Transferees and other people who may be in the Site at the time;

b. contribute to a more detailed plan to address a range of plausible contingencies , to be developed and maintained in accordance with ASNZS 3745 and will include:

    a. procedures for notifying Transfield Services, the Department and other service providers that the contingency plan is in effect;

    b. coordination procedures with Transfield Services, the Department and other service providers and other authorities;

    c. processes for communicating emergency procedures to Transferees, Subcontractor Personnel and all other people at the Site to ensure they understand the emergency procedures;

    d. plans and arrangements for applicable emergency services (such as ambulance services, fire services, police services, utilities and nominated contractors) to access and move through the Site;

    e. procedures which apply to a variety of emergency situations (to include evacuation where warranted); and

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f. frequency of emergency drills and tests.

5.21. Safety and security exercises

The Subcontractor must in conjunction with other service providers:

a. implement a Department approved schedule of quarterly safety and security exercises to test security and Incident response capabilities for personnel of all service providers; and

b. at the conclusion of each safety security exercise, provide a written report to Transfield Services for the Department on the outcomes from the exercise including any proposals for continuous improvement.

6. DEFINITIONS

The following words have the following meanings in this Statement of Services:

(a) Department Operations Team Leader means the person or delegate appointed by the Department to perform the role of Department Operations Team Leader at the Site;

(b) Excluded Items means items that may not be brought to the Site under an applicable law or policy issued by the Department;

(c) In Trust Property means property of a Transferee that is stored by the Subcontractor;

(d) Maintenance means work that maintains the functionality to applicable performance specifications (or where there are no specifications, to reasonable, safe operating standards) of the Site and includes preventative maintenance, repairs, replacement of lost or damaged items, refurbishment and restoration of work;

(e) Pass Through Cost has the meaning given by Annexure 3 – Fees and Payments; and

(f) Personnel means:

a. in relation to the Subcontractor – any natural person who is an officer, employee, agent or professional advisor of the Subcontractor or of its subcontractors; and
b. in relation to Transfield Services - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of Transfield Services; and
c. in relation to the Department any natural person, other than a person referred to in paragraphs a. and b., who is an officer, employee, agent or professional advisor of Transfield Services.

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s. 27 consultation

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s. 27 consultation

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s. 27 consultation

s. 27 consultation s. 47(1)(b)

s. 27 consultation

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SUBCONTRACT AGREEMENT

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ANNEXURE 10 – Subcontractor's subcontractor payment provisions

[For NSW only]

Building and Construction Industry Security of Payment Act 1999 (NSW)

(a) The Subcontractor must:

(i) promptly and without delay give Transfield Services a copy of any notice the Subcontractor receives from a subcontractor; and

(ii) promptly and without delay give Transfield Services a copy of any notice that the Subcontractor receives from another party,

under any of sections 15, 16 or 24 of the *Building and Construction Industry Security of Payment Act* 1999 (NSW).

(b) If Transfield Services becomes aware that a subcontractor is entitled to suspend work (which forms part of the Services) pursuant to section 27 of the *Building and Construction Industry Security of Payment Act* 1999 (NSW), Transfield Services may (at its absolute discretion) pay the subcontractor such money that is or may be owing to the subcontractor in respect of work forming part of the Services, and any amount paid by Transfield Services is recoverable from the Subcontractor as a debt due to Transfield Services.

(c) The Subcontractor must indemnify Transfield Services against all damage, expense (including lawyers' fees and expenses on a solicitor/client basis), loss (including financial loss) or liability of any nature suffered or incurred by Transfield Services arising out of:

(i) a suspension by a subcontractor of work which forms part of the Services pursuant to section 27 of the Building and Construction Industry Security of Payment Act 1999 (NSW); and

(ii) a failure by the Subcontractor to comply with its obligations under clause (a).

(d) For the purposes of this annexure, a reference to:

(i) a subcontractor refers to any party engaged by the Subcontractor, its subcontractors or any other party to carry out work which forms part of the Services; and

(ii) work refers to work which the Subcontractor is or will, in the future, be required to execute or provide under this Agreement and includes equipment, services, materials, plant and temporary services.

[For VIC only]

Building and Construction Industry Security of Payment Act 2002 (VIC)

(a) The Subcontractor must:

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(i) promptly and without delay give Transfield Services a copy of any notice the Subcontractor receives from a subcontractor; and

(ii) promptly and without delay give Transfield Services a copy of any notice that the Subcontractor receives from another party,

under any of sections 16, 17 or 27 of the *Building and Construction Industry Security of Payment Act* 2002 (VIC).

(b) If Transfield Services becomes aware that a subcontractor is entitled to suspend work (which forms part of the Services) pursuant to section 29 of the *Building and Construction Industry Security of Payment Act* 2002 (VIC), Transfield Services may (at its absolute discretion) pay the subcontractor such money that is or may be owing to the subcontractor in respect of work forming part of the Services, and any amount paid by Transfield Services is recoverable from the Subcontractor as a debt due to Transfield Services.

(c) The Subcontractor must indemnify Transfield Services against all damage, expense (including lawyers' fees and expenses on a solicitor/client basis), loss (including financial loss) or liability of any nature suffered or incurred by Transfield Services arising out of:

(i) a suspension by a subcontractor of work which forms part of the Services pursuant to section 29 of the Building and Construction Industry Security of Payment Act 2002 (VIC); and

(ii) a failure by the Subcontractor to comply with its obligations under clause (a).

(d) For the purposes of this annexure, a reference to:

(i) a subcontractor refers to any party engaged by the Subcontractor, its subcontractors or any other party to carry out work which forms part of the Services; and

(ii) work refers to work which the Subcontractor is or will, in the future, be required to execute or provide under this Agreement and includes equipment, services, materials, plant and temporary services.

[for States other than NSW and VIC]

(a) If Transfield Services becomes aware of a payment dispute between the Subcontractor and a subcontractor of the Subcontractor, Transfield Services may (in its absolute discretion) pay the relevant subcontractor such money that is or may be owing to that subcontractor in respect of any of that subcontractor's work forming part of the Services, and any such amount paid by Transfield Services is recoverable from the Subcontractor as a debt due to Transfield Services.

(b) Transfield Services may recover the debt due referred to in (a) above, by either withholding from the Subcontractor such an amount equal to the debt due from payments otherwise due to the Subcontractor, or by setting off an amount equal to the debt due from amounts otherwise owing by Transfield Services to the Subcontractor.

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ANNEXURE 11 – AUDITING & RETURN OF DOCUMENTS

(A) Auditing

(i) The Subcontractor must:

(A) ensure that all documents and records relating to the Services are available to Transfield Services and/or the Auditor at all reasonable times for examination, audit, inspection, transcription and (in respect of records only) copying; and

(B) give Transfield Services or any persons authorised in writing by Transfield Services, access to premises where the Services are being performed or where Official Resources are located.

(ii) The rights referred to in clause (A) (i) are subject to:

(A) Transfield Services providing reasonable prior notice; and
(B) the reasonable security procedures in place at the premises; and

(iii) Persons authorised for the purposes of clause (A) (i) (B) above include the Auditor-General and Information Officer (including their delegates).

(iv) This terms survives for a period of 7 years after the last day of the accounting period to which the record relates.

(B) Access to Documents by Commonwealth

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

(ii) The Subcontractor acknowledges that the Head Contract is a Commonwealth contract.

(iv) Where the Principal has received a request for access to a document created by, or in the possession of, Transfield Services or the Subcontractor that relates to the performance of this Agreement or the Services, the Principal may at any time by written notice require Transfield Services or the Subcontractor to provide the document to the Principal and the Subcontractor must, at no additional cost to Transfield Services or the Principal , promptly comply with the notice.

(C) Return of documents

The Subcontractor must on, or as soon as practicable after, the completion of the Services, or earlier termination of this Agreement deliver up to Transfield Services every record or document recording, containing, setting out or making reference to the Services, including all Documentation.

(C) Reproduction of documentation

The Subcontractor must ensure that:

(a) any record or document recording, containing, setting out, or making reference to the Services; and

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(b) the Documentation,

is used, copied, supplied or reproduced only for the purposes of performing the Services unless it has obtained the prior written approval of Transfield Services.

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ANNEXURE 12 – MANDATORY SAFETY RULES

1. Always verify and tag or lock all energy isolations.
2. Never remove another person's Danger Tag or Personal Lock without written authorisation.
3. Always operate equipment and machinery within defined safety limits.
4. Never begin a skilled task or operate equipment and machinery unless qualified.
5. Always obtain authorisation before entering a confined space.
6. Never disable or override a safety device without written authorisation.
7. Always protect against falling where you can fall more than 2 metres.
8. Never work or travel under a suspended load.
9. Always wear seatbelts when a vehicle is in motion.
10. Never consume or be under the influence of alcohol or illicit drugs while at work.

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SUBCONTRACT AGREEMENT

Signing page

EXECUTED as an Agreement

Signed for and on behalf of TRANSFIELD SERVICES (AUSTRALIA) PTY LIMITED in the presence of:

s. 47F(1)

Name of Witness (block letters)

s. 47F(1)

Name of authorised person (block letters)

Signed for and on behalf of Wilson Parking Australia (1992) Pty Ltd in the presence of:

s. 47F(1)

Name of Witness (block letters)

s. 47F(1)

Name of authorised person (block letters)

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SUBCONTRACT AGREEMENT

ATTACHMENT A – PRICING SCHEDULE

s. 47(1)(b)

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s. 47(1)(b)

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s. 47(1)(b)

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