

# Department of Foreign Affairs and Trade

Head Grant Deed – Agreement number 72281

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Commonwealth of Australia represented by the Department  
of Foreign Affairs and Trade (**DFAT**)

The Asia Foundation (**Recipient**)

# Details

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## Parties

Name                      The Commonwealth of Australia represented by the Department of Foreign Affairs and Trade ABN 47 065 634 525

Short form name        **DFAT**

Name                      The Asia Foundation  
465 California St., 9th Floor  
San Francisco, CA 94104  
USA

Short form name        **Recipient**

## Background

- A      DFAT provides grant funding to support activities for overseas development assistance.
- B      The Recipient is an operational organisation implementing high quality programs throughout the Asia-Pacific region
- C      DFAT and the Recipient have agreed to establish a mechanism by which DFAT may issue Grant Orders to the Recipient from time to time, as part of an overall continuing strategic partnership.
- D      The Recipient has agreed to accept Grant Orders from DFAT and to implement the Activities that are funded in accordance with this Deed.

# DFAT Head Grant Deed

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# Deed

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## 1. Definitions

### 1.1 Defined terms

In this Deed, except where the contrary intention is expressed, the following definitions are used:

<b>Activity Proposal</b>	a description of the Activity to be included in the Grant Order.
<b>Grant Agreement</b>	a grant agreement created under this Deed as described in <b>Clause 2.3</b> .
<b>Grant Order</b>	an order for the implementation of an Activity, substantially in the form of <b>Schedule 2</b> .
<b>Notice</b>	a notice, demand, consent approval or communication issued under this Deed. <b>Notify</b> has a corresponding meaning.
<b>Party</b>	DFAT and the Recipient. <b>Parties</b> has a corresponding meaning.
<b>Standard Grant Conditions</b>	the Standard Grant Conditions in <b>Schedule 1</b> .

## 2. Formation of Grant Agreements

- 2.1 This Deed creates a mechanism by which DFAT and the Recipient may enter into Grant Agreements.
- 2.2 Either DFAT or the Recipient may initiate the creation of a Grant Agreement under this Deed by discussing a proposal with the other Party. DFAT may then ask the Recipient to prepare an Activity Proposal, if one has not already been prepared.
- 2.3 A separate Grant Agreement for the implementation of an Activity described in the Activity Proposal will be created when DFAT issues a Grant Order substantially in the form of **Schedule 2**. The terms and conditions of the Grant Agreement are the Standard Grant Conditions and the terms in the Grant Order itself.

## 3. Term

- 3.1 This Deed commences on 28 February 2016 and continues for an initial term of four years (**Initial Term**).
- 3.2 DFAT may extend the Initial Term by up to four periods of one year each by Notifying the Recipient at least 30 days before the end of the then current term. DFAT may exercise more than one option simultaneously. The maximum term of this Deed is eight years from the date on which it commences.
- 3.3 The expiry of this Deed will not affect any Grant Agreements created prior to the Deed's expiry.

## 4. Relationship with other agreements between DFAT and the Recipient

- 4.1 DFAT and the Recipient are also parties to other existing agreements.
- 4.2 This Deed and the Grant Agreements formed under it will not affect any other agreements between DFAT and the Recipient.

## 5. Termination

- 5.1 Either Party may terminate this Deed by Notifying the other Party at least 90 days before the date on which the termination will take effect.
- 5.2 The termination of this Deed will not affect any Grant Agreements created prior to the Deed's termination.

## 6. Notices and other communications

- 6.1 A Notice given under this Deed must be:
- (a) in writing, in English and signed by a person duly authorised by the sending Party; and
  - (b) hand-delivered or sent by prepaid post or email to the recipient's address for Notices as specified in **Clause 6.2**, as varied by any Notice given by the recipient to the sender.

- 6.2 The Parties' address for Notices are:

### **DFAT**

Mr Blair Exell, First Assistant Secretary, Development Policy Division

Department of Foreign Affairs and Trade

RG Casey Building

John McEwen Crescent

BARTON ACT 0221

AUSTRALIA

Email: [blair.exell@dfat.gov.au](mailto:blair.exell@dfat.gov.au)

### **Recipient**

Mr Gordon Hein, Senior Vice President, Programs

The Asia Foundation

465 California Street, 9th Floor

San Francisco, CA 94104 USA

Email: [gordon.hein@asiafoundation.org](mailto:gordon.hein@asiafoundation.org)

- 6.3 **Clauses 36.2** (Effective on receipt) and **36.3** (Notices by email) of the Standard Grant Conditions apply to Notices given under this Deed.

# Signing page

**EXECUTED** as a deed.

**Signed, sealed and delivered** for and on behalf of the **Commonwealth of Australia** represented by the **Department of Foreign Affairs and Trade** by its duly authorised delegate in the presence of




Signature of witness

ANGEL N KOVALOFF

Name of witness (print)

9/3/2016

Date

←  ←

Signature of delegate


Michael Wilson

Name of delegate (print)

As GFB

Position of delegate and section (print)

**Signed, sealed and delivered** for and on behalf of The Asia Foundation by:

  
Gordon Hein  
Senior Vice President, Programs

Name and position of signatory (print)

←  ←

Signature of signatory

By signing this Deed, the signatory warrants that he/she is duly authorised to execute this Deed on behalf of The Asia Foundation.

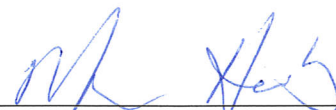
In the presence of:

MAUREEN HASIB

Name of witness (print)

21/3/2016

Date



Signature of witness



# Schedule 1 – Standard Grant Conditions

## Interpretation

### 1. Definitions and interpretation

#### 1.1 Defined terms

In this Agreement, except where the contrary intention is expressed, the following definitions are used:

<b>Activity</b>	the Activity described in the Grant Order.
<b>Activity End Date</b>	the date specified as the Activity End Date in the Grant Order.
<b>Activity Event</b>	any promotional event conducted by the Recipient relating to the Activity, including the award of grant funding, the attainment of a Milestone or launch of the completed Activity.
<b>Activity Proposal</b>	the description of the Activity included in the Grant Order.
<b>Activity Start Date</b>	the date specified as the Activity Start Date in the Grant Order.
<b>Agreement</b>	this Agreement which is a Deed between DFAT and the Recipient, as varied from time to time in accordance with <b>Clause 37.4</b> , including any attachments.
<b>Agreement Material</b>	any Material created by, for or on behalf of the Recipient on or following the Commencement Date, for the purpose of or as a result of performing its obligations under this Agreement including any modifications that may be required under <b>Clause 21.4(b)</b> .
<b>Agreement Period</b>	the period from the Commencement Date to the date DFAT accepts the final report provided in accordance with the Grant Order.
<b>Applicable Auditing Procedures</b>	the internal and external auditing procedures in the rules and regulations applicable to the Recipient.
<b>Application</b>	the application (if any) submitted by, for or on behalf of the Recipient for grant funding in relation to the Activity.
<b>Assets</b>	(a) items described in the Grant Order; and (b) any items of tangible property which are purchased, leased, created or otherwise brought into existence by, for or on behalf of the Recipient either wholly or in part with use of the Funds, not including Agreement Material.
<b>Australian Privacy Principles</b>	the Australian Privacy Principles (APPs) as defined in the <i>Privacy Act 1988</i> (Cth).

<b>Authority</b>	any Commonwealth, State, Territory, local or foreign government or semi-governmental authority, court, administrative or other judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality, including the Partner Government.
<b>Budget</b>	the Budget (if any) set out in the Grant Order.
<b>Business Day</b>	a day that is a working day in the place where the act is to be performed or where the Notice is received.
<b>Change in Control</b>	<p>in relation to an entity, a change in the direct or indirect power or capacity of a person to:</p> <p>(a) determine the outcome of decisions about the financial and operating policies of the entity; or</p> <p>(b) control the membership of the board of directors of the entity, whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of the entity or otherwise, not including a change in control resulting from ordinary course trading on a stock exchange in the shares of the entity.</p>
<b>Commencement Date</b>	the date on which the Grant Order is signed by DFAT.
<b>Commonwealth</b>	the Commonwealth of Australia.
<b>Confidential Information</b>	<p>information that is by its nature confidential and:</p> <p>(a) is designated by a Party as confidential; or</p> <p>(b) a Party knows or ought to know is confidential,</p> <p>but does not include information which is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligation.</p>
<b>DFAT</b>	the Commonwealth represented by Department of Foreign Affairs and Trade.
<b>DFAT Material</b>	any Material provided to the Recipient by DFAT, including the Material (if any) specified in the Grant Order.
<b>DFAT Representative</b>	the person identified as DFAT's Representative in the Grant Order.
<b>Force Majeure Event</b>	has the meaning given in <b>Clause 32.1</b> .
<b>Former DFAT Employee</b>	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 Activity.

<b>Fraudulent Activity, Fraud or Fraudulent</b>	dishonestly obtaining a benefit, or causing a loss, by deception or other means, and includes incidents of attempted, alleged, suspected or detected fraud.
<b>Funds</b>	the grant funding paid by DFAT to the Recipient under this Agreement and any interest earned by, for or on behalf of the Recipient on that grant funding, proceeds from the disposal or write-off of any Asset and any exchange rate gains made on that grant funding by the Recipient.
<b>General Conditions</b>	Clauses 1 to 37 of this Agreement.
<b>Grant Order</b>	the Grant Order issued by DFAT in accordance with <b>Clause 2.3</b> of the Head Grant Deed (DFAT Agreement No.72281), which created this Agreement.
<b>GST Law</b>	has the same meaning as in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Independent Auditor</b>	<p>a person who is:</p> <ul style="list-style-type: none"> <li>(a) a certified financial professional registered under the <i>Corporations Act 2001</i> (Cth); or</li> <li>(b) an appropriately qualified member of the Institute of Chartered Accountants in Australia, of CPA Australia, of the Australian National Institute of Accountants or of an equivalent recognised foreign institution; and</li> <li>(c) is in no way linked or associated with the Project/Program or the Parties.</li> </ul>
<b>Insolvency Event</b>	<p>in relation to an entity:</p> <ul style="list-style-type: none"> <li>(a) the entity disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;</li> <li>(b) the entity ceases to carry on business;</li> <li>(c) the entity ceases to be able to pay its debts as they become due;</li> <li>(d) proceedings are initiated with a view to obtaining an order for the winding up of the entity, or any person convenes a meeting for the purpose of considering or passing any resolution for the winding up of the entity;</li> <li>(e) the entity applies to come under, the entity receives a notice requiring it to show cause why it should not come under, an order has been made for the purpose of placing the entity under, or the entity otherwise comes under one of the forms of external administration referred to in Chapter 5 of the <i>Corporations Act 2001</i> (Cth) or Chapter 11 of the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth) or equivalent provisions in State or Territory legislation or the laws of the Partner Country in relation to incorporated entities;</li> <li>(f) where the entity is a natural person, the entity is declared</li> </ul>

	bankrupt or assigns his or her estate for the benefit of creditors;
	(g) where the entity is a partnership, any step is taken to dissolve that partnership; or
	(h) anything analogous to an event referred to in paragraph (d), (e), (f) or (g) occurs in relation to the entity.
<b>Intellectual Property Rights</b>	all intellectual property rights, including: <ul style="list-style-type: none"> <li>(a) copyright, patents, trade marks (including goodwill in those marks), designs, trade secrets, know how, rights in circuit layouts, domain names and any right to have confidential information kept confidential;</li> <li>(b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and</li> <li>(c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,</li> </ul> whether or not such rights are registered or capable of being registered.
<b>Law</b>	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in: <ul style="list-style-type: none"> <li>(a) Australia, whether made by a State, Territory, the Commonwealth, or a local government; and</li> <li>(b) the Partner Country.</li> </ul>
<b>Material</b>	includes property, equipment, information, data, documentation or other material in whatever 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.
<b>Milestone</b>	a milestone (if any) set out in the Grant Order.
<b>Modify</b>	to add to, enhance, reduce, change, replace, vary or improve. <b>Modification</b> and <b>Modified</b> have corresponding meanings.
<b>Moral Rights</b>	the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the <i>Copyright Act 1968</i> (Cth).
<b>Notice</b>	a notice, demand, consent, approval or communication issued under this Agreement.
<b>Outcomes</b>	the outcomes for the Activity, as set out in the Grant Order.
<b>Partner Country</b>	the country or countries in which the Activity is to be undertaken in whole or in part.
<b>Partner Government</b>	the government of the Partner Country.

<b>Party</b>	DFAT and the Recipient who are listed in the Details section of this Agreement. <b>Parties</b> have a corresponding meaning.
<b>Payment Claim</b>	has the meaning given in <b>Clause 8(a)</b> .
<b>Payment Criteria</b>	the payment criteria specified in the Grant Order.
<b>Performance Improvement Plan</b>	has the meaning given in <b>Clause 15(b)</b> .
<b>Performance Issue</b>	has the meaning given in <b>Clause 15(a)</b> .
<b>Personal Information</b>	has the same meaning as in the <i>Privacy Act 1988</i> (Cth).
<b>Personnel</b>	in relation to a Party, any employee, officer, agent, volunteer, subcontractor or professional adviser of that Party.
<b>Pre-existing Recipient Material</b>	Material developed by the Recipient that: <ul style="list-style-type: none"> <li>(a) is in existence at the Commencement Date or is subsequently brought into existence other than as a result of the performance of the Agreement; and</li> <li>(b) is embodied in or attached to the Agreement Material, or otherwise necessarily related to the performance of the Activity.</li> </ul>
<b>Recipient</b>	The Asia Foundation (ABN 50 169 561 394) .
<b>Recipient Representative</b>	the person identified in as the Recipient Representative in the Grant Order.
<b>Related Agreement</b>	any other agreement between the Parties under which DFAT provides grant funding to the Recipient, whether entered into before or after this Agreement.
<b>Relevant List</b>	the lists of terrorist organisations made under Division 102 of the <i>Criminal Code Act 1995</i> (Cth), posted at: <a href="http://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/default.aspx">http://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/default.aspx</a> ; and organisations listed under the <i>Charter of the United Nations Act 1945</i> (Cth), posted at: <a href="http://dfat.gov.au/international-relations/security/sanctions/Pages/consolidated-list.aspx">http://dfat.gov.au/international-relations/security/sanctions/Pages/consolidated-list.aspx</a> .
<b>Reports</b>	the reports to be provided under <b>Clause 14.2(a)</b> and any Performance Improvement Plan.
<b>Similar List</b>	any similar list to the World Bank List maintained by any other donor of development funding.
<b>Special Conditions</b>	the terms and conditions (if any) set out in the Grant Order and clearly identified as “Special Conditions”.
<b>Third Party Material</b>	any Material made available by the Recipient for the purpose of the Agreement Material or the Activity in which a third party holds Intellectual Property Rights.

<b>Total Funds</b>	the total amount of funding that DFAT will pay to the Recipient as set out in the Grant Order, as may be reduced in accordance with this Agreement.
<b>Warranted Materials</b>	(a) Pre-existing Recipient Material; (b) Third Party Material; and (c) Agreement Material.
<b>World Bank List</b>	a list of organisations maintained by the World Bank in its 'Listing of Ineligible Firms' or 'Listings of Firms, Letters of Reprimand' posted at: <a href="http://web.worldbank.org/external/default/main?theSitePK=84266&amp;contentMDK=64069844&amp;menuPK=116730&amp;pagePK=64148989&amp;piPK=64148984">http://web.worldbank.org/external/default/main?theSitePK=84266&amp;contentMDK=64069844&amp;menuPK=116730&amp;pagePK=64148989&amp;piPK=64148984</a> .

## 1.2 Interpretation

In this Agreement, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, this Agreement;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **AUD, A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Canberra, Australia time;
- (g) a reference to a Party is to a Party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (k) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Agreement or any part of it;
- (l) if the last day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (m) headings are for ease of reference only and do not affect interpretation.

## 2. Priority of documents

- 2.1 If there is any inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the following order of priority to the extent of the inconsistency:
- (a) Special Conditions;
  - (b) General Conditions;
  - (c) Grant Order (excluding any Special Conditions);
  - (d) any attachments to the Grant Order; and
  - (e) documents incorporated by reference in this Agreement.

## 3. Duration of Agreement

- 3.1 This Agreement begins on the Commencement Date and continues until the end of the Agreement Period unless terminated in accordance with **Clause 32** or **34**.

## Activity

### 4. Activity

#### 4.1 Undertaking the Activity

- (a) The Recipient must:
  - (i) have regard to the DFAT-TAF Partnership – Innovations in Development Policy & Practice Concept Note at Schedule 4;
  - (ii) undertake the Activity to achieve the Outcomes;
  - (iii) undertake the Activity diligently, effectively, safely and to a professional standard;
  - (iv) comply with all applicable Laws, guidelines and policies, including as set out in **Clause 16**;
  - (v) ensure that in its performance of the Activity, all of the Recipient's subcontractors and Personnel, while in the Partner Country, respect and comply with the Laws and regulations in force in the Partner Country;
  - (vi) meet the completion dates for the Milestones, as specified in the Activity Proposal;
  - (vii) start the Activity by the Activity Start Date and complete the Activity by the Activity End Date;
  - (viii) ensure that any statement or information given or made to DFAT by the Recipient from time to time under this Agreement (including information or statements contained in any Report) is true and correct (except where the information is provided to the Recipient by another person in which case the Recipient must ensure that it has made reasonable endeavours to verify the accuracy of the information);
  - (ix) take responsibility for the security of all of its Personnel and for taking-out and maintaining all appropriate insurances;

- (x) not, by act or omission, place DFAT in breach of its obligations under the *Work Health and Safety Act 2011* (Cth); and
  - (xi) not engage a Former DFAT Employee in any capacity in connection with the Activity unless DFAT has approved the engagement.
- (b) The Recipient must advise DFAT immediately in writing of any difficulties or delays in implementation of the Activity.

#### 4.2 Warranties

The Recipient represents and warrants that:

- (a) it has the legal right and power to enter into, perform and observe its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement has been duly and validly authorised by the Recipient;
- (c) the statements and information in its Application are accurate and complete;
- (d) it and its subcontractors and Personnel have the necessary experience, skill, knowledge, expertise and competence to undertake the Activity and (where appropriate) will hold such licences, permits or registrations as are required under any Law to undertake the Activity, and are fit and proper people to be involved in an activity, which is funded by the Australian Government;
- (e) it is not subject to any judicial decision against it relating to employee entitlements (not including decisions under appeal) where it has not paid the claim;
- (f) it is not named as not complying with the *Workplace Gender Equality Act 2012* (Cth); and
- (g) if the Recipient is a trustee, it enters this Agreement personally and in its capacity as trustee and has the power to perform its obligations under this Agreement.

#### 5. Variation to the Activity

- (a) If the Recipient wants to seek a variation to the Activity, including postponement of the completion date for a Milestone or change in an intended Outcome, the Recipient must submit a notice to DFAT in writing setting out:
  - (i) details of the proposed variation to the Activity or relevant Milestone completion date or change in an intended Outcome and reasons for the request;
  - (ii) in relation to requests to postpone a Milestone completion date, reasons why the Activity cannot be performed in such a way as to meet the given date; and
  - (iii) the impact the proposed variations will have on:
    - (A) effective delivery of the Activity;
    - (B) the Budget; and
    - (C) the Milestones.
- (b) DFAT will give the Recipient a written notice accepting or rejecting the Recipient's request.



- (c) Notwithstanding DFAT's acceptance of a proposed variation, it will not vary this Agreement or be binding unless and until a variation to this Agreement is made in accordance with **Clause 37.4** (Variation).

## Funds

### 6. Use of Funds by Recipient

#### 6.1 What Funds can be used for

- (a) The Recipient must spend the Funds only for the purposes of undertaking the Activity and purposes that are incidental to the Activity, including for the independent audit of acquittal reports as set out in the Grant Order.
- (b) The Recipient must spend the Funds only in accordance with the Budget.
- (c) Any increase or decrease in the amount allocated to an item of expenditure in the Budget cannot be made without DFAT's prior written approval.

#### 6.2 When Funds cannot be used

- (a) Without limiting any other right or remedy of DFAT, DFAT may by written notice direct the Recipient not to spend Funds if the Recipient has not achieved a Milestone that was due to be achieved before the date of notification, or the Recipient is otherwise in breach of this Agreement.
- (b) The Recipient must not spend any Funds that it has not already legally committed for expenditure after it receives notice from DFAT under **Clause 6.2(a)** unless and until DFAT notifies the Recipient otherwise.

#### 6.3 Bank account

The Recipient must:

- (a) ensure that Funds are held in an account:
  - (i) in the Recipient's name;
  - (ii) held at an institution regulated by the *Banking Act 1959* (Cth) or a reputable banking institution approved or regulated by the relevant banking authority or regulator in the jurisdiction in which the Activity is performed; and
  - (iii) which the Recipient solely controls;
- (b) ensure that the account referred to in **Clause 6.3(a)** is:
  - (i) established solely for the purposes of accounting for, and administering, any Funds; and
  - (ii) an account that bears a rate of interest consistent with the interest rate of Australia as issued by the Reserve Bank of Australia or the equivalent rate set by the Reserve Bank of the Partner Country;
  - (iii) *[deleted]*
- (c) unless the Recipient is a sole director company, ensure that two signatories, who have the Recipient's authority to do so, are required to operate the account;
- (d) notify DFAT, prior to the receipt of any Funds, of details sufficient to identify the account;

- (e) on notification from DFAT, provide DFAT and the institution that provides the account with an authority for DFAT to obtain any details relating to the use of the account;
- (f) if the account changes, notify DFAT within **14 days** after the change occurring, providing DFAT with details of the new account, and comply with **Clause 6.3(a)** to **6.3(e)** in respect of the new account; and
- (g) identify the receipt and expenditure of the Funds separately within the Recipient's accounting records so that at all times the Funds are identifiable, traceable and ascertainable.

## 7. Payment of Funds by DFAT

### 7.1 Payment

- (a) Subject to this Agreement (including satisfaction of the Payment Criteria) and sufficient grant funding being available to DFAT, DFAT will provide grant funding to the Recipient as set out in the Grant Order.
- (b) DFAT's liability under this Agreement is limited to:
  - (i) the Total Funds; or
  - (ii) the amount of grant funding paid under this Agreement (and any amount of grant funding for which DFAT is liable under **Clause 32.5(a)** or **Clause 34.1(c)(i)** and **(ii)**),
 whichever is the lesser.

### 7.2 Suspension

- (a) Without limiting any other right or remedy of DFAT, DFAT may suspend payment of grant funding under this Agreement in whole or in part:
  - (i) if the Recipient has not provided a Report due to be provided before the date for payment, until the Report is provided;
  - (ii) if a Report provided by the Recipient is not acceptable to DFAT, until a replacement Report that is acceptable to DFAT is provided;
  - (iii) if the Recipient has not achieved a Milestone that was due to be achieved before the date for payment, until the Milestone is achieved;
  - (iv) if the Recipient has not otherwise undertaken a Milestone or the Activity to the satisfaction of DFAT, until the Recipient remedies its performance;
  - (v) if the Recipient has not spent Funds in accordance with the Agreement, until the Recipient has done so;
  - (vi) if the Recipient has not satisfied the Payment Criteria; or
  - (vii) if the Recipient is in breach of this Agreement or a Related Agreement, until that breach is remedied.
- (b) Despite any suspension, the Recipient must continue to perform its obligations under this Agreement, unless otherwise agreed to in writing by the Parties.

### 7.3 Reduction

Without limiting any other right or remedy of DFAT, DFAT may reduce the amount of any instalment of grant funding under this Agreement:

- (a) if by the date for payment of the instalment the Recipient has not spent Funds in accordance with the Payment Criteria, by the amount that has not been spent; or
- (b) if Funds have been spent other than in accordance with this Agreement, by the amount that was spent other than in accordance with this Agreement.

#### **7.4 Due date for payment**

Subject to this **Clause 7** and DFAT being satisfied with:

- (a) the Recipient's performance of the Activity; and
- (b) the achievement of the Payment Criteria,

DFAT must make payment within **30 days** of receiving a correctly rendered invoice.

#### **7.5 Incorrect invoices, under/over payment**

If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Recipient, as the case may be.

#### **7.6 Taxes**

The Recipient must pay:

- (a) all stamp duty (including penalties and interest) assessed or payable in respect of this Agreement and the Activity; and
- (b) all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.

### **8. Claims for payment**

- (a) If the Recipient has achieved the Payment Criteria in respect of the applicable instalment, then not earlier than the due date specified in the Grant Order, the Recipient must submit to DFAT a claim for payment of the relevant instalment of the grant funding (**Payment Claim**).
- (b) A Payment Claim submitted under **Clause 8(a)** must include a correctly rendered invoice to DFAT.

### **9. Not used**

### **10. Repayment**

#### **10.1 Misspent Funds**

At any time, DFAT is entitled to recover from the Recipient the amount of any Funds which have been spent or used other than in accordance with this Agreement.

#### **10.2 Unspent Funds**

On the earlier of the Activity End Date, expiry or termination of this Agreement, DFAT is entitled to recover from the Recipient any Funds which have not been spent, or legally committed for expenditure by the Recipient in accordance with this Agreement and payable by the Recipient as a current liability (written evidence of which will be required).

### 10.3 Repayment notice

- (a) DFAT may give the Recipient a notice requiring the Recipient to pay to DFAT (or deal with as specified by DFAT) an amount which DFAT is entitled to recover under this **Clause 10** or **Clause 12** (Assets).
- (b) If DFAT gives a notice under **Clause 10.3(a)**, the Recipient must pay the amount specified in the notice in full (or deal with it as specified by DFAT) within 14 days after the date of the notice.

### 10.4 Interest

If the Recipient fails to make payment as required by **Clause 10.3**, the Recipient must pay DFAT interest:

- (a) at the general interest charge rate as defined in section 8AAD of the *Taxation Administration Act 1953* (Cth) on a daily compounding basis upon the amount specified in the notice as payable to DFAT; and
- (b) from the date the payment was due, for the period it remains unpaid.

### 10.5 DFAT's rights

This **Clause 10** does not limit any other right or remedy of DFAT.

## 11. Procurement

- 11.1 If the Funds are being used to procure goods or services, the Recipient must implement procedures so that procurement is undertaken in a manner consistent with the principles of the Australian Commonwealth Procurement Rules

(<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/commonwealth-procurement-rules/index.html>), in particular the core principle of achieving value for money and the supporting principles of:

- (i) encouraging competition by ensuring non-discrimination in procurement and using competitive procurement methods;
  - (ii) promoting use of resources in an efficient, effective, economical and ethical manner; and
  - (iii) making decisions in an accountable and transparent manner.
- (b) If the Funds are being used to procure goods, the Recipient must ensure in its procurement of goods that the goods to be procured:
- (i) are of a merchantable quality;
  - (ii) are free from defects in design, materials and workmanship;
  - (iii) are fit for purpose;
  - (iv) have good and marketable title and are free from encumbrances; and
  - (v) are delivered in good order and condition and in accordance with the Milestones.
- (c) If the Funds are being used to procure services, the Recipient must ensure in its procurement of services that the services to be procured are performed:
- (i) diligently, effectively, safely and to a professional standard; and
  - (ii) with the skill and care normally exercised by similarly qualified and competent persons in the performance of comparable work.

## 12. Assets

### 12.1 Ownership

- (a) The Recipient may use the Funds to acquire any Assets reasonably required for the performance of the Activity.
- (b) Subject to the requirements of this **Clause 12** and the terms of any lease, the Recipient will own the Assets unless otherwise specified in the Grant Order.

### 12.2 Use and dealings

- (a) During the Agreement Period, the Recipient must use any Asset only for the purposes of the Activity, or other purposes consistent with the Outcomes approved by DFAT.
- (b) During the Agreement Period, the Recipient must:
  - (i) obtain good title to all Assets (other than Assets which the Recipient leases);
  - (ii) hold all Assets securely and safeguard them against Fraud, theft, loss, damage, or unauthorised use;
  - (iii) maintain all Assets in good working order;
  - (iv) maintain all appropriate insurances in respect of any Assets;
  - (v) if required by Law, maintain registration and licensing of all Assets;
  - (vi) be fully responsible for, and bear all risks relating to, the use or disposal of all Assets; and
  - (vii) manage and record the Assets in accordance with the Recipient's own policies and procedures.

### 12.3 Sale or disposal

- (a) The Recipient must not:
  - (i) dispose (including any write-offs) of Assets unless:
    - (A) the disposal is conducted on an arms-length basis; and
    - (B) any conflicts of interest relevant to the disposal are disclosed to DFAT pursuant to **Clause 30** (Conflict of Interest).
- (b) If the Recipient sells or otherwise disposes of an Asset during the Agreement Period, the proceeds of any sale or disposal of the Assets forms part of the Funds.
- (c) If the Recipient sells or otherwise disposes of an Asset during the Agreement Period, DFAT is entitled, at its discretion, to recover from the Recipient:
  - (i) the value of the Asset obtained from the sale or disposal of the Asset; or
  - (ii) the market value of the Asset.

### 12.4 Termination

On termination or expiry of this Agreement, DFAT may require the Recipient to use, deal with or transfer any Asset as DFAT directs in writing.

### 12.5 Lost or damaged Assets

If any Asset is stolen, lost, damaged or destroyed, the Recipient must:

- (a) reinstate the Asset (including using the proceeds of insurance) without using any Funds (unless DFAT's prior written consent is obtained to do otherwise);
- (b) notify DFAT in writing if the Asset is valued at more than AUD2,000 at the time of purchase; and
- (c) this **Clause 12** continues to apply to the reinstated Asset.

### 13. Not used

## Performance and compliance

### 14. Monitoring progress

#### 14.1 Progress meetings

The Parties will meet at the times and in the manner reasonably required by DFAT to discuss any issues in relation to this Agreement or the Activity. The Recipient must ensure that the Recipient Representative, and DFAT must ensure the DFAT Representative, is reasonably available to attend such meetings and answer any queries relating to the Activity raised by either Party.

#### 14.2 Reporting

- (a) The Recipient must provide DFAT with Reports in accordance with the Grant Order.
- (b) When the Recipient provides DFAT with a Report, DFAT will notify the Recipient in writing within 30 days after receiving the Report that it has either:
  - (i) accepted the Report; or
  - (ii) rejected the Report, providing reasons for its rejection.
- (c) If DFAT rejects a Report, excluding a Performance Improvement Plan in accordance with **Clause 15** (Performance Improvement Plan), the Recipient must reissue the Report in a form that addresses the reasons for the earlier rejection and DFAT will comply with **Clause 14.2(b)** in relation to any reissued Report. Deadline for resubmission of the Report will be mutually agreed in writing by the Parties.
- (d) Acceptance of a Report by DFAT does not constitute a release of the Recipient in respect of any matter, an admission or acceptance that the Recipient's performance complies with this Agreement, or acceptance of the accuracy of the Report.

#### 14.3 Evaluation

- (a) DFAT may at any time undertake, or engage an expert to undertake a review or evaluation of the Activity or DFAT's grant programs.
- (b) In relation to any review or evaluation of the Activity or DFAT's grant programs, the Recipient must within 14 days after a request by DFAT (or any expert):
  - (i) provide all reasonable assistance to DFAT (and any expert);
  - (ii) respond to all reasonable requests from DFAT (and any expert); and
  - (iii) provide any information reasonably required by DFAT (and any expert).

## 15. Performance Improvement Plan

- (a) If there is a potential failure or failure to meet a Milestone, perform the Activity or achieve the Outcomes in accordance with this Agreement, other than due to a Force Majeure Event (in this **Clause 15** a 'Performance Issue'), the Recipient must immediately notify DFAT of the Performance Issue.
- (b) If the Recipient notifies DFAT of a Performance Issue in accordance with **Clause 15(a)**, or if DFAT notifies the Recipient of a Performance Issue, then without limitation to any of DFAT's rights or the Recipient's obligations under this Agreement, the Recipient must, if requested by DFAT, within **7 days** (or such longer period as determined by DFAT) prepare and submit to DFAT a report ('Performance Improvement Plan') identifying:
  - (i) the nature and extent of the Performance Issue;
  - (ii) the consequences of the Performance Issue and in particular the Milestones and Outcomes that are likely to be affected; and
  - (iii) steps the Recipient will take to rectify the Performance Issue,
- (c) After receiving the Recipient's Performance Improvement Plan in accordance with **Clause 15(b)**, DFAT will within **30 days** review the Performance Improvement Plan and give the Recipient notice that:
  - (i) DFAT approves the Performance Improvement Plan; or
  - (ii) DFAT does not approve the Performance Improvement Plan.
- (d) If DFAT rejects the Performance Improvement Plan, the Recipient must amend and resubmit its proposed Performance Improvement Plan (again within the timeframe determined in accordance with **Clause 15(b)**), to take account of any concerns that DFAT may have with it, including in relation to matters such as the steps proposed to be taken by the Recipient, and the timeframe in which any steps are proposed to occur.
- (e) If a Performance Improvement Plan is rejected and resubmitted, the process described in **Clauses 15(c)** and **(d)** will apply to the resubmitted Performance Improvement Plan.
- (f) Once a Performance Improvement Plan is approved by DFAT, the Recipient must complete all of the steps and activities in the approved Performance Improvement Plan within the timeframes specified in the approved Performance Improvement Plan.
- (g) If the Recipient:
  - (i) does not submit a Performance Improvement Plan that DFAT is prepared to approve; or
  - (ii) does not comply with the requirements of any approved Performance Improvement Plan,then DFAT may immediately suspend payment in accordance with **Clause 7.2(a)(ii)** (Suspension) or terminate this Agreement in accordance with **Clause 34.2** (Termination for default).
- (h) The exercise of DFAT's rights under this **Clause 15**, including the approval of a Performance Improvement Plan, will:

- (i) not operate as a waiver of the obligations (or any breach thereof) that the Recipient may have under this Agreement; and
- (ii) not limit DFAT's rights or remedies it may have against the Recipient in connection with the Performance Issue (for example, to claim damages for breach or terminate this Agreement).

## 16. Compliance with Laws

- (a) The Recipient must, and must ensure that its subcontractors and Personnel, have regard to and comply with, relevant and applicable Laws, guidelines and policies, including those in Australia and in the Partner Country.
- (b) The Recipient must ensure:
  - (i) that individuals or organisations involved in implementing the Activity are in no way linked, directly or indirectly, to organisations and individuals associated with terrorism, including 'terrorist organisations' as defined in **Division 102** of the *Criminal Code Act 1995* (Cth) and listed in regulations made under that Act and regulations made under the *Charter of the United Nations Act 1945* (Cth); and
  - (ii) that the Funds are not used in any way to provide direct or indirect support or resources to organisations and individuals associated with terrorism.
- (c) The Recipient must in carrying out its obligations under this Agreement:
  - (i) comply with Laws in relation to sanctions, including the *Charter of the United Nations Act 1945* (Cth) and regulations made under the Act and the *Autonomous Sanctions Act 2011* (Cth) and regulations made under that Act; and
  - (ii) ensure that Funds provided under this Agreement do not provide direct or indirect support or resources to organisation and individuals for whom Australia has imposed sanctions under the *Charter of the United Nations Act 1945* (Cth) and regulations made under that Act or the *Autonomous Sanctions Act 2011* (Cth) and regulations made under that Act.
- (d) If during the Agreement Period, the Recipient discovers any link whatsoever with any organisation or individual listed in **Clauses 16(b) and (c)** above, it must inform DFAT immediately.
- (e) The Recipient must have regard to the Australian Government guidance "*Safeguarding your organisation against terrorism financing: a guidance for non-profit organisations*", available at [http://www.nationalsecurity.gov.au/agd/WWW/nationalsecurity.nsf/Page/What\\_Governments\\_are\\_doing\\_Risk\\_of\\_Misuse\\_-\\_Terrorism\\_Financing](http://www.nationalsecurity.gov.au/agd/WWW/nationalsecurity.nsf/Page/What_Governments_are_doing_Risk_of_Misuse_-_Terrorism_Financing).
- (f) If, during the Agreement Period, the Recipient discovers that it or its subcontractors or Personnel have any link whatsoever with any organisation or individual associated with terrorism it must inform DFAT immediately.
- (g) If, during the Agreement Period, the Recipient or any of its subcontractors or Personnel are:
  - (i) listed on a World Bank List or Similar List or subject to any proceedings or an informal process which could lead to them becoming so listed;



- (ii) temporarily suspended from tendering for World Bank grants by the World Bank pending the outcome of a sanctions process or from tendering by a donor of development funding other than the World Bank; and/or
  - (iii) the subject of an investigation (whether formal or informal) by the World Bank or another donor of development funding,
- the Recipient must inform DFAT immediately.
- (h) The Recipient warrants that the Recipient and its subcontractors and Personnel have not made or caused to be made, or received or sought to receive, any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt practice, either directly or indirectly to any Party, as an inducement or reward in relation to the execution of this Agreement.
  - (i) The Recipient must not, and must ensure that its subcontractors and Personnel do not:
    - (i) make or cause to be made, or receive or seek to receive, any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt practice, either directly or indirectly to any party, as an inducement or reward in relation to this Agreement; or
    - (ii) bribe public officials.

## 17. Child protection

- (a) The Recipient must comply, and must ensure that its subcontractors and Personnel comply with the Child Protection Policy for the DFAT – Australian Aid Program, accessible at <http://www.dfat.gov.au>.
- (b) DFAT may conduct a review of the Recipient's compliance with DFAT's Child Protection Policy referred to in **Clause 17(a)**. DFAT will give reasonable notice to the Recipient and the Recipient must participate co-operatively in any such review.

## 18. Compliance with DFAT policies

- (a) The Recipient must, and must ensure that its subcontractors and Personnel comply with all DFAT policies as listed on DFAT's website <http://aid.dfat.gov.au>.
- (b) A list, as amended from time to time, of Australian laws and guidelines that may apply to the delivery of developmental aid to foreign countries can be found on the DFAT website: <http://aid.dfat.gov.au>. This list is not exhaustive and is provided for information only.
- (c) The provision of the list referenced at **Clause 18(b)** above does not relieve the Recipient from complying with the obligations contained in this **Clause 18**.
- (d) The Recipient must have regard to and comply with the Statement of International Development Practice Principles in **Schedule 3**.

## 19. Acknowledgement and publicity

### 19.1 Acknowledgment by Recipient

The Recipient must, in all publications, promotional and advertising materials, public announcements, events and activities in relation to the Activity, or any products,

processes or inventions developed as a result of it, acknowledge the financial and other support received from DFAT, in the manner specified in the DFAT publication 'Visibility and Recognition: Guidelines for NGOs' (available on DFAT's website) or otherwise approved by DFAT prior to its use.

## 19.2 DFAT rights

- (a) DFAT reserves the right to publicise and report on the awarding of the grant funding under this Agreement, and may do this by, amongst other means, including the Recipient's name, any subcontractor's name, the amount of the Total Funds and a brief description of the Activity on websites and in media releases, general announcements about the DFAT's grant programs and annual reports.
- (b) Without limiting any other right of DFAT, DFAT may disclose information about this Agreement, the Recipient or the Activity to any State or Territory government of Australia or a Partner Government.

## 19.3 Announcements

- (a) The Recipient must, before making a public announcement in connection with this Agreement or any transaction contemplated by it, provide DFAT with **21 days** prior written notice, except if required by Law or a regulatory body (including a relevant stock exchange).
- (b) If the Recipient is required by Law or a regulatory body to make a public announcement in connection with this Agreement or any transaction contemplated by this Agreement, the Recipient must, to the extent practicable, first consult with and take into account the reasonable requirements of DFAT.

## 19.4 Activity Events

- (a) The Recipient must not undertake, or participate in any way in, any Activity Event, without providing DFAT with 21 days prior written notice.
- (b) The Recipient must:
  - (i) notify DFAT of a proposed Activity Event at least **21 days** before the proposed date for the Activity Event and submit all details of the Activity Event to DFAT in the format required by DFAT;
  - (ii) invite a representative of DFAT to the Activity Event; and
  - (iii) if required by DFAT, provide the DFAT representative an opportunity to speak at the Activity Event.
- (c) The Recipient must notify DFAT of any change to Activity Event details as soon as possible.

# Subcontracting

## 20. Subcontractors

- (a) The Recipient must notify DFAT of the details of its subcontractors on request from DFAT.
- (b) The Recipient must obtain any subcontractor's express consent for the disclosure to DFAT of the subcontractor's identity (and their Personal Information, if the subcontractor is an individual). The consent obtained must extend to allowing

DFAT to disclose for reporting purposes the subcontractor's identity and the existence and nature of the subcontract.

- (c) The Recipient must not enter into a subcontract with a subcontractor named as an organisation that has not complied with the *Workplace Gender Equality Act 2012* (Cth).
- (d) The Recipient must ensure that any subcontractor complies with all Laws and:
  - (i) **Clause 16** (Compliance with Laws);
  - (ii) **Clause 17** (Child protection);
  - (iii) **Clause 18** (Compliance with DFAT policies);
  - (iv) **Clause 23** (Confidentiality);
  - (v) **Clause 29** (Insurance);
  - (vi) **Clause 24** (Protection of Personal Information);
  - (vii) **Clause 30** (Conflict of interest);
  - (viii) **Clause 25** (Records, books and accounts);
  - (ix) **Clause 26** (Audit and access); and
  - (x) **Clause 31** (Fraud).
- (e) The Recipient is fully responsible for:
  - (i) undertaking the Activity and performing this Agreement even if the Recipient subcontracts any aspect of the Activity; and
  - (ii) the performance of all of the Recipient's obligations under this Agreement.and will not be relieved of that responsibility because of any:
  - (iii) involvement by DFAT or any third party in the performance of the Activity; or
  - (iv) payment of any Funds.

## Information management

### 21. Intellectual Property Rights

#### 21.1 Pre-existing Recipient Material and Third Party Material

- (a) This **Clause 21** does not affect the ownership of the Intellectual Property Rights in any DFAT Material, Pre-existing Recipient Material or Third Party Material.
- (b) The Recipient must obtain all necessary copyright and other Intellectual Property Right permissions before making any Pre-Existing Recipient Material or Third Party Material available as a part of the Agreement Material or Activity.

#### 21.2 Recipient ownership of Intellectual Property Rights in Agreement Material

- (a) All Intellectual Property Rights in the Agreement Material vest in the Recipient on creation.
- (b) The Recipient grants to, or must obtain for, DFAT, a perpetual, irrevocable, world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, Modify, distribute and communicate:

- (i) the Agreement Material; and
  - (ii) any Third Party Material and Pre-Existing Recipient Material,
- required to receive the full benefit of the Agreement Material and the Activity, and for any other DFAT or Commonwealth purpose.
- (c) To the extent that the Recipient needs to use any of the DFAT Material for the purpose of performing its obligations under this Agreement, DFAT grants to the Recipient for the Agreement Period, subject to any direction by DFAT, a revocable, world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, Modify and communicate such Material solely for the purpose of performing the Activity.
  - (d) Each Party must, at its own cost, do all things and execute all documents necessary or convenient to give effect to this **Clause 21**.

### 21.3 **Warranty**

The Recipient warrants that:

- (a) the Warranted Materials and DFAT's use of the Warranted Materials will not infringe the Intellectual Property Rights of any person; and
- (b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided for in this **Clause 21**.

### 21.4 **Remedy for breach of warranty**

If someone claims, or DFAT reasonably believes that someone is likely to claim, that all or part of the Warranted Materials infringe their Intellectual Property Rights, the Recipient must, in addition to the indemnity under **Clause 28** and to any other rights that DFAT may have against it, promptly, at the Recipient's expense:

- (a) use its best efforts to 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 of any other person without any degradation of the performance or quality of the affected Warranted Materials.

## 22. **Moral Rights**

### 22.1 **Obtaining consents**

To the extent permitted by applicable Laws and for the benefit of DFAT, the Recipient must use its best endeavours to ensure that:

- (a) each of the Personnel used by the Recipient in the production or creation of the Agreement Material gives, in a form acceptable to DFAT; and
- (b) any holder of Moral Rights in Third Party Material included in the Agreement Material gives,

genuine consent in writing, to the use of the Agreement Material for the Specified Acts, even if such use would otherwise be an infringement of their Moral Rights.

### 22.2 **Specified Acts**

- (a) In this **Clause 22**, **Specified Acts** means:

- (i) failing to attribute or falsely attributing the authorship of any Agreement Material, or any content in the Agreement Material (including literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth));
  - (ii) materially altering the style, format, colours, content or layout of the Agreement Material and dealing in any way with the altered Agreement Material;
  - (iii) reproducing, communicating, adapting, publishing or exhibiting any Agreement Material; and
  - (iv) adding any additional content or information to the Agreement Material.
- (b) For the purposes of this **Clause 22**, Agreement Material includes any Pre-existing Recipient Material and Third Party Material to the extent that it is included in, forms part of or is attached to the Agreement Material.

## 23. Confidentiality

### 23.1 Prohibition on disclosure

- (a) Subject to **Clause 23.2** below, a Party must not, without the prior written consent of the other Party, disclose any Confidential Information of the other Party to a third party.
- (b) In giving written consent to the disclosure of Confidential Information, a Party may impose such conditions as it thinks fit, and the other Party agrees to comply with these conditions.

### 23.2 Exceptions to obligations

The obligations on the Parties under **Clause 23.1** above will not be taken to have been breached to the extent that Recipient Confidential Information:

- (a) is disclosed by a Party to its Personnel or advisers solely in order to comply with obligations, or to exercise rights, under this Agreement;
- (b) is disclosed to a Party's internal management personnel, solely to enable effective management or auditing of activities related to this Agreement;
- (c) is disclosed by DFAT, to the responsible Minister, a House or a Committee of the Parliament of the Commonwealth of Australia;
- (d) is shared by DFAT within DFAT, or with another Commonwealth agency, State or Territory Government or Partner Government, where this serves the Commonwealth's legitimate interests, the State's or Territory's legitimate interests or the Partner Government's legitimate interests;
- (e) is authorised or required by Law to be disclosed or required in connection with legal proceedings; or
- (f) is in the public domain otherwise than due to a breach of this Agreement.

### 23.3 Transfer of data

The Recipient must not transfer, transmit or disclose Confidential Information of DFAT and Personal Information or allow Confidential Information of DFAT and Personal Information to be taken, transferred, transmitted, accessed or disclosed outside Australia, except to the Partner Country, or allow parties outside Australia to have access to it, without the prior approval of DFAT.

## 23.4 Return of information

The Recipient must use any Confidential Information of DFAT held, acquired or which the Recipient may have had access to in connection with this Agreement only for the purposes of fulfilling its obligations under this Agreement. Upon expiry or earlier termination of this Agreement the Recipient must either destroy or deliver to DFAT all Confidential Information of DFAT, as required by DFAT.

## 24. Protection of Personal Information

### 24.1 Privacy

The Recipient to the extent it deals with personal information for the purpose of conducting the Activity, 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 Activity;
  - (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 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 Activity; 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.

The Recipient 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 Recipient of any obligations referred to in this clause.

### 24.2 Disclosure

Subject to **Clause 23** (Confidentiality) and this **Clause 24**, the Recipient acknowledges that the Commonwealth of Australia may disclose or publish details about this Agreement or Activity. The details may include (but are not limited to) organisation name, the value of the Activity's Funding, and the location where the Activity is being delivered or performed.

## 25. Records, books and accounts

### 25.1 Recipient to keep records, books and accounts

The Recipient must:

- (a) at all times maintain, and must ensure that its subcontractors maintain, full, true, separate and up-to-date records, books and accounts in relation to the Activity,

Funds and this Agreement, including operational records, financial records and records in relation to the Funds. Such records, books and accounts must, without limitation:

- (i) record all operational activities in relation to the Activity, including to enable the prevention, detection and investigation of Fraud as required by **Clause 31** (Fraud and Anti-Corruption);
  - (ii) record all receipts and expenses related to the Activity, including those involving foreign exchange transactions;
  - (iii) enable all receipts and expenses related to the Activity to be identified and reported in accordance with this Agreement;
  - (iv) enable the amounts payable by DFAT under this Agreement to be determined;
  - (v) be kept in a manner that permits them to be conveniently and properly audited or reviewed;
  - (vi) enable the extraction of all information relevant to this Agreement; and
- (b) retain and require its subcontractors to retain for a period of seven years after the expiry or termination of this Agreement, all records, books and accounts relating to the Activity, the Funds and this Agreement.

## 25.2 Costs

The Recipient must bear its own costs of complying with this **Clause 25**.

## 25.3 Survival

This **Clause 25** applies for the Agreement Period and for a period of seven years from the expiry or termination of this Agreement.

# 26. Audit and access

## 26.1 Right to conduct audits or reviews

- (a) DFAT or a representative may conduct audits or reviews relevant to the performance of the Recipient's obligations under this Agreement. Audits or reviews may be conducted of:
- (i) the use of the Funds;
  - (ii) the Assets;
  - (iii) the Recipient's operational practices and procedures as they relate to this Agreement;
  - (iv) the accuracy of the Recipient's invoices and Reports;
  - (v) the Recipient's compliance with its confidentiality and privacy obligations under this Agreement;
  - (vi) the Recipient's compliance with Laws, guidelines and policies including the policies listed at **Clause 16** (Compliance with Laws) and **18** (Compliance with DFAT Policies);
  - (vii) the Recipient's compliance with its child protection policy obligations under **Clause 17** (Child Protection);

- (viii) the Recipient's compliance with its Fraud control strategy and policies including Fraud prevention, reporting and investigation obligations under this Agreement;
  - (ix) Material (including records, books and accounts) in the possession of the Recipient relevant to the Activity or this Agreement; and
  - (x) any other matters determined by DFAT to be relevant to the Activity or this Agreement.
- (b) If DFAT decides to conduct or commission audits or reviews, it will give reasonable notice to the Recipient. The Recipient must participate co-operatively in any audit or review conducted by DFAT or a representative.

## 26.2 Access by DFAT

- (a) DFAT may, at reasonable times and on giving reasonable notice to the Recipient:
- (i) access the premises of the Recipient and premises where the Activity is being undertaken to the extent relevant to the performance of this Agreement;
  - (ii) require the provision by the Recipient, its Personnel or subcontractors of records and information in a data format and storage medium accessible by DFAT by use of DFAT's existing computer hardware and software;
  - (iii) inspect and copy documentation, records, books and accounts, however stored, in the custody or under the control of the Recipient, its Personnel or subcontractors; and
  - (iv) require assistance in respect of any inquiry into or concerning the Activity or this Agreement. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to DFAT), any request for information directed to DFAT, and any inquiry conducted by Parliament or any Parliamentary committee.
- (b) The Recipient must provide access to its computer hardware and software to the extent necessary for DFAT to exercise its rights under this **Clause 26**, and provide DFAT with any reasonable assistance requested by DFAT to use that hardware and software.

## 26.3 Conduct of audit and access

DFAT must use reasonable endeavours to ensure that:

- (a) audits or reviews performed pursuant to **Clause 26.1**; and
- (b) the exercise of the general rights granted by **Clause 26.2** by DFAT,

do not unreasonably delay or disrupt in any material respect the Recipient's performance of its obligations under this Agreement or its business.

## 26.4 Costs

Unless otherwise agreed in writing, each Party must bear its own costs of any reviews and/or audits.

## 26.5 DFAT officers and experts

The rights of DFAT under **Clauses 26.2(a)(i) to 26.2(a)(iii)** apply equally to:



- (a) the Auditor-General, Information Commissioner, Privacy Commissioner and Freedom of Information Commissioner and their delegates, for the purpose of performing their statutory functions or powers; and
- (b) any expert engaged for the purposes of **Clause 14.3** (Evaluation).

#### **26.6 Recipient to comply with DFAT officers' requirements**

The Recipient must do all things necessary to comply with the Auditor-General's, Information Commissioner's, Privacy Commissioner's or Freedom of Information Commissioner's or his or her delegate's requirements, notified under **Clause 26.2**, provided such requirements are legally enforceable and within the power of the Auditor-General, Information Commissioner, Privacy Commissioner or Freedom of Information Commissioner, or his or her respective delegate.

#### **26.7 No reduction in responsibility**

The requirement for, and participation in, audits or reviews does not in any way reduce the Recipient's responsibility to perform its obligations in accordance with this Agreement.

#### **26.8 Subcontractor requirements**

The Recipient must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this **Clause 26**.

#### **26.9 No restriction**

Nothing in this Agreement reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General, Information Commissioner, Privacy Commissioner or Freedom of Information Commissioner, other Commonwealth Commissioner or their delegates. The rights of DFAT under this Agreement are in addition to any other power, right or entitlement of the Auditor-General, Information Commissioner, Privacy Commissioner or Freedom of Information Commissioner or their delegates.

#### **26.10 Survival**

This **Clause 26** applies for the Agreement Period and for a period of seven years from the expiry or termination of this Agreement.

## **Risk management**

### **27. Risk management**

- (a) The Recipient is responsible for, accepts must manage all the risks of and associated with the Activity.
- (b) The Recipient must maintain appropriate risk mitigation measures which may include preparing, maintaining and using risk registers.

### **28. Indemnity**

- (a) The Recipient at all times indemnifies and holds harmless DFAT, its officers and employees (referred to in this **Clause 28** as "**those indemnified**") from and against any loss or liability, including:
  - (i) loss of, or damage to, property of DFAT;
  - (ii) claims by any person in respect of personal injury or death;

- (iii) claims by any person in respect of loss of, or damage to, any property; and
- (iv) costs and expenses, including the costs of defending or settling any claim referred to in **Clause 28(a)(ii)** or **(a)(iii)**,  
arising out of or as a consequence of:
  - (v) the unlawful, negligent or wilfully wrongful, act or omission of the Recipient, its subcontractors or Personnel in the conduct of the Activity;
  - (vi) the Warranted Materials (including the use of the Warranted Materials by DFAT or its Personnel) infringing or allegedly infringing the Intellectual Property Rights of any person;
  - (vii) a breach of **Clause 23** (Confidentiality) or **Clause 24** (Protection of Personal Information); or
  - (viii) without limiting the preceding paragraphs, any breach of this Agreement by the Recipient, its Personnel or subcontractors.
- (b) The Recipient's liability to indemnify those indemnified under **Clause 28(a)** will be reduced proportionally to the extent that any negligent act or omission of those indemnified contributed to the loss.

## 29. Insurance

### 29.1 Obligation to maintain insurance

- (a) In connection with the Activity, the Recipient must have and maintain for the Agreement Period, valid and enforceable appropriate insurance policies relevant to the performance of the Activity including where appropriate, the amount of any professional indemnity insurance specified in the Grant Order.
- (b) If it is specified in the Grant Order that the Recipient is required to have and maintain professional indemnity insurance, the Recipient must continue to maintain such insurance for a period of seven years following the expiry or termination of the Agreement.

### 29.2 Confirmation of insurance

The Recipient must, on request by DFAT, provide current relevant confirmation of insurance documentation for example, a certificate of currency from its insurers or insurance brokers certifying that it has insurance as required by **Clause 29.1**.

## 30. Conflict of interest

### 30.1 Warranty

The Recipient warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement.

### 30.2 Notification of a conflict of interest

If, during the Activity a conflict of interest arises, or appears likely to arise, the Recipient must:

- (a) notify DFAT immediately in writing;
- (b) make full disclosure of all relevant information relating to the conflict; and
- (c) take such steps as DFAT requires to resolve or otherwise deal with the conflict.

## 31. Fraud and anti-corruption

### 31.1 Bribery of Foreign Officials and Facilitation Payment

For the purposes of this **Clause 31**, the definition of 'Fraud' includes:

- (a) **bribery of foreign officials** which includes providing or offering a benefit to a foreign public official, or causing a benefit to be provided or offered to a foreign public official, where the benefit is not legitimately due. The benefit must be intended to influence a foreign public official in the exercise of their official duties for the purpose of obtaining or retaining business or a business advantage or other benefit which is not legitimately due; and
- (b) **facilitation payment** which means making or receiving any payments outside the terms of agreements, contracts or established procedures paid in order to expedite or secure the performance of a routine action which is legitimately required without payment.

### 31.2 Warranty

- (a) The Recipient warrants that, to the best of its knowledge, at the date of signing this Agreement it has disclosed all current allegations or investigations in relation to Fraudulent Activity to DFAT.
- (b) The Recipient warrants that it did not make or cause to be made, receive or seek to receive, any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt act, either directly or indirectly to any party, as an inducement or reward in relation to the execution of this Agreement.
- (c) The Recipient must not bribe public officials, including foreign officials, and must ensure that all Recipient Personnel do not bribe public officials including foreign officials.

### 31.3 Prevention of Fraud and anti-corruption

- (a) The Recipient must not, and must ensure that its subcontractors and Personnel do not, engage in any Fraudulent Activity.
- (b) The Recipient is responsible for preventing and detecting Fraud.
- (c) Within one month following the Commencement Date, the Recipient must prepare a fraud risk assessment and zero tolerance fraud control strategy for the Activity. The risk assessment and strategy must contain appropriate fraud prevention, detection, investigation and reporting processes and procedures that comply with the Commonwealth Fraud Control Framework (<http://www.ag.gov.au>). The Recipient's strategies must include:
  - (i) preparation and implementation of a Fraud control strategy, policy and relevant procedures applicable to the Recipient, its subcontractors and Personnel;
  - (ii) development of guidance on anti-corruption and bribery and delivery of materials and training to the Recipient's subcontractors and Personnel;
  - (iii) provision of mandatory fraud control awareness training to all of the Recipient's subcontractors and Personnel and implementation of procedures to track attendance; and

- (iv) development and implementation of procedures to record and maintain books, accounts and records relating to the Activity that are required to be kept in accordance with **Clause 25** (Records, books and accounts).

#### 31.4 Investigation of Fraud and anti-corruption

- (a) The Recipient must report in writing within **five Business Days** to DFAT any suspicion or detection of Fraudulent Activity involving the Activity including any Fraudulent Activity involving or relating to the Recipient's subcontractors and Personnel.
- (b) In the event of a Fraud and in consultation with DFAT, the Recipient must develop and implement a strategy to investigate the Fraud, based on the principles set out in the Australian Government Investigations Standards (<http://www.ag.gov.au/RightsAndProtections/FOI/Pages/Freedomofinformationandclosurelog/AustralianGovernmentInvestigationStandards2011andAustralianGovernmentInvestigationsStandards2003.aspx>). The Recipient must undertake the investigation at the Recipient's cost.
- (c) In addition to the investigation carried out by the Recipient under **Clause 31.4(b)** above, DFAT or its nominee may conduct its own investigation. If DFAT exercises its rights under this clause, the Recipient must provide all reasonable assistance that may be required at the Recipient's sole expense.
- (d) Following the conclusion of an investigation (whether by the Recipient or by DFAT) if the investigation finds that:
  - (i) the Recipient, its subcontractors or Personnel have acted in a Fraudulent manner, the Recipient must:
    - (A) where money has been misappropriated, pay to DFAT the full value of the Funds that have been misappropriated or reinstate such amount to the use of the Activity;
    - (B) where an Asset has been misappropriated, either return the item to DFAT or for use in the Activity or if the Asset cannot be recovered or has been damaged so that it is no longer usable, replace the Asset with one of equal value at the time of original purchase and of at least equal quality to the Asset at the time of original purchase;
    - (C) refer the matter to the relevant Partner Country police or other authorities responsible for prosecution of Fraudulent Activity, unless an exemption has been sought and granted by the relevant DFAT delegate; and
    - (D) keep DFAT informed, in writing, on a monthly basis, of the progress of the investigation and recovery action; or
  - (ii) a Party other than the Recipient, its subcontractors or Personnel have acted in a Fraudulent manner, the Recipient must, at the Recipient's cost make every effort to recover any Funds or Assets acquired or distributed through Fraudulent Activity, including the following:
    - (A) take recovery action in accordance with recovery procedures, including civil litigation, available in the Partner Country;
    - (B) refer the matter to the relevant Partner Country police or other authorities responsible for prosecution of fraudulent activity, unless

an exemption has been sought and granted by the relevant DFAT delegate; and

- (C) keep DFAT informed, in writing, on a monthly basis, of the progress of the recovery action.
- (e) If the Recipient considers that after all reasonable action has been taken to recover the Funds or Assets and full recovery has not been achieved or recovery has only been achieved in part, the Recipient may seek approval from DFAT that no further recovery action be taken.
- (f) The Recipient must provide to DFAT all information, records and documents required by DFAT to enable DFAT to make a decision on whether or not to approve non-recovery of losses arising from Fraudulent Activity or misappropriated Funds or Assets.

### **31.5 Subcontractor and Personnel requirements**

The Recipient must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this **Clause 31**.

### **31.6 Survival**

This **Clause 31** survives termination or expiration of this Agreement in relation to:

- (a) any Fraudulent Activity which was not detected by the Recipient before the date of termination or expiry of this Agreement;
- (b) any Fraudulent Activity detected by the Recipient before the date of termination or expiry of this Agreement but which the Recipient had not begun to investigate under **Clause 31.4**;
- (c) any investigation commenced by the Recipient under **Clause 31.4**, but not completed, before the date of termination or expiry of this Agreement;
- (d) any investigation commenced by DFAT under **Clause 31.4**, but not completed, before the date of termination or expiry of this Agreement; and
- (e) any investigation completed by the Recipient under **Clause 31.4**, or by DFAT under **Clause 31.4**, but where:
  - (i) Funds have been lost to Fraudulent Activity or misappropriated and the full value of misappropriated funds have not been paid to DFAT or the account of the Activity;
  - (ii) Assets or other DFAT-funded property has been lost to Fraudulent Activity or misappropriated but the property has not been returned to DFAT or the account of the Activity; or
  - (iii) Assets or other DFAT-funded property cannot be recovered or has been damaged so that it is no longer usable and has not been replaced by property of equal value at the time of original purchase and of at least equal quality to the property at the time of original purchase.

# Dispute resolution and termination

## 32. Force Majeure Events

### 32.1 Occurrence of Force Majeure Event

A Party (**Affected Party**) is excused from performing its obligations under this Agreement to the extent it is prevented by circumstances which:

- (a) are beyond its reasonable control (other than, in respect of the Recipient only, lack of funds for any reason or any strike, lockout or labour dispute) including acts of God, natural disasters, acts of war, riots and strikes outside the Affected Party's organisation; and
- (b) could not have been prevented or overcome by the Affected Party (or, where the Affected Party is the Recipient) exercising a standard of care and diligence consistent with that of a prudent and competent person operating within the relevant industry ((a 'Force Majeure Event').

### 32.2 Notice of Force Majeure Event

When a Force Majeure Event arises or is reasonably perceived by the Affected Party as an imminent possibility, the Affected Party must give notice of those circumstances to the other Party as soon as possible, identifying the effect they will have on its performance. The Affected Party must make all reasonable efforts to minimise the effects of such circumstances on the performance of this Agreement.

### 32.3 Payment

DFAT is not obliged to pay the Recipient any grant funding for so long as a Force Majeure Event prevents the Recipient from performing its obligations under this Agreement.

### 32.4 Termination

If non-performance or diminished performance by the Recipient due to a Force Majeure Event continues for a period of more than **60 days**, DFAT may, at any time after the period, terminate this Agreement immediately by giving the Recipient written notice.

### 32.5 Consequences of termination

If this Agreement is terminated under **Clause 32.4**:

- (a) DFAT is liable only for:
  - (i) payments under **Clause 7** (Payment of Funds by DFAT) in accordance with this Agreement before the effective date of termination, but only to the extent that those monies have been spent, or legally committed for expenditure by the Recipient in accordance with this Agreement and are payable by the Recipient as a current liability, by the date the Recipient receives the notice of termination (written evidence of which will be required); and
  - (ii) where the Recipient has undertaken work on but not completed a Milestone by the date the Recipient receives the notice of termination, grant funding in accordance with this Agreement to the extent that those monies have been spent, or legally committed for expenditure by the Recipient in accordance with this Agreement and payable by the Recipient as a current liability, on that Milestone by the date the Recipient receives the notice of termination (written evidence of which will be required); and

- (b) each Party will bear its own costs and neither Party will incur further liability to the other.

### **33. Dispute resolution**

#### **33.1 No arbitration or court proceedings**

If a dispute arises in relation to this Agreement ('Dispute'), a Party must comply with this **Clause 33** before starting arbitration or court proceedings, except proceedings for urgent interlocutory relief. After a Party has sought or obtained any urgent interlocutory relief, that Party must follow this **Clause 33**.

#### **33.2 Notification**

A Party claiming a Dispute has arisen must give the other Party notice setting out details of the Dispute.

#### **33.3 Parties to resolve Dispute**

During the **60 days** after a notice is given under **Clause 33.2** (or longer period if the Parties agree in writing), each Party must use its reasonable efforts through a meeting of senior management representatives (or their nominees) to resolve the Dispute.

#### **33.4 Breach of this clause**

If a Party breaches **Clauses 33.1 to 33.3**, the other Party does not have to comply with those clauses in relation to the Dispute.

#### **33.5 Exception**

For the purpose of this **Clause 33**, a Dispute does not include a dispute arising in relation to DFAT:

- (a) suspending payment of grant funding under **Clause 7.2** (Suspension);
- (b) reducing the amount of an instalment of grant funding under **Clause 7.3** (Reduction) ;
- (c) requiring payment under **Clause 10** (Repayment); or
- (d) terminating this Agreement or reducing the scope of the Activity under **Clause 34** (Termination).

### **34. Termination**

#### **34.1 Termination for convenience**

- (a) Without limiting any other rights or remedies DFAT may have arising out of or in connection with this Agreement, DFAT may, by notice, terminate this Agreement or reduce the scope of the Activity for any reason.
- (b) On receipt of a notice of termination or reduction the Recipient must:
  - (i) take all available steps to minimise loss resulting from that termination or reduction and to protect Agreement Material; and
  - (ii) in the case of a reduction in scope, continue to undertake any part of the Activity not affected by the notice (unless the Recipient, acting reasonably, notifies DFAT that it is not commercially viable to do so).

- (c) If this Agreement is terminated under this **Clause 34.1**, DFAT is liable only for:
  - (i) payments under **Clause 7** (Payment of funds by DFAT) in accordance with this Agreement before the effective date of termination, but only to the extent that those monies have been spent, or legally committed for expenditure by the Recipient in accordance with this Agreement and are payable by the Recipient as a current liability, by the date the Recipient receives the notice of termination (written evidence of which will be required);
  - (ii) where the Recipient has undertaken work on but not completed a Milestone by the date the Recipient receives the notice of termination, grant funding in accordance with this Agreement to the extent that those monies have been spent, or legally committed for expenditure by the Recipient in accordance with this Agreement and payable by the Recipient as a current liability, on that Milestone by the date the Recipient receives the notice of termination (written evidence of which will be required); and
  - (iii) subject to **Clause 34.1(e)**, reasonable costs actually incurred by the Recipient and directly attributable to the termination.
- (d) If the scope of the Activity is reduced, DFAT's liability to pay the grant funding under this Agreement abates in accordance with the reduction in the Activity.
- (e) DFAT is not liable to pay compensation under **Clause 34.1(c)(iii)** that exceeds an amount equal to the Total Funds less any amounts paid or due, or becoming due, to the Recipient under this Agreement.
- (f) The Recipient is not entitled to compensation for loss of prospective profits.

#### 34.2 Termination for default

- (a) Without limiting any other rights or remedies DFAT may have arising out of or in connection with this Agreement, DFAT may terminate this Agreement or reduce the scope of the Activity effective immediately by giving notice to the Recipient if:
  - (i) the Recipient breaches a material provision of this Agreement where that breach is not capable of remedy; .
  - (ii) the Recipient breaches any provision of this Agreement and fails to remedy the breach within 14 days after receiving notice requiring it to do so;
  - (iii) in the opinion of DFAT, a conflict of interest exists which would prevent the Recipient from performing its obligations under this Agreement;
  - (iv) in DFAT's reasonable opinion, one or more of the circumstances described in **Clause 15(g)**(Performance Improvement Plan) apply;
  - (v) not used;
  - (vi) in DFAT's reasonable opinion, it is unlikely that the Recipient will be able to achieve a Milestone to DFAT's satisfaction;
  - (vii) DFAT is satisfied that any statement made in the Application is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the provision of the grant funding under this Agreement;
  - (viii) the organisation is listed in the World Bank list or Similar List;



- (ix) the organisation is listed on a Relevant List;
  - (x) a Related Agreement is terminated by DFAT for default by the Recipient;
  - (xi) there is a Change in Control of the Recipient; or
  - (xii) an Insolvency Event occurs in relation to the Recipient.
- (b) Without limitation, for the purposes of **Clause 34.2(a)(i)**, each of the following constitutes a breach of a material provision:
- (i) breach of warranty under **Clause 4.2** (Warranties);
  - (ii) a failure to comply with **Clause 6.1** (What Funds can be used for);
  - (iii) a failure to comply with **Clause 16** (Compliance with Laws) including a failure to notify DFAT **under sub-clause 16(g)**;
  - (iv) a failure to comply with **Clause 17** (Child protection);
  - (v) a failure to comply with **Clause 18** (Compliance with DFAT policies);
  - (vi) a failure to comply with **Clause 20** (Subcontractors);
  - (vii) a failure to comply with **Clause 21** (Intellectual Property Rights);
  - (viii) a failure to comply with **Clause 24** (Protection of Personal Information);
  - (ix) a failure to comply with **Clause 29** (Insurance);
  - (x) a failure to notify DFAT of a conflict of interest under **Clause 30** (Conflict of interest); and
  - (xi) a breach of warranty or a failure to comply with **Clause 31** (Fraud and anti-corruption).
- (c) If the scope of the Activity is reduced under this **Clause 34.2**:
- (i) DFAT's liability to pay the grant funding under this Agreement abates in accordance with the reduction in the Activity; and
  - (ii) the Recipient must continue to undertake any part of the Activity not affected by the notice (unless the Recipient, acting reasonably, notifies DFAT that it is not commercially viable to do so).

### 34.3 DFAT rights

Without limiting any of DFAT's other rights or remedies, on termination of this Agreement:

- (a) subject to **Clauses 32.5** and **34.1(c)**, DFAT is not obliged to pay to the Recipient any outstanding amount of grant funding under this Agreement; and
- (b) DFAT is entitled to exercise any right to recover from the Recipient, including under **Clause 10** (Repayment) and **Clause 12** (Assets).

### 34.4 Termination does not affect accrued rights

Termination of this Agreement does not affect any accrued rights or remedies of a Party.

# General obligations

## 35. Survival

The following clauses survive the expiry or termination of this Agreement:

- (a) **Clause 6** (Use of Funds by Recipient);
- (b) **Clause 10** (Repayment);
- (c) **Clause 12** (Assets);
- (d) **Clause 14.2** (Reporting);
- (e) **Clause 14.3** (Evaluation);
- (f) **Clause 19** (Acknowledgment and publicity);
- (g) **Clause 21** (Intellectual Property Rights);
- (h) **Clause 22** (Moral Rights);
- (i) **Clause 23** (Confidentiality);
- (j) **Clause 24** (Protection of Personal Information);
- (k) **Clause 25** (Records, books and accounts);
- (l) **Clause 26** (Audit and access);
- (m) **Clause 28** (Indemnity);
- (n) **Clause 29** (Insurance);
- (o) **Clause 31** (Fraud and anti-corruption);
- (p) **Clause 34.3** (DFAT rights); and
- (q) **Clause 37.2** (Amounts due to DFAT),

together with any provision of this Agreement which expressly or by implication from its nature is intended to survive the expiry or termination of this Agreement.

## 36. Notices and other communications

### 36.1 Service of Notices

A Notice must be:

- (a) in writing, in English and signed by a person duly authorised by the sending Party;  
and
- (b) hand delivered or sent by prepaid post or email to the recipient's address for Notices specified in the Grant Order, as varied by any Notice given by the recipient to the sender.

### 36.2 Effective on receipt

A Notice given in accordance with **Clause 36.1** delivered by hand or prepaid post takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery; or

- (b) if sent by prepaid post, on the third Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia),

but if the delivery, receipt or transmission is not on a Business Day or is after **5.00pm** (AEST) on a Business Day in the place where the Notice is taken to be received, the Notice is taken to be received at **9.00am** (AEST) on the next Business Day in the place where the Notice is taken to be received.

### **36.3 Notices by email**

- (a) A Notice relating to a matter under **Clause 32.4** (Termination), **Clause 333** (Dispute Resolution) or **Clause 344** (Termination) must not be sent by email.
- (b) Subject to **sub-clause 36.3(c)** below, a Notice given in accordance with **sub-clause 36.1** above delivered by email is taken to be received on the first to occur of:
  - (i) receipt by the sender of an email acknowledgement from the recipient's information system showing that the notice has been delivered to the email address specified in the recipient's address for Notices specified in Item 7 of **Schedule 2** as varied by any Notice given by the recipient to the sender;
  - (ii) the time that the notice enters an information system which is under the control of the recipient; and
  - (iii) the time that the notice is first opened or read by the intended addressee.
- (c) If the sender receives an out of office reply that states the recipient is out of the office until a later date, the Notice will only be taken to be given on that later date. If the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is after **5.00pm** (AEST) on a Business Day in the place where the Notice is sent, it will be taken to have been duly given or made at the start of business on the next Business Day in that place.

## **37. Miscellaneous**

### **37.1 No security**

The Recipient must not without the prior written consent of DFAT use any of the following as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest, or for the preparation of, or in the course of any litigation:

- (a) the Funds;
- (b) this Agreement or any of DFAT's obligations under this Agreement; or
- (c) any Assets or Intellectual Property Rights in Agreement Material.

### **37.2 Amounts due to DFAT**

- (a) Without limiting any other of DFAT's rights or remedies, any amount owed or payable to DFAT (including by way of refund), or which DFAT is entitled to recover from the Recipient, under this Agreement will be recoverable by DFAT as a debt due and payable to DFAT by the Recipient.

- (b) DFAT may set-off any money due for payment by DFAT to the Recipient under this Agreement against any money due for payment by the Recipient to DFAT under this Agreement or a Related Agreement.

### **37.3 Notice of certain events**

The Recipient must notify DFAT immediately if an Insolvency Event or a Change in Control occurs in relation to the Recipient.

### **37.4 Variation**

No agreement or understanding varying or extending this Agreement is legally binding upon either Party unless the agreement or understanding is in writing in the form of a deed of amendment and signed by both Parties.

### **37.5 Approvals and consents**

Except where this Agreement expressly states otherwise, a Party may, in its discretion, give conditionally or unconditionally or withhold any acceptance, approval or consent under this Agreement.

### **37.6 Assignment and novation**

The Recipient may only assign its rights or novate its rights and obligations under this Agreement with the prior written consent of DFAT.

### **37.7 Costs**

Each Party must pay its own costs of negotiating, preparing and executing this Agreement.

### **37.8 Counterparts**

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

### **37.9 No merger**

The rights and obligations of the Parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

### **37.10 Entire agreement**

This Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.

### **37.11 Further action**

The Recipient must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

### **37.12 Severability**

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

### **37.13 Waiver**

Waiver of any provision of or right under this Agreement:

- (a) must be in writing signed by the Party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

#### **37.14 Relationship**

- (a) The Parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other Party, or as otherwise able to bind or represent the other Party.
- (b) This Agreement does not create a relationship of employment, agency or partnership between the Parties.

#### **37.15 Governing law and jurisdiction**

This Agreement is governed by the law of the Australian Capital Territory and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

#### **37.16 False or misleading information**

The Recipient acknowledges that giving false or misleading information is a serious offence.

#### **37.17 No reliance**

The Recipient:

- (a) acknowledges that DFAT is not liable for any advice, comments, consultation, assistance, information or material made available by DFAT before the Commencement Date in connection with the Recipient applying for grant funding (**Information**);
- (b) acknowledges that the Information may not be accurate or complete and that the Recipient is responsible for making its own enquiries;
- (c) warrants that it has not, in deciding whether or not to enter into this Agreement, relied on any Information or representation (whether oral or in writing), other than as expressly set out in this Agreement, or any other conduct of DFAT or any of its Personnel; and
- (d) waives any right to make any claims in relation to any loss or damage suffered or incurred, whether directly or indirectly, arising out of or in connection with any use of or reliance on the Information.

#### **37.18 No further grant funding**

The Recipient acknowledges that the provision of grant funding under this Agreement for the Activity does not entitle the Recipient to any other or further grants.

# Schedule 2 – Template Grant Order

## Grant Order Details

Item number	Description	Details
1.	DFAT Representative	[insert position and/or name of DFAT's representative]
2.	Recipient Representative	[insert position and/or name of Recipient's representative]
3.	Activity Start Date	[insert date the Activity must start by eg, dd/mm/yy] [User note: this date must not be earlier than the Commencement Date of the Agreement.]
4.	Activity End Date	[insert date the Activity is to be completed by eg, dd/mm/yy]
5.	DFAT Material	[User note: insert specific Material to be provided to the Recipient by DFAT (if any) and any restrictions on the use of the Material. Otherwise insert 'Nil']
6.	Insurance	[User note: insert the amount of professional indemnity insurance required, if any, having regard to the risk profile of the Activity.]
7.	Address for Notices	<p><b>DFAT:</b> [insert name and position of person to receive notices]</p> <p><b>Postal address:</b> Department of Foreign Affairs and Trade – Australian Aid Program GPO Box 887 CANBERRA ACT 2601 AUSTRALIA</p> <p><b>Physical address:</b> 255 London Circuit CANBERRA ACT 2601 AUSTRALIA</p> <p><b>Email:</b> [insert email address for receipt of notices]</p> <p>[User note: DFAT Post's address and contact details may be substituted for DFAT's Canberra address and contact details.]</p> <p><b>Recipient:</b> [insert name and position of person to receive notices]</p> <p><b>Postal address:</b> [insert postal address]</p> <p><b>Physical address:</b> [insert physical address]</p>

Item number	Description	Details
		<p><b>Email:</b> <i>[insert email address for receipt of notices]</i></p> <p><i>[User note: You must specify <b>both</b> a Postal Address <b>and</b> a Street Address in this clause (even if these are the same).]</i></p>
8.	<b>Special Conditions</b>	<p><i>[User note: insert any special conditions for this Agreement – it is unlikely you will have any but they may include ‘All Personnel must obtain and hold a valid relevant visa’. Note that these terms will override the General Conditions ie clauses 1 to 377 to the extent of any inconsistency (refer clause 2).]</i></p>

# Activity Proposal

## 1. Activity description

*[User note: insert a description of the Activity, including elements of risk and how these will be addressed. The description of the Activity should include specific and measurable tasks should be listed in the Milestone table in item 3 below.]*

## 2. Outcomes

*[User note: insert a full and detailed description of the Outcomes that the conduct of the Activity will achieve.]*

## 3. Milestones

	Milestone	Completion date
1.	<p><b>Description</b></p> <p><i>[User note: insert measurable and specific tasks to be achieved with the use of the Funds including any specific goods to be procured (see clause 11.1(b)). In particular, specify all of the specific Reports to be provided and accepted by DFAT eg Milestone report, annual report, acquittal report).</i></p> <p><i>Note that the Recipient may use the Funds to prepare acquittal reports, so consider in the context of the Activity whether an acquittal report is required at the end of each Milestone or only for certain tranches of grant funds.</i></p> <p><i>The final report is specified as the last Milestone in this table.]</i></p> <p><b>Reports to be provided by the Recipient as part of this Milestone</b></p> <p><i>[User note: insert any reports that are to be provided as a part of this Milestone, as appropriate. For example, 'Milestone No. 1 Report', 'acquittal Report for the period from [insert date] to [insert date]', 'annual Report']</i></p>	<p><i>[User note: insert date for completion of Milestone.]</i></p>
2.	<p><b>Description</b></p> <p><i>[insert more rows as required noting the user note above.]</i></p> <p><b>Reports to be provided by the Recipient as part of this Milestone</b></p> <p><i>[User note: insert any reports that are to be provided as a part of this Milestone, as appropriate. For example, 'Milestone No. 2 Report', 'acquittal Report for the period from [insert date] to [insert date]', 'annual Report']</i></p>	



	Milestone	Completion date
3.	<b>Description</b> <i>[insert more rows as required noting the user note above.]</i> <b>Reports to be provided by the Recipient as part of this Milestone</b> <i>[User note: insert any reports that are to be provided as a part of this Milestone, as appropriate. For example, 'Milestone No. 3 Report', 'acquittal Report for the period from [insert date] to [insert date]', 'annual Report']</i>	
4.	<b>Description</b> <i>[insert more rows as required noting the user note above.]</i> <b>Reports to be provided by the Recipient as part of this Milestone</b> <i>[User note: insert any reports that are to be provided as a part of this Milestone, as appropriate. For example, 'Milestone No. 4 Report', 'acquittal Report for the period from [insert date] to [insert date]', 'annual Report']</i>	
5.	<b>Reports to be provided by the Recipient as part of this Milestone</b> Final Report	[By the date that is 60 days after the completion of the Activity in accordance with this Agreement.]

#### 4. Budget

*[User note: Budget to be inserted. Note that the Recipient may only expend Funds in accordance with the Budget. If the costs of Independent Auditors may be paid for from the Funds, this should be included as a specific line item so that DFAT is not liable to pay for it on top of the Total Funds. Delete the GST inclusive column if GST will not be payable to the Recipient – see the user note at clause 9.]*

Item	Description	Price (ex GST)	Price (inc GST)

## 5. Personnel positions

Personnel	Role	Directly working with /contact with children
<i>[insert]</i>	<i>[User note: insert description of the role the Personnel will play detailing the parts of the Activity they will perform]</i>	Yes/No

*[User note: DFAT's child protection policy requires that if this Activity involves directly working with children or contact with children then this Activity Proposal must: (i) identify all Personnel positions working with children or having contact with children; and (ii) ensure that the Activity risk assessment includes assessment of the risks to children. Users should contact Child Protection if further guidance is required.]*

# Funds

## 1. Total Funds

Subject to this Agreement, the maximum amount of grant funding payable by DFAT under this Agreement is *[insert amount and currency type]* (excluding GST). No other amount of grant funding is payable by DFAT.

## 2. Payment

Subject to this Agreement, DFAT will pay the grant funding to the Recipient in instalments as set out in the table below.

No.	Payment Criteria	Payment Claim Due Date	Instalment (GST exclusive)
1.	<p><i>[User note: insert payment criteria, for example:</i></p> <ul style="list-style-type: none"> <li><i>• achievement of Milestone No. 1;</i></li> <li><i>• { 'receipt and acceptance of the [Milestone Report No.1] ; and</i></li> <li><i>• receipt and acceptance of an acquittal report for the period from [insert date] to [insert date].'</i></li> </ul> <p><i>Note: no instalment will be paid if the Payment Criteria is not satisfied.]</i></p>	<p><i>[User note: insert the date by which the Recipient must submit its Payment Claim e.g. within 30 days of [achievement of the Payment Criteria]. This is the invoice date, not the date the Milestone is due – see Schedule 2)]</i></p>	
2.	<p><i>[User note: insert payment criteria, for example:</i></p> <ul style="list-style-type: none"> <li><i>• achievement of Milestone No.2;</i></li> <li><i>• expenditure of at least 80% of payment No. 1;</i></li> <li><i>• { 'receipt and acceptance of the [Milestone Report No.2]. ' ] and</i></li> <li><i>• receipt and acceptance of an acquittal report for the period from [insert date] to [insert date].'</i></li> </ul>	<p><i>[User note: insert the date by which the Recipient must submit its Payment Claim e.g. within 30 days of [achievement of the Payment Criteria]]</i></p>	
3.	<p><i>[User note: insert payment criteria, for example:</i></p> <ul style="list-style-type: none"> <li><i>• achievement of Milestone No. 3;</i></li> </ul>	<p><i>[User note: insert the date by which the Recipient must</i></p>	

No.	Payment Criteria	Payment Claim Due Date	Instalment (GST exclusive)
	<ul style="list-style-type: none"> <li>• { 'receipt and acceptance of the [Milestone Report No.3] '};</li> <li>• expenditure of 100% of payment No. 1 and at least 80% of payment No. 2 and</li> <li>• receipt and acceptance of an acquittal report for the period from [insert date] to [insert date]. '.</li> </ul>	submit its Payment Claim e.g. within 30 days of [achievement of the Payment Criteria]]	
4.	[insert more rows as required noting the user note above.]		
<b>Total</b>			

## Reporting

### 3. Milestone reports

- (a) The Recipient must provide a Milestone report as required by [insert reference].
- (b) Each Milestone report must include:
  - (i) the name of the Recipient and all subcontractors;
  - (ii) a contact name, telephone number and email address;
  - (iii) the Activity title and number;
  - (iv) the Milestone and period to which the report relates;
  - (v) a Budget update (including cost to completion);
  - (vi) a statement of the Funds provided or spent ;
  - (vii) the amount remaining in the account referred to in clause 6.3;
  - (viii) a technical report of the Milestone activities, including:
    - (A) a description and analysis of the technical progress of the Activity;
    - (B) evidence that the activities within the Milestone have been achieved;
    - (C) any major issues or risks which have arisen in the course of achieving the Milestone and the effect they will have on the Activity and what will be done to address any ongoing issues or risks; and
    - (D) any proposed changes to the Activity; and
  - (ix) copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Activity.

## 4. Annual reports

- (a) The Recipient must provide an annual progress report as required by DFAT in writing, and if not specified], within 60 days after completion of each calendar year.
- (b) Each annual progress report must include:
  - (i) the name of the Recipient and all subcontractors;
  - (ii) the Activity title and number;
  - (iii) the period to which the report relates;
  - (iv) a Budget update (including cost to completion);
  - (v) a statement of the Funds provided or spent;
  - (vi) the amount remaining in the account referred to in clause 6.3;
  - (vii) a description and analysis of the progress of the Activity, including:
    - (A) whether the Activity is proceeding in accordance with the Budget and, if it is not, an explanation of why the Budget is not being met, the effect this will have on the Activity and the action the Recipient proposes to take to address this;
    - (B) progress on achieving the Outcomes;
    - (C) any major issues or developments which have arisen and the effect they will have on the Activity; and
    - (D) any proposed changes to the Activity.

## 5. Acquittal reports

- (a) The Recipient must provide acquittal reports:
  - (i) as required by [insert reference]; and
  - (ii) within 60 days after the earlier of the Activity End Date, expiry or termination of this Agreement.
- (b) Each acquittal report must include the following:

	Content	Prepared by
(i)	audited financial statements in accordance with the Applicable Auditing Procedures in respect of the Funds (separately and in the context of the Recipient's overall financial position), which must include a definitive statement as to whether the financial information for the Activity represents the financial transactions fairly and is based on proper accounts and records.	an Independent Auditor
(ii)	where there are any qualifications or limitations on the audit, a letter to the Recipient, or a report providing an outline of the reasons for the qualifications or limitations and the remedial action recommended.	an Independent Auditor
(iii)	a certificate: <ul style="list-style-type: none"><li>(A) that all Funds were spent for the purpose of the</li></ul>	the CEO or CFO of the Recipient

	Content	Prepared by
	<p>Activity and in accordance with this Agreement and that the Recipient has complied with this Agreement; and</p> <p>(B) the amount remaining in the account referred to in clause 6.3.</p>	

## 6. Final report

- (a) Unless stated otherwise in writing the Recipient must within 90 days of the completion of the Activity provide a report which includes:
- (i) the name of the Recipient and all subcontractors;
  - (ii) the Activity title and number;
  - (iii) a statement of the Funds provided and spent;
  - (iv) the amount (if any) remaining in the account referred to in clause 6.3;
  - (v) a description and analysis of the progress of the Activity, including:
    - (A) evidence that the Activity has been completed, and the Milestones have been achieved;
    - (B) details of the extent to which the Activity achieved the Outcomes;
    - (C) any highlights, breakthroughs or difficulties encountered; and
    - (D) conclusions or recommendations (if any) arising from the Activity;
  - (vi) copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Activity; and
  - (vii) reconciliation of Assets and a copy of the Asset Register.

## 7. Ad hoc reports

The Recipient must provide ad-hoc reports as requested by DFAT from time to time at the time and in the manner reasonably required by DFAT in relation to any significant developments concerning the Activity or any significant delays or difficulties encountered in undertaking the Activity.

# Schedule 3 – Statement of International Development Practice Principles

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This Statement of International Development Practice Principles (**The Principles**) promotes the active commitment of all non-accredited, not-for-profit organisations funded by DFAT to the fundamentals of good development practice, and to conducting their activities with integrity, transparency and accountability.

The Principles are founded on a premise of ‘do no harm’ and drawn from good practice principles in the international development not-for-profit sector and international development community more broadly. In line with Aid Effectiveness principles, when planning interventions, not-for-profit organisations are encouraged to consider: what other agencies are doing in the chosen area of focus; where their organisation can add value; and how they can join with others to increase the impact and sustainability of their activities.

Where relevant, DFAT encourages eligible Australian organisations to work towards becoming Australian Council for International Development (ACFID) Code of Conduct signatories.

## International Development Principles

Lessons drawn from best practice NGO and civil society programs recognise the importance of working in partnerships, building creative and trusting relationships with people of developing countries and supporting basic program standards which:

- give priority to the needs and interests of the people they serve and involve beneficiary groups to the maximum extent possible in the design, implementation and evaluation;
- promote an approach that includes all people in a community and ensures the most vulnerable, including people with disability, women and children, are able to access, and benefit equally, from, international development assistance;
- encourage self help and self-reliance among beneficiaries;
- avoid creating dependency through the facilitation of active participation and contributions (as appropriate) by the most vulnerable;
- respect and foster all universally agreed international human rights, including social, economic, cultural, civil and political rights;
- are culturally appropriate and accessible;
- seek to enhance gender equality;
- recognise and put in place processes to mitigate against the vulnerability of not for profit organisations to potential exploitation by organised crime and terrorist organisations;
- have appropriate mechanisms in place to actively prevent, and protect children from harm and abuse;
- integrate environmental considerations and mitigate against adverse environmental impacts; and
- promote collaborative approaches to development challenges including through working in partnerships and avoiding duplication of effort.

All non-accredited, not for profit organisations receiving grant funding from DFAT commit to apply these principles of good development practice, and adhere to the organisational integrity and accountability standards set out on the following page.

## Organisational Integrity and Accountability for Development

DFAT grant funds and resources are designated for the purposes of international aid and development (including development awareness). They can not be used to promote a particular religious adherence, missionary activity or evangelism, or to support partisan political objectives, or an individual candidate or organisation affiliated to a particular political movement. DFAT reserves the right to undertake an independent audit of an organisation's accounts, records and assets related to a funded activity, at all reasonable times.

In all of its activities and particularly in its communications to the public, DFAT expects not-for-profit organisations it works with to accord due respect to the dignity, values, history, religion, and culture of the people it supports and serves, consistent with principles of basic human rights.

*Not-for-profit organisations working with DFAT should:*

- not be a willing party to wrongdoing, corruption, bribery, or other financial impropriety in any way in any of its activities;
- take prompt and firm corrective action whenever and wherever wrongdoing is found among its Governing Body, paid staff, contractors, volunteers and partner organisations;
- have internal control procedures which minimise the risk of misuse of grant funds and processes and systems that ensure grant funds are used effectively to maximise development results;
- establish reporting mechanisms that facilitate accountability to members, donors and the public;
- have adequate procedures for the review and monitoring of income and expenditure and for assessing and reporting on the effectiveness of their aid;
- have a policy to enable staff confidentially to bring to the attention of the Governing Body evidence of misconduct on the part of anyone associated with the Recipient, including misconduct related to the harm and abuse of children;
- be aware of terrorism-related issues and use their best endeavours to ensure that grant funds do not provide direct or indirect support or resources to organisations and individuals associated with terrorism and/or organised crime; and
- ensure that individuals or organisations involved in implementing activities on behalf of the Recipient are in no way linked, directly or indirectly, to organisations and individuals associated with terrorism and/or organised crime.

## DFAT Grant Agreement Requirements

Each DFAT grant agreement also comes with obligations for both DFAT and the Recipient being funded. These are spelt out in detail in the grant agreement. The Principles will not affect or diminish the obligations or liabilities of the Recipient under the grant agreement as outlined in the grant agreement conditions.

Broadly speaking, any Recipient funded by the Australian Government, through DFAT, is required to comply with relevant and applicable laws, regulations and policies, including those in Australia and in the country/ countries in which they are operating. In particular, the Recipient needs to observe the contractual requirements regarding Child Protection and Counter Terrorism.



## **Additional Information and Related Links**

Further information on DFAT's Child Protection Policy, Counter Terrorism and other applicable laws and policies can be found on DFAT's website at:

<http://aid.dfat.gov.au>

Further information on terrorist organisations listed under Division 102 of the Criminal Code Act 1995 (Cth) and the DFAT Consolidated List of persons and entities subject to UN sanctions regimes maintained in accordance with the Charter of the United Nations Act 1945 (Cth) can be found at:

[http://www.dfat.gov.au/icat/UNSC\\_financial\\_sanctions.html#3](http://www.dfat.gov.au/icat/UNSC_financial_sanctions.html#3)

<http://www.nationalsecurity.gov.au/agd/www/nationalsecurity.nsf/AllDocs/95FB057CA3DECF30CA256FAB001F7FBD?OpenDocument>

Further information on DFAT Accreditation and the ACFID Code of Conduct can also be found at:

<http://aid.dfat.gov.au>

<http://www.acfid.asn.au/code-of-conduct>

Further information on Aid Effectiveness can be found at:

[http://www.oecd.org/departement/0,3355,en\\_2649\\_3236398\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/departement/0,3355,en_2649_3236398_1_1_1_1_1,00.html)

[http://www.oecd.org/document/18/0,3343,en\\_2649\\_3236398\\_35401554\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/18/0,3343,en_2649_3236398_35401554_1_1_1_1,00.html)

# Schedule 4 – DFAT-TAF Partnership – Innovations in Development Policy & Practice Concept Note

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*The purpose of this concept note is to offer an initial menu of options under the four main agreed areas of engagement for the second DFAT-TAF Partnership – Cooperation in ‘Post Aid’ Advanced Middle Income Countries, Engaging Emerging Asian Donors, Regional Programming, and Thinking and Working Politically in Practice. It would not be possible to engage in the full range of activities outlined below (and in Annex 1) given the current funding envelope. Rather, it is expected that DFAT and TAF will concentrate on a few activities in each of the four work streams in the first year and build as appropriate in following years.*

## **Work stream: Cooperation in ‘Post Aid’ Advanced Middle Income Countries (AMICs)**

**Objectives:** The objectives of this work stream are:

1. To influence policy and practice, and promote regional and international knowledge exchange on the reform challenges that are generic to AMICs, and how they play out in specific country contexts; and
2. To identify effective, low-cost approaches to enhancing development cooperation with the growing number of Asian countries at or soon to enter AMIC status.

**Relevance Statement & Proposed Scope of Activities:** Many Asian countries have achieved, or are close to achieving, upper and advanced upper middle income country (AMIC) status<sup>1</sup>. To achieve this level of development, these countries have had to overcome most of the institutional and policy constraints that foreign aid was initially designed to address. Yet, most advanced AMICs continue to face significant reform challenges that could delay or even derail progress toward upper income status. Many of these challenges are common to all AMICs though they play out in ways highly specific to the political economy, culture, and history of a given country.

Australia has an enduring interest in the continued rapid growth and stability of middle income Asian countries, and in strengthening national relationships with countries as they move through these later stages of development. However, to remain effective in a “post aid” environment, Australia and other external actors will need to better understand the challenges that Asian AMICs face and develop a set of policy and program tools that are very different from those appropriate to conventional foreign assistance. Yet, there is a dearth of information on what critical reform problems lie ahead for countries as they approach and reach AMIC status, and thus how Australia can position itself now to remain engaged and useful at later stages of their development. Insights and lessons generated by the Foundation on this issue may not only help Australia better understand the environment in which it engages existing AMICs (Thailand, Malaysia), but also provide insights for countries fast approaching AMIC status, like Indonesia, Sri Lanka, and the Philippines. This research and knowledge agenda will leverage the Foundation’s own experience working in advanced and advancing MICs over the past six decades in Asia.

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<sup>1</sup> The World Bank defines the *upper middle income countries* (AMICs) as countries with GNI per capita of US\$4,125–9,000. By comparison, countries such as Portugal, Israel, and Korea were fully developed by about US\$25,000 GNI per capita. TAF uses the term *advanced middle income countries* to cover the identify countries between US\$9,000 to 25,000 GNI per capita. Globally it is roughly around US\$4125 that tradition donor assistance is “graduated” (except in special cases), yet AMICs must address a wide range of tough development challenges.

## **Work stream: Engaging Emerging Asian Donors**

**Objectives:** The objectives of this work stream are:

1. To advance dialogue and identify opportunities for cooperation amongst Asian and traditional development assistance providers; including Australia;
2. To share experience and knowledge amongst Asian development assistance providers; and
3. To advance opportunities for 'triangular' cooperation between traditional donors (such as Australia) and new Asian aid providers (such as China, India, or Korea).

**Relevance Statement & Proposed Scope of Activities:** Asia's rise has had a profound impact on the international aid landscape. As volumes of south-south cooperation and development finance from Asian providers escalate, international development cooperation, once largely set by the policies and practices of the OECD - Development Assistance Committee (DAC) donors, is changing. There is increasing debate as to whether traditional and emerging providers are converging or diverging in both policy and practice. While some Asian providers, notably Japan and Korea, have joined the DAC, others, notably China and India, show little interest in these forums. These non-traditional providers have not engaged enthusiastically in the global aid discourse nor have their approaches been effectively incorporated into the Global Partnership for Effective Development Cooperation (GPEDC). Some Asian providers are expanding their development cooperation portfolios far beyond infrastructure projects to include community development, education, health, disaster response, and governance, and have sought to improve both their transparency and their effectiveness. At the same time, they are also setting up parallel finance institutions and coordinating mechanisms rather than join existing ones.

Although Asian countries are not new to development cooperation, their role as providers and their perspectives on development cooperation have not been well documented or studied, even by national experts, and some Asian countries face capacity issues around effective aid planning, delivery, evaluation, and management.

In recent years, The Asia Foundation has developed strong and positive relationships with these emerging providers through the "Asian Approaches to Development Cooperation" (AADC) program, which has provided a forum for aid practitioners, analysts, and government officials from Asian providers, including China, India, Thailand, Korea, and Indonesia, to share their views on the evolving objectives and modalities of development cooperation. Regional meetings have also facilitated a candid and useful exchange of perspectives among emerging Asian donors, recipient countries, and Development Assistance Committee (DAC) members, including Australia. There has been significant Australian participation, whether from Canberra and/or country Posts, in virtually all Foundation-organized AADC conferences over the past five years. Through the activities described below, TAF will continue this engagement on critical development effectiveness and development cooperation issues and provide a platform for Australia to continue to deepen its involvement with important Asian providers.

## **Work stream: Regional Programming**

**Objectives:** The objectives of this work stream are:

- To advance understanding of the constraints to increased cooperation and integration on key areas of development and foreign policy in the Asia-Pacific region; and
- To identify how Australian contributions to regional cooperation and integration can be advanced in such areas as trade and investment, water sharing, energy, and transport.

**Relevance Statement & Proposed Scope of Activities:** Asia is economically now the most dynamic and fast growing region on Earth, but countries in the region will face a wide range of

economic, political, social, environmental, and security challenges in the years ahead. Progress on many of these challenges can best be addressed, in some cases can only be addressed, through greater regional cooperation and eventually increased regional integration. Australia is a critical actor in this process, in some cases as a strong supporting partner and others as a central participant. There are three levels at which regional cooperation and integration might be considered: 1) sharing of knowledge and solutions to similar development problems across countries (e.g., methods for addressing non-tariff barriers to trade in South Asia); 2) cooperation on cross-border issues (e.g., water sharing between India, Nepal, and Bangladesh); and 3) strengthening of regional architecture (e.g., implementation of the ASEAN Economic Community).

While Australian involvement and support at a regional level has been an important factor in successful advances in regional cooperation to date, programming in this area has in part been constrained by the fact that traditional foreign assistance tends to be limited to individual countries. The DFAT-TAF Partnership provides a unique channel for addressing emerging regional challenges. In the Foundation, DFAT has a partnership with deep contextual knowledge and broad networks of relationships across the region.

### **Work stream: Thinking and Working Politically in Practice**

**Objectives:** The objective of this work stream is:

1. To advance DFAT policy and programming and support international knowledge exchange on how best to apply ‘thinking and working politically’ (TWP) approaches in practice:
  - a. How and in what circumstances should DFAT encourage iterative, politically-informed programming approaches as part of broader aid investments, particularly in the areas of trade and/or economic growth?
  - b. What are the different types of flexible and iterative programs or approaches that exist, and which of these are most likely to yield the greatest impact at the lowest cost?
  - c. How could TWP approaches be used to strengthen DFAT’s efforts to improve gender equality? And conversely, how can TWP approaches take better account of the gender dimensions of development?

**Relevance Statement & Proposed Scope of Activities:** To date, international debate and research on working politically has focused on identifying commonalities across different operating models and trying to demonstrate their impact. However, little attention has been paid to how these models differ, and the tensions that large donors face when attempting to work in these politically-informed ways. We must understand what incentives and disincentives bilateral donors face in this regard, particularly for larger and longer term investments. Similarly, TWP approaches have great potential to enhance donor efforts to empower women and girls, while becoming more open themselves to greater incorporation of gender dimensions of power relations. As a natural extension to current international development debates, the Foundation proposes three possible component activities under this work stream (see annex). Each of these aforementioned components will progress and contribute to international discourse, as well as DFAT’s own policy and programming through a combination of research, analysis, and direct technical or advisory support.

## DFAT-TAF Partnership Activity Types

Strategic collaboration activities under the next phase of the DFAT-TAF partnership will be programmed jointly by TAF and DFAT on an annual basis, steered by the High-Level Meeting and updated through bi-annual working-level meetings in response to emerging priorities.

Such activities may be essentially undertaken by TAF alone and the results reported to DFAT or may represent a TAF-DFAT collaboration (such as participation by TAF personnel in some capacity in a DFAT program or a joint knowledge sharing event). In each case, partnership efforts should be guided not only by the underlying value of the activity, but also by how effective the activity will be in terms of its influence upon DFAT and TAF policy, programming and practice. Those activities which enable a high-level of collaboration between TAF and DFAT, especially Posts, will offer the greatest chance of success.

The following activity types are proposed as the main tools available to the TAF-DFAT strategic partnership, which will be used to pursue the objectives of the four work streams outlined above:

- a) Advisory support (e.g. short-term, in-country advisory support)
- b) Knowledge sharing (e.g. regional or country specific workshops)
- c) Program documentation (e.g. documenting, through research and analysis, examples of innovative aid practice)
- d) Issue-based research papers (e.g. identification, description and analysis of emerging and/or successful policy reforms at country or regional levels)
- e) Small-scale consultations (e.g. to survey a range of actors on a specific issue of interest)
- f) *etc*

Annex 1 contains initial TAF suggestions as to indicative components and activities under the four work streams, based on discussions with DFAT to date and building on successful areas of focus under the current partnership.

## Annex 1: Indicative Work Stream Components and Activities

### Work stream: Cooperation in 'Post Aid' Advanced Middle Income Countries (AMICs)

#### *Component 1: Enhancing Policy Influence*

Knowledge of the reform challenges faced by advanced MICs, and how donors could respond using a beyond-aid agenda, lies largely outside of the foreign aid industry where concerns end with aid "graduation". What knowledge and expertise does exist, largely in academia and the private sector, tends to be stove-piped. TAF already has a nascent research and knowledge agenda underway, and this could be developed further and forming one component of an advanced dialogue with DFAT on these issues. This could include:

- Small scale *consultations* with a broad and diverse community of actors who are thinking and working globally on the various reform challenges in advanced MICs (e.g., researchers, foreign ministry officials, private sector leaders, and other influential actors from advanced MICs and advanced economies).
- *Issue-based research papers and think pieces* on specific reform challenges facing AMICs, as well as ideas on how external actors can continue to cooperate effectively on advanced development challenges long after aid graduation. This work includes drawing on TAF program experience from the late 1970s through to the early 1990s in places like Korea and Taiwan.

#### *Component 2: Dissemination, Testing, and Learning through Australian Policy and Practice*

The knowledge generated through the aforementioned research and analysis can immediately inform Australian aid policy and practice in advanced MIC contexts and be rolled out as an analytical tool for countries fast approaching graduation (e.g., Indonesia, Philippines). Full focus on this work-stream would like come in years 2-3 and beyond as our knowledge and experience on specific issues facing rapidly advancing AMICs increases, though early consultations with Posts and Canberra will take place on a regular basis. This work stream will include a series of small discussions and follow-on analytical inputs for DFAT Posts that will be carefully shaped and timed to meet Post needs, or delivered regionally where issues are cross-cutting.

### Work stream: Engaging Emerging Asian Donors

#### *Component 1: Deepening dialogue*

This component aims to strengthen understanding of development policy and cooperation amongst Asian and traditional providers through a series of dialogues and research studies.

The upcoming, sixth year of the ongoing AADC dialogue series, organized jointly by The Asia Foundation and the Korea Development Institute (KDI), will focus on the role of non-state actors in international development cooperation. Two meetings will be held in 2016, one on civil society and one on the role of the private sector in international development. The latter would explore how both OECD-DAC donors and emerging Asian provider countries are engaging their private sectors in international development cooperation through public-private partnerships, corporate social responsibility, and Shared Value approaches. It would be especially valuable to draw on Australia's experience and expertise in this area.

Additional dialogue programs will focus on the evolving development cooperation policies and priorities of China and India. On China, the Foundation plans to work with Chinese partner institutions to conduct a study of China's (uneven and seemingly ambivalent) engagement with global development institutions and fora over the past decade. Through analysis, policy

recommendations, and a roundtable seminar with Chinese and international stakeholders, the project will seek to chart a path for increased cooperation between China and other aid-providing countries going forward. On India, the Foundation will partner with Indian scholars and government-connected think tanks to produce an analysis and organize a dialogue series to inform the development of a more comprehensive policy framework and agenda for India's growing international development cooperation.

### ***Component 2: Building the capacities and practices of Asian providers***

This component will focus on strengthening the capacities and enhancing the practices of Asian providers through a range of potential activities. In China, an emerging opportunity and challenge for China's aid program has been the growth of a Chinese NGO community that is becoming increasingly interested and steadily more active in overseas development, including in response to the recent Nepal earthquake. To help build experience and capacity in this sector, the Foundation could arrange a series of internships for Chinese NGO staff to spend time with Australian NGO engaged on development issues in different Southeast Asian countries. Two Chinese NGOs have already expressed interest in such a China-Australia NGO Internship program.

In Mongolia, the Foundation has been advising the country's newly-created International Cooperation Fund (ICF), based in the Ministry of Foreign Affairs, as it seeks to develop initiatives to support democratization and market transitions in selected Asian countries such as Myanmar and Afghanistan. Additional support would be very much welcomed by the ICF to help build staff capacity, develop a more coherent aid policy/strategy, and explore opportunities for enhanced triangular cooperation with countries like Australia.

In India, the Foundation has had positive discussions with the Ministry of External Affairs about developing a program – similar to the one the Foundation implemented in China two years ago – to build Indian capacity in the field of overseas Disaster Risk Management (DRM). As in the China case, a series of in-country seminars would be held for Indian officials with international DRM experts, including from Australia, and a study tour to Australia organized to connect with key agencies involved with Australia's emergency and humanitarian response (e.g. ACFID, Australia's Emergency Management Institute, DFAT, Australian Red Cross).

### ***Component 3: Advancing Triangular Cooperation***

This component will examine the experiences of Triangular Cooperation (TRC) in the region and promote opportunities for more effective partnerships among participating countries. TRC represents an attractive and potentially important way for established donors to collaborate with emerging providers around common objectives and priorities. Providers of South-South Cooperation such as China, Thailand, and Malaysia have signed MOUs with traditional donors around a variety of development issues. However, these MOUs are often idle or awaiting opportunities for implementation. Recognizing the potential that these partnerships offer, The Asia Foundation would support the Network for International Development Cooperation in Thailand to convene an international forum on the topic of TRC. The aim would be to identify issues and points of common interest that figure or should figure in TRC agreements, and some practical ways forward for collaborating partners. Invitations will be extended to DAC donors active and interested in TRC (e.g., Australia, Japan, USA, Germany) as well as Asian providers currently engaged in TRC or interested in future opportunities (e.g., China, India, Thailand, Malaysia, Indonesia, Mongolia). In addition, the Foundation would support a detailed study of the TRC arrangements between Australia/China/Thailand and Australia/China/Indonesia on disaster risk management. The study will document and share the practices and experiences of the participating countries and their approaches to humanitarian aid. It will also identify practical opportunities for expanded triangular cooperation in DRM going forward.

## **Work stream: Regional Programming**

### ***Component 1: Advancing South Asian cooperation***

Under the current Partnership, DFAT and The Asia Foundation will convene a regional workshop in South Asia in December, which will focus on four thematic areas where regional cooperation and integration discussions have acquired a degree of traction—water, energy, trade, and transit. This activity will bring together a range of actors from the government, private sector, academia, civil society organizations, and the international community to examine ways to advance cooperation in the four key areas above. This event will position the Partnership for a potentially wide range of future programs that could contribute to and Australian support for regionalism in this sub-regional. Future activities could for example focus on cross border cooperation on water and/or energy.

### ***Component 2: Strengthen cooperation under ASEAN***

ASEAN is now an important regional body in Southeast Asia, though its potential has not yet been fully realized. Capacities within ASEAN are still limited, but the organization has been the centre of growing cooperation in economic growth, among others areas. Success of the Asian Economic Community (AEC) is one area where Australia has a tremendous stake and could potentially increase its support and role as external partnership. The Foundation can be a good partner in this effort.

Cooperation between DFAT and the Asia Foundation under the new DFAT-TAF Partnership has an immense potential, and could involve any of a range of critical sectoral issues, including trade, water, energy, and transport and beyond. It is also a useful mechanism for furthering Australian efforts to support enhanced dialogue and support for any of these areas at the level of regional architecture including ASEAN, IORA, SAFTA, SAARC, APEC, East Asian Summit, and others.

## **Work stream: Thinking and Working Politically in Practice**

### ***Component 1: Advisory Support***

The majority of aid programs administered by bilateral and multilateral donors may not be able to fully embrace a highly adaptive, politically-informed approach. Yet the international communities' understanding of what it takes to move these programs incrementally towards higher impact through more responsive, iterative, and politically-informed ways of working is limited. This component proposes three areas of cooperation with DFAT to assist in deepening theoretical and practical knowledge in this regard. We propose that these first be offered in the form of services to programs focused on economic growth or trade issues, given that these are a current Australian Government priority and that the Foundation has significant expertise to offer in this area.

1. The Foundation could provide short-term, in-country advisory support to a series of DFAT-nominated programs that would like to work in more adaptive, politically-informed ways, but have not yet had the opportunity or support to do so. The advisory support would include developing a series of hypotheses about how the program could operate in more iterative, politically-informed ways, and then providing strategic support to DFAT and/or implementers as required.
2. The Foundation could also complement this direct advisory support to programs with broader knowledge-sharing – for example, through regional or country-specific workshops to help DFAT posts better understand how elements of the working politically in practice agenda could be integrated into their portfolios.



3. The Foundation could also document the experiences of larger programs that are experimenting with more iterative, adaptive approaches.<sup>2</sup> This research would track results of different approaches and build a deeper understanding of which are most effective in catalyzing large, more conventional programs to adopt more politically informed ways of working. Through this research, the Foundation could compile a compendium of different program structures, models, and management arrangements that have been used enable traditional programs to adopt new approaches. This would focus on identifying different program typologies and how effective they are at maximising space for program iteration and adaptation. The research would also consider the broader institutional environment in which each program operates, and the extent to which it constrained or hindered TWP approaches from taking hold.

### ***Component 2: The Intersection of TWP and Gender***

The May 2015 DFAT-hosted TWP Community of Practice meeting held in Bangkok marked an important turning point in discussions within the international TWP community. For the first time, the intersections between the TWP agenda and gender were unpacked and interrogated. Yet, while many questions were answered, many more were also raised. Using gender as a case study, the Foundation will draw on its own program experiences combined with insights from international literature and best practice to gain clear program-relevant answers to one or two of the following questions:

1. Taking a recent policy reform example(s), how can taking a TWP approach to programming maximize outcomes for women and girls as well as men? How does TWP influence or affect existing gendered structures, attitudes, norms, and institutions in the contexts teams operate within?
2. Taking a recent policy reform example(s), how can TWP approaches better integrate a gender perspective?
3. Drawing on examples from recent women's empowerment initiatives across Asia, what might TWP approaches offer in support of these efforts?

### ***Component 3: Understanding Different Program Models***

This component would document some of the differences among programs operating in highly iterative and flexible ways. In doing so, this research agenda could also identify the variables that lead to differences in program approach – with the ultimate aim of helping program managers know which approach to deploy, when, why, and how. The research would draw on lessons from programs under the DFAT-TAF Partnership and other donor funded projects.

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<sup>2</sup> These may include nominated DFAT programs where TAF is providing advisory support and potentially other donor programs for comparison. Levels of analysis could also be extended to include examination of WPIP approaches at the country and sector portfolio level, depending on discussions with DFAT and anticipated need.

