

**JOINT SELECT COMMITTEE ON AUSTRALIA'S  
IMMIGRATION DETENTION NETWORK**

**\*Q157\***

**Question:** Could we have a copy of the contract?

**Answer:** Please see ATTACHMENT A and ATTACHMENT B.

The contract has been redacted so as not to disclose information that is commercially sensitive.



**Australian Government**

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**Department of Immigration and Citizenship**

**AGREEMENT**

**BETWEEN**

**COMMONWEALTH OF AUSTRALIA**

**AND**

**LIFE WITHOUT BARRIERS (ABN 15 101 252 171)**

in relation to Services for

**THE PROVISION OF CARE FOR UNACCOMPANIED MINORS IN  
COMMUNITY DETENTION, IMMIGRATION DETENTION FACILITIES  
AND ALTERNATIVE PLACES OF DETENTION IN AUSTRALIA**

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## AGREEMENT

BETWEEN

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

AND

**LIFE WITHOUT BARRIERS** (ABN 15 101 252 171) of 352 King Street, Newcastle, NSW 2300 ('the Contractor')

RECITALS:

- A. Non-citizens who are unlawfully in Australia may be detained under the *Migration Act 1958 (Cth)* in accordance with the following seven (7) Immigration Detention Values:
1. Mandatory detention is an essential component of strong border control.
  2. To support the integrity of Australia's immigration program, three (3) groups will be subject to mandatory detention:
    - a. all unauthorised arrivals, for management of health, identity and security risks to the community;
    - b. unlawful non-citizens who present unacceptable risks to the community;
    - and
    - c. unlawful non-citizens who have repeatedly refused to comply with their visa conditions.
  3. Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an Immigration Detention Centre.
  4. Detention that is indefinite or otherwise arbitrary is not acceptable and the length of and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.
  5. Detention in Immigration Detention Centres is only to be used as a last resort and for the shortest practicable time.

6. People in detention will be treated fairly and reasonably within the law.
  7. Conditions of detention will ensure the inherent dignity of the human person.
- B. The Detention Services Network includes a variety of detention placements, including in Immigration Detention Centres, Residence Determination (Community Detention), Alternative Places of Detention (APODs) such as Immigration Transit Accommodation, Immigration Residential Housing and other APODs such as hospitals, nursing homes, mental health facilities, hotels and motels.
  - C. Children or unaccompanied minors (UAMs) are detained in Alternative Forms of Detention, which include Community Detention, APODs and other APODS.
  - D. Since November 1997, the provision of detention services has been outsourced by the Department to private organisations. More recently, the Department has assumed responsibility for directly contracting for the provision of health care to People in Detention.
  - E. In 2009, the Department entered into contracts with Serco Australia Pty Limited (“Serco”) to provide services to People in Detention in Immigration Detention Centres and Immigration Detention Facilities throughout Australia (“Serco Contracts”).
  - F. The Department wishes to engage the Contractor to provide the Services as specified in Schedules 2A, 2B and 2C of this Agreement in respect of Clients (which include Unaccompanied Minors and may include Accompanied Minors) in Community Detention, Immigration Detention Facilities and APODs throughout Australia.
  - G. The Contractor has fully informed itself on all aspects of the work required to be performed and the Parties have agreed to enter into this Agreement to set out their respective rights and obligations in relation to the Services.

THE PARTIES AGREE as follows:

## **1 DEFINITIONS AND INTERPRETATION**

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### **1.1 Definitions**

1.1.1 In this Agreement, unless a contrary intention appears:

**Accompanied Minors** means minors who are cared for by their parents, or an adult relative;

**Agreement** means this document, the Schedule, any attachments and any document expressly incorporated;

**Alternative Forms of Detention** means Community Detention, Immigration Detention Facilities such as Immigration Residential Housing (IRH) and Immigration Transit Accommodation (ITA), and other Alternative Places of Detention;

**Alternative Places of Detention** means a place approved by the Minister, or his delegate, where a person may be kept in Immigration Detention other than at a detention centre. Examples of alternative places of detention used for accommodation purposes includes: IRHs, ITAs, hospitals / nursing homes, mental health facilities, hotels/motels etc.;

Examples of Alternative Places of Detention attended by detainees for part of the day or on an 'as required' basis include: schools and medical facilities used for day procedures or treatment;

**Client** means unaccompanied minors and may also include accompanied minors who are in receipt of the Services under this Agreement;

**Commencement Date** 1 July 2010;



<b>Commonwealth Material</b>	means any Material provided by the Commonwealth to the Contractor for the purposes of this Agreement or which is copied or derived from Material so provided;
<b>Community Detention</b>	means a non-compellable, non-delegable detention intervention power which was introduced under section 197AB to enable the Minister to make a <i>residence determination</i> that specifies a person's detention arrangements to take place in the community;
<b>Confidential Information</b>	<p>in relation to a Party, means information that is by its nature confidential; and</p> <p>(a) is designated by a Party as confidential; or</p> <p>(b) the receiving Party knows or ought reasonably to know is confidential,</p> <p>and includes the information described in Item O of Schedule 1 but does not include information which is or becomes public knowledge other than by breach of the Agreement or any other confidentiality obligations or is independently developed without reference to the other Party's Confidential Information;</p>
<b>Contract Material</b>	<p>means all Material:</p> <p>(a) created for the purposes of this Agreement, including the Contract Material specified in <i>Item G (Required Contract Material) of Schedule 1</i>;</p> <p>(b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or</p> <p>(c) copied or derived from Material referred to in paragraphs (a) or (b);</p>
<b>Contractors</b>	will, where the context so admits, include the officers, employees, volunteers, bailees, agents and authorised sub-contractors of the Contractor;
<b>Department</b>	<p>is the Department of Immigration and Citizenship or the Department or agency of the Commonwealth which is from time to time responsible for the administration of this Agreement;</p> <p>OR</p> <p>is the Department of Immigration and Citizenship or its successor;</p>

<b>Department Policy</b>	means any Department policy relating to Immigration Detention: (a) available on the Department's instruction system (Legend);or (b) notified by the Department to the Contractor from time to time as applicable to this Agreement;
<b>Existing Material</b>	means the Material, including that specified in <i>Item M of Schedule 1 (Existing Material)</i> , which the Contractor has developed prior to the date upon which the Contractor commenced performance of the Services or is subsequently developed or acquired by the Contractor other than as a result of the performance of the Services and which will or may be used in the provision of Services or the development of Contract Material;
<b>Immigration Detention</b>	has the same meaning as in the <i>Migration Act 1958</i> ;
<b>Immigration Detention Centre</b>	is a detention centre established under Section 273 of the <i>Migration Act 1958</i> ;
<b>Immigration Detention Facilities</b>	comprise Immigration Detention Centres, Immigration Residential Housing and Immigration Transit Accommodation;
<b>Immigration Detention Values</b>	are the seven (7) values set out in Recital A of the Agreement that underpin the Australian Government's Immigration Detention policy and the management of People in Detention;
<b>Immigration Residential Housing</b>	means a flexible detention arrangement to enable people in immigration detention to live in family-style accommodation;
<b>Immigration Transit Accommodation</b>	means accommodation to house people who are of low security risk;
<b>Independent Needs Assessment</b>	means an assessment and recommendation report on each Client to be provided by the Contractor;
<b>Instalment</b>	means an instalment of fees payable under <i>Clause 3</i> in relation to part of the Services;

<b>Intellectual Property</b>	includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
<b>Living Skills</b>	means skills that increase self-reliance and as a consequence improve a person's self-confidence, resilience and adaptability to new situations.
<b>Map of Services</b>	means the map of the services to be provided to UAMs in Community Detention, Immigration Detention Facilities and Alternative Places of Detention pursuant to this Agreement;
<b>Material</b>	includes information and the subject matter of any category of Intellectual Property right;
<b>Minister's New Directions in Detention</b>	<p>means a major policy introduced by the Minister on Tuesday 29 July 2008. The Minister's 'New Directions in Detention' announced a suite of reforms to Australia's immigration detention system including a new 'risk-based' detention policy;</p> <p>The reforms are underpinned by The Immigration Detention Values;</p>
<b>Moral Rights</b>	<p>includes the following rights of an author of copyright material:</p> <ul style="list-style-type: none"> <li>(a) the right of attribution of authorship;</li> <li>(b) the right of integrity of authorship; and</li> <li>(c) the right not to have authorship falsely attributed;</li> </ul>
<b>Party</b>	means a party to this Agreement;
<b>People in Detention</b>	has the same meaning as "Detainee" in the <i>Migration Act 1958</i> , and includes Illegal Foreign Fishers;

<b>Personal Information</b>	means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;
<b>Personnel</b>	means a party's officers, employees, agents, Contractor staff or professional advisers engaged in, or in relation to, the performance or management of this Agreement;
<b>Project Officer</b>	means the person for the time being holding, occupying or performing the duties of the office of the Department specified in <i>Item I (Project Officer) of Schedule 1</i> or any substitute notified in writing to the Contractor by the Department;
<b>Residence Detained Person</b>	means a person placed by the Minister into Residence Determination arrangements;
<b>Residence Determination</b>	means a determination made by the Minister under Section 197AB of the <i>Migration Act 1958</i> ;
<b>Services</b>	means the services described in <i>Item B (Services) of Schedules 2A, 2B and 2C</i> and includes provision of the Contract Material to the Department;
<b>Service Level Standards</b>	means the service levels as specified in Tables A, B and C attached to this Agreement as required to be met by the Contractor in performing the Services;
<b>Serco Contracts</b>	means the contracts between the Department and Serco for: (i) the provision of services to People in Detention at Immigration Detention Centres dated 29 June 2009, and (ii) the provision of services to People in Detention at IRHs and ITAs dated 11 December 2009;
<b>Specified Personnel</b>	means the personnel specified in <i>Item F (Specified Personnel) of Schedule 1</i> as personnel required to undertake the Services or part of the work constituting the Services; and

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

**Transition-Out** means the process of preparing for handover of the Services from the Contractor to any new provider contracted by the Department to perform the Services or any part of the Services;

**Transition-Out Plan** means the plan prepared by the Contractor under clause 13 of this Agreement, detailing how the Contractor proposes to disengage on expiry or earlier termination of the Agreement;

**Unaccompanied Minors** means a non-citizen who:

- is under 18 years old at the time of (lawful or unlawful) arrival in Australia;
- is not currently in the care of one of their parents;
- is not entering Australia for the purposes of a full and permanent adoption;

does not have a spouse over the age of 21 to whom they are married in accordance with the Marriage Act 1961, and

- intends, or is intended, to become a permanent resident of Australia.

## **1.2 Interpretation**

1.2.1 In this Agreement, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenient reference only and have no effect in the interpretation of this Agreement;
- d. words importing a person include a partnership and a body, whether corporate or otherwise;
- e. a reference to dollars is to Australian dollars;
- f. reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;

- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- h. reference to an Item is to an Item in the Schedules;
- i. the Schedule and any attachments form part of this Agreement;
- j. the following terms have the meaning specified in the Australian Government Protective Security Manual 2005 as amended from time to time: Official Information, Security Classified Information, Security Breach, Security Incident and Security Violation;
- k. reference to the Schedules (or an attachment) is a reference to the Schedules (or an attachment) to this Agreement, including as amended or replaced from time to time by agreement in writing between the parties; and
- l. reference to days is to business days, being any day which is not Saturday, Sunday or a public holiday in Canberra.

### **1.3 Guidance on Construction of this Agreement**

- 1.3.1 This Agreement records the entire agreement between the parties in relation to its subject matter.
- 1.3.2 No variation of this Agreement is binding unless it is agreed in writing and signed by both parties, in the form of a Deed of Variation.
- 1.3.3 Any reading down or severance of a particular provision does not affect the other provisions of this Agreement.
- 1.3.4 Where any conflict arises between the terms and conditions contained in the clauses of this Agreement, or if there is any inconsistency between the provisions of this Agreement, the following descending order of precedence applies:
  - a. the terms of this Agreement;
  - b. the Schedules; and
  - c. any attachments,
 so that the provision in the higher ranked document will prevail, to the extent of the inconsistency.
- 1.3.5 The laws of the Australian Capital Territory apply to this Agreement.

## **2 PROVISION OF CONTRACT SERVICES**

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### **2.1 Obligations of the Contractor**

- 2.1.1 The Contractor agrees to
  - a. perform the Services as specified in *Item B (Services) of Schedules 2A, 2B and 2C* and to the satisfaction of the Department;

- b. provide to the Department the Contract Material specified in *Item G (Required Contract Material) of Schedule 1*;
  - c. adopt relevant best practice, including any Departmental, Commonwealth or industry standards and guidelines specified in *Item E (Standards and Best Practice) of Schedule 1*;
  - d. comply with the time frame for the performance of the Services specified in *Item B (Services) of Schedules 2A, 2B and 2C and Item B (Time Frame) of Schedule 1*; and
  - e. submit invoices, and any supporting documents, in the manner specified in *Item H (Invoice Procedures) of Schedule 1*.
- 2.1.2 The Contractor is fully responsible for the performance of the Services and for ensuring compliance with the requirements of this Agreement, and will not be relieved of that responsibility because of any:
- a. involvement by the Department in the performance of the Services;
  - b. payment made to the Contractor on account of the Services;
  - c. subcontracting of the Services; or
  - d. acceptance by the Department of replacement Personnel.
- 2.1.3 The Contractor warrants that at the time of entering into this agreement that it does not have a judicial decision against it (not including decisions under appeal) relating to employee entitlements that it has not paid.

## **2.2 Liaison**

- 2.2.1 The Contractor agrees to liaise with and comply with any directions made by the Project Officer.

## **2.3 Conduct when on Premises**

- 2.3.1 When using the Department's premises or facilities, the Contractor will comply with all directions and all current procedures relating to occupational health and safety that apply to those premises or facilities.

## **2.4 Specified Personnel**

- 2.4.1 The Contractor agrees that the Specified Personnel will undertake work in respect of the Services in accordance with the terms of this Agreement.
- 2.4.2 If Specified Personnel are unable to undertake work in respect of the Services, the Contractor will notify the Department immediately.
- 2.4.3 The Department may, at its absolute discretion, give notice requiring the Contractor to remove personnel (including Specified Personnel) from work in respect of the Services.
- 2.4.4 The Contractor agrees to provide replacement personnel acceptable to the Department at no additional cost and at the earliest opportunity.

2.4.5 Any need to replace any of the Contractor's personnel (including Specified Personnel) during the course of the Agreement will not constitute an act or event that is beyond the reasonable control of the Contractor in meeting the requirements of the Agreement.

2.4.6 If the Contractor is unable to provide acceptable replacement personnel the Department may terminate this Agreement in accordance with the provisions of *Clause 12.2*.

## **2.5 Engagement of illegal workers prohibited**

2.5.1 For the purposes of this Clause 2.5, an "illegal worker" is a person who is an Unlawful Non-Citizen, or a Non-Citizen who is performing work in breach of a Visa Work Condition, and the following definitions also apply:

- (a) "Contractor" will, where the context so admits, include the officers, employees, volunteers, bailees, agents and authorised sub-contractors of the Contractor; and
- (b) "Non-Citizen" has the same meaning as under the *Migration Act 1958*;
- (c) "Unlawful Non-Citizen" has the same meaning as under the *Migration Act 1958*; and
- (d) "Visa Work Condition" means a condition of a visa restricting the work that the Non-Citizen may do in Australia,

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

2.5.2 The Contractor must ensure that no employee or independent contractor, including those engaged by any subcontractors, are illegal workers.

2.5.3 The Contractor must make compliance by any subcontractors with the provisions of this Clause 2.5 a condition of any subcontract.

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

2.5.5 For the avoidance of doubt, compliance with the Contractor's obligations under this Clause 2.5 will not constitute a force majeure event, give rise to an entitlement to claim any delay or otherwise excuse the Contractor from compliance with its obligations under this Contract.

2.5.6 When requested in writing, the Contractor will provide evidence within 14 days that it has taken all reasonable steps to ensure that it has complied and is complying with its obligations under this Clause 2.5.

2.5.7 Contractors may check their entitlement to work in Australia at [www.immi.gov.au/evo](http://www.immi.gov.au/evo)

## **2.6 Protocols**

2.6.1 The Department and the Contractor may agree, to the extent reasonably practicable, to establish protocols ("Protocols") for changes or decisions in respect of the Services described under this Agreement, where the Department notifies the Contractor at any time of any:



- a. changes to timeframes or reporting requirements;
- b. information requirements; or
- c. new or altered requirements related to the provision of Services

which are necessary to be followed in respect of the process of consideration of a change or decision to which this clause applies.

- 2.6.2 The Department and the Contractor will respond in relation to a change or decision to which clause 2.6.1 applies as soon as reasonably practicable and to the extent each party is authorised to do so. An assessment of what timeframe is reasonably practicable for the purpose of this clause must have regard to operational requirements of the Department and the Contractor.

### **3 FEES, ALLOWANCES AND ASSISTANCE**

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#### **3.1 Payment of Fees, Allowances and Assistance**

- 3.1.1 Upon receipt of a correctly rendered invoice and subject to the Services having been completed to the satisfaction of the Department. The Department agrees to:
- a. pay the fees in the Instalments (if any) as specified in *Item C (Fees) of Schedule 1*;
  - b. pay the allowances and meet the costs as specified in *Item D (Allowances and Costs) of Schedule 1*; and
  - c. make all payments in the manner specified in *Item C (Fees) of Schedule 1*.
- 3.1.2 An invoice will be correctly rendered if it is set out as specified in *Item H (Invoice Procedures) of Schedule 1* and the amounts are properly payable and correctly calculated under the agreement.
- 3.1.3 The Department agrees to provide the facilities and assistance as specified in *Item J (Facilities and Assistance) of Schedule 1*.

#### **3.2 Taxes, Duties And Government Charges**

- 3.2.1 Except as provided by this *Clause 3.2*, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement will be borne by the Contractor.
- 3.2.2 Unless otherwise indicated, the amounts paid by the Department as determined in accordance with *Clause 3* includes Goods and Services Tax (GST) for supplies made under this Agreement which are taxable supplies within the meaning of *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act).
- 3.2.3 In relation to taxable supplies made under this Agreement, the Contractor will issue the Department with a tax invoice in accordance with the GST Act.
- 3.2.4 If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Agreement, on receipt of a tax invoice from the supplier, the recipient must pay

without set-off an additional amount to the supplier equal to the GST imposed on the supply in question.

- 3.2.5 No party may claim from the other party under this Agreement any amount for which the first party may claim an input tax credit.

### **3.3 Department's Right to Delay Payment**

- 3.3.1 The Department will be entitled (in addition and without prejudice to any other right it may have) to defer payment or reduce the amount of any Instalment until the Contractor has completed, to the satisfaction of the Department, that part of the Services to which that Instalment relates.

### **3.4 Time for Payment of Fees and Allowances**

- 3.4.1 The Department agrees to pay to the Contractor the fees and allowances for Services completed to the satisfaction of the Department within 30 days after the receipt by the Department of a correctly rendered invoice. If this period ends on a day that is not a business day, payment will be made on the next business day.
- 3.4.2 The Department will not be required to make any payment to the Contractor in the absence of a correctly rendered invoice. Accordingly, an invoice which includes amounts that are not properly payable under the contract or are incorrectly calculated is not a correctly rendered invoice and the Department is not required to make any payment in respect of that invoice.

## **4 MATERIAL**

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### **4.1 Commonwealth Material**

- 4.1.1 The Department agrees to provide to the Contractor the Commonwealth Material as specified in *Item K (Material to be provided by Commonwealth) Schedule 1*.
- 4.1.2 The Commonwealth grants to, or will procure for, the Contractor a royalty-free, non-exclusive licence to use, reproduce and adapt the Commonwealth Material for the purposes of this Agreement.
- 4.1.3 The Contractor will ensure that the Commonwealth Material is used, copied, supplied, or reproduced only for the purposes of this Agreement.
- 4.1.4 The Contractor agrees to ensure that all Commonwealth Material is used strictly in accordance with any conditions or restrictions set out in *Item L (Use of Commonwealth Material) of Schedule 1*, and any direction by the Department.
- 4.1.5 Upon the expiration or earlier termination of this Agreement, the Contractor will return to the Department all Commonwealth Material remaining in its possession unless otherwise directed by the Department.

## **4.2 Intellectual Property**

4.2.1 Intellectual Property in all Contract Material vests or will vest immediately in the Commonwealth.

4.2.2 *Clause 4.2.1* does not affect the ownership of Intellectual Property in:

- a. any Material in existence at the Commencement Date, including that specified in *Item M (Existing Material) of Schedule 1*; or
- b. any Commonwealth Material incorporated into Contract Material.

4.2.3 The Contractor grants to (or will procure for) the Department a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt and exploit Existing Material in conjunction with the Contract Material.

4.2.4 If requested by the Department to do so, the Contractor will bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this *Clause 4.2*.

4.2.5 The Contractor will ensure that where any Personnel are not employees of the Contractor that all necessary documentation will be entered into by those Personnel to ensure that Intellectual Property in Contract Material vests in the Commonwealth in accordance with this *Clause 4.2*.

4.2.6 The Contractor represents and warrants that:

- a. it is entitled; or
- b. it will be entitled at the relevant time,

to deal with the Intellectual Property in any Contract Material or Existing Material in the manner provided for in this *Clause 4.2*.

## **4.3 Moral Rights**

4.3.1 For the purposes of this *Clause 4.3*, 'Permitted Acts' means any of the following classes or types of acts or omissions:

- a. using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution of authorship;
- b. supplementing the Contract Material with any other Material;
- c. making any variations to, including additions to or deletions from, the Contract Material; or
- d. using the Contract Material in a different context to that originally envisaged,

but does not include those which would infringe the author's right not to have authorship falsely attributed.

4.3.2 Where the Contractor is a natural person and the author of the Contract Material, he or she consents to the performance of the Permitted Acts by the Commonwealth or any person claiming under or through the Department.

- 4.3.3 If *Clause 4.3.2* does not apply, the Contractor agrees:
- a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Department or any person claiming under or through the Department (whether occurring before or after the consent is given); and
  - b. on request – to provide the executed original of any such consent to the Department.
- 4.3.4 This *Clause 4.3*:
- a. applies subject to any provision to the contrary in *Item M (Existing Material) of Schedule 1*; and
  - b. does not apply to any Commonwealth Material incorporated into the Contract Material.

#### **4.4 Dealings with Copies**

- 4.4.1 For the purposes of this *Clause 4.4*, Copy (or Copies) means any document, device, article or medium in which Commonwealth Material, Contract Material or the Commonwealth's Confidential Information is embodied.
- 4.4.2 Property in each Copy vests or will vest in the Department and must be delivered to the Department on demand within a timeframe designated by the Department.
- 4.4.3 The Contractor agrees to establish and maintain procedures to secure all Copies against loss and unauthorised access, use, modification or disclosure.
- 4.4.4 Upon the expiration or termination of this Agreement, the Contractor agrees to deliver to the Department or otherwise deal with all Copies as directed by the Department.
- 4.4.5 Notwithstanding *Clause 4.4*, the Contractor may retain for its normal business purposes a full copy of Material used in the course of providing Services under this Agreement, which may include copies of extracts from or references to the Commonwealth Material, Contract Material and Confidential Information, subject to the confidentiality obligations in *Clause 5.1*.

## **5 DISCLOSURE OF INFORMATION**

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### **5.1 Confidential Information**

- 5.1.1 Subject to *Clause 5.1.5*, a Party must not, without the prior written consent of the other Party, use or disclose any Confidential Information of the other Party.
- 5.1.2 In giving written consent to use or disclose the Commonwealth's Confidential Information, the Department may impose such conditions as it thinks fit.
- 5.1.3 The Department may at any time require:
- a. the Contractor's Personnel and subcontractors; or
  - b. any person with a Third Party Interest;

to give a written undertaking in a form reasonably required by the Department relating to the use and non-disclosure of the Commonwealth's Confidential Information.

- 5.1.4 If the Contractor receives a request under *Clause 5.1.3*, it must promptly arrange for all such undertakings to be given.
- 5.1.5 The obligations on the Parties under this *Clause 5.1* will not be taken to have been breached to the extent that Confidential Information:
- a. is disclosed by a Party in order to comply with obligations, or exercise rights, under this Agreement;
  - b. is disclosed by a party's internal management Personnel, solely to enable effective management or auditing of Agreement related activities;
  - c. is disclosed to any Commonwealth Minister, or the Minister's advisers;
  - d. without limiting the application of this *Clause 5.1.5*, is disclosed:
    - i. in order to comply with the requirements of any regulatory body;
    - ii. in order to respond to a request that is made by a Royal Commission, a body undertaking an administrative or statutory review, or an audit or inquiry (whether within or external to the Commonwealth), including a review, audit or inquiry that is conducted by the Commonwealth Auditor-General or the Federal Privacy Commissioner pursuant to *Clause 9*; or
    - iii. in order to respond to a request or direction of a House, or a request by a Committee, of the Parliament of the Commonwealth of Australia;
  - e. is authorised or required by the law to be disclosed;
  - f. is shared by the Department within the Department's organisation, or with another agency, where this serves the legitimate interests of the Commonwealth; and
  - g. is in the public domain otherwise than due to a breach of this *Clause 5.1*.
- 5.1.6 Where a person discloses Confidential Information to another person pursuant to *Clauses 5.1.5 (a), (b), (c) or (d)*, the disclosing person must notify the receiving person that the information is confidential.
- 5.1.7 The Contractor agrees to provide all reasonable assistance to the Department with regard to the release of the Contractor's Confidential Information where disclosure may be required for the purposes of the Department's Parliamentary reporting and accountability obligations.
- 5.1.8 The obligations under this *Clause 5.1* continue, in relation to the information described in *Item O (Confidential Information of the Parties) of Schedule 1*, for the period, or the respective periods, set out in that schedule, commencing on the commencement of this Agreement and the Parties agree that these obligations survive for that period notwithstanding the expiry or termination of this Agreement.

## **5.2 Reporting Obligations and Disclosures**

5.2.1 The Contractor will allow the disclosure of information related to this Contract for various reporting and Commonwealth disclosure obligations. These disclosures include:

- (a) disclosure of procurement information for the Department's annual reporting purposes;
- (b) disclosure to the Parliament and its committees, as appropriate, in line with the *Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters*;
- (c) disclosure of information consistent with the *Freedom of Information Act 1982*;
- (d) disclosure of discoverable information that is relevant to a case before a court; and
- (e) disclosure of information as required under other legislation or Commonwealth policy.

5.2.2 Clause 5.2.1 survives the termination or expiration of this Agreement.

## **5.3 Media**

5.3.1 The Contractor agrees to refer to the Department as soon as practicable all media enquiries which the Contractor receives and which relate specifically to the Services described under this Agreement.

5.3.2 The Contractor agrees not to release or provide to the media any information, document or article in respect of any Client or Services described under this Agreement without the prior written consent of the Department.

5.3.3 For the avoidance of doubt, no right or obligation arising from this Agreement is to be read or understood as limiting the Contractor's rights to enter into public debate or criticism of the Australian Government or its Personnel.

## **6 PROTECTION OF PERSONAL INFORMATION**

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### **6.1 Application of Clause**

6.1.1 This *Clause 6* applies only to the extent that the Contractor deals with Personal Information in providing Services under this Agreement.

### **6.2 Interpretation of this Clause**

6.2.1 In this *Clause 6*, the following terms have the same meaning as they have in the Privacy Act 1988 (Cth) (the Privacy Act):

- an agency;
- APC (approved privacy code);
- contracted service provider;

IPPs (Information Privacy Principles); and

NPPs (National Privacy Principles).

### **6.3 Obligations of Contractor in relation to Personal Information**

6.3.1 The Contractor acknowledges that it is a contracted service provider and agrees, in providing Services under this Agreement:

- a. to use or disclose Personal Information obtained in the course of providing Services under this Agreement only for the purposes of this Agreement;
- b. to carry out and discharge the obligations contained in the IPPs as if it were an agency;
- c. not to do any act or engage in any practice which, if done or engaged in by an agency, would be a breach of an IPP;
- d. not to use or disclose Personal Information in breach of section 16F [Direct marketing] of the Privacy Act (where applied to the Contractor), unless that use or disclosure is explicitly required under this Agreement;
- e. not to engage in an act or practice that would breach an NPP (particularly NPPs 7 to 10) or an APC (where applied to the Contractor), unless that act or practice is explicitly required under this Agreement;
- f. to comply with any request under section 95C of the Privacy Act (relating to disclosure of any provisions of this Agreement that are inconsistent with an NPP or an APC binding on a party to this Agreement);
- g. to notify the Department immediately if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this *Clause 6*, whether by the Contractor or its Personnel;
- h. to comply with any directions, guidelines, determinations or recommendations referred to or relating to the matters set out in *Item P(Privacy Directions, Guidelines, Determinations or Recommendations) of Schedule 1*, to the extent that they are consistent with the requirements of this *Clause 6*; and
- i. to ensure that all Personnel required to deal with Personal Information for the purposes of this Agreement are made aware of the obligations of the Contractor set out in this *Clause 6*.

6.3.2 The Contractor agrees to ensure that any subcontract entered into by the Contractor for the purpose of fulfilling its obligations under this Agreement imposes on the subcontractor the same obligations that the Contractor has under this clause (including this requirement in relation to subcontracts).

## 7 SECURITY REQUIREMENTS

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### 7.1 Interpretation of this Clause

#### 7.1.1 In this *Clause 7*:

<b>Official Information</b>	means any information developed, received or collected by or on behalf of the Commonwealth of Australia through its agencies and contracted providers;
<b>Official Resources</b>	includes: a. Official Information; b. people who work for or with the Commonwealth; and c. assets belonging to (even if in the possession of contracted providers) or in the possession of the Commonwealth;
<b>Security Classified Information</b>	means Official Information that, if compromised, could have adverse consequences for the Commonwealth;
<b>Security Incident</b>	means a security breach, violation, contact or approach from those seeking unauthorised access to Official Resources.

### 7.2 General Security Obligations

#### 7.2.1 The Contractor agrees to ensure that its Personnel comply with:

- a. all relevant security requirements specified in the Australian Government Protective Security Manual 2005;
- b. the security requirements specified in *Item T (Security Requirements) of Schedule 1*; and
- c. any variations or additions to these security requirements that the Commonwealth (in its absolute discretion) notifies the Contractor in writing, from the date specified in the notice (or five business days after it receives the notice if no date is specified).

#### 7.2.2 If the Contractor can substantiate that changes to the security requirements pursuant to *Clause 7.2.1c* have cost implications for it, the Contractor may apply to the Department for a variation in the fees payable as specified in *Item C (Fees) and/or Item D (Allowances and Costs) of Schedule 1*.

#### 7.2.3 The Contractor acknowledges that in performing the Agreement, it may become subject to certain statutory provisions relating to security and security issues, and agrees to ensure that its Personnel are aware of, and comply, with those statutory provisions.



### 7.3 Personnel Security

- 7.3.1 The Contractor agrees to obtain prior written authorisation from the Department for any Personnel who may be required to:
- a. enter secure areas in the Department's building or places;
  - b. work with Commonwealth Personnel for extended periods;
  - c. have access to Security Classified Information, or valuable assets; or
  - d. hold a particular kind of security clearance that the Department notifies to the Contractor.
- 7.3.2 The Contractor agrees to ensure that all Personnel proposed:
- a. are of good fame and character;
  - b. are properly qualified for the tasks they are to perform; and
  - c. will act in all circumstances in a fit and proper manner while they are carrying out work under this Agreement.
- 7.3.3 The Contractor agrees to provide any information the Department reasonably requests to enable the Department to investigate whether particular Personnel should be authorised.
- 7.3.4 The Department may require that particular Personnel hold a particular level of Commonwealth security clearance.
- 7.3.5 The Commonwealth agrees that it will not unreasonably withhold authorisation.
- 7.3.6 The Commonwealth agrees to notify the Contractor of:
- a. the Personnel who have been granted authorisation (Authorised Persons);
  - b. the type and level of Commonwealth security clearance (if any) given to each Authorised Person; and
  - c. the period during which the authorisation is effective; and
  - d. the Personnel who have not been granted authorisation.
- 7.3.7 The Contractor agrees to acknowledge receipt of any notice provided under *Clause 7.3.6* by signing and returning a copy of the notice to the Department.
- 7.3.8 The Contractor must promptly notify the Department of any change in an Authorised Person's circumstances that, in the Contractor's reasonable opinion, is likely to affect the Commonwealth's authorisation of that person.
- 7.3.9 The Commonwealth may, at any time, on reasonable grounds, without any liability whatsoever, withdraw, limit or suspend its authorisation of a particular person, and in such event must notify the Contractor accordingly.
- 7.3.10 In the event referred to in *Clause 7.3.9*, the Contractor agrees, upon request, to propose and make available another person for authorisation by the Commonwealth under this *Clause 7* within a reasonable time and without inconvenience or cost to the Commonwealth.

#### **7.4 Information Security**

7.4.1 The Contractor agrees not to permit any of its Personnel to have any access to Security Classified Information unless:

- a. the relevant person has been cleared to the appropriate security level;
- b. the Commonwealth has given written authority under this *Clause 7*;
- c. the relevant person has undergone the training specified in *Item T (Security Requirements) of Schedule 1* relating to access and use of Security Classified Information.

7.4.2 The Contractor agrees to inform the Department immediately if it becomes aware that any unauthorised person has had access to Security Classified Information.

7.4.3 The Contractor agrees not to perform the Services outside Australia, or transfer Security Classified Information outside Australia, without the Department's prior written approval.

#### **7.5 Physical Security**

7.5.1 The Contractor may only access the Department's premises if it:

- a. has Department's written authorisation; and
- b. complies with the Department's requirements set out in this Agreement or otherwise notified by the Department.

7.5.2 The Contractor must ensure that its Personnel safeguard any keys or passes or other Material detailing access arrangements that are provided to the Contractor for the purposes of this Agreement.

7.5.3 The Contractor agrees to protect any Official Resources it possesses or controls to the same extent as if it were the Commonwealth, including ensuring that unauthorised persons cannot access any Official Information.

#### **7.6 Security Reports**

7.6.1 The Contractor agrees to notify the Department immediately if it becomes aware that a Security Incident has occurred.

7.6.2 The Contractor agrees to supply written security reports to the Department in a form and at the times specified in *Item T (Security Requirements) of Schedule 1*, including the following information:

- a. all Security Incidents, including steps taken by the Contractor to address these;
- b. perceived security problems;
- c. where appropriate, recommendations for security improvements;
- d. proposed and actual changes of Personnel; and
- e. any other information which the Department reasonably requires.

## 7.7 Training

7.7.1 The Contractor must ensure that its Personnel undertake the training specified by the Department in *Item T (Security Requirements) of Schedule 1*.

## 8 COMPLIANCE WITH LAWS AND POLICIES

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### 8.1 Compliance with the Law

8.1.1 The Contractor agrees, in carrying out the Services under this Agreement, to comply with all relevant legislation of the Commonwealth or State or Territory or local authority in force from time to time, and in particular, but not limited to:

- a. the *Crimes Act 1914*;
- b. *Racial Discrimination Act 1975*;
- c. *Sex Discrimination Act 1984*;
- d. *Disability Discrimination Act 1992*;
- e. *Equal Opportunity for Women in the Workplace Act 1999*;
- f. *Fair Work Act 2009*;
- g. *Privacy Act 1988*;
- h. *Occupational Health and Safety (Commonwealth Employment) Act 1991*;
- i. *Safety, Rehabilitation and Compensation Act 1988*;
- j. *Environment Protection and Biodiversity Conservation Act 1999*;
- k. *Auditor-General Act 1997*;
- l. *Financial Management and Accountability Act 1997*;
- m. *Public Service Act 1999*;
- n. any requirements for licenses / permits for the exercise of a profession or trade; and
- o. relevant child protection legislation and State and Territory screening programs as set out in Table 1 below:

<b>Jurisdiction</b>	<b>Legislation</b>	<b>Type of program</b>
ACT	No relevant legislation	No formal legislation or screening program, however, individual employers may require police checks at their discretion.
NSW	<i>Commission for Children and Young People</i>	The NSW Working With Children Check is an employer driven "point-in-time" system entailing background checks of employees and the exclusion of prohibited persons from child-

	<i>Act 1998 (NSW)</i>	related occupations.
<b>NT</b>	<i>Care and Protection of Children Act 2007 (NT)</i>	Individuals are required to apply for a Working With Children Check, known as a "Clearance Notice" in the Northern Territory. A Clearance Notice is valid for two years, and applies to employers and volunteers in child-related employment settings.
<b>QLD</b>	<i>Commission for Children and Young People and Child Guardian Act 2000 (Qld)</i>	Individuals are required to apply for a Working With Children Check, known as a "Blue Card" in Queensland. Valid for two years, Blue Cards entitle individuals to engage in child-related occupations/volunteering.
<b>SA</b>	<i>Children's Protection Act 1993 (SA)</i>	The South Australian system is an employer driven "point-in-time" system requiring employers and responsible authorities to obtain criminal history checks for those engaging in child-related occupations/volunteering.
<b>TAS</b>	No relevant legislation	No formal legislation or screening program, however, individual employers may require police checks at their discretion.
<b>VIC</b>	<i>Working With Children Act 2005 (Vic.)</i>	Individuals are required to apply for a Working With Children Check. Valid for five years, the Check entitles individuals to engage in child-related occupations/volunteering.
<b>WA</b>	<i>Working with Children (Criminal Record Checking) Act 2004 (WA)</i>	Individuals are required to apply for a Working With Children Check. Valid for three years, the Check entitles individuals to engage in child-related occupations/volunteering.

## 8.2 Compliance with Commonwealth Policies

8.2.1 The Contractor will comply with the principles and practices of the Commonwealth Government's Accessible Government Services for All.

8.2.2 The Contractor agrees to provide all reasonable assistance to the Department with any investigation of a report of a breach of the APS Code of Conduct.

### 8.3 Fair Work Act 2009

- 8.3.1 The Contractor 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 [www.deewr.gov.au/fairworkprinciples](http://www.deewr.gov.au/fairworkprinciples)), including by:
- a. complying with all applicable workplace relations, occupational health and safety, and workers' compensation laws;
  - b. informing the Department of any adverse court or tribunal decision for a breach of workplace relations law, occupational health and safety laws, or workers' compensation laws made against it during the term of the Agreement and any remedial action it has taken, or proposes to take, as a result of the decision;
  - c. providing the Department any information the Department reasonably requires to confirm that the Contractor (and any subcontractor) is complying with the Fair Work Principles; and
  - d. participate 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.
- 8.3.2 Compliance with the Fair Work Principles shall not relieve the Contractor from its responsibility to comply with its other obligations under the Agreement.
- 8.3.3 If the Contractor does not comply with the Fair Work Principles, without prejudice to any rights that would otherwise accrue to the Commonwealth, the Commonwealth shall be entitled to publish details of the Contractor's failure to comply (including the Contractor's name) and to otherwise provide those details to other Commonwealth agencies.
- 8.3.4 As far as practicable, the Contractor must:
- a. not use a subcontractor in relation to this Agreement where the subcontractor would be precluded from contracting directly with the Commonwealth under the requirements of the Fair Work Principles; and
  - b. ensure that all subcontracts impose obligations on subcontractors equivalent to the obligations under these Agreement *Clauses 8.3.1 to 8.3.4*.

## 9 ACCESS TO PREMISES

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- 9.1.1 The Contractor will allow:
- a. the Project Officer;
  - b. the Australian National Audit Office;
  - c. the Ombudsman's Office; and
  - d. other persons authorised by the Project Officer,
- to access the Contractor's premises at all reasonable times and to inspect and copy all

relevant documentation and records, however stored, in the Contractor's possession or control, for purposes associated with the Agreement or any review of performance under the Agreement.

- 9.1.2 The rights referred to in *Clause 9.1.1* are subject to:
- a. the provision of reasonable prior notice to the Contractor;
  - b. compliance with the Contractor's reasonable security procedures;
  - c. each party bearing its own cost arising out of or in connection with any access or inspection; and
  - d. if appropriate, execution of a deed of confidentiality relating to non-disclosure of the Contractor's Confidential Information.
- 9.1.3 The Contractor will ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this *Clause 9*.
- 9.1.4 *Clauses 9.1.1 and 9.1.2* apply for the term of the Agreement and for a period of seven years from the date of expiration or termination of the Agreement.

## **10 INDEMNITY AND INSURANCE**

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### **10.1 Indemnity**

- 10.1.1 The Contractor agrees to indemnify the Department from and against any:
- a. cost or liability incurred by the Department;
  - b. loss of or damage to property of the Department; or
  - c. loss or expense incurred by the Department in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Department,
- arising from:
- d. any act or omission by the Contractor or its Personnel in connection with this Agreement;
  - e. any breach by the Contractor of its obligations or warranties under this Agreement;
  - f. any unauthorised use or disclosure by the Contractor, its Personnel, or subcontractors of Personal Information held or controlled in connection with this Agreement; or
  - g. the use by the Department of the Contract Material or Existing Material, irrespective of whether there was fault on the part of the person whose conduct gave rise to that liability, loss or damage, or loss or expense.
- 10.1.2 The Contractor's liability to indemnify the Department under *Clause 10.1.1* will be reduced proportionately to the extent that any breach of this Agreement by the

- Department or any act or omission involving fault on the part of the Department contributed to the relevant cost, liability, loss, damage, or expense.
- 10.1.3 The right of the Department to be indemnified under *Clause 10.1.1* is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Department is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage, or expense.
- 10.1.4 In this *Clause 10.1*, “Department” includes officers, employees and agents of the Department.
- 10.1.5 *Clause 10.1.1* will survive 6 years from the expiration or termination of this Agreement.

## **10.2 Insurance**

- 10.2.1 The Contractor will, for so long as any obligations remain in connection with this Agreement, effect and maintain insurance as specified in *Item Q (Insurance) of Schedule 1* for all the Contractor’s obligations under this Agreement, including those which survive the expiration or termination of this Agreement.
- 10.2.2 The Contractor will upon request, provide proof of insurance acceptable to the Department.

## **11 RELATIONSHIP OF THE PARTIES**

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### **11.1 Negation of Employment, Partnership And Agency**

- 11.1.1 The Contractor will not represent itself, and will ensure that its Personnel and sub-contractors do not represent themselves, as being Personnel of the Department, or as otherwise able to bind or represent the Department.
- 11.1.2 The Contractor will not by virtue of this Agreement be or for any purpose be deemed to be Personnel of the Department, or as having any power or authority to bind or represent the Department.
- 11.1.3 The Contractor acknowledges that it shall be responsible for the deduction and payment of income tax from the fees in *Item C (Fees) of Schedule 1* and that the Department will not be liable for the Contractors’ superannuation payments.
- 11.1.4 Notwithstanding *Clause 11.1.3*, the Department shall deduct taxation from the Fees in *Item C (Fees) of Schedule 1* where it is required by law to do so.
- 11.1.5 The Contractor will not by virtue of the Agreement be entitled to any holiday pay, long service leave, sickness benefits or any other benefit that may arise under any statute or industrial award or agreement that are ordinarily conferred upon Department employees.

### **11.2 Cooperation with Other Service Providers**

- 11.2.1 The Contractor must cooperate with any other service provider appointed by the Department to ensure the integrated and efficient carrying out of services and must

provide such reasonable assistance to other service providers as the Department may reasonably request.

### **11.3 Conflict of Interest**

- 11.3.1 For the purposes of this *Clause 11.3* “Conflict of Interest” means any matter, circumstance, interest, or activity affecting the Contractor (including its Personnel) which may or may appear to impair or potentially impair the ability of the Contractor to provide the Services to the Department diligently and independently.
- 11.3.2 The Contractor represents and warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date no Conflict of Interest exists or is likely to arise in the performance of its obligations under this Agreement by itself or by any of its Personnel.
- 11.3.3 The Contractor will not, and will ensure that its Personnel do not, engage in any activity that is likely to give rise to a Conflict of Interest.
- 11.3.4 If, during the term of this Agreement a Conflict of Interest arises, or appears likely to arise, the Contractor agrees to:
- a. notify the Department immediately in writing;
  - b. to make full disclosure of all relevant information relating to the Conflict of Interest; and
  - c. to take such steps as the Department may reasonably require to resolve or otherwise deal with the Conflict of Interest.
- 11.3.5 If the Contractor fails to notify the Department or is unable or unwilling to resolve or deal with the conflict as required, the Department may terminate this Agreement in accordance with the provisions of *Clause 12.2*.

## **12 TERMINATION**

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### **12.1 Termination and Reduction for Convenience**

- 12.1.1 The Department may, at any time by notice, terminate this Agreement or reduce the scope of the Services immediately.
- 12.1.2 Upon receipt of a notice of termination or reduction, the Contractor agrees to:
- a. stop (or reduce) work as specified in the notice;
  - b. take all available steps to minimise loss resulting from that termination or reduction; and
  - c. continue work on any part of the Services not affected by the notice.
- 12.1.3 Where there has been a termination under *Clause 12.1.1*, the Department will be liable only:
- a. to pay any Instalments relating to Services completed before the effective date of termination;



- b. to reimburse any expenses reasonably and unavoidably incurred by the Contractor and directly attributable to the termination or reduction where the Contractor substantiates these amounts to the satisfaction of the Project Officer;
  - c. to pay any allowance and meet any costs unavoidably incurred under *Item D (Allowances and Costs) of Schedule 1* before the effective date of termination; and
  - d. to provide the facilities and assistance necessarily required under *Item J (Facilities and Assistance) of Schedule 1* before the effective date of termination.
- 12.1.4 The Department will not be liable to pay compensation under *Clause 12.1.3* in an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Agreement, together exceed the fees set out in *Item C (Fees) of Schedule 1*.
- 12.1.5 Where there has been a reduction in the scope of the Services, the Department's liability to pay fees or allowances, meet costs or provide facilities and assistance under *Clause 3* will, unless there is agreement in writing to the contrary, abate in accordance with the reduction in the Services.
- 12.1.6 The Contractor will not be entitled to compensation for loss of prospective profits.

## **12.2 Termination for Default**

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

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## **13 TRANSITION-OUT**

### **13.1 General Transition-Out Obligations**

- 13.1.1 Upon expiration or otherwise earlier termination of this Agreement, the Contractor must

cooperate with the Department and provide all reasonable assistance to the Department to enable the Transition-Out of the Services or part of the Services in the case of a reduction in scope, to a new provider nominated by the Department.

13.1.2 This clause 13.1 survives the expiration or termination of this Agreement.

### **13.2 Transition-Out Plan**

13.2.1 Within 90 days after the Commencement Date, the Contractor must submit to the Department for approval by the Department a Transition-Out Plan for the purposes of ensuring the smooth transition of the provision of the Services from the Contractor to the Department's new service provider during the Transition Period.

13.2.2 The Transition-Out Plan must not be inconsistent with this clause 13.2 and must address the Services that are being terminated or removed or for which the Term expires and must include actions and requirements that ensure:

- a. the secure delivery, transfer or transmission of Commonwealth information, the Commonwealth Material and Contract Material to the Department or its nominee;
- b. the removal of the Department's information relating to the Services from the Contractor's computer and other file storage systems;
- c. the completion of outstanding Services;
- d. steps are taken to notify other agencies or service providers including Serco of transitional arrangements between the Contractor and a new service provider;
- e. transferring or providing access to the Department to all information stored by whatever means held by the Contractor or under the control of the Contractor in connection with this Agreement;
- f. Contractor Personnel are available to the Department or a new provider for discussions; and
- g. all requirements of the Department and Serco which relate to working in, and then permanently exiting and leaving an Immigration Detention Facility or APOD, are met.

13.2.3 The Transition-Out Plan shall not require the Contractor to reveal any 'Commercial-in-Confidence' information of the Contractor.

### **13.3 Approval of Transition-Out Plan**

13.3.1 The Contractor will liaise and cooperate with the Department as necessary to ensure the Department's approval of the Transition-Out Plan is provided, including by fully addressing any requests or concerns communicated by the Department in a prompt and timely manner.

### **13.4 Transition-out Assistance**

13.4.1 During the Transition-Out, the Department may:

- (a) audit and review the implementation of the Transition-Out Plan;

- (b) notify the Contractor in writing of any non-conformance in the implementation of the Transition-Out Plan; and
- (c) require such amendments to the Transition-Out Plan as the Department reasonably considers necessary to ensure that the Services are performed in accordance with the requirements of the Agreement.

13.4.2 During the Transition-Out Period, the Contractor must:

- (a) comply with any notice given under Clause 13.4.1 within the timeframe specified by the Department;
- (b) continue to provide the Services in accordance with this Agreement until the end of the Transition-Out period;
- (c) provide the Transition-Out Assistance and comply with the Transition-Out Plan; and
- (d) ensure that the quality of the Services provided during the Transition-Out Period is at least the same standard as the Contractor's provision of the Services immediately preceding the commencement of the Transition-Out Period.

13.4.3 The Contractor must provide the Transition-Out Assistance regardless of the reason for the transition.

13.4.4 Without limiting the Transition-Out Assistance to be provided during the Transition-Out Period, the Contractor must:

- (i) if required by the Department, novate to the Department, or to any person nominated by the Department, any subcontract the Contractor holds with Approved Subcontractors as required by the Department on the terms of a novation deed reasonably satisfactory to the Department; and
- (ii) if required by the Department, for any subcontract which is not specific to the Services, use its best endeavours to procure the subcontractor to enter into a contract with the Department, or any person nominated by the Department, on terms reasonably satisfactory to the Department.

The Contractor must arrange for and pay for all consents necessary to effect any novation described in clause 13.4.4 (i).

## **14 DISPUTE RESOLUTION**

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### **14.3 Dispute Resolution Procedure**

14.3.1 The Parties agree that any dispute arising during the course of this Agreement will be dealt with as follows:

- h. the Party claiming that there is a dispute will send to the other a notice setting out the nature of the dispute;
- i. the Parties will try to resolve the dispute by direct negotiation, including by referring the matter to persons who may have authority to intervene and direct

some form of resolution;

- j. the Parties have 10 business days from the sending of the notice to reach a resolution or to agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure; and
- k. either Party may commence legal proceedings if:
  - i. there is no resolution or agreement; or
  - ii. there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 business days of the submission, or such extended time as the Parties may agree in writing before the expiration of the 15 business days.

14.3.2 Despite the existence of a dispute, the Contractor will (unless requested in writing not to do so) continue to perform the Services.

14.3.3 This *Clause 14.1* does not apply to:

- a. action by either Party under or purportedly under *Clause 12.2*;
- b. action by the Department under or purportedly under *Clause 3 or Clause 12.1*; or
- c. either Party commencing legal proceedings for urgent interlocutory relief.

## **15 RISK MANAGEMENT & BUSINESS CONTINUITY**

---

15.1.1 The Contractor agrees in relation to the performance of the Services to:

- a. implement appropriate risk management strategies;
- b. act in accordance with generally recognised best practice risk management standards in its industry;
- c. maintain regular back up copies of all software and databases used in provision of the Services;
- d. protect against the introduction of any computer virus and against effects of any such virus;
- e. maintain and upgrade business continuity and disaster recovery procedures and plans; and
- f. maintain an appropriate risk register and risk treatment schedule.

15.1.2 Where requested by the Department, the Contractor must within seven days provide details of the Contractor's risk management strategy, disaster recovery and business continuity plans for the Services.

15.1.3 Any disaster recovery and business continuity plans must address and include the components in accordance with the requirements of *Item U (Business Continuity and Risk management) of Schedule 1*.

15.1.4 The Contractor must comply with, and must ensure that all subcontractors comply with, the Contractor's risk management strategies and plans in the performance of the Services.

15.1.5 Any required disaster recovery and business continuity plans must be updated annually and apart from the first Business Continuity Plan, must be provided by 30 September in each year, or any other date notified by the Department. The Contractor agrees to meet with the Department annually to discuss and review any Business Continuity and Risk Management Plans. The Contractor will make changes to the Business Continuity Plan as are reasonably required by the Department.

15.1.6 Without limiting or qualifying the Department's other rights under this agreement, the Department may, at its discretion, audit or arrange for accredited third parties to audit, the Contractor's compliance with the requirements of this *Clause 15*.

## **16 GENERAL PROVISIONS**

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### **16.1 Waiver**

16.1.1 A waiver by either party in respect of any breach of a condition or provision of this Agreement will not be deemed to be a waiver in respect of any continuing or subsequent breach of that provision, or breach of any other provision.

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

### **16.2 Sub-contracting**

16.2.1 The Contractor will not, without the prior written approval of the Department, sub-contract the performance of any part of the Services. In giving written approval, the Department may impose such terms and conditions as it considers to be appropriate.

16.2.2 The Contractor will ensure that any subcontract contains provisions that are equivalent with all confidentiality, privacy, security, reporting obligations, disclosures, audit requirements and compliance with laws and Commonwealth policies imposed on the Contractor under this Agreement.

16.2.3 The Contractor remains responsible for the provision of the Services, notwithstanding that the Department may have approved a Subcontractor.

16.2.4 The Contractor will make available, on request, details including names of all subcontractors performing all or part of the Services.

16.2.5 The Contractor will inform the subcontractors that their participation in performing all or part of the Services maybe publicly disclosed.

### **16.3 Assignment and Novation**

16.3.1 The Contractor will not assign, in whole or in part, its rights or obligations under this Agreement without the prior written approval of the Department.

16.3.2 The Contractor will not consult with any other person or body for the purposes of entering into an arrangement which will require novation of the Agreement without first consulting the Department.

## 16.4 Notices

16.4.1 Any notice, request or other communication to be given or served pursuant to this Agreement will be in writing and dealt with as follows:

- a. if given by the Contractor to the Department - addressed and forwarded to the Department, for the attention of the Project Officer at the address indicated in *Item R (Commonwealth's Address for Notices) of Schedule 1* or as otherwise notified by the Project Officer;
- b. if given by the Department to the Contractor - signed by the Project Officer and forwarded to the Contractor at the address indicated at *Item S (Contractor's Address for Notices) of Schedule 1* or as otherwise notified by the Contractor.

16.4.2 Any such notice, request or other communication will be delivered by hand or sent by pre-paid post, facsimile or email, to the address of the party to which it is sent.

16.4.3 Any notice, request or other communication will be deemed to be received:

- a. if delivered personally, on the date of delivery;
- b. if sent by pre-paid security post, on the day that the acknowledgment of delivery is completed by the recipient;
- c. if sent by facsimile, on the business day next following the day of dispatch providing that the sender receives an "OK" code in respect of the transmission and is not notified by the recipient by close of business of the next business day following the day of dispatch that the transmission was illegible; and
- d. if transmitted electronically, upon receipt by the sender of an acknowledgement that the communication has been properly transmitted to the recipient.

## SCHEDULE 1

### ***Item A. Proposal and Quotation (see Recitals)***

---

The Contractor has been and is currently providing services to the Department with respect to AMs and UAMs in Alternative Forms of Detention on the Mainland. The Department would like the Contractor to continue providing the Services and seeks to consolidate the provision of the Services under this Agreement.

The Services to be provided by the Contractor are as detailed in Schedules 2A, 2B and 2C of this Agreement (“the Services”).

### ***Item B. Timeframe (see clause 2.1)***

---

#### **Commencement Date:**

The Contractor will commence the services the subject of this Agreement for the Department on 1 July 2010, as specified in *Clause 1.1.1 (Definition of Commencement Date)*.

#### **Time frame:**

The Agreement will expire eighteen (18) months from the Commencement Date ie on 31 December 2011 unless terminated earlier in accordance with Clause 12.

The Department has the option to extend this Agreement for a further six months to 30 June 2012 by written notice to the Contractor at least two (2) months prior to 31 December 2011. The terms and conditions including fees applicable for the period of extension will be in accordance with this Agreement.

### ***Item C. Fees (see clauses 3 & 11.1)***

---

Payment of all fees will be by direct credit to the Contractor’s nominated bank account. To facilitate this, the Contractor will be required to complete a “Request for Financial Institutions Details” form if it has not already done so.

The Fees payable by the Department for the Services provided by the Contractor to Clients in Community Detention, Immigration Detention Facilities and APODs; for the provision of Individual Needs Assessments and Independent Observers are detailed in the Fee Schedules at

Attachment A, which are as follows:

- Attachment 1: Notes
- Attachment 2: Contractor's Cost by Component
- Attachment 3: Component Descriptions
- Attachment 4: 18 Month Program Costs
- Attachment 5: Model Cost Comparisons (A)
- Attachment 6: Cost Comparisons Chart
- Attachment 7: Cost Comparison (B)
- Attachment 8: Port Augusta
- Attachment 9: MITA-BITA Onsite carers
- Attachment 10: MITA-BITA Offsite carers
- Attachment 11: CD Mainland -DIAC Accommodation
- Attachment 12: CD Mainland – Contractor's Accommodation
- Attachment 13: Motel APOD
- Attachment 14: Berrimah House

***Item D. Allowance and Costs (see clause 3.1)***

---

The Department will cover travel costs, including air fares, taxi fares, meals, accommodation and incidental expenses where the Contractor is required to travel at the Department's request. The travel rate amount for each destination will be consistent with the Department's rate of travel for Non-SES officers.

The Contractor is responsible for organising all travel and flights, taxis, meals and incidentals for its personnel involved in delivering the Services, and will then invoice the Department for the costs. In using the services of its own travel service provider instead of the Department's travel service provider, the Contractor has agreed to abide by the Department's policy of obtaining the lowest practical airfare, and will ensure the air fares are in accordance with and within the Department's rates of travel for Non-SES officers.

The Department will reimburse costs up to the Department's rate for Non-SES officers.

***Item E. Standards and Best Practices (see clause 2.1)***

---

The Contractor must provide the Services in accordance and in compliance with Department Policy on Immigration Detention, the Government's Immigration Detention Values and the following industry standards which are based on the Quality Improvement Councils Health and Community Service Standards (6<sup>th</sup> edition) and include:

**Building Quality Organisations**



- Governance - The organisation's governance structure builds a collective sense of purpose and direction that enable the organisation's mission, values, goals and service priorities to be identified and met.
- Management Systems - The organisation has effective and responsive management systems to enable and coordinate achievement of the organisation's mission, values, goals and service priorities.
- Human Resources - Human resources are managed to create an effective and competent service.
- Physical Resources - The organisation's physical resources are managed to ensure an effective, safe and efficient service.
- Financial Management - The organisation's financial management reflects its goals and supports and efficient and sustainable service.
- Knowledge Management - Knowledge (including research and the collection, storage and sharing of information) is managed in a systematic, ethical and secure way, and the organisation uses it to inform service review and development.
- Risk Assessment and Management - The organisation identifies, assesses and manages risks to ensure continuous, safe, responsive and efficient service.
- Legal and Regulatory Compliance - The organisation ensures compliance with all relevant laws and regulations.
- Safety and Quality Integration - Safety and quality systems are integrated and are managed systematically with clear lines of accountability to ensure continuously improving performance.

### **Providing Quality Services and Programs**

- Assessment and Planning - Assessment and planning are undertaken at individual and community levels to ensure services and programs are responsive to identified needs.
- Focusing on Positive Outcomes - Services and programs are provided in an effective, safe and responsive way to ensure positive outcomes for consumers and communities.
- Ensuring Cultural Safety and Appropriateness - Services and programs are provided in a culturally safe and appropriate manner.
- Confirming Consumer Rights - Services and programs are provided in a way that strengthens the rights of consumers, empowers them and is ethical.
- Coordinating Services and Programs - Services and programs within the organisation are coordinated.

### **Sustaining Quality External Relationships**

- Service Agreements and Partnerships - The organisation enters into formal service agreements and other less formal partnerships to ensure a continuous and sustainable service.
- Collaboration and Strategic Positioning - The organisation collaborates with other organisations and positions itself strategically within the wider service system.
- Incorporation and Contribution to Good Practice - The organisation demonstrates that it has incorporated and contributes to currently-accepted good practice in its field.
- Community and Professional Capacity Building - The organisation works to build the capacity of the community it serves and the professional community to which it belongs.

**Item F. Specified Personnel (see clauses 1.1 and 2.4)**

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N/A

**Item G. Required Contract Material (see clauses 1.1 and 2.1)**

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Within 90 days of commencement of this Agreement, the Department and the Contractor will, in accordance with Clause 2.6, negotiate and agree on a quality assurance framework, which will include the frequency, content and type of reporting required from the Contractor.

The Contractor must produce and deliver to the Project Officer the following reports and other information specified below and as detailed in Table A within the specified timeframes:

(1) Community Detention

- (a) Condition Report and Inventory, if applicable
- (b) Care Plan
- (c) Reports
  - Critical incidents are to be reported to the Department immediately; and
  - Monthly Reports within seven (7) days before the end of each calendar month.

(2) Immigration Detention Facilities and APODs

- (a) Regular reports to the Department which should include content on the following:
  - (i) Clients;
  - (ii) The Contractor's Personnel;
  - (iii) Administration and Infrastructure;
  - (iv) Service Development and delivery, and
  - (v) Community Engagement.

(3) Independent Observers

- (a) Monthly list: A list of the Contractor's Personnel who performed the role of Independent Observer. The list must include name of the Personnel; site/facility; date(s); total number of hours performed in the role of Independent Observer for each Personnel listed for that month.
- (b) Monthly report: A monthly report on the Independent Observer services provided by the Contractor for each month must be submitted to the Department together with related invoices for the provision of those services.

(4) Independent Needs Assessments

- (a) A Report detailing findings of Independent Needs Assessment and / or Living Skills for the Clients; and

(b) this Report must be submitted within an agreed timeframe, to be negotiated between the parties on a case-by-case basis.

The Department reserves the right to request further reports or information from the Contractor in so far as the reports or information relate to the provision of the Services. The Department will notify the Contractor in writing of the reports or information it requires and will allow the Contractor a reasonable timeframe as specified at the time of the request.

*In all Contract Material supplied in accordance with the definition of 'Contract Material' in Clause 1.1.1, the Contractor must insert the following Commonwealth Copyright Notice on the first page of all written or paper based Contract Material:  
© Commonwealth of Australia [add year]*

*This work is copyright. Apart from any use as permitted under the Copyright Act 1968, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to the Commonwealth Copyright Administration, Attorney General's Department, Robert Garran Offices, National Circuit, Barton ACT 2600 or posted at <http://www.ag.gov.au/cca>*

**Item H. Invoice Procedures (see clause 3.1)**

---

Invoices are to be submitted in arrears and will be correctly rendered if they include the following information:

- (a) title of Services, or reference to this contract;
- (b) name of Project Officer;
- (c) contract number or purchase order number (if any);
- (d) outline of services provided;
- (e) the timeframe in which services were provided;
- (f) correctly addressed;
- (g) is properly payable under the contract;
- (h) identifies the amount claimed;
- (i) is correctly calculated; and

- (j) where explanation is necessary, is accompanied by documentation substantiating the amount claimed.

Invoices must comply with the requirements of Clause 3.2 'Taxes, Duties and Government Charges'.

Invoices must be addressed to:

Dr Jon Rosalky  
Director  
Community Services Section  
Department of Immigration & Citizenship  
PO Box 25  
BELCONNEN ACT 2616

***Item I. Project Officer (see clause 1.1)***

---

The Project Officer is the person for the time-being holding, occupying or performing the duties of Assistant Director in the Community Services Section of the Department (see clauses 1.1 and 2.1) currently Ms Samantha Chalk, available on telephone number (02) 6264 2001.

***Item J. Facilities and Assistance (see clause 3.1)***

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Office space and meeting rooms for the Contractor's staff will be provided at each site.

***Item K. Material to be Provided by Commonwealth (see clause 4.1)***

---

The Department will provide the Contractor with a Map of Services, and a copy of the Department Policy on Immigration Detention and the Department's Immigration Detention Values.

**Item L. Use of Commonwealth Material (see clause 4.1)**

---

The Contractor is permitted to use the Commonwealth Material for the purposes of the Agreement but will generally be required to return it afterwards.

**Item M. Existing Material (see clause 4.2)**

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Nil, currently.

**Item N. Dealings with Copies (see clause 4.4)**

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Not Applicable

**Item O. Confidential Information of the Parties (see clause 5.1)**

---

A. Commonwealth's Confidential Information

**1. Agreement Provisions/Schedules/Attachments**

Item	Period of Confidentiality
N/A	

**2. Agreement-related material**

Item	Period of Confidentiality
Any client-related information	Until such time as the Information is released in the public domain

B. Contractor's Confidential Information

1. Agreement Provisions/Schedules/Attachments

Item	• Period of Confidentiality
N/A	

2. Agreement-related material

Item	• Period of Confidentiality
The Contractor's policies or business strategies	Until such time as the Information is released in the public domain
The Contractor's financial information	Until such time as the Information is released in the public domain

*Drafting note regarding the identification of the Contractor's Confidential Information for the purposes of Item P.*

*This Item P is used to assist the Department in recognising and protecting the Contractor's confidential information referred to in the Commonwealth's Guidance on Confidentiality in Procurement found at [www.finance.gov.au](http://www.finance.gov.au), consisting of the following criteria:*

- (i) the information to be protected must be specifically identified;*
- (ii) the information must be commercially 'sensitive'. This means that the information should not generally be known or ascertainable;*
- (iii) disclosure would cause unreasonable detriment to the owner of the information or another party; and*
- (iv) the information was provided under an understanding that it would remain confidential.*

*The use of Item P does not detract from the Parties' general obligation under clause 5 of this contract to maintain the confidentiality of information falling within the broad definition of Confidential Information contained in paragraph 1.1.1 of this contract.*

**Item P. Privacy Directions, Guidelines, Determinations or Recommendations (see clause 6)**

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Nil.

***Item Q. Insurance (see clause 10.2)***

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The Contractor is required to hold:

- (a) Professional indemnity insurance to the value of no less than \$ [REDACTED] per claim made, and in the aggregate;
- (b) Public liability insurance to the value of no less than \$ [REDACTED] per occurrence; and
- (c) Worker's compensation insurance.

The Contractor shall provide proof of currency of all insurance cover prior to the signing of the Agreement, and on request by the Department.

***Item R. Commonwealth's Address for Notices (see clause 16.5)***

---

Dr Jon Rosalky  
Director  
Community Services Section  
Department of Immigration & Citizenship  
PO Box 25  
BELCONNEN ACT 2616

Telephone: (02) 6264 3999  
Facsimile: (02) 6264 2997

***Item S. Contractor's Address for Notices (see clause 16.4)***

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Life Without Barriers  
352 King Street,  
NEWCASTLE, NSW, 2300

Telephone: (02) 4033 4500  
Facsimile: (02) 4927 5113

***Item T. Security Requirements (see clause 7)***

---

The Contractor will be required to comply with security requirements as set out in the:

- (a) Australian Government Protective Security Manual 2005 as amended from time to time; and
- (b) Security procedures, policies and requirements as notified by the Commonwealth from time to time.

The Contractor must comply with Serco and the Department's Operational Procedures (a copy of which will be provided to the Contractor) established in relation to the operation and management of Immigration Detention Facilities and sites, including all Alternative Places of Detention.

***Item U. Business Continuity and Risk Management (see clause 15)***

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N/A



## SCHEDULE 2A

### Community Care and Welfare Services for Clients in Community Detention

#### ***Item A. Background and Philosophy***

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Community Detention is a form of Immigration Detention that enables people in detention to reside and move about freely in the community without needing to be accompanied or restrained by an officer under the *Migration Act 1958*.

Community Detention was introduced in 2005 to enable children, families with children and people with special needs to be placed in detention in the community, rather than at a secure Immigration Detention Centre.

The program has afforded detained people the ability to live in the community, subject to certain conditions, while their immigration status is resolved.

The Department works with non government organisations (NGOs) to support people placed in Community Detention while their immigration status is resolved. These people must reside at a nominated address and comply with other conditions which include regular reporting to the Department.

Currently, International Health and Medical Services (IHMS) are contracted to provide health services to people in Community Detention on the mainland. The services are provided through local community General Practitioners.

#### ***Item B. Services (see clauses 1.1 and 2.1)***

---

The Services will be based upon the needs of the particular Client and the framework provided by the Department.

The Services are to ensure the wellbeing of the Client and to effectively address any changes in their circumstances.

## **Overview of Services**

The Services to be provided by the Contractor, including the Service Level Standards, are as outlined below and detailed in Table A. The Services may be varied from time to time by written agreement between the parties in accordance with Clauses 1.3.2 and 2.6 of this Agreement.

Without limiting any other provisions of this Agreement or the provisions in Table A, the Contractor must provide the Services from initial referral and preparation phase through to the Client's transition out of Community Detention as specified under Table A. These Services include:

### **(1) Management and Supervision of Daily Care**

- (a) manage and supervise the day to day care of Clients in the Contractor's care in accordance with this Agreement and subsequent Protocols or other directions from the Department or the Department Policies;
- (b) provide accommodation options, care, nutrition, medical and health support, recreation, skills development and transitional support that is tailored to the needs of the particular Client and is respectful of their culture, circumstances, and legal status; and
- (c) provide suitably skilled and appropriately experienced Personnel to provide the Services as agreed in the staffing and funding models established for this Agreement. This will also include any future approved service models as provided for under Clause 2.6 of this Agreement.

### **(2) Ensure the Suitability of Personnel**

The Contractor must ensure it provides:

- (a) suitably trained and screened Personnel to supervise day-to-day care arrangements;
- (b) suitably screened Carers to provide day-to-day care arrangements.
- (c) all Personnel with the following probity checks:
  - i. AFP checks to determined suitability of individuals for employment;
  - ii. Child protection checks with the relevant state and/or territory working with children groups in accordance with applicable laws and policies; and
  - iii. Culturally appropriate Carers to Clients.
- (d) Carers whose role includes but is not limited to ensuring that:
  - i. the Clients are properly clothed;
  - ii. the Clients are provided with nutritious meals;
  - iii. Clients live in houses which are maintained in optimum condition;

- iv. they are able to attend to the health, education, recreational, emotional and spiritual needs of Clients; and
- v. they are able to make appropriate referrals when challenges or issues are identified.

### **(3) Recreational Activities**

The Contractor must provide recreational activities to the Clients in liaison with their school, where appropriate, in accordance with Table A. The recreational activities must be organised each weekday after school, every weekend and on school holidays.

### **(4) Skills Development**

The Contractor must provide skills development to the Clients in liaison with their school, where appropriate, in accordance with Table A. The Skills Development Program must include:

- i. practical facilitation of English language skills;
- ii. self care skills;
- iii. self management skills, for example knowledge in:
  - using of household appliances and products;
  - purchasing goods and the preparation of meals;
  - handling Australian currency;
  - using the postal services;
  - sporting clubs and associations; and
  - accessing health and other services.

### **(5) Casework Coordination**

The Contractor must liaise, coordinate, refer or negotiate with other agencies or service providers to meet the needs of Clients, in accordance with Table A. This includes liaising with the school, where appropriate, to ensure that there is an integration of both the recreational and the skills development component.

### **(6) Interagency Coordination**

The Contractor must where required, coordinate and work closely with other agencies and other NGOs to meet the needs of Clients.

## **(7) Incident Reporting**

The Contractor must report the following incidents, including but not limited to:

- (a) the risks of flight;
- (b) any changes in mental health of a Client;
- (c) any Client health issues;
- (d) non-compliance with the law by a Client;
- (e) a Client's threatened or potential self harm;
- (f) changes to family dynamics requiring professional support;
- (g) harm or perceived harm to any Client;
- (h) financial/ budgeting management problems;
- (i) any emerging issues;
- (j) property related matters; and
- (k) emergency incidents.

## **(8) Complaints**

The Contractor must:

- (a) refer urgent complaints to the Department's on-call duty officer in the National Office; and
- (b) provide details of complaints in the monthly client care reports as agreed in accordance with the relevant Protocol.

The Contractor has in place an internal procedure for the escalation of matters to State Management and National Office, including reporting to external agencies. The Contractor, the Department and Serco will develop in partnership a communication protocol for the escalation of matters that require external reporting.

The Department may at any time, in its sole and absolute discretion, advise the Contractor in writing that it does not require the Contractor or approved subcontractors to provide the Services in respect of any Client for whom a Residence Determination is in force. Where requested by the Department, the Contractor will as soon as practicable identify and engage the services of relevant additional community support service providers for such Clients.

## **Residence Determination and Cessation of Services**

The Department may at any time, in its sole and absolute discretion, advise the Contractor in writing directing it to cease providing any or all of the Services specified in the Community Detention Care Plan for a Residence Detained Person in the event that:

- (a) the Minister revokes or varies a Residence Determination in respect of that Residence Detained Person; or
- (b) the Minister or the Department determines that it is preferable for other arrangements to be put in place in respect of that Residence Detained Person; or
- (c) the Residence Determination ceases in respect of that Residence Detained Person.

## SCHEDULE 2B

### Care and Welfare Services for Clients in Immigration Detention Facilities and Alternative Places of Detention

#### *Item A. Background and Philosophy*

---

The Minister's New Directions in Detention reinforced that children will not be detained in Immigration Detention Centres.

All Services provided to people in Immigration Detention Facilities and Alternative Places of Detention ("APODs") will be provided in accordance with the Immigration Detention Values.

Attachment B provides an overview of each of the Immigration Detention Facilities and APODs subject to this Agreement.

#### *Item B. Services (see clauses 1.1 and 2.1)*

---

The Contractor will provide a value added service to support Clients in Immigration Detention Facilities and APODs by providing

- facility-based, 24 hr live-in care; and
- facility-based, non-live in, daily care and welfare support visits.

The Services to be provided by the Contractor as outlined below and detailed in Table B attached, include:

- care;
- nutrition, medical and health support;
- provide suitably trained and screened staff to supervise day to day care arrangements;
- professional carers and relief professional carers;
- ensure that the Clients are properly clothed, that nutritious meals are provided, accommodation is maintained in optimum condition, and health, recreational, emotional and spiritual needs of the Clients are attended to, and appropriate referrals made where challenges or issues are identified;
- provide suitably trained and screened staff to develop and manage immigration care and welfare support services programs.

## **Objectives**

The Contractor will provide:

- access to skills development opportunities (including education and language acquisition;
- access to appropriate recreational activities; and
- support for the maintenance of health and wellbeing (including general health, nutrition and mental health).

## **Commitments**

In the provision of these Services, the Contractor must be committed to the following:

- the provision of culturally respectful support; and
- the development and maintenance of effective relationships with collaborating partners

## **Overview of Services**

The Services to be provided by the Contractor, including the Service Level Standards, are as outlined below and detailed in Table B. The Services may be varied from time to time by written agreement between the parties in accordance with Clauses 1.3.2 and 2.6 of this Agreement.

The Contractor acknowledges that Serco Pty Limited is currently contracted by the Department to provide services to People in Detention in the Immigration Detention Facilities and APOD sites pursuant to and in accordance with the Serco Contracts. Accordingly, the Contractor agrees to work collaboratively with, provide the required support, facilitate, liaise and consult with and regularly meet with Serco and perform all tasks and responsibilities and directions from Serco as detailed in Table B attached.

Without limiting any other provisions of this Agreement or the provisions in Table B, the Contractor must provide the following Services:

### **(1) Management and Supervision of daily care**

- (a) manage and supervise the day to day care of Clients in the Contractor's care in accordance with this Agreement and subsequent Protocols or other directions from the Department or the Department Policies;
- (b) provide accommodation options, care, nutrition, medical and health support, recreation, skills development and transitional support that is tailored to the needs of the particular UAM and is respectful of their culture, circumstances, and legal status; and

(c) provide the following suitably skilled and appropriately experienced Personnel to provide the Services:

- i. Coordinators
- ii. Carers (primary carer and respite carer)
- iii. Supporter of Carers
- iv. Team Leader
- v. Care Coordinator
- vi. Cultural Advisor
- vii. English as a Second Language (ESL) teacher, where appropriate
- viii. Program Development and Management

(d) ensure that these Personnel are qualified for following roles and responsibilities:

- i. Coordinators for casework and interagency coordination and cooperation;
- ii. Carers (primary carer and respite carers) who will live onsite or offsite, as required and care for young people in a house. The Carer will ensure the effective and smooth running of the house, or other setting, and will assist young people, where appropriate, in cleaning, maintenance, cooking, hygiene and cultural identity.
- iii. Supporters of Carers and Cultural Advisors who will live off site and provide 24/7 support to the Carers;
- iv. Team Leaders and Care Coordinators who will usually live off site and are the Contractor's employees. Weekly working hours will be flexible depending on program activities eg. night and weekends may be required;
- v. ESL teachers who will provide education support to young persons where required and as negotiated;
- vi. Independent Observers will attend interviews and meetings between Clients and agencies and NGOs. The Independent Observer will provide pastoral or physical care of the child throughout the interview process. The role of the Independent Observer is implemented in the best interests of the child and is to ensure that the Department's and other agencies' treatment of UAMs and AMs in immigration detention is fair, appropriate and reasonable.

The type and number of Personnel required at each Immigration Detention Facility and APOD site will differ depending on the model of care adopted or, in respect of the Services provided by an Independent Observer, the length and number of interviews to be conducted at that particular site.

## **(2) Ensure the Suitability of Personnel**

The Contractor must ensure it provides:

- (a) suitably screened staff to supervise day-to-day care arrangements. This includes



conducting the following probity checks:

- i. AFP checks to determined suitability of individuals for employment;
- ii. Child protection checks with the relevant state and/or territory working with children groups in accordance with applicable laws and policies; and
- iii. Culturally appropriate Carers to Clients.

### **(3) Recreational Activities**

Where possible and if appropriate, the Contractor must provide recreational activities to the Clients in liaison with their school, where appropriate, in accordance with Table B. The recreational activities must be organised each weekday after school, every weekend and on school holidays.

### **(4) Skills Development**

Where possible and if appropriate, the Contractor must provide skills development to the Clients in liaison with their school, where appropriate, in accordance with Table B. The Skills Development Program must include:

- (a) practical facilitation of English language skills;
- (b) self care skills;
- (c) self management skills, for example knowledge in:
  - using of household appliances and products;
  - purchasing goods and the preparation of meals;
  - handling Australian currency;
  - using the postal services; and
  - accessing health and other services.

### **(5) Casework Coordination**

The Contractor must liaise, coordinate, refer or negotiate with other agencies or service providers including but not limited to Serco to meet the needs of Clients in accordance with Table B.

### **(6) Interagency Coordination**

The Contractor must coordinate and work closely with other agencies and other NGOs to meet the needs of Clients.

### **(7) Attendance at meetings and consultative committees**

The Contractor must attend and participate in all meetings with the Department and Serco and participate in consultative committees and other relevant fora, as identified in Table B and as

negotiated in accordance with Clause 2.6.

**(8) Client Welfare and Incident Reporting**

The Contractor must provide regular reports to the Department, Serco and other relevant service providers on client welfare issues and any other reports as detailed in Table B. In addition, the Contractor must report the following incidents, including but not limited to:

- (a) the risks of flight;
- (b) any changes in mental health of a Client;
- (c) any Client health issues;
- (d) non-compliance with the law by a Client;
- (e) Clients threatened or potential self harm;
- (f) changes to family dynamics requiring professional support;
- (g) harm or perceived harm to any Client;
- (h) financial/ budgeting management problems;
- (i) any emerging issues;
- (j) property related matters; and
- (k) emergency incidents.

**(9) Complaints**

The Contractor must

- (a) refer urgent complaints to Serco's on-site duty officer; and
- (b) provide details of complaints in the monthly client care reports, and as agreed in accordance with the relevant Protocol.

The Contractor has in place an internal procedure for the escalation of matters to State Management and National Office, including reporting to external agencies. The Contractor, the Department and Serco will develop in partnership a communication protocol for the escalation of matters that require external reporting.

## SCHEDULE 2C

### ***Item A. Background and Philosophy***

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The Contractor will provide a value added service to support Clients in Immigration Detention to ensure the physical and emotional wellbeing of the Clients.

The role of the Independent Observer is implemented in the best interests of the Clients and is to ensure that the Department's and other agencies' treatment of Clients in immigration detention is fair, appropriate and reasonable.

### ***Item B. Services (see clauses 1.1 and 2.1)***

---

Independent Observers are adults engaged by the Department to attend interviews and meetings between Clients and agencies.

An Independent Observer is required for processes such as entry, Australian Federal Police and other intelligence interviews, in order to provide pastoral or physical care of the child throughout the interview process. Independent Observers are also utilised for Refugee Status Assessment interviews.

The Independent Observer has no casework, legal advocacy, or investigative responsibilities.

The Contractor will provide the services of an Independent Observer who will have the responsibilities outlined in Table C, attached.

**FEE SCHEDULES**

**IMMIGRATION DETENTION FACILITIES AND ALTERNATIVE PLACES OF  
DETENTION**

SIGNED for and on behalf of the

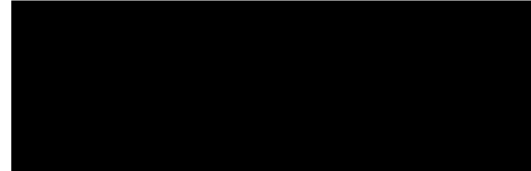
**COMMONWEALTH OF AUSTRALIA**

by

FIONA LYNCH-MAGOR

(Please print Name)

(Position) **AS SERVICES MANAGEMENT**  
Department of Immigration and Citizenship



30 / 06 / 2010

Date

in the presence of



Signature

WILLIAM R McGUINNNESS

(Please print name)

30/06/2010

Date

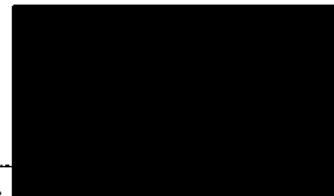
SIGNED on behalf of

**LIFE WITHOUT BARRIERS**

by

**RAY DUNN - CEO**  
**LIFE WITHOUT BARRIERS**

(Please print Contractor Director's name)



Signature

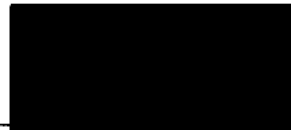
30 / 6 / 10

Date

in the presence of

Diane O'Donnell - CFO / Company Sec.

(Please print name of another Director or a Company Secretary)



Signature

30 / 6 / 10

Date

SIGNED for and on behalf of the

**COMMONWEALTH OF AUSTRALIA**

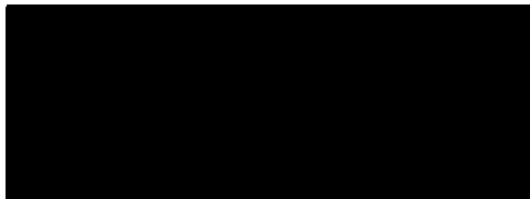
by

Fiona Lynch-Magor

(Please print Name)

(Position)

Department of Immigration and Citizenship



30, 7, 2010

Date

in the presence of



SUELY BROWN

Please print name

30/7/10

Date

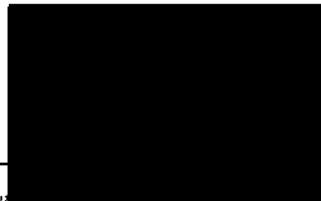
SIGNED on behalf of

**LIFE WITHOUT BARRIERS**

by

**RAY DUNN - CEO  
LIFE WITHOUT BARRIERS**

[Please print Contractor Director's name]



Signature

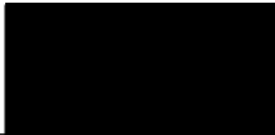
30 / 6 / 10

Date

in the presence of

Diane O'Donnell - CFO / Company Sec.

(Please print name of another Director or a Company Secretary)



Signature

30, 6, 10

Date

Note: Client costs can vary from these examples. Costs per site/model are dependent on the number of clients at any time.

For example: using a [redacted] carer to client ratio

Cost if [redacted] UAMs are on a site with a ratio of [redacted]

Cost if [redacted] UAMs are on a site with a ratio of [redacted]

-- The [redacted] UAMs would still require [redacted] carers.

These figures are based on examples of numbers used in each site/model and should not be considered an exact costing

No Client costs have been included in these calculations -- these are just the costs of providing carers and carer supervision

Establishment Costs for recruitment and training, household formation etc have not been included in the total program costs as this is not applied on an ongoing basis. These costs must be considered for each model, but as a one-off expense at initial set-up.

For example



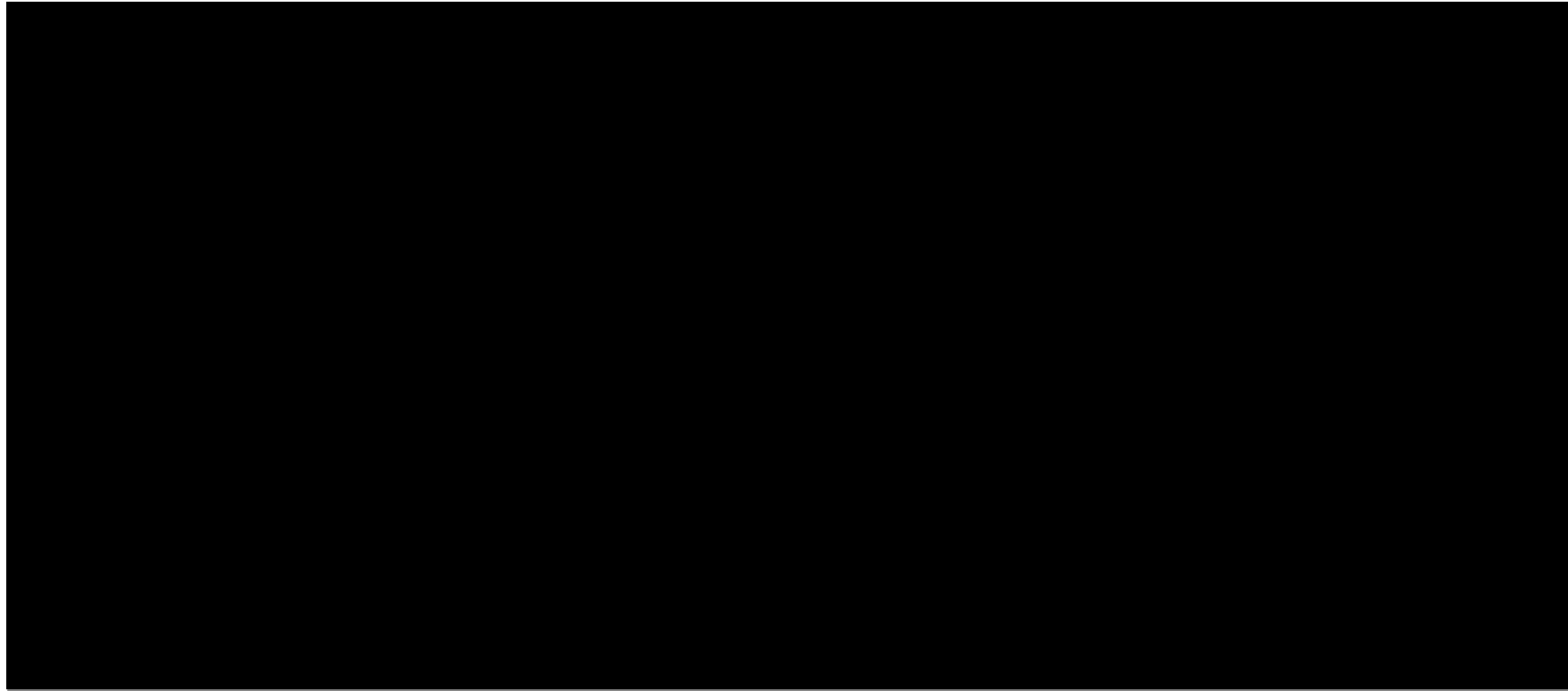


Component	Description
Carer	LWB recruited and trained carers, with relevant working with children checks. Carer ratios are dependant on care model. Carer payment - the payment to the carers of [REDACTED] is a casual wage, and is based on an hourly rate of [REDACTED] for [REDACTED] hours worked (plus casual loading [REDACTED] under the state award for social and community services.
Care Coordinator	The Care Coordinator will assist the program manager in developing and implementing weekly programs.
Clinical	A clinician may be required to assist carers to manage incidents relating to the clients trauma and/or behaviours. Also for reports and assessments such as, independent living skills assessment, behavioural management plan, health assessment and risk management plans. Clinical also includes therapeutic support to the placement thus fostering longevity. Nb. Clinical support is only offered on an individual basis where there maybe factors such as health care, disability, and behavioural concerns.
Program Manager	The program manager will be the conduit between the local DIAC and SERCO staff and LWB. The Program manager will be responsible for the supervision of the Care Coordinators, Carers and programming for all UHM's. Where a fee of [REDACTED] per week is charged against Program Manager, this is a percentage of program manager costs that are applicable to a particular program.
Motor Vehicle	LWB Fleet vehicle or hire car
Phones and Communication (A)	Cost of phone, fax and internet for carers/staff
Phones and Communication (B)	Cost of phone, fax and internet for CD households of clients
Household Expenses & Consumables	Food and other household items
Rent (CD in LWB Accommodation)	Rental on properties sourced and secured by LWB
Utilities	Cost of gas and electricity
Repairs and Maintenance	Basic repairs and maintenance cost on rental properties
Carer Accommodation (per carer)	Motel or rented accommodation for carers living offsite in
Meals	Meal costs for carers living offsite
Initial Recruitment	Costs of finding and recruiting suitable carers/staff for DIAC programs. Recruitment costs include advertising, recruitment of staff/carers and relevant working with children and background checks. This also includes assessment of new carers. <b>Nb.</b> This cost is only applied during the initial set-up of a program in a new facility and is not applied ongoing.
Initial Training	Costs of training and clearing new carers. Training includes LWB Induction, First Aid Training, Carer Training and Cultural Sensitivity Training. <b>Nb.</b> This cost is only applied during the initial set-up of a program in a new facility and is not applied ongoing.
House set up	Costs of furnishing and connecting houses for DIAC programs
OHS Equipment & First Aid	OHS Equipment & First Aid
Needs Assessment	LWB Assessment and recommendations report on clients
Agency Fee	[REDACTED] of total cost components per program
Remote Living Allowance	Allowance paid to staff living in remote areas, in accordance with ATO guidelines
Living Away from Home Allowance	Allowance paid to staff who are required to live away from their usual residence for a period greater than one week.

TOTAL NATIONAL PROGRAM COST ALL FACILITIES COMBINED (Based on 140 clients):				
Included facilities:	Number UAMs	\$\$ per week	\$\$ per month	\$\$ for 18 months of contract
Port Augusta	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
MITA-BITA Onsite Carers				
Motel APOD				
Berrimah House				
<b>TOTALS FOR ALL FACILITIES:</b>				
TOTAL AVERAGED 'PER CLIENT' COSTS ACROSS ALL FACILITIES OVER 18 MONTH CONTRACT LIFE:				
Average 140 clients per month across all facilities	Number UAMs	\$\$ per UAM per week	\$\$ per UAM per month	\$\$ per UAM for 18 month life of contract
<b>AVERAGED TOTALS PER UAM:</b>				

	Port Augusta	MITA-BITA Onsite Carers	MITA-BITA Offsite Carers	Mainland CD - DIAC Accomm.	Mainland CD - LWB Accomm.	Motel APOD	Christmas Island CD	Berrimah House
<b>Weekly Cost Description</b>	█ x Carers █ x Coordinators █ Clients	█ x carers █ x Coordinators █ Clients	█ x Carers █ x Coordinators █ Clients	█ x Carer █ x Coordinator █ Clients	█ x Carer █ x Coordinator █ Clients	█ x Carer █ x Coordinator █ Clients	█ x Carers █ x Coordinator █ Clients	█ x Carers █ x Coordinator █ Clients
Carer costs by current # of carers onsite								
Care Coordinator by # of Coord's onsite								
Program Manager								
Clinical								
Motor Vehicle								
Phones and Communication by # houses								
Household Expenses & Consumables								
Rent (CD in LWB Accommodation)								
Utilities								
Repairs and Maintenance								
Carer/Coordinator Accommodation								
Meals								
Agency Fee █								
<b>BASIC PROGRAM TOTALS:</b>								
Current Site cost per UAM								

Care Model Cost Comparison  
Cost of care services per UAM in each program



**ATTACHMENT B -- UAM CARE PROGRAM COSTS PER SITE**

**Comparison of total costs for UAM care program:**

- LWB/DIAC total \$\$ for care models per facility
- LWB/Other agency total \$\$ for care model (1:5 ratio)
- DIAC/LWB \$\$ per UAM, per week, by facility
- LWB/Other agency \$\$ per minor, per week (1:5 ratio)

FACILITY	CLIENT NUMBERS	LWB/DIAC \$\$ per WK	LWB/Other agency \$\$ per WK	LWB/DIAC \$\$ per ANNUM	LWB/Other agency \$\$ per annum	LWB/DIAC \$\$ per UAM per WK	LWB/Other agency pp per WK
Port Augusta							
MITA-BITA Onsite Carers							
MITA-BITA Offsite Carers							
CD Mainland DIAC Accommodation							
CD Mainland LWB Accommodation							
Motel APOD							
Christmas Island CD							
Berrimah House							

**Port Augusta**

Model	Component	#s	One-off Cost	Cost per week	Cost per annum
<b>Live-in Care in DIAC Facility - Household Model</b> Carer Ratio [REDACTED]  Accommodation individual houses in facility  All flights and accommodation paid by DIAC  Carers given access to vehicle  Meals prepared, cooked and served in each household by carers and clients - food supplied by Detention Service Provider (DSP)	Carer/s				
	Program Manager				
	Care Coordinator/s				
	Care Coordinator/s Accommodation				
	Agency Fee - [REDACTED] of total components				
	<b>TOTAL:</b>				
Current # UAMs in facility					
<b>Current \$ TOTAL per UAM:</b>					

**MITA-BITA with Onsite Carers**

Model	Component	#s	One-off Cost	Cost per week	Cost per annum
<b>Live-in Care in DIAC Facility</b> Carer Ratio [REDACTED] - number of carers required will depend on number of clients	Carer Program Manager Care Coordinator				
All flights and accommodation paid by DIAC	Agency Fee - [REDACTED] of total components				
Meals by Detention Service Provider (DSP)	<b>TOTAL:</b>				
	Current # UAMs in facility				
<b>Current \$ TOTAL per UAM:</b>					



**MITA-BITA with Offsite Carers**

Model	Component	#s	One-off Cost	Cost per week	Cost per annum
<p><b>Daily Care in DIAC Facility - Offsite carer accommodation</b></p> <p>Carer Ratio [redacted] - number of carers required will be dependant on number of clients</p> <p>All flights and accommodation paid by DIAC</p> <p>Carers given access to vehicle</p>	Carer				
	Program Manager				
	Care Coordinator				
	Carer/s Accommodation				
	Carer Meals				
	Telephone and Communication				
	Motor Vehicle				
	Agency Fee - [redacted] of total components				
	<b>TOTAL:</b>				
	Current # UAMs in facility				
<b>Current \$ TOTAL per UAM:</b>					

**CD MAINLAND IN DIAC ACCOMMODATION**

Model	Component	#s	One-off Cost	Cost per week	Cost per annum
<b>CD in DIAC Accommodation</b>	Carer				
Carer Ratio ■■■	Care Coordinator				
	Program Manager				
All property and utility expenses paid by DIAC	Clinical				
	Motor Vehicle				
Meals prepared, cooked and served in each household by carers and clients	Phones and Communication				
	Household Expenses & Consumables				
Food purchased by carers and clients - costs reimbursed to LWB by DIAC	Agency Fee - ■■■ of total components				
	<b>TOTAL:</b>				
	Current # UAMs in facility				
	<b>Current \$ TOTAL per UAM:</b>				

CD MAINLAND IN LWB ACCOMMODATION					
Model	Component	#s	One-off Cost	Cost per week	Cost per annum
<b>CD in LWB Accommodation</b>	Carer				
Carer Ratio [REDACTED]	Care Coordinator				
	Program Manager				
All property and utility expenses paid by LWB	Clinical				
	Motor Vehicle				
Rental cost dependant on location & type of property required	Rent				
	Utilities				
	Repairs and Maintenance				
Cost shown based on a single house	Phones and Communication				
	Household Expenses & Consumables				
Meals prepared, cooked and served in each household by carers and clients	Agency Fee - [REDACTED] of total components				
Food purchased by carers and clients - costs reimbursed to LWB by DIAC					
	<b>TOTAL:</b>				
	Current # UAMs in facility				
	<b>Current \$ TOTAL per UAM:</b>				

**MOTEL APOD**

Model	Component	#s	One-off Cost	Cost per week	Cost per annum
<p><b>Live-in Care in Motel APOD Arrangement</b></p> <p>Carer Ratio [redacted] - number of carers required will be dependant on number of clients</p> <p>Carers accommodated in same motel as UAMs, with separate rooms</p> <p>All flights and accommodation paid by DIAC</p> <p>Carers given access to vehicle</p> <p>Meals by Detention Service Provider (DSP)</p>	<p>Carer            Manager            Care Coordinator            Carer Accommodation            Carer Meals by DIAC            Motor Vehicle</p> <p>Agency Fee - [redacted] of total components</p> <p style="text-align: right;"><b>TOTAL:</b></p> <p>Current # UAMs in facility</p> <p style="text-align: right;"><b>Current \$ TOTAL per UAM:</b></p>	<div style="background-color: black; width: 100%; height: 100%;"></div>	<div style="background-color: black; width: 100%; height: 100%;"></div>	<div style="background-color: black; width: 100%; height: 100%;"></div>	<div style="background-color: black; width: 100%; height: 100%;"></div>

CHRISTMAS ISLAND - CD

Model	Component	#s	One-off Cost	Cost per week	Cost per annum
<b>CD in DIAC Accommodation</b> Carer Ratio [REDACTED]  All property and utility expenses paid by DIAC  Meals prepared, cooked and served in each household by carers and clients  Food purchased by carers and clients - costs reimbursed to LWB by DIAC	Carer/s				
	Program Manager				
	Care Coordinator/s				
	Clinical				
	Motor Vehicle				
	Phones and Communication				
	Household Expenses & Consumables				
	Remote Allowance				
	LAFHA				
	Agency Fee - [REDACTED] of total components				
	<b>TOTAL:</b>				
Current # UAMs in facility					

**TOTAL:**

Current # UAMs in facility

**Current \$ TOTAL per UAM:**

**BERRIMAH HOUSE**

Model	Component	#s	One-off Cost	Cost per week	Cost per annum
<p><b>Daily Care in DIAC Facility - Offsite carer accommodation</b></p> <p>Carer Ratio [redacted] max - number of carers required will be dependant on number of clients</p> <p>Carers 8am - 9pm coverage, with [redacted] carers.</p> <p>All flights and accommodation paid by DIAC</p> <p>Carers given access to vehicle</p>	Carer				
	Care Coordinator				
	Telephone and Communication (on call)				
	Remote Allowance				
	Agency Fee - [redacted] of total components				
	<b>TOTAL:</b>				
	Current # UAMs in facility				
	<b>Current \$ TOTAL per UAM</b>				