

IN-CONFIDENCE

ATTACHMENT E – DEED OF NON-DISCLOSURE PERSONAL INFORMATION

THIS DEED POLL is made the _____ day of _____ 20____
in favour of the COMMONWEALTH OF AUSTRALIA represented by the Department of
Immigration and Citizenship (**the Department**)

BY (the **Confidant**)

1. The Confidant understands that in the course of performing duties in relation to a Contract between the Department and Playfair Visa and Migration Services ABN 96 142 775 322 (**Contractor**) for the provision of protection claims assistance service in a Regional Processing Country (**Service**), 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: not do any act, or engage in any practice that would breach:
 - the Services Provider's obligations under the Contract to protect Personal Information if done or engaged in by the Services Provider; or
 - the Information Privacy Principles set out in the *Privacy Act 1988* (Cth) (**Privacy Act**) if done or engaged in by the Department;
 - implement all reasonable measures to assist the Department in meeting the obligations under the Privacy Act concerning the security, use and disclosure of information to which the Department is subject in respect of that Personal Information;
 - co-operate with any reasonable demands or enquiries made by the Commonwealth Privacy Commissioner;
 - not disclose such Personal Information without the written authority of the Department except in the course of, and for the purpose of, performing the

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Contract, and it will immediately notify the Department where it becomes aware that a disclosure of such information may be required by law;

ensure that any person who has an access level which would enable that person to obtain access to any information in respect of which the Department has obligations under the Privacy Act is made aware of, and undertakes in writing, to observe the provisions of this Deed;

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 Contractor Personnel have access to it. For the avoidance of doubt, Personal Information must not be used for, or in any way relating to, any direct marketing purpose;

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

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 Contractor or a National Privacy Principle as set out in the Privacy Act, in accordance with the Contractor's obligations under section 95C of the Privacy Act;

immediately to notify the Department when the Confidant becomes aware of a breach of any obligation concerning security, use and disclosure of such Personal Information relating by itself or any representative, employee or officer;

notify the Department of, and co-operate with the Department in the resolution of, any complaint alleging an interference with privacy;

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 Contractor, except to the extent that the Contractor is required or authorised by law to refuse to provide the person with access to that Personal Information;

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;

upon written notice from the Department, destroy or permanently de-identify any Personal Information as soon as practicable after it is no longer required for the purpose for which it was originally collected;

not adopt as its own identifier of a person an identifier that has been assigned by the Department, or use or disclose any such identifier except for the purpose of fulfilling its obligations under the Contract, or where required or authorised by law; and if the Personal Information is sensitive information or health information, as those terms are defined in the Privacy Act, not collect, use or disclose such information without the consent of the person to whom that information relates, subject to any exception provided for by law.

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

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relation to the Contract:

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

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 Contractor or the Department taking action against the Confidant (including, without limitation, disciplinary action).
6. The Confidant acknowledges that any unauthorised access, alteration, removal, addition, possession, control, supply or impediment to the access, reliability, security or operation of data held in any computer (or, in some cases, any storage device) in the course of performing a Contract with the Commonwealth may be an offence under Part 10.7 of the *Criminal Code 1995* (Cth) for which there are a range of penalties, including imprisonment.
7. The Confidant acknowledges that:
 - 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";
 - 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
 - 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

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applicable jurisdiction of the Courts of that Territory in respect of all matters arising under, or in relation to, this Deed.

11. Without limiting the rights of the Department to enforce this Deed, the Department may also enforce this Deed against the Confidant.

Executed as a Deed

SIGNED, SEALED and DELIVERED by

[*Confidant*] in the presence of:

Signature of witness

Name

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

Signature of director

Signature of director/secretary

Name

Name