



Australian Government
Department of Foreign Affairs and Trade

DFAT – Goods and Services Contract

Dated

Commonwealth of Australia represented by the Department of Foreign Affairs and Trade (ABN 47 065 634 525) (**‘DFAT’**)

[***insert Contractor’s name***] (ABN [***insert***]) (**‘Contractor’**)

FOR

Angau Hospital Project Delivery Office (Papua New Guinea)

DFAT AGREEMENT NUMBER: 0000

CONTRACT made day of 20

BETWEEN:

COMMONWEALTH OF AUSTRALIA represented by the Department of Foreign Affairs and Trade ("DFAT") **ABN 47 065 634 525**.

AND

[Contractor's Name], ABN XX XXX XXX XXX of [insert address] (the "Contractor").

RECITALS:

- A. DFAT requires the provision of certain Goods and/or Services for the purposes of [insert name of Project, which matches contract title] (the "Project").
- B. The Contractor has expertise in the provision of the Goods and/or Services and has offered to provide the Goods and/or Services to DFAT subject to the terms and conditions of this Contract.

OPERATIVE:

DFAT and the Contractor promise to carry out and complete their respective obligations in accordance with the attached **Parts 1-7** and the Schedules.

STRUCTURE OF THE CONTRACT

This Contract has seven (7) **Parts** and eleven twelve (11) (*revise as required*) **Schedules** as follows:

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CONTRACT DETAILS

Parties:	DFAT and the Contractor			
DFAT:	The Commonwealth of Australia represented by the Department Foreign Affairs and Trade (ABN 47 065 634 525)			
Address:	R.G Casey Building, John McEwen Crescent Barton, ACT 0221			
DFAT's (Management) Representative:	Contact Information:	{insert}		
DFAT Escalation Representative	Contact information	{insert}	:	
Contractor :	{insert}	ARBN:	{insert}	
	Acting as Trustee:	Y/N		
	Small Business:	Y/N	Registered for GST:	Y/N
		ABN:	{insert}	
Contractor's (Management) Representative:	Name:	{insert}	Telephone:	{insert}
	Position:	{insert}		
	Street address:	{insert}		
	Postal address:	{insert}		
	E-mail address:	{insert}		
Contractor's Escalation Representative:	Name:	{insert}	Telephone:	{insert}
	Position:	{insert}		
	Street address:	{insert}		
	Postal address:	{insert}		
	E-mail address:	{insert}		
Term:	Commencement Date:	{insert Contract execution date}		
	Project Start Date:	{insert date}		
	Services to commence in country			
	Term:	{insert Project Start Date and End Date}		
	Option Period:	{Insert option Period}		

STANDARD CONDITIONS

PART 1 – COMMON PROVISIONS

1. DEFINITIONS

1.1. In this Contract:

APS Code of Conduct refers to the code of conduct of the Australian Public Service available at www.apsc.gov.au.

APS Values refers to the values of the Australian Public Service available at www.apsc.gov.au.

Adviser means an individual who provides advice (including technical, leadership/oversight) on the strategic direction or implementation of the Project/ Program and is engaged under this Contract by the Contractor, but does not include locally engaged staff employed in non-specialist roles associated with this Contract (including staff engaged in administrative or logistical roles, Contractor's head office staff or contractor representatives).

Adviser Remuneration Framework means the Framework that defines DFAT's policies and procedures for determining the remuneration of commercially contracted international aid advisers and outlines requirements for implementing and monitoring these policies. DFAT staff (and Managing Contractors engaging Advisers on DFAT's behalf) must work within the Framework, as amended from time to time. It is and available on DFAT's website at <http://dfat.gov.au/about-us/publications/Pages/adviser-remuneration-framework.aspx>.

Associates means an organisation or organisations whom the Contractor identified in its tender for the provision of the Services as an associate or joint-venture or consortium member to provide the Goods and/or Services.

Authority includes any Australian Government (whether State, Territory, Commonwealth or Local Government) Ministry, department, government, governmental or semi-governmental authority, agency, instrumentality, council, corporation, utility or other legal entity.

Business Day any day that is not a Saturday, Sunday, public holiday or bank holiday in the ACT.

Changed Tax means a new or existing Commonwealth, State or Territory Government or Partner Country tax, duty or charge imposed or a change in an existing Commonwealth, State or Territory Government or Partner Country tax, duty or charge after the execution of this Contract.

Commencement Date is the date of execution of this Contract by the Parties.

Commonwealth means the Commonwealth of Australia or DFAT, as appropriate.

Commonwealth Grant Rules and Guidelines means the guidelines issued by the Minister for Finance that govern granting activities by Commonwealth agencies and departments. Details are available at: <http://www.finance.gov.au>

Commonwealth Procurement Rules ('CPRs') means the Rules made in accordance with the Public Governance Performance and Accountability Act 2013 (Cth).

Confidential Information means the Confidential Information identified by the Parties at **Schedule 4** (Confidential Information) to this Contract.

Contract Material means all material brought into existence in the course of the Contractor's performance of this Contract, including documents, visual data, information, text and data stored by any means.

Contract means this agreement including the Details, Parts, Schedules and any Annexes (but not including headings).

Contractor Confidential Information means information that is by its nature confidential and/or is designated as confidential in **Schedule 4** (Confidential Information) but does not include this Contract or information which is or becomes public knowledge other than by breach of this Contract or any other confidentiality obligation.

Contract Details means the details set out in Contract Details table of this Contract.

Contract Management Group means the representatives nominated by DFAT and the Contractor as set out in the Contract Details table of this Contract.

Data includes any information provided by the Contractor under this Contract from any source, or collected or created by the Contractor in connection with the Services, whether in magnetic, electronic, hardcopy or any other form.

Daily Remuneration Rate has the meaning given in **Schedule 2** (Pricing Schedule).

Day/s means calendar days

Dependent Child means a child under 21 years of age who is a natural, step- or adopted child of the Adviser, a child of the Adviser's Partner or a child for whom the Adviser is a legal guardian."

DFAT means Commonwealth of Australia represented by the Department of Foreign Affairs and Trade.

DFAT Confidential Information means information that is by its nature confidential and/or is designated as confidential in **Schedule 4** (Confidential Information) but does not include this Contract or information which is or becomes public knowledge other than by breach of this Contract or any other confidentiality obligation.

DFAT Material means any Material created by DFAT, and/or provided by DFAT to the Contractor.

DFAT Representative means the person nominated by DFAT in the Contract Details.

DFAT Supplied Items means all items of equipment, materials and facilities owned or controlled by DFAT which the Contractor and its Personnel may procure or use in the course of providing the Goods and/or Services.

Disposal means disposal by an authority for the disposal of Commonwealth records in accordance with the *Archives Act 1983* (Cth).

Encumbrance means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention.

Escalation Representative means the Representative appointed by either the Contractor or DFAT in accordance with **Clause 51** (Dispute Resolution).

Fees means the fees for the Services set out in **Schedule 2** (Pricing Schedule), not including Reimbursable Costs.

Force Majeure Event includes acts of god or war, pandemic, act of public enemy, terrorist act, civil unrest, nationalisation, expropriation, embargo, restraint of property by government, strike or other form of industrial dispute, provided that they are outside the reasonable control of the affected Party and could not have been prevented or avoided by that Party taking all reasonable steps.

Former DFAT Employee A person who was previously employed by DFAT, whose employment ceased within the last **nine (9) months** and who was substantially involved in the design, preparation, appraisal, review, and or daily management of this Contract.

Fraud means dishonestly obtaining a benefit, or causing a Loss, by deception or other means, and includes alleged, attempted, suspected or detected fraud.

General Interest Charge Rate means the general interest charge rate defined in the *Taxation Administration Act 1953* (Cth) on the day payment is due, expressed as a decimal rate per day.

Goods means the parts, equipment, consumables or other items (if any) described in **Schedule 1** (Statement of Requirements).

Independent Auditor means an auditing firm that does not have any affiliations with, and is not currently engaged by, the Contractor in any manner.

Intellectual Property means all intellectual property rights including copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered and unregistered designs and patents, and any other rights resulting from intellectual endeavour.

Long Term Adviser or **LTA** means an Adviser working continuously for **six (6) months** or longer on the Project.

Loss or Losses means any damage, liability, cost or expense including legal expenses.

Material includes property, equipment, information, data, photographs, documentation or other material in any form, including any software, reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.

Mobility Allowance means the supplemental payment payable to Long Term Advisers in addition to the Monthly Remuneration Rate in accordance with the Adviser Remuneration Framework.

Mobility Allowance Supplement means a fixed monthly allowance paid to long term advisers who have relocated in-country from their permanent country of residence and are accompanied by at least one Dependent Child who attends kindergarten (primary education) through to year 12 (secondary education).

Monthly Remuneration Rate has the meaning given in **Schedule 2** (Pricing Schedule).

Moral Rights means the rights of authors in relation to attribution and integrity of authorship or the right against false attribution.

MOU or Treaty means the Memorandum of Understanding or Treaty in relation to Development Cooperation, including any related Subsidiary Arrangement entered into between DFAT and the Government of the relevant Partner Country, if any, which deals with the governmental arrangements applicable to this Contract.

NAA means the National Archives of Australia.

Partner Country means the country/countries in which the Services are to be delivered as specified in **Schedule 1** (Statement of Requirements).

Partner Government means the Government of the relevant Partner Country or Partner Countries.

Party means DFAT or the Contractor or a Department or Agency that has signed **Schedule 9** (Department/Agency Access Form).

Payment Milestone means a milestone identified in **Annex 1** (**Management Fees Payable by Milestone**) to **Schedule 2** (Pricing Schedule) for which the Contractor is entitled to receive a payment in accordance with the Contract.

Persistent Breach means **three (3)** or more breaches of the same Performance Standard as outlined in **Clause 9** of the Standard Conditions or any performance standards outlined in **Schedule 1** (Statement of Requirements) in any Australian calendar year.

Personnel means the Contractor's officers, employees, agents, advisers, Contractors and subcontractors (including their respective personnel), and includes Specified Personnel and Associates.

Pre-existing Contractor Material means any Material developed by the Contractor that:

(a) is in existence at the Commencement Date or is subsequently brought into existence other than as a result of the performance of the Contract, and

(b) is embodied in, or attaches to, the Services or is otherwise necessarily related to the functioning or operation of the Services.

PGPA Act means the *Public Governance, Performance and Accountability Act 2013* (Cth).

Privacy Act means the *Privacy Act 1988* (Cth).

Privacy Commissioner means the person so named in the *Australian Information Commissioner Act 2010* (Cth).

PAYG means *Pay As You Go Withholding Non-compliance Tax Act 2012* (Cth).

Project/Program means the [Insert name of relevant Project or Program as identified on the Project Design Document].

Project Administration and Equipment means goods and services (such as office furniture, computers, vehicles, communications, utilities and office rent) required by the Contractor for the day-to-day administration of the Project/Program.

Project Director means the specified person nominated in **Schedule 1** (Statement of Requirements)

Project Specific Conditions means **Part 7** of this Contract.

Project Start Date means the date by which the Contractor must commence the Services in the Partner country.

Project Supplies means goods provided to the Partner Country by the Contractor during the course of the Project/Program as required by this Contract.

Record has the meaning given to the term in the *Acts Interpretation Act 1901* (Cth).

Recordkeeping means making and maintaining complete, accurate and reliable evidence of business transactions relevant to the Goods and/or Services provided under this Contract in the form of documents and other recorded information.

Reimbursable Costs means any costs incurred by the Contractor for which DFAT shall reimburse the Contractor as specified in **Schedule 2** (Pricing Schedule).

Relevant Employer has the meaning given to the term in the *Workplace Gender Equality Act 2012* (Cth) ('WGE Act').

Relevant List means any similar list to the World Bank List maintained by any other donor of development funding.

Services means the Services described in the Contract Details, **Schedule 1** (Statement of Requirements) and the Contractor's other obligations under the Standard Conditions of this Contract.

Short Term Advisers or **STA** means Advisers working on the Project/Program for less than **six (6) months** continuously.

Small Business means an enterprise that employs less than the full time equivalent of **20** persons on the day that the Contract is entered into.

Specified Acts means the use, reproduction, adaptation or exploitation of Material in conjunction with the Contract Material.

Special Location Allowance means the country specific income supplement that is payable to Long Term Advisers in accordance with the Adviser Remuneration Framework.

Specified Personnel means the personnel listed as Specified Personnel in **Schedule 1** (Statement of Requirements).

Standard Contract Conditions means the provisions contained in **Parts 1-6** of the Contract.

Supplies means Project Supplies and Project Administration and Equipment purchased by the Contractor for use in this Project/Program.

Tax Invoice means a tax invoice which complies with the requirements under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ("GST Act").

Taxable Supply has the meaning it has under the GST Act.

Tender means the Tender submitted by the Contractor together with accompanying documentation as an offer to undertake the Services.

Third Party Issues means any issues or events which may affect the provision of the Goods and/or Services and which are within the control of a party other than DFAT, the Australian High Commission or Australian Embassy in or having responsibility for the Partner Country or the Contractor. |

Third Party Material means any Material made available by the Contractor for the purpose of the Contract in which a third party holds Intellectual Property Rights.

Use includes run (in the case of software), copy, modify, adapt, develop, integrate or deal with in any other way.

World Bank List means a list of organisations maintained by the World Bank in its "Listing of Ineligible Firms" or "Listings of Firms, Letters of Reprimand" posted at: <http://web.worldbank.org>

2. **INTERPRETATION**

- 2.1. In this Contract including the Recitals and Schedules, unless the context otherwise requires:
- (a) a reference to this Contract or another instrument includes any variation, amendment, novation, or replacement of any of them;
 - (b) words in the singular include the plural and vice versa;
 - (c) words denoting a gender include all genders;
 - (d) a reference to a person includes a natural person and any type of body or entity whether incorporated or governmental, and any executor, administrator or successor in law of the person;
 - (e) a reference to any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (f) “shall” and “must” denote an equivalent positive obligation;
 - (g) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
 - (h) a reference to ‘dollars’, ‘\$’ or AUD is a reference to Australian currency;
 - (i) a reference to any Party to this Contract includes a permitted substitute or a permitted assign; and
 - (j) if a word or phrase is defined, other parts of speech have a corresponding meaning.
- 2.2. No rule of construction shall apply in the interpretation of this Contract to the disadvantage of one Party on the basis that such Party put forward or drafted this Contract or drafted any provision of this Contract.

3. INCONSISTENCY

- 3.1. If there is any inconsistency (whether express or implied from the Contract or otherwise) between the **Standard Contract Conditions (Parts 1 – 6)** as applicable) and a **Schedule** to the Contract, the Schedules are to be read subject to the **Standard Contract Conditions** and the relevant provisions of **Standard Contract Conditions** of the Contract prevail to the extent of the inconsistency unless explicitly amended in the **Project Specific Contract Conditions (Part 7)**.
- 3.2. If there is any inconsistency between Schedules, the following order of priority in interpretation applies:
- (a) the Statement of Requirements (**Schedule 1**);
 - (b) the Pricing Schedule (**Schedule 2**); and
 - (c) all other Schedules.
- 3.3. If there is any inconsistency between the contents of a Schedule in circumstances where the Schedule is made up of a number of sub-documents, the body of the

Schedule will take priority over the sub-documents. The sub-documents have equal status.

4. **CONTRACT TERM**

- 4.1. This Contract commences upon execution by both Parties on the Commencement Date and continues for the Term as set out in the Contract Details or until all obligations under this Contract have been fulfilled, or this Contract is terminated, except for any clauses which survive termination.
- 4.2. The Contractor must commence provision of the Goods and/or Services on the Project Start Date by [insert Project Start Date] and complete the provision of Goods and/or Services by [insert Project End Date] as set out in the Contract Details.
- 4.3. The Contractor grants to DFAT an option to extend the term of this Contract for a period of up to [Insert number] () of [months/years]. DFAT may exercise the option by notifying the Contractor in writing prior to the date of completion of the Services specified in **Clause 4.2**. If DFAT exercises the option, the Contractor must continue to provide the Services for the extended term on the terms and conditions contained in this Contract, except that this **Clause 4.3** shall no longer apply |
- 4.4. Except to the extent referred to in this Clause, each Party must bear and is responsible for its own costs in connection with the preparation, execution and carrying into effect of this Contract.

5. **SCOPE**

- 5.1. This Contract sets out the terms and conditions on which the Contractor agrees to provide the Goods and/or Services and to secure the aims and objectives of the Project/Program as applicable.
- 5.2. The Goods and/or Services to be provided by the Contractor are detailed in **Schedule 1** (Statement of Requirements).
- 5.3. Without limiting any other rights or remedies available to DFAT under this Contract, DFAT may reduce funding available under this Contract if there is a policy or funding decision which impacts upon Australia's overseas development assistance budget and associated programs.
- 5.4. Upon reasonable notice being given by DFAT to the Contractor of policy or funding decisions under Clause 5.3, the Contractor will negotiate with DFAT reasonably reduced management fees, personnel fees and operational costs to be paid under this Contract.
- 5.5. This Contract constitutes the sole and entire agreement between the Parties about its subject matter.

6. **CONTRACTOR OBLIGATIONS**

- 6.1. The Contractor must:

- (a) provide DFAT with the Good and/or Services as described in **Schedule 1** (Statement of Requirements) in addition to providing DFAT with any incidental Goods and/or Services to enable performance of this Contract;
- (b) follow DFAT directions (including those issued by an Australian Embassy and High Commission) and cooperate with any third party appointed by DFAT to provide the Goods and/or Services including the provision of any reasonable assistance to third party providers of Goods and/or Services as DFAT may request;
- (c) ensure the adequacy and lawfulness of any workers' compensation insurance for its Personnel, both in Australia, and in any relevant Country it operates in;
- (d) remain responsible for the payment of any taxes, or entitlements, other statutory charges and/or any other amount payable to its Personnel and agrees to indemnify DFAT in relation to any fine, penalty or other charge imposed on DFAT as a result of the Contractor's non-compliance with this **Clause 6.1**;
- (e) assign all Advisers a Job Level and Professional Discipline Category in accordance with the Adviser Remuneration Framework and engage and remunerate Adviser's in accordance with the relevant classification specified in the Adviser Remuneration Framework; and
- (f) ensure that Advisers provide a written declaration prior to confirming their eligibility for allowances under the Adviser Remuneration Framework. The written declaration shall be substantially in accordance with the declaration at **Schedule 7** (Declaration of Status).

6.2. The Contractor is responsible for all Goods (and the risk of loss or damage to such Goods) until DFAT accepts them and title passes to DFAT upon payment of the Contractor.

7. NON-EXCLUSIVITY AND VOLUME

7.1. The Contractor acknowledges that:

- (a) DFAT has no obligation to acquire any minimum volume of Goods and/or Services from the Contractor; and
- (b) The Contractor may not be the exclusive provider of Goods and/or Services to DFAT similar to those provided under this Contract.

8. GOODS AND SERVICES TO OTHER AGENCIES

8.1. The Contractor may provide Goods and/or Services to any other Commonwealth Agency at its request provided it completes **Schedule 8** (Department/Agency Access Form).

8.2. Where a Contractor enters into an arrangement in accordance with **Schedule 8** (Department/Agency Access Form), the terms and conditions of this Contract will apply to the Contract entered into by that Commonwealth Agency.

9. PERFORMANCE STANDARDS

- 9.1. Where delivering the Goods and/or Services, the Contractor must at all times meet the performance standards outlined in this **Clause 9** and any performance standards outlined in **Schedule 1** (Statement of Requirements).
- 9.2. Where this Contract is for Services they must be performed:
- (a) with due skill, care and diligence;
 - (b) to a professional standard and in a timely manner; and
 - (c) in the most cost-effective manner and using suitable materials.
- 9.3. Where this Contract is for Goods they must:
- (a) be reasonably fit for their intended purpose;
 - (b) be provided in compliance with all relevant Australian (or if none apply, international) and Partner Country industry standards, best practice, guidelines and codes of practice;
 - (c) ensure any product resulting from the Goods will be of such a nature and quality, state or condition that they can be reasonably expected to achieve their intended result;
 - (d) be provided in a way that demonstrates the Contractor has sought to improve the quality, effectiveness and efficiency of the Goods at every opportunity; and
 - (e) where for Construction, be provided in accordance with the design brief and/or functionality requirements and, using new materials unless otherwise specified.

10. **WARRANTIES**

- 10.1. The Contractor warrants that it does not have any judicial decision against it relating to employee entitlements (not including decisions under appeal), that has not been met in full by the Contractor.
- 10.2. If any judicial decision against the Contractor relating to employee entitlements occurs during the Term of the Contract, the Contractor must notify DFAT immediately.
- 10.3. The Contractor warrants that it has made its own assessment of all information made available to the Contractor in respect of the Services and sought all appropriate professional advice.
- 10.4. The Contractor warrants that it has full corporate power and authority to enter into, perform and observe its obligations under this Contract and that the execution, delivery and performance of this Contract shall be duly and validly authorised by all necessary corporate action.
- 10.5. Where the Contractor is a trustee, the Contractor warrants that it enters this Contract personally and in its capacity as trustee has the power to perform its obligations under this Contract.

Goods

- 10.6. In relation to Goods provided to DFAT, the Contractor warrants that the Goods:
- (a) are of acceptable quality, are safe and durable;
 - (b) are free from defects in: design, performance, materials and workmanship;
 - (c) are fit for all the purposes for which goods of that kind are commonly supplied;
 - (d) comply with Australian (or if none apply, international) standards;
 - (e) will not be adversely affected in any way by any date-related issue; and
 - (f) are free of any Encumbrances.
- 10.7. The Contractor must ensure that DFAT obtains the full benefit of any third party warranties available for the Goods.

Services

- 10.8. In relation to the Services provided to DFAT by the Contractor under this Contract, the Contractor represents and warrants that:
- (a) its Personnel have the necessary experience, skill, knowledge, expertise and competence to perform the Services; and
 - (b) the Services or related products are free from defects in design, performance and workmanship and are safe and durable.

DFAT Property

- 10.9. The Contractor warrants that it and its Personnel will:
- (a) use in a proper manner and maintain in good order all DFAT Supplied Items which the Contractor and its Personnel may use in the course of providing the Goods and/or Services under this Contract; and
 - (b) promptly return all DFAT Supplied Items upon completion of use or otherwise upon expiry or termination of this Contract.

11. CONFLICT OF INTEREST

- 11.1. The Contractor warrants that, at the date of signing this Contract, no conflict of interest exists, or is likely to arise in the performance of its obligations under this Contract.
- 11.2. The Contractor must use its best endeavours to ensure that no conflict of interest arises in relation to the performance of any aspect of this Contract.

12. INSURANCES

- 12.1. The Contractor must arrange and maintain for the Term of the Contract unless otherwise specified:

- (a) Public Liability insurance with a limit of at least **AUD20 million** for each and every claim which covers Loss of, or damage to, or Loss of Use of any real or personal property and/or any personal injury to, illness or death of any person arising from the performance of the Contract;
 - (b) Motor vehicle third party property damage insurance;
 - (c) Workers' Compensation insurance in accordance with **Clause 6.1 (c)** which:
 - (i) fully insures the Contractor for any amount it becomes liable to pay under any statute relating to workers' or accident compensation or for employer's liability at common law;
 - (ii) is effected in the Partner Country as well as every state or territory in Australia where its Personnel normally reside or in which their contract of employment was made; and
 - (iii) where possible at law, extends to indemnify DFAT as principal for DFAT's liability to persons engaged by the Contractor.
 - (d) adequate property insurance covering any Contract Material, Supplies and the reinstatement of any Data while in the care, custody or control of the Contractor for its full replacement value;
 - (e) adequate Professional Indemnity insurance to cover the Contractor's obligations under this Contract. The Contractor must maintain the necessary insurance each year until the expiration of **three (3)** years after the full Term of the Contract or earlier termination of the Contract;
 - (f) adequate medical and dental insurance for its Personnel who are engaged to operate outside their country of permanent residence; and
 - (g) adequate insurance for medical evacuation and evacuation resulting from an insured event for all its Personnel.
- 12.2. Where there is no workers compensation legislation in force in the Partner Country, the Contractor should arrange adequate personal accident and illness insurance (accidental death and weekly benefits) for any of its Personnel not otherwise covered for the Term of the Contract.
- 12.3. The Contractor must, within fourteen **(14) Business Days** after a request by DFAT, provide for any insurance policy: a certificate of currency, a list of exclusions; and the amount of excess payable.
- 12.4. Where any policy is to be cancelled, or the level of cover reduced, the Contractor must give DFAT at least fourteen **(14) Business Days** prior notice of the cancellation.
- 12.5. Neither the arrangement and maintenance of insurance nor any failure to arrange and maintain such insurance shall in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Contractor under the other provisions of this Contract or at law.

- 12.6. Failure by the Contractor to maintain all necessary insurances will entitle DFAT to terminate this Contract immediately in accordance with **Clause 53** (Termination for Breach).
- 12.7. In the event of an insurance claim any deductible or excess payable will be the responsibility of the Contractor.

13. **INTELLECTUAL PROPERTY RIGHTS**

- 13.1. This **Clause 13** does not affect the ownership of the Intellectual Property Rights in any Pre-existing Contractor Material or Third Party Material.
- 13.2. The Contractor must obtain all necessary copyright and other Intellectual Property Rights permissions before making any Pre-Existing Contractor Material or Third Party Material available as a part of the Services.
- 13.3. All Intellectual Property Rights in the Contract Material vest in DFAT on creation.
- 13.4. To the extent that:
 - (a) DFAT needs to use any of the Pre-Existing Contractor Material or Third Party Material to receive the full benefit of the Services, the Contractor grants to, or must obtain for, DFAT, a perpetual, world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate that Pre-Existing Contractor Material or Third Party Material; or
 - (b) the Contractor needs to use any of the DFAT Material, or Contract Material, for the purpose of performing its obligations under this Contract, DFAT grants to the Contractor for the term of this Contract, subject to any conditions or restrictions specified by DFAT, a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to Use, reproduce, adapt, modify, distribute and communicate such Material solely for the purpose of providing the Services.
- 13.5. The licence granted to DFAT under **Clause 13.4 (a)** does not include a right to exploit the Pre-Existing Contractor Material or Third Party Material for DFAT's commercial purposes.
- 13.6. The Contractor must deliver all Contract Material to DFAT or to the Partner Government counterpart agency as may be directed in writing by DFAT.
- 13.7. The Contractor warrants that:
 - (a) the warranted Materials and DFAT's use of those warranted Materials, will not infringe the Intellectual Property Rights or Moral Rights of any person, and
 - (b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided in this **Clause 13**.
- 13.8. If a third party claims, or DFAT reasonably believes that a third party is likely to claim, that all or part of the warranted Materials infringe their Intellectual Property

Rights or Moral Rights the Contractor must, in addition to the Contractor's obligation under **Clause 14** (Indemnities) and to any other rights that DFAT has against the Contractor, promptly, at the Contractor's expense:

- (a) secure the rights for DFAT to continue to use the affected warranted Materials free of any claim or liability for infringement; or
- (b) replace or Modify the affected warranted Materials so that the warranted Materials or the use of them does not infringe the Intellectual Property Rights or Moral Rights of any other person without any degradation of the performance or quality of the affected warranted Materials.

13.9. The Contractor warrants or undertakes that the author of any Contract Material, other than Prior Material, has given or will give written consent to the Specified Acts (whether those Specified Acts occur before or after the consent is given) and that such consent extends directly or indirectly to DFAT.

14. INDEMNITIES

14.1. The Contractor indemnifies DFAT (and its officers, employees, agents, and any relevant Partner Country) against any Loss suffered or incurred (including personal injury, death and legal costs and expenses on a solicitor/own client basis) and the cost of time and resources arising from:

- (a) a breach of the Contractor's performance of this Contract;
- (b) an infringement, or an alleged infringement, of the Intellectual Property Rights of any person, which occurred by reason of the performance or use of the Services;
- (c) an infringement or an alleged infringement of the provisions of the *Privacy Act 1988*(Cth), in connection with the Services;
- (d) an investigation carried out by the Ombudsman which arises directly or indirectly, as a result of, and/or due to conduct of the Contractor or its Personnel; and/or
- (e) any act or omission involving fault on the Contractor's or the Contractor Personnel's part in connection with this Contract.

14.2. The indemnity in this **Clause 14** is reduced to the extent that the Loss or liability is directly caused by DFAT, its employees or contractors (except the Contractor) as substantiated by the Contractor.

14.3. DFAT must take any reasonable action to mitigate any Loss arising out of **clause 14.1**.

15. BRANDING

15.1. The Contractor must:

- (a) identify, and with prior DFAT approval, implement appropriate opportunities for publicising the Project/Program (including signage at each Project/Program site that acknowledges the funding of the Project/Program)

in accordance with “DFAT Guidelines for managing Contractors (or NGOs or multilateral agencies) on the use of logos and other forms of acknowledgement” at all times;

- (b) only use the Australian Government/DFAT crest logo with prior approval, (in-line version or stacked version) in Australia or the Australian Aid identifier overseas to denote association with Australia, the Australian Government or DFAT in any publicity or other project related materials; and
- (c) promptly remove Contractor signs at the completion of the Project/Program unless otherwise instructed by DFAT.

16. PUBLICITY

- 16.1. The Contractor may not make media or other announcements or releases relating to this Contract without DFAT’s prior written approval except to the extent that the announcement or release is required to be made by law.

17. AGENCY

- 17.1. The Contractor, and its Personnel are not, will not be deemed to be and must not represent themselves as being, by virtue of this Contract, an employee, partner or agent of DFAT.
- 17.2. The Contractor acknowledges that it has no authority to bind DFAT without DFAT’s specific consent.

18. AMENDMENT

- 18.1. The Contractor must not do anything that amounts to a variation of this Contract in whole or in part otherwise than in accordance with this Clause.
- 18.2. The provisions of this Contract may not be amended either in law or in equity except in writing and substantially in the form of a Deed of Amendment signed by both DFAT and the Contractor.

19. WAIVER

- 19.1. A waiver by either Party of a breach of a particular provision of this Contract by the other Party does not operate as a waiver in respect of any other breach, and the failure of either Party to enforce at any time a provision of this Contract is not to be interpreted as a waiver of the provision.

20. SEVERANCE

- 20.1. If any term or condition of this Contract is not enforceable, other terms or conditions of the Contract that are self-sustaining and capable of separate enforcement are to continue in operation.

21. **ASSIGNMENT**

- 21.1. The Contractor may not assign or transfer any of its rights or obligations under this Contract without DFAT's prior written approval, and where consent is given the Contractor must execute a Deed of Novation substantially in the form of **Schedule 5** (Deed of Novation and Substitution).

22. **SURVIVAL**

- 22.1. The following clauses survive termination and expiry of this Contract:
Clause 10 (Warranties), **Clause 12** (Insurances), **Clause 13** (Intellectual Property), **Clause 14** (Indemnities), **Clause 25** (Investigation by the Ombudsman), **Clause 27** (Fraud), **Clause 32** (Confidentiality), **Clause 33** (Privacy), **Clause 39** (Recordkeeping), **Clause 42** (Audit) and any other clause, which by their nature, survive the expiry or termination of this Contract.
- 22.2. In addition to the survival of clauses outlined at **Clause 22.1**, the expiry or termination of this Contract will not extinguish or affect any rights of either Party against the other accrued prior to termination, or arising at any future time from any breach or non-observance of obligations under this Contract.

23. **GOVERNING LAW AND JURISDICTION**

- 23.1. This Contract and any transactions contemplated under this Contract are governed by, and are to be construed in accordance with the laws of the Australian Capital Territory. Each Party to the Contract unconditionally submits to the exclusive jurisdiction of the courts of the Australian Capital Territory.

24. **NOTICES**

- 24.1. A notice given under this Contract:
- (a) must be in writing, signed by the Representative, or other authorised officer, marked for the attention of the person set out below and sent to that persons relevant address, by prepaid ordinary post (airmail if posted to or from a place outside Australia) or by facsimile transmission, or by email to the person's email address; and
 - (b) will be taken to be received on the date it is delivered (if hand-delivered to the Party), in the case of a pre-paid letter sent by ordinary mail, on the third Business Day (seventh, if posted to or from a place outside Australia) after posting, or on the date of transmission if sent in its entirety to the recipient's facsimile machine (if sent by facsimile), or in the case of email, when it is delivered to a system from which the addressee can retrieve it.
- 24.2. The addresses, email addresses and fax numbers of the Parties are:

DFAT

Attention: *[insert name of relevant DFAT officer/Activity Manager and most appropriate address]*

Address: Department of Foreign Affairs and Trade
 R.G Casey Building
 John McEwen Crescent
 Barton ACT 0221
 AUSTRALIA

Fax: [insert]

E-mail: [insert]

Contractor

Attention: [insert]

Address: [insert]

Fax: [insert]

E-mail: [insert]

PART 2 - COMPLIANCE

25. INVESTIGATION BY THE OMBUDSMAN

- 25.1. In carrying out the Services, the Contractor, and an employee or sub-contractor of the Contractor, may be a “Commonwealth service provider” under Section 3BA of the *Ombudsman Act 1976* (Cth).
- 25.2. The Contractor must use its best endeavours, and must ensure that employees and sub-contractors of the Contractor use their best endeavours, in undertaking the Services, not to engage in conduct that:
- (a) would, if the Contractor or an employee or sub-contractor were an officer of DFAT, amount to a breach of duty or to misconduct; or
 - (b) should be brought to the attention of the principal officer of DFAT as defined in the *Ombudsman Act 1976* (Cth)..
- 25.3. If the Commonwealth Ombudsman commences an investigation of conduct of the Contractor, as a Commonwealth service provider, the Contractor, at the cost of the Contractor, must cooperate with the investigator including:
- (a) providing all documentation required by the investigator;
 - (b) making Contractor Personnel available to assist the investigator; and
 - (c) allowing the investigator, at any reasonable time of the day, to enter a place occupied by the Contractor and carry on the investigation at that place.
- 25.4. If the Ombudsman brings evidence to the notice of DFAT concerning the conduct of the Contractor, or of an employee or sub-contractor of the Contractor, the Contractor must, at the cost of the Contractor, take whatever remedial action is required by DFAT or by the Ombudsman to rectify the situation.

26. COUNTER-TERRORISM

- 26.1. The Contractor must ensure that funds provided under this Contract (whether through a subcontract or not) do not provide direct or indirect support or resources to:
- (a) organisations and/or individuals associated with terrorism, and
 - (b) organisations and individuals for whom Australia has imposed sanctions under: the *Charter of the United Nations Act 1945* (Cth) and regulations made under that Act; the *Autonomous Sanctions Act 2011* (Cth) and regulations made under that Act or the World Bank List or a Relevant List.

27. FRAUD

- 27.1. The Contractor must not, and must ensure that Personnel do not, engage in any Fraud and must prevent and detect Fraud, including Fraud by its Personnel.
- 27.2. Within one month of the Project Start Date, the Contractor must conduct a Fraud risk assessment and produce a Fraud control strategy in compliance with the Commonwealth Fraud Control Framework available at www.ag.gov.au. The risk assessment and strategy must contain appropriate fraud prevention, detection, investigation and reporting processes and procedures.
- 27.3. The Contractor is responsible for preventing and detecting Fraud including Fraud within those functions outsourced / performed by a sub-contractor or under any other arrangement established by the Contractor relating to the performance of this Contract.
- 27.4. The Contractor must ensure that Personnel are responsible and accountable to the Contractor for preventing and reporting any Fraud as part of their routine responsibilities. The Contractor must ensure that Personnel who are not employed by the Contractor report Fraud to the Contractor within five (5) Business Days.
- 27.5. If the Contractor becomes aware of a Fraud, it must report the matter to DFAT in writing within five (5) **Business Days**. The written report to DFAT must be signed by a Contractor authorised person and must include the following (where known):
- (a) the name of the Project under which DFAT funding is being provided;
 - (b) name of any Personnel (including any sub-contractors) involved;
 - (c) the allegation(s), including a chronological account of the facts giving rise to the allegation(s);
 - (d) the names of the suspected offender(s) (where known);
 - (e) details of witnesses;
 - (f) copies of relevant documents;
 - (g) references to any relevant legislation;
 - (h) a nominated contact officer;

- (i) any other relevant information (eg, political sensitivities, any other party or agency that has been informed, involved or that can assist with investigations); and
 - (j) the current status of any inquiries commenced by the Contractor.
- 27.6. If a report has been made in accordance with **Clause 27.5** above, the Contractor must respond within five (5) **Business Days** to any further requests for information DFAT may make.
- 27.7. If the Contractor becomes aware of a Fraud, the Contractor must, in consultation with DFAT, develop and implement a strategy to investigate the Fraud based on the principles set out in the Australian Government Investigations Standards.
- 27.8. The Contractor must investigate any fraud at the Contractor's cost and in accordance with any directions or standards required by DFAT. Whether the Contractor conducts an investigation or appoints an investigator to conduct an investigation, the person conducting the investigation must possess the minimum qualifications specified in the Australian Government Investigation Standards or an equivalent agreed to by DFAT.
- 27.9. DFAT reserves the right to appoint its own investigator, conduct its own investigation or report Fraud to the appropriate law enforcement agencies or any other person or entity DFAT deems appropriate in Australia or in the Partner Country for investigation. If DFAT exercises its rights under this **Clause 27.9**, the Contractor must provide all reasonable assistance that may be required at its sole expense.
- 27.10. After the investigation is finished, if a suspected offender has been identified or at the direction of the Director of DFAT Fraud Control Section, the Contractor must promptly report the Fraud to the local police and any other appropriate law enforcement agency in the country where the incident has occurred, unless the Director of DFAT- Fraud Control Section agrees otherwise in writing.
- 27.11. If the investigation finds the Contractor or Personnel have engaged in Fraud, the Contractor, in consultation with DFAT, must:
 - (a) if DFAT funds have been misappropriated, pay to DFAT the full value of the misappropriated funds; and
 - (b) if DFAT-funded property has been misappropriated, either return the property to DFAT or, if the property cannot be recovered or has been damaged, replace the property with property of equal or greater value or quality, or repair the property, at no cost to DFAT.
- 27.12. If the investigation finds that a person other than the Contractor or Personnel has engaged in Fraud, the Contractor must, at the Contractor's cost, take all reasonable action to recover any DFAT funds or DFAT-funded property acquired or distributed through the Fraud, including taking recovery action in accordance with recovery procedures (including civil litigation) available in the Partner Country.

- 27.13. The Contractor must keep DFAT informed, in writing, on a monthly basis, of the progress of its efforts to recover the DFAT funds or DFAT-funded property, including any recovery action.
- 27.14. If the Contractor considers that all reasonable action has been taken to recover the DFAT funds or DFAT-funded property and recovery has not been achieved or recovery has only been achieved in part, the Contractor may seek approval from DFAT that no further recovery action be taken.
- 27.15. If an investigation finds that the Contractor or Personnel have engaged in Fraud, or if DFAT discovers that a Fraud has not been reported to DFAT in accordance with **Clause 27.5**, DFAT reserves the right to:
- (a) terminate this Contract by giving the Contractor notice in writing specifying the date on which the termination will take effect; and
 - (b) not enter into any further agreements with the Contractor until such time as DFAT is satisfied that any recommended changes to the Contractor's management and procedures have been made in order to prevent any further Fraud from occurring and to ensure timely reporting of fraud to DFAT.
- 27.16. Without limitation to DFAT's rights pursuant to **Clauses 53** and **27.15**, if the Contractor fails to comply with its obligations under this **Clause 27** with respect to a Fraud, DFAT may give the Contractor a written notice which specifies:
- (a) the obligation(s) with which the Contractor has not complied;
 - (b) the action that the Contractor must take to rectify the failure; and
 - (c) the date by which the Contractor must rectify the failure.
- 27.17. If the Contractor does not comply with a notice issued pursuant to **Clause 27.16**, DFAT reserves the right to:
- (a) terminate this Contract in accordance with **Clause 53**; and / or
 - (b) exercise its rights pursuant to **Clause 27.15**; and / or
 - (c) withhold payments (or parts of payments) due to the Contractor under this Contract until the Contractor has complied with the notice.
- 27.18. This **Clause 27** survives the termination or expiration of this Contract, including with respect to any Fraud relating to the performance of this Contract, which is not detected until after this Contract has been terminated or has expired.

28. **ANTI - CORRUPTION**

- 28.1. The Contractor warrants that neither it nor its Personnel will make or cause to be made, receive or seek to receive any offer, gift or payment, or benefit of any kind, which could be construed as an illegal or corrupt act, either directly or indirectly to any Party, in relation to the execution of this Contract.
- 28.2. Any breach of this **Clause 28** will entitle DFAT to issue a notice under **Clause 53** (Termination for Breach) to terminate this Contract immediately.

29. COMPLIANCE WITH LAWS AND POLICIES

- 29.1. The Contractor is responsible for ensuring that it and Personnel comply with applicable laws, Treaties or MOUs of the Commonwealth, any State, Territory or local authority and applicable Commonwealth Government policies as set out in this Contract or as notified to the Contractor from time to time.
- 29.2. With respect to any monies payable either to DFAT by the Contractor or to the Contractor by DFAT, the Contractor must:
- (a) comply with all relevant provisions of Commonwealth legislation, financial regulations and directions, except to the extent that the relevant obligation is imposed on DFAT; and
 - (b) if required by DFAT, comply with any recommendation by the Commonwealth Auditor-General concerning the handling of DFAT's money.
- 29.3. In performing any part of this Contract outside Australia, the Contractor and its Personnel and Sub-Contractors must:
- (a) not engage in any political activity in the relevant country during the provision of the Goods and/or Services;
 - (b) observe all laws and respect all religions and customs of that country; and
 - (c) conduct themselves in a manner consistent with the *Public Service Act 1999* (Cth) (including the Australian Public Service Values and Employment Principles and Code of Conduct).

30. SECURITY

- 30.1. The Contractor is responsible for the security of Contractor Personnel, ensuring that both the Contractor and its Personnel comply with this **Clause 30**.
- 30.2. If, during the Term of this Contract, the Contractor is required to access or otherwise gains access to Official Information or Security Classified Information, it agrees to comply with:
- (a) all relevant security requirements specified in the Commonwealth Protective Security Policy Framework as minimum standards;
 - (b) the security requirements specified in this Contract; and
 - (c) any variations or additions to the security requirements under this **Clause 30** that DFAT (in its absolute discretion) notifies the Contractor in writing. Such changes to the security requirements must be implemented by the Contractor from the date specified in the notice (or **5 Business Days** after it receives the notice if no date is specified).
- 30.3. The Contractor must ensure that all its Personnel, when using DFAT's premises or facilities, comply with all DFAT procedures and directions relating to security.

- 30.4. If required by DFAT each of the Contractor's Personnel engaged by or on behalf of the Contractor, must meet all necessary security assessments and standards required by DFAT including:
- (a) an identity check;
 - (b) a National Police Clearance check or equivalent;
 - (c) signing any forms notified to the Contractor by DFAT from time to time;
 - (d) holding Australian Government security clearances to the level requested by DFAT in accordance with the Commonwealth Protective Security Policy Framework, or as otherwise required by DFAT;
 - (e) attending and completing a DFAT Security Awareness Course prior to or as soon as possible after the Commencement Date at the Contractor's cost; and
 - (f) complying with any other security awareness requirements reasonably requested by DFAT
- 30.5. DFAT will facilitate the obtaining of security clearances for Contractor Personnel. The Contractor must bear the cost of security clearances for its Personnel. If the security requirements are redefined, the Contractor is entitled to apply to DFAT for a price variation.
- 30.6. All Personnel, where DFAT considers this appropriate, must:
- (a) attend and complete a Departmental Security Awareness Course prior to or as soon as possible after the Commencement Date at the Contractor's cost; and
 - (b) comply with any other security awareness requirements reasonably requested by DFAT.
- 30.7. The Contractor acknowledges that if any of its Personnel lose their security clearance or causes a security breach, DFAT may:
- (a) after consultation with the Contractor, require the replacement of that Personnel; or
 - (b) terminate this Contract for breach.
- 30.8. The Contractor must:
- (a) notify DFAT immediately on becoming aware of any security incident or security breach and comply with all DFAT directions to rectify the security problem; and.
 - (b) participate in security reviews of its procedures at least annually as requested by DFAT and participate in any security audit in relation to the Contract, providing full co-operation to DFAT or its independent auditors, including the Australian National Audit Office .

31. WORK HEALTH AND SAFETY

- 31.1. The Contractor must perform its, and must ensure that its Personnel, perform their, obligations under this Contract in strict compliance with the *Work Health and Safety Act 2011* (Cth) ('WHS Act') and are able to participate in:
- (a) any necessary inspections of work in progress;
 - (b) any necessary consultation with DFAT regarding implementation of the WHS Act provisions; and
 - (c) tests and evaluations of the Goods and Services.
- 31.2. The Contractor agrees, when using DFAT's premises or facilities, to comply with all reasonable directions and procedures relating to work health and safety and security in effect at those premises or in regard to those facilities, as notified by DFAT or as might be inferred from the use to which the premises or facilities are being put.
- 31.3. Without limiting any other provision of this Contract, the Contractor agrees to, on request, give all reasonable assistance to DFAT, by way of provision of information and documents, to assist DFAT and its officers as defined in the WHS Act to comply with the duties imposed on them under the WHS Act.
- 31.4. The Contractor acknowledges that DFAT may direct it to take specified measures in connection with the Contractor's work under this Contract that DFAT considers reasonably necessary to deal with an event or circumstance that has or is likely to have, an adverse effect on the health or safety of persons. The Contractor must comply with the direction at its own cost.

32. CONFIDENTIALITY

- 32.1. Neither Party, nor their Personnel may disclose, use or make public the Confidential Information of the other Party (or Confidential Information disclosed by or on behalf of the other) unless required by law, necessary for legal proceedings, provided with the written consent of the relevant Party, or required to manage the Contract. If the Confidential Information is required to be disclosed under this **Clause 32.1**, a Party must use all reasonable endeavours to ensure that persons receiving the Confidential Information do not further disclose the information.
- 32.2. DFAT Data (including DFAT Confidential Information) must not be removed from Australia or the relevant Partner Country.
- 32.3. If a Party is required to disclose Confidential Information by law or for legal proceedings, the disclosing Party must provide reasonable notice to the other Party.
- 32.4. The Contractor must obtain from any Personnel who will have access to DFAT Confidential Information, a written undertaking in the form set out at **Schedule 3** (Deed of Confidentiality) to this Contract relating to non-disclosure of that information.

- 32.5. The Contractor acknowledges and agrees to allow DFAT to publish details and report lists of Contracts valued over certain thresholds, and identify Confidentiality agreements in accordance with Senate Order requirements.
- 32.6. The Contractor acknowledges and agrees to allow DFAT to periodically publish detailed information about work under the Contract on the DFAT website. This will include information about the Contractor's policies, plans, processes, the results of the Contractor's aid activities and DFAT's evaluations of the Contractor's performance. DFAT and the Contractor will consult prior to publication or release of information regarded as sensitive (for example, Fraud or corruption matters).
- 32.7. The identity of the Contractor's Personnel is not Confidential Information, nor is this Contract with the exception of those items specified in **Schedule 4** (Confidential Information).
- 32.8. The Contractor must ensure that it obtains any necessary consent from its Personnel in relation to the requirements of this **Clause 32**.
- 32.9. Upon expiry or earlier termination of this Contract, the Contractor must either destroy or deliver to DFAT all DFAT Confidential Information.

33. **PRIVACY**

- 33.1. The Contractor is a 'Contracted Service Provider' within the meaning of the *Privacy Act 1988* (Cth) and, to the extent that it deals with personal information in the provision of Services, agrees to:
 - (a) comply with the Australian Privacy Principles as they apply to DFAT, including:
 - (i) to use or disclose personal information only for the purposes of this Contract;
 - (ii) take necessary steps to ensure adequate security measures are in place to protect personal information from misuse, interference and loss and from unauthorised access, modification or disclosure;
 - (iii) comply with the requirements of Australian Privacy Principle 8 regarding the disclosure of personal information to an overseas recipient;
 - (b) not do any act, or engage in any practice, that would – if done in or engaged in by DFAT – breach the Australian Privacy Principles;
 - (c) comply with any reasonable request or direction of DFAT or the Privacy Commissioner in relation to access to, or handling of, personal information;
 - (d) immediately notify DFAT if it becomes aware of a breach or possible breach of any obligations referred to in this clause, or the initiation of any action by the Privacy Commissioner relevant to this Contract; and
 - (e) investigate any complaint arising out of a breach or possible breach of any obligations referred to in this clause, and notify DFAT of that investigation and outcome.

- 33.2. The Contractor agrees to indemnify DFAT in respect of any loss, liability or expense suffered or incurred by DFAT which arises directly or indirectly from a breach by the Contractor of any obligations referred to in this clause.

PART 3- CONTRACT MANAGEMENT

34. CONTRACT MANAGEMENT GROUP

- 34.1. Each Party must identify one **(1)** Contract Management Representative to be responsible for operational coordination and contract management and one Escalation Representative to assist in any Dispute Resolution, both to be listed in the Contract Details, and to be changed in accordance with **Clause 24** (Notices).
- 34.2. If required by DFAT, this Contract Management Group may meet on a weekly basis for the first **three (3) months** from the Project Start Date of this Contract and then at a frequency (at least monthly) to be agreed between the Parties.
- 34.3. The Contractor must attend and participate in all Contract Management Group meetings as directed by DFAT and when required, consult, cooperate with, and promptly provide input, information and advice to the Contract Management Group on progress and performance of the Project/Program (including any matters, concerns, circumstances or events which may be affecting or may affect the Contractor's relationship with Stakeholders, DFAT or the Contract Management Group), and suggest actions to mitigate these, or assist in the prompt resolution of these.
- 34.4. A representative of the Contractor must take Minutes of all Contract Management Group Meetings and distribute copies of the Minutes to each member of the Contract Management Group within **ten (10) Business Days** after the relevant meeting.

35. REVIEW

- 35.1. At any time DFAT may itself, or may appoint an independent person or persons to conduct a review of any matter capable of affecting the performance of this Contract.
- 35.2. The Contractor and its Personnel must participate cooperatively in any reviews conducted by DFAT or its nominees, while continuing to perform its obligations under this Contract, and respond in writing to any draft review report within **28 Business Days** after the date of receipt by the Contractor of the draft report.
- 35.3. Each Party must bear its own costs of any such reviews conducted by or on behalf of DFAT.

36. PERFORMANCE ASSESSMENT

- 36.1. The Contractor acknowledges and agrees that DFAT may issue in relation to this Contract:
- (a) a Partner performance assessment;
 - (b) Adviser performance assessments;
 - (c) sub-contractor performance assessments; and

- (d) sub-contractor key personnel performance assessments.
- 36.2. Performance assessments will be substantially in accordance with the assessment sheet in **Schedule 10** (Partner Performance Assessment). Within 15 days of receiving a performance assessment from DFAT, the Contractor must:
- (a) sign and return to DFAT the Partner Performance Assessment together with any response; and
 - (b) ensure that all other performance assessments together with any response the sub-contractor or any personnel wishes to include are signed and returned to DFAT.
- 36.3. Contractor must undertake Adviser, sub-contractor and sub-contractor personnel assessments as required by DFAT.
- 36.4. The Contractor must insert clauses in any sub-contracts relating to the Contract that require the sub-contractor to agree that:
- (a) DFAT or the Contractor may issue:
 - (i) a sub-contractor performance assessment; or
 - (ii) sub-contractor key personnel performance assessments, in relation to the sub-contract;
 - (b) the performance assessments will be substantially in accordance with the assessment sheet in **Schedule 11** (Adviser Performance Assessment); and
 - (c) the sub-contractor will sign and return the sub-contractor performance assessment together with any response within 15 days of receipt and will ensure that sub-contractor personnel performance assessments together with any response any personnel wishes to include are signed and returned within 15 days of receipt.

37. **SPECIFIED PERSONNEL**

- 37.1. It is a material term of this Contract that where Specified Personnel are identified in **Schedule 1** (Statement of Requirements) the Services must be provided by them in their designated roles for the Term of the Contract. If any of them are unable to do so for a period of more than ten **(10) Business Days** the Contractor must not remove or replace them, but must notify DFAT in accordance with **Clause 23** (Notices) and seek DFAT's approval for proposed replacement personnel within ten **(10) Business Days** and at no additional cost to DFAT.
- 37.2. The Contractor must advise DFAT promptly in writing of any change in the circumstances of any Specified Personnel that would reasonably be considered likely to affect DFAT's assessment of the person under the Contract. In the event DFAT directs the Contractor to remove any Personnel as a result of notification under this Clause, the Contractor must identify replacement personnel within ten **(10) Business Days**.
- 37.3. The Contractor must only propose replacement personnel with suitable skills and qualifications to act as replacement Specified Personnel and able to commence providing the Goods and/or Services under the Contract immediately.

- 37.4. DFAT may give notice to the Contractor in accordance with **Clause 24** (Notices) requiring the Contractor to remove any Personnel from work in respect of the provision of the Goods and/or Services and propose new Personnel in accordance with **Clauses 37.1** and **37.2** above.
- 37.5. The Contractor must not engage a currently serving Commonwealth employee in any capacity in connection with the Goods and/or Services without DFAT's prior written approval.
- 37.6. The Contractor must not engage a Former DFAT Employee in any capacity in connection with the Goods and/or Services unless DFAT has approved the engagement.
- 37.7. When engaging Personnel for work in a Partner Country, the Contractor will use its best endeavours to ensure they are certified as fit and healthy by a legally qualified medical practitioner to work in the Partner Country, and have received the necessary medical advice, including that on vaccinations and other preventive medical assistance allowing them to undertake work in-country in a safe manner.

38. **SUBCONTRACTING**

- 38.1. The Contractor may not sub-contract the provision of the whole of the Goods and/or Services and must not enter into a subcontract relating to the provision of the Goods and/or Services with a person who is or an entity which is listed on a World Bank List or a Relevant List.
- 38.2. The Contractor must obtain DFAT's prior written approval to sub-contract with any third party, except Specified Personnel, to the value of **AUD100,000** or more. In granting its approval, DFAT may impose any conditions it considers appropriate.
- 38.3. Where DFAT objects to the Contractor's preferred sub-contractor or DFAT nominates a particular sub-contractor in place of the Contractor's preferred sub-contractor, the Contractor must enter into an agreement with the sub-contractor as directed by DFAT on the basis of remuneration approved by DFAT and provide DFAT with a copy of the executed sub-contract.
- 38.4. If the Contractor subcontracts its performance of any part of this Contract, the Contractor will remain liable for the acts, defaults and omissions of the subcontractor as if they were the Contractor's acts, defaults and omissions.
- 38.5. Any subcontract entered into by the Contractor for the performance of any part of this Contract must contain clauses:
- (a) that authorise the Commonwealth to publish details of the name of the subcontractor and the nature of the Services that the subcontractor is subcontracted to perform
 - (b) under which the subcontractor assumes all the Contractor's obligations (including all obligations under Australian Law and development policies), and gives all the warranties the Contractor gives, under this Contract to the extent they are relevant to the Services the subcontractor is subcontracted to perform; and

- (c) that give DFAT the right of substitution under **Schedule 5** (Deed of Novation and Substitution), to further novate the sub-contract to another contractor. The Contractor entering into a subcontract for the provision of parts or elements of the performance of the Services, or provision of the Goods, does not create any contractual relationship between DFAT and the subcontractor.

PART 4 – RECORDS, AUDIT AND REPORTS

39. RECORDKEEPING

- 39.1. The Contractor must ensure that it and its Personnel at all times to the satisfaction of DFAT:
 - (a) keep accurate and up-to-date accounts and records relating to the performance of its obligations under this Contract (including receipts and expenses) in a manner that enables them to be conveniently and properly audited;
 - (b) record all operational activities in relation to the provision of the Services, including to enable the prevention, detection and investigation of Fraud as required by **Clause 27** (Fraud);
 - (c) keep accurate and up-to-date accounts and records which contain details of the disposition of Supplies as agreed to by DFAT, such as replacement, write-off or transfer to the Partner Country;
 - (d) comply with any standards prescribed by DFAT from time to time for the creation, care, access, storage, preservation and return or legal destruction of its accounts and records (including Contract Material) and any DFAT material;
 - (e) provide all reasonable assistance requested by DFAT for any administrative or statutory review concerning this Contract; and
 - (f) retain copies of all accounts and records for a period of **seven (7) years** after termination or expiration of this Contract or completion of any legal action arising out of or in connection with this Contract, whichever occurs later.
- 39.2. DFAT retains legal ownership of all records created for the provision of the Goods and/or Services by the Contractor. Upon termination or completion of this Contract, the Contractor must transfer all records created and maintained for Goods and/or Services provided by the Contractor under this Contract to DFAT in a format and manner which allows the records to be quickly and easily retrieved, reviewed and utilised by DFAT.
- 39.3. The Contractor must store, dispose of, and/or transfer, custody or the ownership of any Commonwealth records in accordance with standards issued under the *Archives Act 1983* (Cth) and/or any specific instructions provided from time to time by the Australian Government through the NAA.
- 39.4. The Contractor must comply with any direction given by DFAT for the purpose of transferring Commonwealth records to the possession, custody or control of the NAA or providing the NAA with full and free access to those records.

- 39.5. The Contractor must maintain up to date records of the names of all sub-contractors engaged by the Contractor to perform part of the Services.
- 39.6. The Contractor may keep one (1) copy of all records created during the course of the provision of the Goods and/or Services for legitimate risk management and audit purposes.

40. **ADVISER INFORMATION**

- 40.1. In this **Clause 40**, “Adviser Information” means the information which the Contractor must give DFAT in accordance with **Clause 40.2** below, if requested to do so by DFAT. Adviser information may be Personal Information.
- 40.2. The Contractor must give DFAT the following information about each Adviser on **15 July** of each year:
- (a) position title;
 - (b) nature of engagement (short term/long term);
 - (c) ARF discipline category;
 - (d) ARF job level;
 - (e) gender;
 - (f) nationality;
 - (g) work location;
 - (h) contract start and end date;
 - (i) number of days/months worked in the time period specified by DFAT;
 - (j) monthly or Daily Remuneration Rate;
 - (k) Mobility Allowance, if any;
 - (l) Special Location Allowance, if any;
 - (m) Adviser Support Costs including Housing Costs, if any; and
 - (n) any other information regarding remuneration or costs associated with Advisers and identified by DFAT in the request.

- 40.3. In addition to the reporting requirements at **Clause 40.2** above, the Contractor must provide the information specified in **Clause 40.2 (a) – (n)** within **ten (10)** Business Days of receiving a written request from DFAT.
- 40.4. DFAT will use the Adviser Information to ensure that the Australian Government's official overseas aid program achieves value for money and to meet its reporting requirements.
- 40.5. DFAT may disclose Adviser Information in accordance with **Clause 32** (Confidentiality).
- 40.6. The Contractor must ensure that Advisers, before they are engaged consent in writing to DFAT using the Adviser Information which may be collected under this **Clause 40** for the purposes described in **Clause 40.4** and are aware that:
 - (a) DFAT may request, and the Contractor may provide to DFAT, the Adviser Information;
 - (b) DFAT may disclose the Adviser Information to Commonwealth Government Departments and Agencies, Commonwealth Ministers and Parliamentary Secretaries, and to the Commonwealth Parliament; and
 - (c) They are entitled to access their own Personal Information which is held by DFAT, unless DFAT has a lawful right to refuse access.

41. **ACCESS TO PREMISES AND RECORDS**

- 41.1. The Contractor must:
 - (a) produce records, books and accounts for inspection by DFAT immediately upon request (including where entering into a subcontract and executing a Deed of Novation and Substitution) at the same time or within **ten (10)** Business Days of execution of the sub-contract by the Contractor.
 - (b) permit each of DFAT, the Commonwealth Auditor-General and the Information Privacy Commissioner or Privacy Commissioner as appropriate at reasonable times and on reasonable notice, through their officers, agents or advisers authorised on their behalf, to:
 - (i) access the Contractor's premises;
 - (ii) examine, inspect, audit and copy any accounts and records relating to this Contract or the Goods and/or Services;
 - (iii) provide all necessary facilities for this purpose; and
 - (iv) in the case of documents or records stored on a medium other than in writing, make available to DFAT on request reasonable facilities necessary to enable a legible reproduction to be created.
- 41.2. In the exercise of the rights under this **Clause 41**, DFAT must use reasonable endeavours not to unreasonably interfere with the Contractor's performance under the Contract in any material respect.

42. AUDIT

- 42.1. DFAT has the inspection and audit rights described in **Clause 41** (Access to Premises and Records) and this **Clause 42** and subject to these provisions, each Party is to bear its own costs in relation to any audit.
- 42.2. DFAT or a representative of DFAT may conduct audits relevant to the performance and/or compliance by the Contractor with any of its obligations under the Contract, including audits of the Contractor's relevant:
- (a) operational practices and procedures;
 - (b) project and financial management governance;
 - (c) oversight practices and procedures;
 - (d) invoices and reports;
 - (e) Material (including records, books and accounts) in the possession of the Contractor; and/or
 - (f) other matters determined by DFAT to be relevant to the performance of the Contractor's obligations under the Contract.
- 42.3. Where DFAT has reasonable concerns regarding the Contractor's financial management systems, DFAT must provide the Contractor with written notification of those concerns outlining the action to be undertaken by the Contractor. These actions include:
- (a) a request that the Contractor's Company Director provide a Statutory Declaration confirming that he/she has sighted the necessary supporting documentation and confirms the veracity of the claim for payment;
 - (b) the Contractor providing DFAT with additional documentation to support the claim for payment; and/or
 - (c) a direction that the Contractor engage an independent, suitable organisation to undertake an audit of those financial management systems, including its invoicing procedures and practices, with a copy of the audit report to be provided to DFAT.
- 42.4. The Contractor must respond to any notice received under **Clause 42.3** above within fourteen **(14) Business days**.
- 42.5. DFAT reserves the right, at any time to direct the Contractor engage an independent audit firm and to provide DFAT with a copy of the audit report from the independent auditor.
- 42.6. If DFAT directs the Contractor to undertake an independent audit it must do so at the Contractor's cost, and the Contractor must comply with any directions given by DFAT regarding terms of reference or required auditing standards.
- 42.7. Where a direction has been made under **Clause 42.6** above, DFAT will not make any further payments owed to the Contractor pending certification of the reliability of the

Contractor's financial management systems and the veracity of the invoicing procedures and practices.

- 42.8. This **Clause 42** applies for the term of this Contract and for a period of seven (7) **years** from the date of its expiration or termination.
- 42.9. The requirement for access and participation in audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.

43. **REPORTS**

- 43.1. The Contractor must provide DFAT, and if applicable other Commonwealth agencies, at its own cost, the reports described in **Schedule 1** (Statement of Requirements).
- 43.2. The Contractor must at its own cost comply with DFAT's reasonable directions as to the form and content of reports or other written information required under this Contract. DFAT must give the Contractor at least two (2) **weeks** notice of a change in the requirements for reports, unless otherwise agreed with the Contractor.
- 43.3. DFAT may reject and withhold payment of Fees for any report which does not, in the opinion of DFAT, meet the requirements or standards outlined in the Contract until the Contractor rectifies the report.

PART 5- PAYMENT AND TAX

44. **INVOICING**

- 44.1. The Contractor must invoice DFAT for the provision of Goods and/or Services on a monthly basis, or as otherwise described in **Schedule 2** (Pricing Schedule).
- 44.2. For the purposes of this **Clause 44** (Invoicing) and **Schedule 2** (Pricing Schedule), an invoice is correctly rendered if:
- (a) it is in the form of a valid Tax Invoice under the GST Act (or, where the supply of the Goods and/or Services is not a Taxable Supply, in the form of an invoice approved by DFAT);
 - (b) it is accompanied by supporting documentation in respect of the Goods and Services in the form, and containing the information, reasonably required by DFAT;
 - (c) it is correctly addressed to DFAT and is correctly calculated;
 - (d) it relates only to Goods and/or Services that have been delivered to DFAT in accordance with the Contract;
 - (e) reimbursable costs, and amounts owing to suppliers or sub-contractors have been paid before submission of the invoice to DFAT;
 - (f) the invoice details all Goods and/or Services provided by the Contractor against the Fees referred to in **Schedule 2** (Pricing Schedule) and records the

amount payable in respect of each category of Goods and/or Services described in the Contract;

- (g) the Fees claimed in the invoice are inclusive of all costs, expenses, disbursements, levies and taxes and the actual costs and expenses incurred by the Contractor in providing the Goods and/or Services;
- (h) it is in Australian dollars or converted into Australian dollars at the exchange rate incurred by the Contractor at the time of making the payment; and
- (i) a company Director of the Contractor or authorised representative of the Contractor has certified that the invoice is accurate and represents the Goods and/or Services provided.

44.3. Where the Contract is for Goods, the Contractor must ensure that the charges for, and GST applicable to, the supply of Goods are itemised separately on the relevant invoice.

44.4. If an invoice is found to have been rendered incorrectly, any underpayment or overpayment shall be recoverable by or from the Contractor, as the case may be and, without limiting recourse to other available remedies may be offset against any amount subsequently due from DFAT to the Contractor.

45. **PAYMENT**

45.1. Subject to this Contract, DFAT agrees to pay the Contractor the Fees and/or Reimbursable Costs for the provision of the Goods and/or Services in accordance with **Schedule 2** (Pricing Schedule).

45.2. Without limiting **Clause 48** (Taxes), the amounts payable under **Schedule 2** (Pricing Schedule) are inclusive of all taxes and duties (including GST) payable in connection with the Goods and/or Services.

45.3. Subject to the Contract, DFAT must pay the Fees and Reimbursable Costs within **30 days** of:

- (a) receipt of a correctly rendered invoice in accordance with **Clause 44** (Invoicing); and
- (b) DFAT's acceptance of the satisfactory completion of the Services and/or delivery of the Goods or relevant Payment Milestone as specified in **Schedule 2** (Pricing Schedule).

45.4. DFAT will pay all amounts payable to the Contractor under this Contract into a bank account nominated by the Contractor. The Contractor must provide DFAT with the necessary bank account details as soon as possible following execution of this Contract.

45.5. Any requests by the Contractor to change the bank account for payments under this Contract must be provided to DFAT with **30 Business Days** written notice.

- 45.6. If **Clause 45.5** above is not complied with, DFAT will not be responsible for any costs incurred by the Contractor as a result of the change including bank charges or exchange rate variances.
- 45.7. If the Contractor does not have an Australian Business Number ('ABN'), DFAT will be required to hold a prescribed proportion of the amount payable to the Contractor under the Contract, unless the exceptions under **Division 12** of the PAYG legislation apply.

46. **PAYMENT NOT AN ADMISSION OF LIABILITY**

- 46.1. A payment by DFAT to the Contractor is not an admission of liability. If DFAT makes a payment and subsequently learns that performance specifications have not been met or that, on review, the amount is greater than the amount payable under the Contract, the payment shall be deemed an overpayment and recoverable from the Contractor.
- 46.2. Any overpayment may be offset against any amount subsequently due to the Contractor or may be recovered in Court as a debt due and payable to DFAT by the Contractor.
- 46.3. Where DFAT deducts the amount of a debt or payment in accordance with **Clause 46.2** above, it must advise the Contractor in writing that it has done so.
- 46.4. Unless approved in writing by DFAT, if the Contractor pays an Adviser more than the rate specified in the Adviser Remuneration Framework for the relevant Job Level and Professional Discipline Category:
- (a) the Contractor will not be entitled to seek reimbursement of the excess from DFAT; and
 - (b) if the Contractor discovers the excess payment after it has received reimbursement from DFAT, it must promptly advise DFAT of the excess and deduct the amount of the excess from its next invoice.

47. **DISPUTED INVOICES**

- 47.1. DFAT need not pay an amount to the Contractor that is disputed in good faith by DFAT until the dispute is resolved.
- 47.2. If DFAT considers in good faith that an invoice exceeds the amount properly payable to the Contractor, DFAT must:
- (a) notify the Contractor of the amount in dispute within ten **(10)** Business Days after receipt of the invoice; and
 - (b) pay the balance of the invoice in accordance with **Clause 45.3** (Payment).
- 47.3. The Contractor must continue to comply with its obligations under this Contract, notwithstanding that there is a disputed invoice.

48. **TAXES**

- 48.1. Unless otherwise indicated, the amount payable under the Contract for each supply of Goods and/or Services under this Contract as listed in **Schedule 2** (Pricing Schedule) is the value of that supply plus any GST imposed under the GST Act. Payment by DFAT to the Contractor of the GST shall be subject to the Contractor providing DFAT with a valid Tax Invoice issued in accordance with the relevant provisions of the GST Act and regulations.
- 48.2. The total amount of GST payable by the Contractor, and for which the Contractor seeks payment from DFAT in respect of the supply shall be shown as a separate item on the Contractor's Tax Invoice.
- 48.3. If the additional amount under **Clause 48.2** above differs from the amount of GST payable by the Contractor, the additional amount must be adjusted between the Parties.
- 48.4. If a Party is entitled to be reimbursed or indemnified under this Contract, the amount to be reimbursed or indemnified does not include any amount attributable to GST which the Party is entitled to claim back by way of an input tax credit or otherwise.
- 48.5. Except as provided by this **Clause 48**, all taxes, duties and charges imposed or levied in Australia or in the Partner Country in connection with:
- (a) the performance of this Contract (including any sub-contracts entered into for the performance of the Services and the obtaining of any approvals, consents or authorisations); and
 - (b) the sale, purchase, lease, assignment, licence or transfer of any property under this Contract
- shall be borne by the Contractor or its sub-contractor(s) as the case requires.
- 48.6. If a Changed Tax occurs which affects the cost to the Contractor of providing the Goods and/or Services, the Contractor must give DFAT:
- (a) written notice of the increase, decrease or removal;
 - (b) written notice of the net effect of the Changed Tax on the cost of supplying the Goods and/or Services; and
 - (c) in the case of a decrease or a removal, any supporting evidence of the change and an explanation of its effect on the Management Fees,
- as soon as practicable after the change in the Changed Tax is announced or the Contractor becomes aware of the increase, decrease or removal.

49. **SUPERANNUATION**

- 49.1. DFAT will, as the case requires and in accordance with legislative requirements, contribute to a complying Superannuation Fund, a pre-existing fund nominated by the Contractor or where none is nominated to the Australian Superannuation a sum equivalent to the level stipulated from time to time in the *Superannuation Guarantee*

(*Administration*) Act 1992 (Cth). The Contractor must include in its invoice for the Goods and/or Services the following information with regards to the superannuation guarantee contributions: superannuation guarantee contribution amount, full name and address of the Superannuation Fund and the Contractor's membership number.

PART 6- REMEDIES, DISPUTES AND TERMINATION

50. REMEDIES

50.1. The Contractor must remedy at its own cost:

- (a) any failure to comply with the requirements of this Contract as soon as practicable after becoming aware of the failure; and
- (b) if this is a Goods Contract, any errors or defects in the Goods notified to the Contractor by the DFAT Representative for the warranty period described in the Contract Details.

50.2. If the Contractor fails to rectify an error or a defect under **Clause 50.1** above within ten (10) **Business days** after notification by the DFAT Representative, DFAT may, without limiting the Contractor's warranties and obligations under this **Clause 50**, perform or have performed the necessary remedial work at the expense of the Contractor, and may recover such expense as a debt due to DFAT payable by the Contractor on demand.

51. DISPUTE RESOLUTION

51.1. If a dispute arises under this Contract, prior to commencing any arbitration or court proceedings -other than for interlocutory relief or where an authority of the Commonwealth, a state or Territory is investigating a breach or suspected breach of the law by the Contractor, or DFAT is exercising a right to terminate – the Parties must act in good faith and use their reasonable endeavours to resolve the dispute as follows:

- (a) the Party claiming that there is a dispute must give the other a written notice in accordance with **Clause 24** (Notices) setting out the nature of the dispute;
- (b) within ten (10) **Business Days** following notice, attempt to resolve the dispute through direct negotiation between the Contractor Representative and the DFAT Representative;
- (c) if still unresolved, refer the dispute to each Party's Escalation Representative as set out in the Contract Details, who must in good faith work to resolve the dispute within a further ten (10) **Business Days** or any other agreed period;
- (d) if still unresolved, the Parties have thirty (30) **Business Days** from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or conciliation rather than litigation or arbitration; and
- (e) if the dispute is not resolved in that time or there is no agreement to, or submission of the dispute to mediation or conciliation within a further thirty (30) **Business Days**, then either Party may commence legal proceedings.

- 51.2. Subject to **Clause 45** (Payment), the Contractor and Personnel must continue to comply with its obligations under this Contract, notwithstanding that there is a dispute between the Parties, or that legal proceedings are pending or current.

52. **EARLY NOTIFICATION**

- 52.1. The Contractor must immediately notify DFAT if the Contractor (including Contractor Personnel) or a sub-contractor is:
- (a) listed on a World Bank List or on a Relevant List;
 - (b) subject to any proceedings or an informal process which could lead to listing on a World Bank List or listing on a Relevant List;
 - (c) temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process;
 - (d) temporarily suspended from tendering by a donor of development funding other than the World Bank; and/or
 - (e) the subject of an investigation (whether formal or informal) by the World Bank or another donor of development funding.
- 52.2. If the Contractor becomes aware of any issue that may affect its performance of the Contract and in particular its compliance with any of the following clauses: **Clause 9** (Performance Standards), **Clause 10** (Warranties), **Clause 11** (Conflict of Interest), **Clause 12** (Insurances), **Clause 26** (Counter-terrorism), **Clause 27** (Fraud), **Clause 28** (Anti-Corruption), **Clause 29** (Compliance with Laws and Policies), **Clause 30** (Security), **Clause 32** (Confidentiality), **Clause 33** (Privacy) and **Clause 38** (Sub-contracting), (including the use or disclosure of Sensitive, Personal or Confidential Information, or any Security Incident that arises), it must inform DFAT immediately.

53. **TERMINATION FOR BREACH**

- 53.1. DFAT may terminate this Contract by notice to the Contractor in accordance with **Clause 24** (Notices) in any of the following circumstances:
- (a) the Contractor commits a material breach or breach which, in DFAT's opinion, is not capable of remedy;
 - (b) the Contractor commits a breach capable of being remedied by the Contractor but the Contractor fails to remedy it within ten (10) Business days of receipt of a notice from DFAT specifying the breach and requiring the Contractor to remedy the breach;
 - (c) the Contractor commits a Persistent Breach;
 - (d) where the Contractor is a company- if there is appointed or if steps are taken to appoint a liquidator, receiver, manager, controller or an administrator over the whole or any part of its affairs;

- (e) where the Contractor is an individual – if it enters into a scheme of arrangement with its creditors, commits any act of bankruptcy or becomes bankrupt, or becomes incapable of managing its own affairs;
- (f) where the Contractor has entered into this Contract in the capacity of trustee of a trust – if any event occurs or any action or step is (or is proposed to be) taken, which limits, restricts, or prevents it being indemnified out of the assets of that trust in respect of its obligations and liabilities under this Contract;
- (g) the Contractor fails to notify DFAT under **Clause 52** (Early Notification);
- (h) the Contractor ceases to hold any licence, qualification, approval, authority or consent required for the Contractor to comply with its obligations under this Contract (except to the extent that this is outside the Contractor’s reasonable control);
- (i) the Contractor made a statement or warranty in its Tender or failed to make a disclosure in its Tender Declaration leading to this Contract and DFAT is satisfied on reasonable grounds that the statement was materially inaccurate, incorrect or misleading or the failure to make a disclosure would, in DFAT’s opinion not have led to the formation of a Contract;
- (j) the Contractor is convicted of any offence during the Term of this Contract;
- (k) the Contractor, its Personnel or subcontractors are or become listed on a World Bank or Relevant List or are subject to any proceedings or an informal process that may lead to them becoming so listed;
- (l) the Contractor does not take appropriate steps to manage and resolve an allegation of child exploitation or abuse with respect to this Contract, including a failure to inform DFAT immediately of any allegation of child abuse or exploitation in accordance with DFAT’s Child Protection Policy; and/or
- (m) the Contractor commits a breach of **Clauses 29.1** (Compliance with Laws and Policies) or **61.1** (Compliance with DFAT Policies) and does not remedy the breach within ten (10) Business Days (or such longer period as DFAT may specify in the notice) of receipt of a notice from DFAT specifying the breach and requiring the Contractor to remedy the breach.

53.2. For the avoidance of doubt, **Clauses 53.1(g) to (m)** do not limit the generality of **Clauses 53.1(a) or (b)**.

54. **TERMINATION FOR CONVENIENCE**

54.1. DFAT has an unfettered discretion to, by notice to the Contractor in accordance with **Clause 24** (Notices), terminate or reduce the scope of this Contract from the time specified in the notice. Without limiting DFAT’s rights under this Contract, at law or in equity, DFAT’s rights under this **Clause 54.1** include the discretion to terminate or reduce the scope of this Contract if DFAT determines that the continuation of this Contract, or the continuation of a program or initiative for the purposes of which this Contract was entered into, does not support the achievement of value for money by

DFAT. The parties acknowledge and agree that such a determination by DFAT may be made in the absence of a breach of this Contract by the Contractor and due to circumstances beyond the Contractor's control.

- 54.2. If DFAT exercises its right in **Clause 54.1**, the Contractor must comply with directions given by DFAT, cease or reduce (as applicable) the performance of work and immediately do everything possible to mitigate its losses, and all other losses, costs and expenses in connection from, or arising out of Termination, including novate any Subcontracts to DFAT or its nominee, if required by DFAT.
- 54.3. If DFAT terminates this Contract under this **Clause 54**, DFAT will only be liable to the Contractor for the following loss or damage incurred as a direct consequence of termination of this Contract to the extent that they can be reasonably substantiated and are unable to be avoided or mitigated:
- (a) fees and any Reimbursable Costs, as payable under Schedule 2 (Pricing Schedule) for Goods and/or Services provided before the effective date of termination (on a pro-rata basis, if applicable);
 - (b) lease termination costs for early termination of leases required specifically and exclusively for the performance of the Contract;
 - (c) the Contractor's finance termination costs required specifically and exclusively for performance of this Contract; and
 - (d) payments made to Subcontractors which are not related entities of the Contractor and which were paid prior to the date of notice of termination of this Contract by DFAT,
- and excluding all other loss or damage, including the cost of redundancies, the costs of terminating any subcontracts, loss of profits and all other forms of expectation loss.
- 54.4. The Contractor must, in each subcontract, reserve a right of termination to take account of DFAT's right of termination under this **Clause 54** (Termination for Convenience) and the Contractor must make use of such rights to mitigate losses in the event of termination by DFAT under the provisions of this **Clause 54**.
- 54.5. Subject to this Contract, on expiry or termination:
- (a) the Parties are relieved from future performance of this Contract, without prejudice to any right of action that has accrued at the date of termination;
 - (b) all licences and authorisations granted to the Contractor by DFAT under this Contract terminate immediately; and
 - (c) the Contractor must provide DFAT with all reasonable assistance and information to assist DFAT in transitioning to DFAT's new provision of Goods and/or Services arrangements.
- 54.6. The Contractor's obligations under **Clause 54.5** above include, at DFAT's request, continuing for a period of up to **three (3) months** to supply the Goods and/or Services to DFAT on the terms and conditions of this Contract until the time DFAT advises the Contractor that it is no longer required to do so. This clause does not

apply during any period DFAT is in breach of an obligation to pay money under this Contract.

- 54.7. DFAT is not obliged to make any further payments to the Contractor (whether under this Contract, at law or in equity) if DFAT exercises its rights in **Clause 54.1** except as expressly provided under this **Clause 54**.

55. FORCE MAJEURE

- 55.1. Despite any other provision of this Contract, if a Party is unable to perform or is delayed in performing an obligation under this Contract (other than an obligation to pay money), by reason of a Force Majeure Event, and notice has been given in accordance with **Clause 55.2** below:
- (a) that obligation is suspended, but only so far and for so long as it is affected by the Force Majeure Event; and
 - (b) the affected Party will not be responsible for any loss or expense suffered or incurred by any other Party as a result of, and to the extent that, the affected Party is unable to perform, or is delayed in performing, its obligations because of the Force Majeure Event.
- 55.2. A Party affected by a Force Majeure Event must give the other Party a written notice which:
- (a) sets out details of the Force Majeure Event (including the effect of the Event on the Contract and details of insurance available to mitigate damage if any);
 - (b) estimates the likely period of time that the Party will not be able to perform, or the Party will be delayed in performing, its obligations; and
 - (c) provides details of the action that it has taken, or proposes to take, to remedy the situation.
- 55.3. The Contractor must:
- (a) arrange a meeting with DFAT within 24 hours' of a notice given under **Clause 55.2** above; and
 - (b) take all reasonable steps to avoid, remove or limit the effects of the Force Majeure Event on its performance of the suspended obligations as quickly as possible and re-commence performing them soon as possible.

56. EXTENSION OF TIME

- 56.1. Subject to **Clause 56.5** below neither DFAT nor the Contractor shall be in breach of the Contract to the extent that performance of their Contract obligations is prevented due to any significant change in circumstances (including change in Partner Country laws, and industrial disputes) that are beyond the control of the Contractor.
- 56.2. Where in the Contractor's reasonable opinion there is likely to be a delay in the Contractor's discharging of an obligation under the Contract due to **Clause 55** (Force

Majeure) it must notify DFAT in accordance with **Clause 55.2** providing details of the delay and its likely impact on the performance of the Contract.

- 56.3. Where **Clause 55** (Force Majeure) has been triggered, the Contractor must take all reasonable steps to mitigate the effects of any delay, use its best endeavours to continue to perform the obligations, and where necessary, make a request in writing to DFAT for an extension of time outlining the length of the extension which the Contractor considers reasonable in all the circumstances in the form of an Amendment Proposal in accordance with **Clause 18** (Amendment).
- 56.4. DFAT must give consideration to the Contractor's recommendations and request for an extension of time as soon as practicable after receiving the request in accordance with **Clause 56.3** above and may grant approval subject to conditions.
- 56.5. If DFAT approves in writing a request by the Contractor for an extension of time under **Clause 56.3** above, any resultant changes to the Contract must be documented in a "Deed of Amendment".
- 56.6. Even if the Contractor has not given notice under **Clause 56.2** above, where DFAT considers that a delay has arisen, in whole or in part, because of an act or omission on the part of DFAT, its employees or agents, DFAT may, by notice in writing to the Contractor, extend the time for performance of the relevant obligation of the Contractor.
- 56.7. Where an extension of time has been granted and the Contractor has been unable to perform its obligations for forty five (45) **Business Days** or more, DFAT may suspend the Contract, reduce the scope or terminate the Contract by notice in writing.
- 56.8. In the event of suspension, deletion or termination of the Services or the Contract in accordance with this **Clause 56**, DFAT will be liable for Fees and Reimbursable Costs in accordance with **Clause 54.3** (Termination for Convenience).

57. **LIABILITY**

- 57.1. If any Party to this Contract consists of more than one person then the liability of those persons in all respects under this Contract is a joint liability of all those persons and a separate liability of each of those persons.
- 57.2. Subject to any law to the Contrary, DFAT, its employees, agents and advisors, disclaim all liability for any loss or damage suffered by any other person acting on any part of the information made available to the Contractor, in respect of the Project, whether or not the Loss arises in connection with any negligence, default or lack or care on the part of DFAT, its employees, agents or advisors.

PART 7 -PROJECT SPECIFIC CONDITIONS

58. **DEFINITIONS**

- 58.1. For the purposes of this **Part 7** the following Definitions Apply:

Construction Defect means any defect, fault, or omission in any Construction Work or any other aspect of any Construction Work which is not in accordance with the Contract requirements.

Construction Works includes all the construction and building work of any kind including the installation of equipment required for the delivery of the Goods and/or Services related to this Contract. **Director of Workplace Gender Equality** means the person so named in **Section 9** of the *Workplace Gender Equality Act 2012* (Cth)

Indigenous Participation Plan means the plan set out as an attachment to this contract as Schedule 12. *Note to drafters: If determined to be a 'high value' contract for the purposes of the Indigenous Procurement Policy, the successful Tenderer's Indigenous Participation Plan must be attached to the resultant Contract as Schedule 12.*

Project Vehicles means vehicles paid for by DFAT for an Australian Aid Program Project or Program and that are provided for Project/Program activities.

59. **HANDOVER**

- 59.1. The Contractor must within **twelve (12) months** of the Project Start Date draft and provide to DFAT a copy of, a Handover Plan which includes all the functions to be performed to hand over Contract Material, Supplies, information, documents and other materials to the Partner Country (or to DFAT where Goods and/or Services are provided in Australia) in a manner which ensures the Partner Country is able to benefit from the Project and in particular enables the Partner Country to manage ongoing maintenance requirements, as well as any other matters specified in **Schedule 1**.
- 59.2. The Contractor must make changes to the Handover Plan as reasonably requested by DFAT and update the Handover Plan as necessary during the Project but at least annually and **six (6) months** before the end of the Contract.
- 59.3. The Contractor must ensure that a finalised Handover Plan is provided to DFAT within seven **(7) days** of any early termination of the Project, or one month prior to the expected completion of the Project.
- 59.4. The Contractor must:
- (a) bear the loss or damage in respect of the Supplies until handover of Supplies to the relevant Partner Government or back to DFAT;
 - (b) establish and maintain a Register of Assets which shall record any non-consumable Supplies valued at **AUD2,000** or more, which at a minimum contains the following information: reference identification number (which may be for example, a serial number, engine number or chassis number); description of the asset; date of procurement; cost; location; current status; and disposal or handover details; and
 - (c) submit to audit by or on behalf of DFAT its Register of Assets and associated documentation such as import documents, invoices and warranties at any time and from time to time.

- 59.5. On termination of the Contract, the Contractor must provide all reasonable assistance and cooperation necessary to facilitate the provision of further maintenance by DFAT or an alternative Contractor. In particular the Contractor must:
- (a) deliver to DFAT or its nominee complete copies of all the Data and Contract Material, in a form and on a media approved by DFAT, and any other DFAT property including the Supplies;
 - (b) either destroy or deliver to DFAT all copies of DFAT Confidential Information as required by DFAT;
 - (c) if requested by DFAT, facilitate the assignment to DFAT, DFAT's nominee or to the Partner Country of sub-contracts relating to Supplies, including for licensing and support of information technology and any construction work maintenance;
 - (d) vacate the Project Office where this has been supplied by DFAT or the Partner Country; and
 - (e) co-operate with DFAT and, if requested, DFAT's nominee, and provide reasonable assistance relating to the transfer of any contracts to DFAT, its nominee or the Partner Country.

60. **PROJECT VEHICLE CONTRIBUTION**

- 60.1. Project Vehicles remain the responsibility of the Contractor for the term of the Project/Program.
- 60.2. In consideration of the Contractor being entitled to use Project Vehicles for non-project use, the Contractor must contribute **AUD400.00** for each Project Vehicle for each month of the Project. The contribution will be deducted by the Contractor and must be clearly identified on the Contractor's invoices.
- 60.3. The Contractor must prioritise project use over private use of vehicles, ensure Personnel have relevant licences, ensure vehicles are appropriately insured and serviced at regular intervals and have seat belts fitted.
- 60.4. The Contractor is responsible for any costs incurred in the event of an accident while the Project Vehicle is being privately used.

61. **COMPLIANCE WITH DFAT POLICIES**

- 61.1. The Contractor must ensure that it and its Personnel comply with all DFAT policies including:
- (a) the disability inclusive strategy: '*Development for All 2015-2020: Strategy for strengthening disability-inclusive development in Australia's aid program*', accessible on the DFAT website at: <http://dfat.gov.au/about-us/publications/Pages/development-for-all-2015-2020.aspx>. Particular attention must be directed towards the Strategy's guiding principles;

- (b) the child protection compliance standards in the ‘*Child Protection Policy*’ for the DFAT - Australian Aid Program, accessible on the DFAT website at: www.dfat.gov.au;
- (c) the ‘*Family Planning and the Aid Program: Guiding Principles*’ (2009) for the DFAT - Australian Aid Program, accessible on the DFAT website at: www.dfat.gov.au ;
- (d) information accessibility requirements contained in the ‘*Guidelines for preparing accessible content*’ (2012) for the DFAT - Australian Aid Program, accessible on the DFAT website at: www.dfat.gov.au ;
- (e) the ‘*Environment Protection Policy for the Aid Program*’ (2014), accessible on the DFAT website at: www.dfat.gov.au; and
- (f) ‘*Promoting Opportunities for All: Gender Equality and Women’s Empowerment*’ (November 2011), accessible on the DFAT website at: www.dfat.gov.au.

62. **Not used**

63. **GENDER EQUALITY**

- 63.1. The Contractor must comply with its obligations, if any, to promote gender equality in the workplace under *the Workplace Gender Equality Act 2012* (Cth) (‘WGE Act’)
- 63.2. If the Contractor becomes non-compliant with the WGE Act during the Term of the Contract, the Contractor must notify the DFAT Officer nominated in **Clause 24** (Notices) and DFAT reserves the right to provide the Contractor with directions regarding compliance.
- 63.3. If the Term of the Contract exceeds **eighteen (18) months**, the Contractor must provide a current letter of compliance with the WGE Act within **18 months** from the Contract Commencement Date and following this, annually, to the DFAT Officer nominated in **Clause 24** (Notices).

64. **DESIGN AND IMPLEMENTATION CONTRACT**

- 64.1. The Parties acknowledge and agree that, commencing on the Project Start Date, the Parties are only bound by the provisions of this Contract which relate to the Design Phase and nothing more.
- 64.2. Notwithstanding **Clause 64.1** above, the Contractor grants DFAT an option (the “Option”) to extend the operation of this Contract to include the Implementation Phase. DFAT may exercise the Option at its sole discretion, by notice in writing to the Contractor given within [**Insert No. of days**] after DFAT’s approval of the final Project Design Document (‘PDD’). The provisions of this Contract with respect to the Implementation Phase shall be binding and effective on the Parties when the Contractor receives the notice exercising the Option.
- 64.3. If DFAT elects not to exercise the Option in **Clause 64.2** above:

- (a) DFAT may itself carry out the Implementation Phase or enter into a contract with another Contractor to implement the Project; and
 - (b) DFAT or another Contractor may use all design documentation prepared by the Contractor without restriction for the purposes of implementing the Project.
- 64.4. Neither DFAT nor its nominees owe a duty to the Contractor to review the PDD for errors, omissions or compliance with this Contract.
- 64.5. Further, no comment upon, review or rejection of or consent to any use of the PDD by DFAT or its nominees, nor any other instruction by DFAT will relieve the Contractor from or alter or affect the Contractor's liabilities or responsibilities under this Contract or otherwise.

65. **DESIGN PHASE WORK**

- 65.1. Within [**Specify period days/weeks or specify a date**] of the Project Start Date, the Contractor must prepare and submit to DFAT an Initial PDD which:
- (a) sets out the proposed structure of the Draft PDD including a preliminary breakdown of the Project into components and implementation proposals;
 - (b) fully outlines the information obtained from the consultative activities undertaken during the Design Phase;
 - (c) provides an indicative time schedule for the Design Phase and Implementation Phase; and
 - (d) contains the Contractor's proposed outline of and approach to a systematic Risk Management Plan prepared in accordance with DFAT Guidelines for Risk Management which will identify and analyse potential risks to the Project and appropriate responses to those risks, with the full Risk Management Plan being submitted as an integral part of the PDD.
- 65.2. Within [**Specify period**] **days** of receiving the Initial PDD, DFAT will issue a notice:
- (a) approving the Initial PDD; or
 - (b) requiring the Contractor to rectify or amend the Initial PDD and re-submit it to DFAT within seven (7) **days** or as agreed in writing with DFAT, in which event the Contractor will continue to perform the Design Phase Services and this clause shall apply to the resubmitted Initial PDD.
- 65.3. Within [**Specify period**] days of DFAT's approval of the Initial PDD, the Contractor must prepare and submit to DFAT a Draft PDD in accordance with the approved Initial PDD and the following requirements:
- (a) the Design of each Project component must contain the following details:
 - (i) the objectives and outputs to be achieved;
 - (ii) the relationship of the component to poverty alleviation and sustainable development;

- (iii) risks and constraints of implementing the proposed component;
 - (iv) the activities involved in performing the Implementation Phase Work relevant to that Project component;
 - (v) the estimated number of person months involved in each activity together with the relevant Personnel rates in accordance with the Adviser Remuneration Framework;
 - (vi) the proposed Payment Milestones that will apply together with the objective verifiable performance indicators that are to be used to assess the Contractor's performance under the Contract, and in particular to assess whether or not it has achieved the outputs and is therefore entitled to receive a milestone payment;
 - (vii) a Costing Schedule for Implementation Phase Work; and
 - (viii) an Implementation Schedule for Implementation Phase Work.
- (b) the Draft PDD must include a comprehensive, structured and systematic Risk Management Plan prepared in accordance DFAT's Risk Management Guide, identifying and analysing potential risks for the Project and appropriate responses to minimise those risks;
 - (c) the Draft PDD must include analysis of the issues of sustainability, including that approaches are environmentally appropriate and the potential for a phased handover of Project responsibilities; and
 - (d) specify any other matters detailed in or required for **Schedule 1** (Statement of Requirements).
- 65.4. Where instructed by DFAT in writing, the Contractor must attend and participate in a minimum of two (2) meetings with DFAT as required and produce such documents for the meetings as are specified in DFAT's instructions.
- 65.5. The Contractor must amend the Draft PDD, if instructed to do so by DFAT and thereafter submit the Final PDD to DFAT for appraisal.
- 65.6. Within **[specify period]** days of receiving the Final PDD or a revised Final PDD, DFAT will issue a notice in which it either:
- (a) approves the Final PDD; or
 - (b) rejects the Final PDD and by written notification requires the Contractor to rectify or amend the Final PDD within the time period stated in the notice in which event this clause shall apply to the re-submitted Final PDD.
- 65.7. The Final PDD will form the key reference document for the Project.

66. **IMPLEMENTATION PHASE WORK**

- 66.1. If DFAT exercises the Option pursuant to **Clause 64.2** (Design and Implementation Contract), DFAT in consultation with the Contractor must develop an Implementation Statement of Requirements based on the Final PDD (including

timeframes within which the Implementation Phase Services will be carried for each component), within [specify period] days after DFAT has exercised the Option.

- 66.2. The DFAT approved Implementation Statement of Requirements will be incorporated into this Contract by a Deed of Amendment in accordance with **Clause 18** (Amendment).

67. **PERFORMANCE GUARANTEE**

- 67.1. The Contractor must, at its expense, provide to DFAT, within ten (10) **Business Days** of the Project Start Date, a performance guarantee executed by [insert name of Guarantor] delivered to DFAT, guaranteeing the Contractor's performance of its obligations under the Contract, which must be substantially in the form appearing in **Schedule 6** (Performance Guarantee).

68. **CONSTRUCTION SERVICES AND USE OF APPROPRIATE BUILDING MATERIALS**

- 68.1. The Contractor must engage specialist construction sub-contractors to undertake all Construction Work. However, the engagement of Construction sub-contractors shall not relieve the Contractor from any liability for the performance of this Contract in accordance with **Clause 38** (Sub-contracting).
- 68.2. The Contractor must ensure that all construction design work is carried out:
- (a) in accordance with and so as to comply with any design brief or functionality requirements notified by DFAT;
 - (b) to a high standard of skill, care and diligence expected of a design professional; and
 - (c) to ensure that the design work is fit for its intended purpose.
- 68.3. The Contractor must ensure that all Construction Work is carried out:
- (a) in accordance with DFAT approved plans and specifications;
 - (b) so that it is fit for its intended purpose;
 - (c) using good workmanship and, unless otherwise approved or specified, new materials;
 - (d) employing competent and appropriately qualified personnel; and
 - (e) in a manner which clearly seeks to achieve the aims of the Project.
- 68.4. When engaging a construction sub-contractor, the Contractor must undertake a competitive tendering process that complies with the *Commonwealth Procurement Rules* ('CPRs') and the *Public Governance Performance and Accountability Act* ('PGPA Act') and DFAT's policy on applying **Division 2** of the CPRs and the PGPA Rules.
- 68.5. If DFAT reasonably considers that the Contractor has not adhered to appropriate processes or policies with respect to advertising for, or the evaluation of, tenders,

DFAT may require the Contractor to cancel the tender selection process. In such circumstances the Contractor may be required to repeat the competitive tender process at no additional cost to DFAT.

- 68.6. The Contractor warrants that it will exercise a duty of care and good faith to DFAT in performing its obligations under this Contract including the preparation of all tender documentation and the administration of any construction sub-contract, including ensuring that such sub-contracts allow for the correction of any Construction Defects.
- 68.7. The Contractor must ensure, and provide certification in reports that any timber or other building materials used in any way for the Project has been sustainably harvested, or sourced from recycled building materials, and are not made of and do not contain any asbestos
- 68.8. In the event that Supplies or building materials provided or used in any way by the Contractor for the Project/Program do not comply with the requirements of this **Clause 68** the Contractor must remedy this defect at the Contractor's own cost.

69. **PROCUREMENT AND GRANTS**

- 69.1. In procuring all Supplies for the purposes of providing the Goods and/or Services to DFAT (including establishing subcontracts), the Contractor must:
 - (a) determine what Supplies are required for proper implementation of the Services and advise DFAT;
 - (b) keep DFAT informed of ongoing requirements for Supplies in connection with the Project;
 - (c) implement procedures that are consistent with the principles of the Commonwealth Procurement Rules or the Public Governance, Performance and Accountability Act in particular, observing the core principles of achieving value for money and the supporting principles;
 - (d) maintain complete and accurate records documenting the procedures followed in procuring, and the particulars of Supplies;
 - (e) use its best endeavours to ensure Supplies are maintained including taking appropriate steps to ensure that manufacturers' warranties of Supplies are secured and warranty conditions followed;
 - (f) use its best endeavours to ensure Supplies are free from defects in design, material, manufacture or workmanship. The Contractor must replace defective Supplies under warranty provisions or at its own cost; and
 - (g) use the Supplies only for the purposes permitted under this Contract.
- 69.2. In administering any Grant activities, the Contractor must:
 - (a) implement procedures so that grant administration is undertaken in a manner that is consistent with the Commonwealth Grants Rules and Guidelines, in particular the seven Key Principles for Grants Administration; and

- (b) maintain complete and accurate records documenting the procedures followed in selecting grant recipients.

70. LIQUIDATED DAMAGES

- 70.1. In addition to DFAT's other remedies either under the Contract or at law, where, through the act or omission of the Contractor, the performance of certain parts of the Services is not successfully completed by the relevant date specified in the Annual Plan or by the Payment Milestone dates specified in **Schedule 2** (Pricing Schedule), and where no extension of time has been granted under **Clause 56** (Extension of Time), the Contractor must pay the liquidated damages amount specified in **Schedule 2** in respect of each such day of delay, up to a limit of **180 days** when the Contract may be terminated by DFAT under **Clause 53** (Termination for Breach).
- 70.2. The Contractor's responsibility to achieve Payment Milestones is essential for the successful implementation of the Project and the failure to achieve Payment Milestones in accordance with the Contract is likely to significantly prejudice achievement of the Project objectives and:
 - (a) cause DFAT significant political embarrassment
 - (b) adversely affect Australia's relationship with the Partner Country
 - (c) adversely affect public perceptions, both within Australia and internationally, of Australia's bilateral aid program, and
 - (d) undermine the diplomatic value to DFAT's bilateral aid program with the Partner Country.
- 70.3. The Contractor agrees that:
 - (a) the obligation to pay liquidated damages under this clause is additional to DFAT's rights to withhold payment or part payment of Fees under the Contract, and
 - (b) the amount specified for liquidated damages represents a genuine pre-estimate of the loss likely to be suffered and that the issues specified in this **Clause 70** are relevant in determining DFAT's loss.
- 70.4. DFAT and the Contractor acknowledge and agree that they are both Parties negotiating and contracting at arms' length, have equal bargaining power, possess extensive commercial experience and expertise and are being advised by their own legal, accounting, financial, economic and other professionals in relation to their rights and obligations under this Contract.

71. ACCESSIBILITY REQUIREMENT FOR DFAT WEBSITES

- 71.1. If the Statement of Requirements requires the Contractor to develop or maintain a website on behalf of DFAT, the Contractor must ensure that the website complies with the Web Content Accessibility Guidelines (WCAG) Version 2.0, Level AA.

SCHEDULE 1—Statement of Requirements

See separately attached Schedule 1 on DFAT's Business Opportunities and Notifications website.

SCHEDULE 2 – PRICING SCHEDULE

See separately attached Schedule 2 on DFAT's Business Opportunities and Notifications website.

SCHEDULE 3 - Deed of Confidentiality

THIS DEED POLL is made on the _____ day of _____ []

in favour of **COMMONWEALTH OF AUSTRALIA** represented by the Department of Foreign Affairs and Trade ("DFAT").

BY [Insert name and address of Recipient who will have access to Confidential Information] (the "Recipient").

RECITALS

- A. DFAT and **Contractor's Name** (the "Contractor") have entered into a Contract for the purpose of a project in [Country].
- B. The Recipient has been engaged by the Contractor to work on the project.
- C. The Recipient, in carrying out that work, be given access to Confidential Information.
- D. DFAT requires the Recipient to enter into this Deed in relation to use of Confidential Information.

THE RECIPIENT DECLARES AS FOLLOWS:

1 INTERPRETATION

In this Deed, unless the contrary intention appears:

‘Confidential Information’ means information that:

- (a) is designated by DFAT as confidential; or
- (b) the Recipient knows or ought to know is confidential,

but does not include information which:

- (c) is or becomes public knowledge other than by breach of this Deed or other obligation of confidentiality.

“Personal Information” has the same meaning as in the *Privacy Act 1988*.

2 CONFIDENTIAL INFORMATION

- 2.1 The Recipient acknowledges and agrees that:

- (a) the Confidential Information is confidential and that any Confidential Information disclosed to the Recipient is disclosed to the Recipient only pursuant to the terms of this undertaking;
- (b) it must not, other than with the prior written approval of the Commonwealth, use, disclose, divulge or deal with any Confidential Information, nor allow any act, matter or thing to be done or occur whereby any Confidential Information may be ascertained or used by, or disclosed or communicated to, any other person, except in accordance with the terms of this undertaking; and
- (c) improper use or disclosure of Confidential Information would damage the Commonwealth.

3 RESTRICTIONS ON USE

3.1 The Recipient must:

- (a) keep the Confidential Information, and all documents containing, or referring to, any Confidential Information, under effective control of the Recipient;
- (b) not use or reproduce any document containing, or referring to, any Confidential Information, nor allow any other person to use or reproduce any such document;
- (c) take all reasonable steps to ensure that Confidential Information, and all documents containing, or referring to, any Confidential Information, are protected at all times from any unauthorised use, disclosure or access and immediately notify the Commonwealth if the Recipient becomes aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
- (d) if required at any time by the Commonwealth to do so, deliver up to the Commonwealth, or destroy, all Confidential Information, including all documents containing, or referring to, any Confidential Information, in the possession, custody or control of the Recipient; and
- (e) if required by the Commonwealth:
 - (i) permit the Commonwealth reasonable access to the Recipient's premises and information management systems to ensure or check compliance with this undertaking; and
 - (ii) provide to the Commonwealth a statutory declaration of an officer of the Contractor stating that **Clause 3.1(e)** has been complied with.

4 PERSONAL INFORMATION

- 4.1 The Recipient agrees, with respect to all Personal Information acquired by it during the performance of the Contract, to abide by the provisions of the *Privacy Act 1988* as if the Recipient were an "Agency" as defined by that Act.

5. SURVIVAL OF OBLIGATIONS

5.1 The obligations in this Deed are perpetual.

EXECUTED as a deed poll.

SIGNED, by the Individual in the presence)
of:)
Signature of

.....

Signature of witness

.....

Name of witness
(*Print*)

SCHEDULE 4 – Confidential Information

Confidential Information identified by DFAT

Description	Period of Confidentiality
<insert clause reference and brief description or insert “not applicable”>	

Confidential Information identified by the Contractor

Description	Period of Confidentiality
<insert clause reference and brief description or insert “not applicable”>	

SCHEDULE 5 - Deed of Novation and Substitution

This **DEED OF NOVATION AND SUBSTITUTION** made the day of

BETWEEN:

COMMONWEALTH OF AUSTRALIA represented by the Department of Foreign Affairs and Trade (“DFAT”)

AND:

[ABN of] (the “Subcontractor”) of the second part;

AND:

Insert Contractor's Name and ACN] of [insert **Contractor's Address** (the “Contractor”) of the third part.

WHEREAS:

- A. DFAT is concerned to ensure that the Services under the Contract are properly delivered.
- B. The Subcontractor is a subcontractor to the Contractor for the Services.
- C. The Subcontractor and Contractor have agreed with DFAT to novate the Subcontract to DFAT in the event that DFAT exercises its right under **Clause 38** (Subcontracting) and **37** (Specified Personnel) of the Contract.
- D. The Subcontractor agrees that DFAT may novate the Subcontract to another Contractor at its sole and absolute discretion in the event that DFAT has exercised its right under **Clause 38** and **Clause 37** of the Contract.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

“**Business Day**” means a day on which trading banks are open for business in Canberra;

“**Commencement Date**” has the same meaning as in the Contract;

“**Contract**” means the Contract for the provision of Services between DFAT and the Contractor dated on or about [];

“**Deed**” means this Deed of Novation;

“**Services**” means the services to be provided by the Contractor to DFAT under the Contract;

“**Party**” means DFAT, the Subcontractor or the Contractor;

“**Subcontract**” means the contract between the Contractor and the Subcontractor for the provision of the Subcontractor Services; and

“**Subcontractor Services**” means the services that the Subcontractor is obliged to provide to the Contractor under the Subcontract.

2. APPLICATION OF DEED

2.1 The Contractor and the Subcontractor agree that:

- (a) this Deed is entered into for the benefit of DFAT; and
- (b) DFAT may exercise the rights granted to it under this Deed.

2.2 This Deed commences on the Commencement Date of the Subcontract.

3. NOVATION

3.1 DFAT may issue a notice of substitution to the Subcontractor if DFAT is entitled to exercise its rights under **Clause 38** (Subcontracting) and **Clause 37** (Specified Personnel) of the Contract

3.2 The Parties agree that on and from the date of issue of a notice of substitution:

- (a) DFAT is substituted for the Contractor under the Subcontract in respect of the Subcontractor Services as if DFAT was originally the Party to the Subcontract instead of the Contractor, and all references in the Subcontract to the Contractor are to be read and construed as if they were references to DFAT;
- (b) DFAT is to pay any amount due to the Subcontractor under the Subcontract to the Subcontractor and the receipt of the Subcontractor shall be full and sufficient discharge for any such payments;
- (c) subject to paragraph (a), DFAT is bound by, and must fulfil, comply with and observe all the provisions of the Subcontract and enjoys all the rights and benefits of the Contractor under the Subcontract; and
- (d) the performance by the Subcontractor of services under the Subcontract, is instead of, and not in addition to, any performance by the Contractor of its obligations under that Subcontract.

3.3 If DFAT exercises its rights of novation under this deed, DFAT may further novate the Subcontract by substituting a new contractor in place of the Contractor on the terms of this deed with appropriate alterations. In the event of such novation, the rights and obligations of the Subcontractor with respect to the Contractor shall become the rights and obligations of the Subcontractor with respect to the new contractor.

4. RELEASE

- 4.1 Except in relation to payment due from the Contractor to the Subcontractor under the Subcontract but unpaid on the date of issuing of the notice of substitution referred to in **Clause 3** of this Schedule, the Contractor releases and discharges DFAT from any and all claims, actions, proceedings, obligations and liabilities (whether based in negligence or any other form of legal liability) in respect of or in any way arising from the Subcontract prior to the date of the notice of substitution in respect of the Subcontractor Services.

5. FURTHER ASSURANCES

- 5.1 Each Party must take such steps, execute all such documents, and do all such acts and things as may be reasonably required by the other Party to give effect to any of the transactions contemplated by this Deed.

6. DISCHARGE

- 6.1 Neither the Subcontractor nor the Contractor are discharged or released or excused from this Deed by an arrangement made between the Contractor and the Subcontractor prior to the issue of a notice of substitution with, by any change to the Subcontract, or by any forbearance whether as to payment, time or otherwise.
- 6.2 The Contractor undertakes to notify DFAT of any alterations to the Subcontract or other matter referred to in **Clause 3** of this Schedule. A failure of the Contractor to notify DFAT under this clause does not alter the Subcontractor's obligations under this Deed.
- 6.3 This Deed by the Subcontractor for DFAT to assume the obligations of the Contractor is discharged in relation to the Subcontract only on completion by the Subcontractor of all its obligations under the Subcontract in respect of the Subcontractor Services, or, in the event of the issue of a notice of substitution, on the due and proper performance of the Subcontract by the Subcontractor.
- 6.4 The obligations of DFAT under this Deed in its application to the Subcontract must not exceed the obligations of the Contractor under the Subcontract.

7. NOTICES

- 7.1 A notice required or permitted to be given by one Party to another under this Deed must be in writing and is treated as being duly given and received:
- (a) when delivered (if left at that Party's address);
 - (b) on the third Business Day after posting (if sent by pre-paid mail); or
 - (c) on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and the facsimile machine provides an affirmation of a successful transmission).

Address of Party

- 7.2 For the purposes of this clause, the address of a Party is the address set out below or another address of which that Party may from time to time give notice to each other Party:

DFAT

To: **Desk Name**

Attention: Country Program Manager

Address: Department of Foreign Affairs and Trade
RG Casey Building
John McEwen Crescent
Barton
ACT 0221
AUSTRALIA

Facsimile: Desk Fax

Contractor

To: Contractor's Name

Attention:

Address: Contractor's Address

Facsimile: Contractor's Fax

Subcontractor

To:

Attention:

Address:

Facsimile:

8. LAWS

- 8.1 This Deed is subject to and construed in accordance with the laws in force in the Australian Capital Territory.

9. **WARRANTY**

- 9.1 The Subcontractor and the Contractor each warrant and represent to DFAT that at all times:
- (a) the execution and delivery of this Deed has been properly authorised by all necessary corporate action of the Subcontractor and the Contractor respectively;
 - (b) the Subcontractor and the Contractor respectively each has full corporate power and lawful authority to execute and deliver this Deed and to consummate and perform or caused to be performed its obligations under this Deed;
 - (c) this Deed constitutes a legal, valid and binding obligation of the Subcontractor and the Contractor respectively, enforceable in accordance with its terms by appropriate legal remedy; and
 - (d) to the best of each of the Subcontractor's or the Contractor's knowledge, there are no actions, claims, proceedings or investigations pending or threatened against or by the Subcontractor or the Contractor respectively that may have a material effect on the ability of the Subcontractor or the Contractor respectively to perform its obligations under this Deed.

10. **GENERAL**

Counterparts

- 10.1 **This Deed may be executed up to three (3) counterparts and all of those counterparts taken together constitute one and the same instrument.**
Attorneys

- 10.2 **Where this Deed is executed on behalf of a Party by an attorney, that attorney by executing declares that the attorney has no notice of the revocation of the power of attorney under the authority of which the attorney executes this Deed on behalf of that Party.**
Further Assurance

- 10.3 **Each Party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers all deeds, documents, instruments and acts reasonably required of it or them by notice from another Party effectively to carry out and give full effect to this Deed and the rights and obligations of the Party under it.**
Assignment

- 10.4 **No Party may assign or transfer any of its rights or obligations under this Deed without the prior consent in writing of the other Parties. DFAT may withhold its consent in its absolute discretion.**

EXECUTED as a Deed.

SIGNED for and on behalf of the)
COMMONWEALTH OF)
AUSTRALIA in the presence of:)
) Signature

.....
Signature of witness

.....
Name of witness
(Print)

SIGNED for and on behalf of)
[Subcontractor] by:)
)

.....
Director
Name of Director
(Print)

.....
Director/Secretary
Name of Director/Secretary
(Print)

SIGNED for and on behalf of)
[Contractor] by:)
)

.....
Director
Name of Director
(Print)

.....
Director/Secretary
Name of Director/Secretary
(Print)

SCHEDULE 6 – Performance Guarantee

THIS DEED OF GUARANTEE is made the day of 20

BETWEEN COMMONWEALTH OF AUSTRALIA represented by the Department of Foreign Affairs and Trade ('DFAT')

AND [] ABN []

('Guarantor')

RECITALS

- A. DFAT wishes to procure certain services.
- B. [Insert Contractor's Name] ('Contractor') has agreed to supply the services to DFAT under the annexed Contract (the 'Contract').
- C. The Guarantor agrees to provide the guarantees and indemnities appearing in this Deed.

AGREEMENT

1. The Guarantor guarantees to DFAT the performance of the obligations undertaken by the Contractor under the Contract on the conditions set out in this Deed.
2. If the Contractor (unless relieved from the performance of the Contract by DFAT expressly or by statute or by a decision of a Court or tribunal of competent jurisdiction) fails to execute and perform its obligations under the Contract, the Guarantor shall, if required to do so by DFAT, complete or cause to be completed the obligations set out in, and in accordance with the conditions of, the Contract. If the Contractor commits any breach of its obligations, and such breach is not remedied by the Guarantor under this Deed and the Contract is then terminated for default, the Guarantor shall indemnify DFAT against losses, damages, costs and expenses directly incurred by reason of that default.
3. The Guarantor shall not be discharged or released or excused from this Deed by an arrangement made between the Contractor and DFAT with or without the consent of the Guarantor, or by any alteration, amendment or variation in the obligations assumed by the Contractor or by any forbearance whether as to payment, time, performance or otherwise. The guarantee by the Guarantor in this Deed to assume the obligations of the Contractor shall continue in force and effect until completion of all the Contractor's obligations under the Contract or until the completion of the undertakings under this Deed by the Guarantor.
4. The undertakings of the Guarantor under this Deed shall not exceed the obligations of the Contractor under the Contract. Any liability of the Guarantor shall be coextensive, but not in excess of any liability of the Contractor to DFAT under the Contract. The Guarantor shall be entitled to all rights, privileges and defences otherwise available, to the Contractor with respect to any such liability, including without limitation all provisions of the Contract relating to the limitation of liability and the resolution of disputes.

5. This Deed is subject to, and is to be construed in accordance with, the laws in force in the Australian Capital Territory and the parties agree that the courts of that Territory have jurisdiction to entertain any action in respect of, or arising out of, this Deed and the parties submit themselves to the jurisdiction of those courts.
6. For the purpose of this Deed, where an obligation of the Contractor under the Contract has not been performed, the Contractor shall be taken to have failed to perform that obligation notwithstanding that the Contractor has been dissolved or is subject to external administration procedures under **Chapter 5** of the *Corporations Law 2001*(Cth) or any other law.
7. The guarantee in this Deed is a continuing guarantee to DFAT until the obligations and liabilities of the Contractor under the Contract have in all respects been performed, observed and discharged.
8. The following notice arrangements apply:
 - (a) notice or other communication which may be given to or served on the Guarantor under this Deed shall be deemed to have been duly given or served if it is in writing, signed on behalf of DFAT and is either delivered by hand, posted or faxed or a copy transmitted electronically to the Guarantor or its agent at any registered office of the Guarantor or posted to the Guarantor's address set out above or such other address as is notified in writing to DFAT from time to time;
 - (b) a notice or other communication which may be given to or served on DFAT under this Deed shall be deemed to have been duly given or served if it is in writing, signed by or on behalf of the Guarantor and is either delivered by hand, posted or faxed or a copy transmitted electronically to DFAT at the address set out above or such other address as is notified in writing to the Guarantor from time to time;
 - (c) a notice sent by post shall be deemed to have been given at the time when, in due course of transmission, it would have been delivered at the address to which it is sent; and
 - (d) a notice sent by facsimile transmission or transmitted electronically shall be deemed to have been given when the machine on which the notice is sent reports that the notice has been transmitted satisfactorily.

SIGNED for and on behalf of the)
COMMONWEALTH OF)
AUSTRALIA by:)

In the presence of:

..... Name and Position
(*Print*)

Signature of witness

.....

Name of witness (print)

SIGNED for and on behalf of)
[Guarantor] by:)
)

.....

Director Director/Secretary
Name Name
(*Print*) (*Print*)

SCHEDULE 7– Declaration of Status

THIS DEED POLL is made on the _____ day of []

in favour of **COMMONWEALTH OF AUSTRALIA** represented by the Department of Foreign Affairs and Trade (“DFAT”).

BY [Insert name and address of Adviser] (the “Adviser”).

RECITALS

- A. DFAT and **Contractor’s Name** (the “Contractor”) have entered into a Contract for the purpose of a project in [insert **Country**].
- B. The Adviser has been engaged by the Contractor to work on the project.
- C. DFAT requires the Adviser to enter into this Deed in order to confirm their eligibility to receive allowances under the Adviser Remuneration Framework for the DFAT – Australian Aid Program.

THE ADVISER DECLARES AS FOLLOWS:

1. INTERPRETATION

1.1 In this Deed:

“Partner” means a person who:

- (a) has a close personal relationship with an Adviser;
- (b) shares accommodation or housing with an Adviser; and
- (c) who provides the Adviser with financial or domestic support.

“Dependant” means a person who:

- (a) has a close personal relationship with an Adviser;
- (b) shares accommodation or housing with an Adviser; and
- (c) who is provided with financial or domestic support by the Adviser.

“Dependant Child” means a child under 21 years of age who is a natural, step- or adopted child of the Adviser, a child of the Adviser’s Partner or a child for whom the Adviser is a legal guardian.

2. ADVISER STATUS

- 2.1 The Adviser **[has/has not]** relocated in-country from their permanent country of residence.
- 2.2 The Adviser **[is/is not]** accompanied by dependants.
- 2.3 The Adviser’s dependants and/or partner **[are/are not]** in receipt of an expatriate housing allowance from the Commonwealth of Australia or any other employer.
- 2.4 The Adviser’s dependants and/or partner:
 - (a) [are/are not] currently employed by DFAT or on an DFAT funded project; and
 - (b) [are/are not] in receipt of an allowance that recognises their accompanied status from the Commonwealth of Australia.
- 2.5 The Adviser **[is/is not]** accompanied by a Dependant Child/ren.
- 2.6 The Dependant Child/ren **[is/is not]** attends kindergarten through to year 12.
- 2.7 The Adviser acknowledges that he/she must provide proof of enrolment in a primary or secondary school for each Dependent Child in order to be eligible to receive the Mobility Allowance Supplement.
- 2.8 The Adviser must inform DFAT or the Contractor promptly if their status as described in this **Clause 2** changes.

3. PROOF OF STATUS

- 3.1 DFAT may, at any time, request the Adviser to give DFAT reasonable evidence to confirm the Adviser’s status as described in **Clause 2**.
- 3.2 If DFAT makes a request under **Clause 3.1**, the Adviser must promptly comply with the request.

EXECUTED as a deed poll.

SIGNED, by the Adviser in the presence of:)

)
Signature of

.....

Signature of witness

.....

Name of witness
(*Print*)

Schedule 8 – Department/Agency Access Form

The Contractor has entered into a Contract with the Commonwealth of Australia as represented by the Department of Foreign Affairs and Trade (the “Contract”). Under that Contract, the Contractor offers to provide the Goods and Services to other Commonwealth Departments and Agencies.

The Commonwealth entity specified in **Item 3** below accepts this offer on the terms and conditions set out in the Contract and in this Agency Access Form. If there is an inconsistency between this Agency Access Form and any other provisions of the Contract, the terms and conditions in this Agency Access Form Contractor prevail to the extent of the inconsistency.

1	Contract description	
2	Names of Parties to the Contract	
3	Customer	<i>[Insert Department/Agency name]</i> A reference to <i>[insert name of the contracting Department /Agency]</i> or the Customer in the Contract Contractor be taken as a reference to <i>[the Agency]</i>
4	Commencement Date	
5	Customer Representative	Title: Name: Postal Address: Fax number: Email:
6	Customer’s details for Notices	Postal address: Physical address: Facsimile number:
7	Contractor Specified Personnel	<i>[insert names]</i>
8	Goods and/ or Services required	<i>[itemise the specifics required in a separate Attachment A to this Schedule 9]</i>

9	Any other changes	<i>[insert any additional commercial requirements, insurances,]</i>
---	-------------------	---

SIGNED by)

)

)

)

(Name of authorised [INSERT NAME OF DEPARTMENT/ AGENCY REPRESENTATIVE] in block letters)

)

(Signature of authorised DFAT representative)

)

By executing this Agreement the signatory for [insert] warrants that the signatory is duly authorised to execute this Agreement on behalf of [INSERT NAME OF AGENCY]

)

as authorised representative for [INSERT NAME OF DEPARTMENT/AGENCY] in the presence of:

)

)

)

)

(Signature of witness)

)

)

)

)

(Name of witness in block letters)

DATE:

EXECUTED by the (insert Contractor)
name) in accordance with section 127(1)
of the Corporations Act by authority of its)
directors:)

)

)

)

((Signature of director /
company secretary*)))

*delete whichever is not applicable)

(Signature of witness)

)

)

(Name of director/company secretary* in)
block letters))

(Name of witness in block letters)

*delete whichever is not applicable

Schedule 9 – Partner Performance Assessment

Partner Performance Assessment (PPA)

DFAT uses Partner Performance Assessments (PPAs) to assess how well implementing partners are delivering the services required in aid agreements. PPAs are internal DFAT documents, but data from PPAs are used to inform future procurement evaluations, including Tender Evaluation Committees, partner selection decision making, and core contributions to multilateral organisations. PPAs should be completed by agreement managers and be based on the most recent 12 month period where performance information is available. Responses should be based on assessments of performance by a partner in relation to a specific agreement. It is mandatory to complete a PPA for all agreements with NGOs, commercial suppliers and multilateral organisations with a total value over \$3 million, except for core contributions to multilateral organisations. A proportional approach to completing the PPA should be adopted depending on the size and risk of the agreement. For agreements above \$10 million, text is required to provide evidence to support the ratings and identify any areas for improvement. For agreements between \$3 million and \$10 million, supporting text is only required if an unsatisfactory rating (i.e. 3 or below) or a rating of 6 (very good) is provided. As PPAs inform future funding decisions, delivery partners must be given an opportunity to review the assessment. Delivery partners should be provided with a minimum 15 working days to endorse the ratings. PPAs must be approved by a relevant EL2 officer or above and uploaded onto AidWorks by 1 May 2015. This Smart PDF form can be directly uploaded into AidWorks. For further information, refer to the [Good Practice Note](#). If you have any questions, please contact the relevant partner area: for NGOs contact ngoengagement@dfat.gov.au, for multilateral organisations contact aidriskmanagement@dfat.gov.au, for commercial suppliers contact contractor.performance@dfat.gov.au.

Summary

Agreement Name	Agreement Name		
Partner's Name	Name of NGO, commercial supplier or multilateral organisation	Agreement Number	Agreement Number
Agreement Start Date	Start Date of Agreement	Agreement End Date	End Date of Agreement
Reporting period start date	Start date of the reporting period covered in this PPA	Reporting period end date	End date of the reporting period covered in this PPA
Total Value	\$AUD	Country/Region	Country / Region Name
Report drafted by	Name	Sector	Sector Name
Approved by	Counsellor / Director Name	Date approved	Date Approved
Partner Type	<input type="radio"/> NGO <input type="radio"/> Commercial Supplier <input type="radio"/> Multilateral Organisation <input type="radio"/> Other		
Agreement Type	<input type="radio"/> Procurement <input type="radio"/> Grant		

Australian Aid – Rated Performance Criteria

Rate each statement using the following six point scale as a guide.

Satisfactory		Less than satisfactory	
6	Very good; satisfies criteria in all or almost all areas	3	Less than adequate; on balance does not satisfy criteria but does not fail in any major area
5	Good; satisfies criteria in most areas	2	Poor; does not satisfy criteria in major areas
4	Adequate; on balance satisfies criteria; does not fail in any major area	1	Very poor; does not satisfy criteria in many major areas

1. Deliver Lasting Results and Impact - Is the delivery partner achieving agreed objectives and results and promoting sustainability?

a) Results focused and delivers on time, ensuring deliverables are of high quality, accurate and meet the defined requirements	1	2	3	4	5	6
b) Undertakes sound monitoring and evaluation reporting that includes quantitative and qualitative evidence of progress against objectives	1	2	3	4	5	6
c) Promotes sustainability and where applicable, is prepared for transition in/out of the activity	1	2	3	4	5	6
Overall rating:						

Assessment (no more than 300 words)

*For agreements above \$10 million: It is **mandatory** to provide evidence to support the ratings given. This should include any identified areas for improvement.*

*For agreements between \$3-10 million: Supporting evidence is **required** if a rating of 3 or below or 6 is given.*

2. Maximise Value for Money (VfM) – Is value for money being delivered ensuring effective, ethical, efficient and economical use of funds?

a) Committed to eliminating inefficiency and duplication and applying lessons learnt to enhance VfM	1	2	3	4	5	6
b) Delivers defined services within budget (predicted budgets compare well to actual expenditure)	1	2	3	4	5	6
c) Scrutinises costs to pursue the most cost-effective options and considers proportionality in planning/allocating resources	1	2	3	4	5	6
d) Robust systems and procedures in place to monitor and manage VfM during implementation	1	2	3	4	5	6
Overall rating:						

Assessment (no more than 300 words)

*For agreements above \$10 million: It is **mandatory** to provide evidence to support the ratings given. This should include any identified areas for improvement.*

*For agreements between \$3-10 million: Supporting evidence is **required** if a rating of 3 or below or 6 is given.*

3. Collaboration, Communication and Responsiveness – Does the partner work collaboratively, communicate effectively with stakeholders and respond effectively to emerging issues?

a) Communicates effectively with stakeholders and counterparts (including partner government, other donors, private sector, communities and beneficiaries as appropriate), works collaboratively, builds effective relationships and ensures DFAT is consulted on key developments and emerging issues	1	2	3	4	5	6
b) Demonstrates appropriate flexibility and responsiveness to DFAT requests and addresses problems/issues openly and constructively	1	2	3	4	5	6
Overall rating:						

Assessment (no more than 300 words)

*For agreements above \$10 million: It is **mandatory** to provide evidence to support the ratings given. This should include any identified areas for improvement.*

*For agreements between \$3-10 million: Supporting evidence is **required** if a rating of 3 or below or 6 is given.*

4. Policy Alignment, Risk Management and Innovation – Does the partner operate in a manner consistent with DFAT policies and priorities, effectively managing risk, fraud and corruption, and promoting innovation?

a) Partner takes appropriate account of DFAT policies including on Child protection, Environmental and Resettlement safeguards; Gender Equality and Disability Inclusive Development	1	2	3	4	5	6
b) Has effective systems for identifying, managing and reporting risk, fraud and corruption and informs DFAT of risks/issues that may adversely affect timing, cost or quality of services as agreed	1	2	3	4	5	6
c) Partner follows branding guidelines, including use of the DFAT crest and Australia Aid Identifier, and promotes the visibility of Australian Government funded aid investments as appropriate	1	2	3	4	5	6
Innovation (This is not a performance standard. A low rating against this question does not necessarily result in a poor performance assessment)						
d) Partner proposes and implements innovative development approaches (e.g. results-based aid; trialling/adapting new technologies), leveraging new partnerships/sources of finance, whilst mitigating associated risks	1	2	3	4	5	6
Overall rating:						

Assessment (no more than 300 words)

*For agreements above \$10 million: It is **mandatory** to provide evidence to support the ratings given. This should include any identified areas for improvement.*

*For agreements between \$3-10 million: Supporting evidence is **required** if a rating of 3 or below or 6 is given.*

5. Effective partner personnel – Does the partner provide personnel with appropriate skills and experience and manage them effectively?

a) Senior personnel demonstrate effective leadership and management, achieve results against agreed responsibilities and communicate effectively	1	2	3	4	5	6
b) Head/Regional Office provides effective support and oversight to the in-country team	1	2	3	4	5	6
c) Recruitment and management of staff is conducted in a timely and professional manner	1	2	3	4	5	6

and DFAT has been alerted to any recruitment/staffing issues	
	Overall rating:

Assessment (no more than 300 words)

For agreements above \$10 million: It is mandatory to provide evidence to support the ratings given. This should include any identified areas for improvement.

For agreements between \$3-10 million: Supporting evidence is required if a rating of 3 or below or 6 is given.

6. Other Agreement Specific Measurable(s) - [If necessary, use the fields below to add any indicators specific to the partner performance agreement]

a) [Add as required]	1	2	3	4	5	6
b) [Add as required]	1	2	3	4	5	6
c) [Add as required]	1	2	3	4	5	6
d) [Add as required]	1	2	3	4	5	6

Assessment (no more than 300 words)

For agreements above \$10 million: It is mandatory to provide evidence to support the ratings given. This should include any identified areas for improvement.

For agreements between \$3-10 million: Supporting evidence is required if a rating of 3 or below or 6 is given.

7. General Comments (no more than 500 words)

Use this text box to record any other information relevant to the performance of the partner. If there is insufficient space, a separate PDF can be uploaded to AidWorks. Advise here where additional information can be found, if applicable.

Partner Acknowledgement

☐ I/we endorse this Partner Performance Assessment

Name:	
Position:	
Date:	

OR

☐ I/we do not endorse this Partner Performance Assessment and attach a written statement detailing the reasons for this

Name:	
Position:	
Date:	

Schedule 10 – Adviser Performance Assessment

NOTES FOR COMPLETING:

1. This form is to be used by DFAT and/or its implementing Partners for assessing Adviser performance.
2. An Adviser Performance Assessment (APA) is undertaken on completion of an adviser contract, or annually for engagements longer than one year in duration.
3. DFAT or the relevant MC may seek the views of Partner Government officials involved in the activity when completing the APA.
4. Where underperformance is identified in an APA, practical steps to rectify the performance issues must be put in place. Where underperformance is not sufficiently rectified, there must be practical consequences.
5. In all cases, Advisers must be given 15 working days to review and sign the APA.
6. Completed APAs must be emailed to contractor.performance@dfat.gov.au.

NOTES FOR ADVISERS:

1. Advisers are required to sign completed APAs within 15 working days of receipt.
2. Advisers may include a written response with the APA to address any issues raised.
3. Responses must be returned to the party conducting the APA (i.e. DFAT or Managing Contractor)
4. Failure to respond within 15 working days of receipt is deemed as acceptance of the APA.
5. Completed APAs are placed on DFAT's performance register and remain valid for five (5) years.
6. APAs, including written responses from Advisers, can be used by DFAT as part of a future adviser selection process.
7. APAs may be provided by DFAT to other Partner (Government, Multilateral etc.) procurement processes which involve DFAT funds.

Summary

Adviser Name	<i>Adviser Name</i>	Agreement Name	<i>Agreement Name</i>
Managing Contractor	<i>Name of Commercial Partner</i>	Agreement Number	<i>Agreement Number</i>
Agreement Start Date	<i>Start Date of Agreement</i>	Agreement End Date	<i>End Date of Agreement</i>
Reporting period start date	<i>Start Date of the Reporting Period covered in this APA</i>	Reporting period end date	<i>End Date of the Reporting Period covered in this APA</i>
Total Value	<i>\$AUD</i>	Country/Region	<i>Country / Region Name</i>
Report drafted by	<i>Name</i>	ARF Classification	<i>Professional Discipline/Job Category</i>
Approved by	<i>Counsellor / Director Name</i>	Date approved	<i>Date Approved</i>

Australian Aid – Rated Performance Criteria

Rate each statement using the following six point scale as a guide.

Satisfactory		Less than satisfactory	
6	Very good; satisfies criteria in all or almost all areas	3	Less than adequate; on balance does not satisfy criteria but does not fail in any major area
5	Good; satisfies criteria in most areas	2	Poor; does not satisfy criteria in major areas
4	Adequate; on balance satisfies criteria; does not fail in any major area	1	Very poor; does not satisfy criteria in many major areas

1. Deliver Lasting Results and Impact – Is the adviser achieving the agreed deliverables?

a) Achieves results and delivers on time; ensuring deliverables are of high quality, accurate and meet the defined requirements.	1	2	3	4	5	6
b) Progress in capacity building and knowledge transfer to key counterpart(s), as per the defined requirements	1	2	3	4	5	6
c) Demonstrates effective leadership and management, as per the defined requirements	1	2	3	4	5	6
<i>Supporting evidence is <u>required</u> if a rating of 3 or below or 6 is given (no more than 300 words).</i>						

2. Demonstrated effective, ethical, efficient and economical use of resources – Does the adviser demonstrate Value for Money principles in their approach to the defined requirements?

a) Delivers defined services within budget.	1	2	3	4	5	6
b) Applies lessons learnt to enhance value for money.	1	2	3	4	5	6
<i>Supporting evidence is <u>required</u> if a rating of 3 or below or 6 is given (no more than 300 words).</i>						

3. Collaboration, Communication and Responsiveness – Does the adviser work collaboratively, communicate effectively with stakeholders and respond effectively to emerging issues?

a) Demonstrates professional conduct and cultural sensitivity by communicating effectively, working collaboratively and building effective relationships.	1	2	3	4	5	6
b) Demonstrates appropriate flexibility and responsiveness to DFAT (and/or its implementing partner) and the Partner Government's requests.	1	2	3	4	5	6
c) Addresses problems/issues openly and constructively.	1	2	3	4	5	6
<i>Supporting evidence is <u>required</u> if a rating of 3 or below or 6 is given (no more than 300 words).</i>						

4. Risk Management – Does the adviser effectively manage risk and operate in a manner consistent with DFAT policies?

a) Effectively manages risks and informs DFAT of any risks or issues that may adversely affect timing, cost or quality of services.	1	2	3	4	5	6
b) Takes appropriate account of DFAT policies including on Child protection, Environmental and Resettlement safeguards; Gender Equality and Disability Inclusive Development.	1	2	3	4	5	6
<i>Supporting evidence is <u>required</u> if a rating of 3 or below or 6 is given (no more than 300 words).</i>						

5. Other Contract Specific Measurable(s)

<i>[Add as required]</i>	1	2	3	4	5	6
<i>Supporting evidence is required if a rating of 3 or below or 6 is given (no more than 300 words).</i>						

DFAT Representative	DFAT Partner Representative	Adviser
Name:	Name:	Name:
Signature:	Signature:	Signature:
Date:	Date:	Date: