AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF AUSTRALIA
FOR THE SHARING OF VISA AND IMMIGRATION INFORMATION

PREAMBLE:

The Government of the United States of America and the Government of Australia (hereinafter referred to individually as "the United States", "Australia" and "Party" or collectively as "the Parties");

NOTING the importance of a new approach to migration that takes into account the global patterns of both regular and irregular migration and the increasingly sophisticated methods for identity fraud and abuse of the Parties' immigration laws;

RECOGNIZING that border security and border management are significantly enhanced by cooperation and collaboration;

RECOGNIZING that the United States and Australia decided upon a biometric exchange for law enforcement purposes under the Memorandum of Understanding on Enhancing Cooperation in Preventing and Combating Crime, signed on November 16, 2011;

EMPHASIZING that it is critically important to have timely access to current and accurate information to inform inadmissibility assessments or other immigration related determinations that are vital to the common security of the United States and Australia;

CONSIDERING that the effective administration and enforcement of the immigration laws of the United States and Australia is important to protect the health and safety of their populations, to maintain the security of their societies, and to promote security by denying access to their territories to persons who are criminals or security risks;

CONVINCED that greater cooperation through the exchange of information can make their actions in achieving these objectives more effective;

HAVE AGREED as follows:

ARTICLE 1

DEFINITIONS

For purposes of this Agreement,

A. "**National of a Third Country**" means a person who is neither an Australian citizen nor a U.S. citizen or national, and includes a person not having a country of nationality.

B. "**Information**" means data collected, maintained, or generated on Nationals of a Third Country, and Nationals, including citizens, of the Parties pursuant to the provisions of Article 2(C) and 2(D), seeking authorization to travel to, work in, or live in Australia or the United States, and other

immigration-related data, including data pertaining to visa, admissibility, or immigration compliance actions and/or decisions rendered in accordance with or relevant to the immigration laws of the respective Parties. Information may include personal data, statistical data, or both.

ARTICLE 2

SCOPE AND PURPOSE

A. The scope of this Agreement is to specify the terms, relationships, responsibilities, and conditions for the regular sharing of Information as defined in Article 1(B) between the Parties and pursuant to the purpose identified in Article 2(B).

B. The purpose of this Agreement is to assist in the administration and enforcement of the respective immigration laws of the Parties by:

(i) Using Information in order to enforce or administer the respective immigration laws of the Parties;

(ii) Furthering the prevention, detection, or investigation of acts that would constitute a crime rendering an individual inadmissible or removable under the laws of the Party providing the Information; and

(iii) Facilitating a Party's determination of eligibility for a visa, admission, or other immigration benefit, or of whether there are grounds for removal.

C. A Party to this Agreement shall only provide Information about its Nationals in response to a query under this Agreement, or any Implementing Arrangement to this Agreement, when such Information is relevant and necessary to support an identifiable immigration decision in the receiving

country, and the sharing of such Information is compatible with domestic law and policy.

D. A Party to this Agreement shall only provide Information about a National of the other Party under this Agreement or any Implementing Arrangement to this Agreement in response to a specific immigration matter in the receiving Party to which the individual is directly tied, where the sharing of such Information is compatible with domestic law and policy.

E. This Agreement shall not affect any existing agreements or arrangements between the two Parties. No provision in this Agreement shall be interpreted in a manner that would restrict practices relating to the sharing of Information that are already in place between the two Parties.

F. This Agreement shall not give rise to rights, privileges or benefits on the part of any other party, private or public, including to obtain, suppress, or exclude any evidence or to impede the sharing of personal data. Rights, privileges or benefits existing independently of this Agreement are not affected.

ARTICLE 3

EXCHANGE OF INFORMATION AND IMPLEMENTATION

For the purposes identified in Article 2(B), the Parties shall provide each other with Information through processes provided for in implementing arrangements pursuant to Article 4, and in so far as is consistent with the respective domestic laws of the Parties.

ARTICLE 4

IMPLEMENTING ARRANGEMENTS

A. The Parties shall develop, by mutual consent, implementing arrangements under this Agreement consistent with their respective domestic laws.

B. The implementing arrangements shall: set forth the Information to be exchanged, the operational procedures to be followed, and the security mechanisms and other safeguards to be maintained; and set out the ways that such exchange of the particular Information would be consistent with the purposes identified in Article 2(B). The exchange, storage, and retention of Information by the respective Parties as set forth in the implementing arrangements shall be subject to the obligations set forth in this Agreement.

ARTICLE 5

USE AND DISCLOSURE OF INFORMATION

A. The Parties may use and disclose Information obtained under this Agreement:

(i) For the purpose of assisting in the effective administration and enforcement of each Party's respective immigration laws;

(ii) For preventing immigration fraud or other exploitations of immigration or travel systems by Nationals of a Third Country;

(iii) For identifying threats to national or public security related to immigration or travel systems;

(iv) In its non-criminal immigration enforcement proceedings and actions directly related to immigration enforcement set forth in Article 5(A)(i); or

(v) For any other purpose, only with the prior consent of the Party that transmitted the Information.

B. Nothing in this Agreement or any implementing arrangement shall restrict a Party's authority to share Information with its respective appropriate domestic authorities pursuing any purpose identified in Article 2(B) or a use listed in Article 5(A) when such authorities are carrying out their official duties. The Parties shall ensure that such domestic authorities limit their use and subsequent disclosure of Information in accordance with this Agreement.

C. A Party may disclose Information received under this Agreement with the express consent, in writing, of the other Party providing the Information, consistent with the following terms:

(i) After obtaining written consent, a Party may disclose Information it has received from the other Party:

(a) To a domestic court or in a domestic judicial proceeding, for the purposes identified in Article 2(B);

(b) In furtherance of verifying identity or establishing the provenance of identity documents, in connection with re-documentation or return of a National of a Third Country with the government of that third country. However, the Party disclosing the Information shall make best efforts to ensure that the disclosure of Information:

1. Could not cause the Information to become known to any government, authority or person from which the subject of the Information is seeking or has been granted protection (a) in Australia under domestic laws or processes implementing Australia's obligations under the Convention relating to the Status of Refugees, done on 28 July 1951 (the "1951 Refugee Convention"); the Protocol relating to the Status of Refugees, done on 31 January 1967 (the "1967 Protocol"); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done on 10 December 1984 (the "Convention against Torture"); or the International Covenant on Civil and Political Rights, done on 16 December 1966 (the "ICCPR").; or (b) in the United States under domestic laws implementing U.S. obligations under the 1967 Protocol or the Convention against Torture.

2. Does not occur in circumstances where, by virtue of the government, authority or person becoming aware of such Information, it is reasonably foreseeable that the subject of the Information may become eligible for the protections set out in paragraph (C)(i)(b)(1) above;

3. Does not occur in circumstances where, by virtue of the government, authority or person becoming aware of such Information, the subject of the Information or their family members may be placed at risk of refoulement, or any other type of harm contemplated under the 1951 Refugee Convention, the 1967 Protocol, or the Convention against Torture.

(c) Subject to paragraph (C)(ii), below, for such other purpose specifically described in the providing Party's advance written authorization: including to any private party, the public, a third party foreign government, or an international organization, or for a purpose not identified in Article 2(B), to a court or in a judicial proceeding.

(ii) The providing Party may condition its consent with caveats or restrictions on the use of such Information, which shall not include generic restrictions with respect to the legal standards of the receiving Party for processing personal data. In such instances, the receiving Party shall be bound by any such conditions.

(iii) Consent may be provided either in response to a specific request or through an implementing arrangement.

D. The Parties shall not interpret this Article to preclude the use or disclosure of Information to the extent that there is an obligation to do so under the domestic law of the Party that received the Information. In these circumstances, the Party requiring such use or disclosure shall endeavor to notify the other Party in advance and provide details of that use or disclosure. In the exceptional case where advance notice is not practicable, the Party using or disclosing the Information shall notify the other Party as soon as possible.

ARTICLE 6

EXEMPTIONS

A. If a Party determines that sharing Information under this Agreement would be inconsistent with its domestic law, or detrimental to its national sovereignty, national security, public order, or other important national interest, the Party may decline to provide all or part of the Information, or offer to provide the Information in whole or in part subject to such terms and conditions as it may specify.

B. This Agreement is made within the context of Australia and United States being parties to important treaties of the United Nations on human rights, including the ICCPR and the Convention against Torture. The Parties affirm that this Agreement shall be implemented consistent with their obligations under those treaties and any domestic legislation implementing those treaties, as applicable.

ARTICLE 7

ACCESS, CORRECTION AND NOTATION

A. Nothing in this Agreement shall interfere with a Party's legal obligations, as set forth in its respective laws, to provide data subjects with information as to the purposes of the processing and the identity of the data controller, the recipients or categories of recipients, the existence of the right of access to and the right to rectify the data concerning him or her and any further information such as the legal basis of the processing operation for which the data are intended, the time limits for storing the data and the right of recourse, in so far as such further information is necessary, having regard for the purposes and specific circumstances in which the data are processed, to guarantee fair processing with respect to data subjects.

B. Such information may be denied in accordance with the respective laws of the Parties, including if providing information may jeopardize:

(i) The purpose of the processing;

(ii) Investigations or prosecutions conducted by the competent authorities in the United States or by the competent authorities in Australia; or

(iii) The rights and freedoms maintained by third parties.

ARTICLE 8

PROTECTION OF INFORMATION

A. The Parties shall have in place the necessary technical measures and organizational arrangements to protect Information against accidental or unlawful destruction, accidental loss, or unauthorized disclosure, alteration,

access or any unauthorized form of processing. The Parties, in particular, shall take reasonable measures to ensure that only those authorized to access personal data can have access to such data.

B. Implementing arrangements or other technical arrangements that govern the procedures for automated biographic and biometric queries under this Agreement shall provide:

(i) That appropriate use is made of modern technology to ensure data protection, security, confidentiality, and integrity;

(ii) That encryption and authorization procedures recognized by the competent authorities are used when having recourse to generally accessible networks; and

(iii) For a mechanism to ensure that only permissible queries are conducted.

C. Each Party shall notify the other promptly, but no later than forty-eight (48) hours after becoming aware of any material accidental or unauthorized access, use, disclosure, modification or disposal of Information received under this Agreement and shall furnish all necessary details of the material accidental or unauthorized access, use, disclosure, modification or disposal of that Information as appropriate.

D. Each Party shall take appropriate action, including under the civil or criminal law or both, in the event of misuse, unauthorized alteration or deletion of, or unauthorized use or disclosure of, any Information shared under this Agreement.

E. A Party shall notify the other by telephone or in writing, to include electronic mail, promptly and in any event no later than forty-eight (48) hours, if there is a situation that disrupts the intended transfer of Information between them.

F. The Parties shall use and disclose personal Information fairly and in accordance with their respective laws and ensure that:

(i) Personal data provided are adequate and relevant in relation to the specific purpose of the transfer; and

(ii) Possibly inaccurate personal data are brought to the attention of the receiving Party in a timely manner in order that appropriate corrective action is taken.

ARTICLE 9

RETENTION, ARCHIVING AND DISPOSAL

A. Each Party shall retain personal data received under this Agreement in an orderly and secure system, only for as long as is necessary for the specific purpose for which the data were provided or further processed in accordance with this Agreement, and in accordance with applicable domestic law.

B. A Party shall destroy, as soon as practicable, any data received under this Agreement that it determines are not relevant to the intended query or that are erroneously provided.

C. Each Party shall operate a system of database and document control that provides for the orderly and secure archiving and destruction of Information that has been received under this Agreement, in accordance with the relevant Party's domestic law.

ARTICLE 10

FINANCIAL ARRANGEMENTS

Subject to applicable laws and regulations, each Party shall bear the expenses incurred by its authorities in implementing this Agreement. In special cases, the Parties may agree to different arrangements, where authorised under domestic laws or processes.

ARTICLE 11

REVIEW AND CONSULTATION

A. The Parties shall consult each other regularly on the implementation of provisions of this Agreement.

B. Each Party shall be responsible for notifying the other Party as to any substantive or material change to its laws that would fundamentally alter its ability to comply with this Agreement within fourteen (14) days.

C. In the event of any dispute regarding the interpretation or application of this Agreement or any implementing arrangement, the Parties shall consult each other in order to facilitate its resolution.

D. The Parties shall jointly determine in advance the modalities and terms of the consultation.

ARTICLE 12

SETTLEMENT OF DISPUTES

A. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt to arrive at a

mutually satisfactory resolution of any matter that might affect its implementation or administration.

B. If the Parties cannot, through consultations, come to a mutually satisfactory resolution of a dispute regarding the interpretation or application of this Agreement, they shall address the dispute through diplomatic channels.

ARTICLE 13

AMENDMENT AND TERMINATION

A. The Parties may amend this Agreement by mutual agreement, in writing.

B. A Party may terminate this Agreement at any time by giving notice in writing to the other Party. The termination shall be effective 90 days after the date of the notice, except that the provisions of Articles 5, 7, 8 and 9 shall continue to apply to Information exchanged pursuant to this Agreement, even after the Agreement is terminated.

ARTICLE 14

ENTRY INTO FORCE

This Agreement shall enter into force on the date of the last note of an exchange of diplomatic notes in which the Parties notify each other of the completion of their respective internal procedures necessary for the entry into force of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective governments, have signed this Agreement:

DONE at CANBERRA, this 27th day of AUGUST, 2014, in duplicate, in the English language.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF AUSTRALIA: